

IN THE MATTER OF
GOTHAM SALES COMPANY, INC., 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 3120. Complaint, Apr. 30, 1937—Decision, Sept. 3, 1938

Where a corporation and five individuals, officers, directing heads and sole stockholders thereof, engaged as wholesale dealers in a variety of peddlers' and retailers' supplies, including cosmetics, perfumes, dental, and shaving creams, toilet accessories, spices, extracts, and similar household notions, and in sale and distribution thereof in commerce among the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products in commerce as aforesaid, and including manufacturers, sellers, and distributors of like and similar products who refrain from advertising or representing, through their catalogs and other advertising media, that their merchandise has a merit, origin, or value which it does not have, or falsely that they are manufacturers; in advertising their said commodities through catalogs, price lists, and other printed matter published, issued and circulated through the mails to their customers and prospective customers in the various States and in said District—

- (a) Represented, through fictitious pricing and other means, that their products were customarily and regularly sold at prices greatly in excess of those for which they were actually ordinarily and customarily offered and sold to ultimate purchasers, and greatly in excess of the true and actual retail value thereof, and that their dental and shaving creams were put up in "Giant" sizes, and to dealer customers that they could make introductory combination offers to the public of "Free" goods in connection with merchandise sold them by said corporation and individuals, facts being it was not contemplated or intended that products in question would be sold for fictitious prices represented, but said prices were thus advertised and held out as customary and regular in order to place in hands of retailers means and instrumentality whereby purchasing public might be deceived and misled into belief that it was buying merchandise at price lower than that at which it was ordinarily sold, aforesaid creams were not put up in sizes known to trade and purchasing public as "Giant" sizes, but in same sizes in which similar products were ordinarily packed by competitors who do not thus describe the same, and products thus represented as "Giant 50¢ size" did not have any such resale value or price or usually and customarily sell for any such sum, and sale price of supposed "free" articles was covered in that paid for others included in particular deal;
- (b) Represented, through such designations as "Dr. Ross—Dental Creams" and "Dr. Sach's—Dental Creams," that products in question were made under formula perfected by member of medical or dental profession and made under supervision and direction of a doctor and that they had, as a result thereof, superior or special qualities, and through use of such words as "Odeurs de Paris," "Perfumes of France," "Parfums de Paris," in referring in catalogs and other advertising literature to perfumes sold by them, and

through prominent display of words "Paris" and "France," that products in question were made in and imported from said country, facts being various products in question, thus referred to, were neither, as case might be, made in accordance with the formula perfected by a member of aforesaid professions, nor under supervision of a doctor, and did not possess superior qualities as result of such formula or supervision, and perfumes in question were imitations made, compounded, and bottled in the United States;

With effect of confusing and misleading public with respect to true facts and into erroneous and mistaken belief that it could secure some of their products free, that some were packaged in larger sizes than similar products of competitors, or were composed of superior ingredients and made under supervision of a doctor, etc., and with special or scientific properties as a result of such medical advice or supervision, and that they imported certain of their perfumes, and that retail prices advertised in connection with the sale of their said products represented the true value or selling price thereof, and, in accordance with the custom and belief of many years' standing, that in purchasing said products thus offered they were securing a bargain not ordinarily obtainable in usual course of trade; and

(c) Represented, as case might be, through use of various trade names including words "Laboratories," "Food Products," "Institute," and "Manufacturing," and through use of word "Manufacturers" on letterheads and circulars, order blanks, and general business stationery, that they owned, operated, and controlled laboratories wherein they made the products sold by them, facts being they made none of said products, but bought same from various manufacturers and were not manufacturers, in ordinary and accepted sense of term, of products thus sold and distributed, nor owners and operators of laboratories, and did not directly and absolutely, or in any other manner, control any factory, plant, or laboratory wherein were made their various products as aforesaid;

With result of placing in hands of peddlers and retailer buyers instrument and means whereby they might commit a fraud upon substantial portion of purchasing public by enabling such dealers to represent and offer for sale and sell said household products and notions as genuinely superior or imported products, produced by manufacturers thereof with intent of selling same in usual course of trade to general purchasing public at and for approximately same retail prices advertised by the manufacturer, and of misleading substantial portion of purchasing public in several States and in said District by inducing them mistakenly to believe that merchandise described as aforesaid sold at retail prices and had retail values close approximating those represented, that products in question, as case might be, were composed of superior ingredients and were packaged in larger sizes than similar goods of competitors, and that they gave certain merchandise free and had "free" deal transactions, and were manufacturers and owned and operated laboratories and were importers of perfumes from France and other foreign countries, and of inducing substantial number of retail merchants and consumer purchasers to buy products offered, sold, and distributed by them on account of such erroneous and mistaken beliefs, and of thereby unfairly diverting trade to them from similarly engaged competitors who do not, as hereinbefore set forth, misrepresent the facts with respect to their goods and status; 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.

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Before *Mr. John W. Addison*, *Mr. William C. Reeves*, and *Mr. Edward E. Reardon*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. Samuel J. Ernstoff, of New York City, for respondents.

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 Gotham Sales Co., Inc., a corporation, also trading as Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, Lady Fair Laboratories; and Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, individually and as copartners trading as Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, Lady Fair Laboratories, and as officers of Gotham Sales Co., Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by 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 Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, for more than 3 years last past have been, and are now, individually and as copartners, doing business under the trade names Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, and Lady Fair Laboratories, with their principal office and place of business located at 37 Union Square, in the city of New York, State of New York. They have also for more than 5 years last past maintained branch offices located in the city of Chicago, State of Illinois; in the city of New Orleans, State of Louisiana; and in the city of San Francisco, State of California.

PAR. 2. Respondent, Gotham Sales Co., Inc., is a corporation organized on or about December 15, 1935, under and by virtue of the laws of the State of New York, with its principal office and place of business located at 37 Union Square, in the city of New York, State of New York. In the conduct of its business as hereinafter described said respondent trades under its own corporate name and also under the

trade names Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, and Lady Fair Laboratories.

In the course and conduct of its said business it is now, and has been at all times since its incorporation, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of household products and notions, in commerce between and among various States of the United States, and in the District of Columbia. Its officers, since its organization, have been and still are, the respondents Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen. The above-named individuals cooperate and participate in the direction of the herein described sales policies and business practices and activities of the corporate respondent.

The said respondent corporation, trading under its own name and under the aforesaid trades names, has been since December 15, 1935, and the said individuals, individually and as copartners, trading under said various trade names, have been for more than 3 years last past, and all of said respondents are now engaged in business as wholesale dealers in a variety of peddlers' and retail dealers' supplies, including cosmetics, perfumes, dental and shaving creams, toilet accessories, spices, extracts, and similar household notions, and in the sale and distribution thereof in commerce between the various States of the United States, and in the District of Columbia. All of said respondents cause, and have caused, said products when sold by them to be shipped from their principal place of business and branches thereof in said cities of New York, Chicago, New Orleans, and San Francisco, into and through other States of the United States, to the purchasers thereof located in such States other than the States of New York, Illinois, Louisiana, and California.

In the course and conduct of their said businesses they are, and have been, in substantial competition with corporations, firms, partnerships, and individuals engaged in the sale and distribution of a variety of similar household products and notions, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of their businesses as aforesaid, the respondents, in soliciting the sale of and in selling their commodities, and for the purpose of creating a demand upon the part of the consuming public for said commodities, now cause and have caused their commodities to be advertised through the medium of catalogs, price lists, and other printed matter published, issued, and circulated

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through the United States mails, to their customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 4. In the aforesaid ways and by the aforesaid means, respondents make and have made to the general public many false and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogs and price lists are described as possessing retail values or prices greatly in excess of the actual selling price by respondents to retailers or other purchasers, and greatly in excess of the actual value or price thereof. A number of the said items and articles of merchandise described in the aforesaid catalogs have fictitious retail prices stamped or printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public.

Representative of such statements and representations made by the respondents in their advertising literature and on containers regarding the selling price and value of the commodities thus offered by them for sale are the following:

Rio-Rita Skin and Complexion Soap. Richly Scented. Refreshing and Luxurious. Price 50¢.

4-Piece Stropper Outfit—Consists of 1 stropper for all make blades, 1 genuine Pigskin Leather strop with swivel, 1 box of Strop Dressing in tin foil (in box), 1 large Display Printed Carton that holds entire Outfit. A good 50¢ outfit and a knockout at 25¢.

Tip Top Tooth Brush. Sanitary * * * Sterilized. 15¢

Dental Creams—a beautiful range of popular 25¢ and 35¢ tubes. * * *

Chewing Laxatives—20 envelopes on a display card. (Yields \$1.00)

United Blades Brushless Shaving Cream. Price 50¢.

Flavoring Extracts—Vanilla, Lemon, Almond * * *. Packed in tall panel bottles. 2 dozen to a shipping case. 4 oz. (Label priced 50¢) 8 oz. (Label priced \$1.00)

Mothers Pride Flavor. 8 Fluid oz. Imitation Vanilla Flavor. * * * Value \$1.00.

Pipe Sets—4 pieces—Each set in a colorful modernistic box. A handsome flash with a retail value of \$2.50.

Old Gotham Old Fashioned Needle Book * * *. Each book inserted in individual envelope marked 75¢ each. A very handsome flash.

The respondents further make false and misleading statements in the advertising literature hereinabove referred to, through the use of the words "Free" and "Free Deal," thus representing to purchasers and prospective purchasers of respondents' said products that respondents furnish some of their products without cost.

PAR. 5. In truth and in fact, said "Rio-Rita Skin and Complexion Soap" which is price marked 50 cents per box actually is sold to the retail trade for 7½ cents per box; 4-piece stropper outfits which are

price marked 50 cents actually are sold to the retail trade for \$1.20 for 1 dozen outfits complete; Tip Top tooth brushes which are price marked 15 cents each actually are sold to the retail trade for 7 cents each; dental creams which are price marked 35 cents per tube actually are sold to the retail trade for 66 cents per dozen tubes; chewing laxatives which are price marked 5 cents per envelope actually are sold to the retail trade for 15 cents for a display card of 20 envelopes; "United Blades Brushless Shaving Cream" which is price marked 50 cents actually is sold to the retail trade for 90 cents a dozen; flavoring extracts (all flavors) 4-ounce size which is price marked 50 cents actually is sold to the retail trade for 60 cents per dozen bottles and 8-ounce size which is price marked \$1 actually is sold to the retail trade for 84 cents per dozen bottles; "Mothers Pride Flavor" which is price marked \$1 per bottle actually is sold to the retail trade for \$1.20 per dozen bottles; pipe sets which are price marked \$2.50 actually are sold to the retail trade for 60 cents per set; and the "Old Gotham Old Fashioned Needle Book" which is price marked 75 cents actually is sold to the retail trade for 60 cents per dozen.

No merchandise is given away free by said respondents, but the sales price of the article or articles purported to be offered "free" is taken up into the cost of the other article or articles in the sales deal.

The respective items above referred to are usually and customarily sold to retail dealers or peddlers for the retail prices above indicated. The said retail prices at which the products are actually sold to retail consumers do not appear on the containers.

The said catalogs of respondents contain many other instances where fictitious retail prices or values are imprinted upon the product itself, its label or carton.

PAR. 6. The said catalogs and other advertising literature also offer for sale "Giant" sizes of dental and shaving creams. Characteristic of such advertising is the following:

RX Dental Cream. A new line of Creams.

Giant 50c size-----a dozen \$1

The statements and representations in such catalogs that their said dental and shaving creams are put up in "Giant" sizes were and are inaccurate and misleading. In fact, said dental and shaving creams are not put up in sizes known to the trade and purchasing public as "Giant" sizes and said products as packaged do not have a retail value or price approaching 50 cents each.

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Among other statements and representations made by the respondents regarding the commodities offered by them for sale are the following:

Dental Creams-----Dr. Sach's; and

Dental Creams-----Dr. Ross'.

Through the use of designations such as "Dr. Ross" and "Dr. Sach's" respondents represent that said products are made from a formula of a member of the medical or dental profession and are made under the supervision and direction of a doctor and have superior or special qualities which are the result of medical advice or service.

The products so marked, stamped, branded, advertised, and sold in interstate commerce were not and are not made in accordance with the design or formula of a member of the medical or dental profession. Said products are not made under the supervision of a doctor, as represented, and do not contain special or scientific features which were or are the result of medical advice or service.

PAR. 7. The said catalogs and other advertising literature published and distributed by the respondents also contain other instances of misleading descriptions and misrepresentations of their commodities. Among them are the following:

"Three Charms Turtle Oil Tissue Cream" bearing the inscription "Scientific Beauty Institute, New York, Chicago"—described as "An outstanding product made with pure imported South Sea Turtle Oil."

"RX—72 Cod Liver Oil," represented to be "Pure Imported Norwegian."

"RX—71 Russian Mineral Oil" represented to be "Genuine Imported Russian Mineral Oil, U. S. P. Heavy."

"RX—12 Olive Oil" represented to be "Highest Grade imported oil" and described in catalogs as "Pure imported oil in fancy bottles, finest quality."

On boxes containing perfume marked "Odeurs de Paris," "Perfums of France," "Parfums de Paris," some containing also an atomizer, the words "Paris" or "France" are prominently featured on both the bottle and the container.

For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes, cod liver oil, and mineral and olive oils which are manufactured or compounded in foreign countries.

In truth and in fact, neither the aforesaid commodities nor their ingredients are manufactured in France or in any other foreign country, as represented. The above-described products are domestic products made and compounded in the United States.

PAR. 8. Over a period of many years, manufacturers in many trades have adopted and followed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which the said manufacturers suggest that the retailer should sell the item or article to the ultimate consumer purchaser. The public generally understands this custom and has been led to and does place its confidence in the price-marking so stamped and the representations so made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has had and has expressed a marked preference for dental creams, shaving creams, toilet articles, and similar household notions which are composed of superior ingredients produced by manufacturers for sale at prices in excess of the general and usual range of prices for similar products or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed have marked or stamped the suggested retail prices on said products to indicate the superior quality and character of the product and its higher value.

Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the purchasing public is led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail prices thereof over ordinary products sold for their regular price which is lower than the normal retail value of the superior products in the customary course of trade.

The retail prices so stamped or printed as aforesaid upon respondents' products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 9. The respondents, in soliciting the sale of and selling their commodities for the purpose of creating a demand on the part of the consuming public for such commodities, now represent and have for more than 1 year last past represented, through the use of the various trade names herein set out and through the use of the words "Manufacturers and Importers" on letterheads and circulars, order blanks, and general business stationery that they are manufacturers

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and importers, and that they own, operate, and control laboratories wherein they compound the products which they sell.

In truth and in fact, the above representations of the respondents are false in that the respondents, under their various trade names, or in any other manner, are not in any sense whatsoever manufacturers of any of the aforementioned products. They are not owners and operators of laboratories, as represented by them; nor are they in any sense whatsoever importers of the various articles distributed and sold by them. They do not directly and absolutely, or in any other manner, control any factory, plant, or laboratory wherein the various products sold by them are compounded or manufactured.

PAR. 10. The aforesaid false and misleading statements and representations, together with the aforesaid false and fictitious price markings, on the part of the respondents, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public, by enabling such dealers to represent and offer for sale and sell respondents' said household products and notions as being genuinely superior, or imported products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for approximately the retail price stamped on said products or on their containers.

PAR. 11. There are, among the competitors of the respondents in commerce, as described herein, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products and the nature and size of their business. There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing through their catalogs and other advertising media, and through fictitious price markings, that the merchandise offered for sale by them has a merit, origin, or value that it does not have.

PAR. 12. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States, and in the District of Columbia, by inducing them to mistakenly believe that the merchandise so described sells at retail prices and has retail values closely approximating the prices stamped thereon; that said products are

composed of superior ingredients; that respondents give certain merchandise "free" and that respondents have "free deal transactions"; that respondents are manufacturers and own and operate laboratories; and that respondents are importers of perfumes and cod liver, mineral and olive oils, and other toiletries from France, Norway, Russia, and other foreign countries.

The foregoing false and misleading statements and representations on the part of said respondents have induced and still induce a substantial number of retail merchants as well as the consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been unfairly diverted to respondents from those competitors engaged in similar businesses, referred to in paragraph 11 above. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 13. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and respondents' competitors, as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 30, 1937, issued and served its complaint in this proceeding upon respondents, Gotham Sales Co., Inc., a corporation, also trading as Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, Lady Fair Laboratories; and Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, individually and as copartners trading as Universal Merchandise Co., Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, Lady Fair Laboratories, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, James McKeag, and Joe L. Evins,

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attorneys for the Commission, and in opposition to the allegations of the complaint by Samuel J. Ernstoff, attorney for the respondents, before John W. Addison, W. C. Reeves, and Edward E. Reardon, examiners 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 a stipulation of facts was entered into between Samuel J. Ernstoff, attorney for respondents, and W. T. Kelley, the Commission's chief counsel, subject to the Commission's approval. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence and brief of counsel for the Commission (brief on behalf of respondents having been waived and oral argument not having been requested), and on the aforesaid stipulation of facts, which said stipulation has been approved by the Commission; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, all brothers, for more than 5 years last past have been, and are now individually and as copartners, doing business under the trade name Universal Merchandise Co., with their principal office and place of business located at 37 Union Square, New York City, N. Y.

PAR. 2. Gotham Sales Co., Inc., the corporate respondent, was organized on or about January 1, 1936, under the laws of the State of New York. Its principal office and place of business is at 37 Union Square, New York City, N. Y. Said respondent corporation, trading under its own name and as Universal Merchandise Co., and the aforesaid individual respondents, individually and as copartners, also trading as Universal Merchandise Co., are now, and for several years have been, engaged in business as wholesale dealers in a variety of peddlers' and retail dealers' supplies, including cosmetics, perfumes, dental and shaving creams, toilet accessories, spices, extracts, and similar household notions, and in the sale and distribution thereof in commerce between and among the various States of the United States, and in the District of Columbia. The five individual respondents, all brothers, are the officers and directing heads of said corporation, and otherwise cooperate and participate in the direction of the sales policies and business practices and

activities of the corporate respondent. Said brothers are the sole stockholders in and are, respectively, president, vice president, secretary, treasurer, and assistant treasurer of said respondent corporation, which was incorporated for \$100,000 and is now doing a \$900,000 yearly business.

Beside their principal place of business in New York City, as aforesaid, said corporate and individual respondents also have large branch offices in Chicago, Ill., New Orleans, La., and San Francisco, Calif.

Respondents' place of business in New York City is in charge of the brothers Harry J. Gottsegen, president, and Max Gottsegen, secretary, respectively, of the respondent corporation. Martin Gottsegen, one of the brothers, is in charge of respondents' Chicago branch, and another brother, Alexander Gottsegen, is in charge of respondents' New Orleans branch. The San Francisco branch is in charge of Morton Greenfeld, a cousin and employee of the five Gottsegen brothers. Said branch offices, as well as the principal place of business in New York City, are the respective places of business of all the respondents, corporate and individual.

Gotham Sales Co., Inc., the corporate respondent, and Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, and Alexander Gottsegen, four of the five individual respondents, all trading as Universal Merchandise Co., do not operate and carry on their business under the trade names Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, and Lady Fair Laboratories, as alleged in the complaint. These various trade names are used only by Martin Gottsegen, the other brother and individual respondent named herein, who, besides managing the Chicago office of Gotham Sales Co., Inc., trades also in his individual capacity under all of the various aforesaid trade names, in competition with other individuals and with partnerships, firms, and corporations selling and distributing similar household notions and products in commerce, as herein described.

In connection with his various individual enterprises, other than as manager in charge of the Chicago branch of respondent Gotham Sales Co., Inc., said Martin Gottsegen has his principal place of business located at 28 South Wells Street, Chicago, Ill. He also maintains and operates branch offices in New Orleans, La., and in San Francisco, Calif. His principal place of business in Chicago, known principally as the Tip Top Laboratories, one of his several trade names, is separate and distinct from the Chicago branch office

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of Gotham Sales Co., Inc., of which he is the manager, as are also his branch establishments in New Orleans and in San Francisco. These places of business are also the addresses and places of business of Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, and Lady Fair Laboratories, the other trade names under which said Martin Gottsegen does business in his individual capacity. None of these trade names under which said Martin Gottsegen trades is registered, but said trade names are identified for convenience with various post offices.

The said Gotham Sales Co., Inc., the corporate respondent and all the aforesaid individual respondents, doing business under the various aforesaid trade names, have caused and now cause said products when sold by any of them to be shipped from their various places of business in New York City, Chicago, New Orleans, and San Francisco to purchasers consisting of retail dealers and peddlers located in various States of the United States other than the State of origin of said respective shipments, and in the District of Columbia.

In the course and conduct of their said businesses said corporate respondent and all the individual respondents trading as Universal Merchandise Co., and respondent Martin Gottsegen doing business under the various other trade names hereinbefore set out, have been and are now in substantial competition with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of similar housesold notions and products in commerce among and between the various States of the United States and in the District of Columbia.

In said several places of business which he controls and operates, said Martin Gottsegen bottles and assembles cosmetics, flavoring extracts, and drug sundries for sale and shipment to the Gotham Sales Co., Inc., corporate respondent herein, at its four separate places of business.

At his principal place of business in Chicago, respondent Martin Gottsegen employs an assistant who has studied chemistry, but holds no degree as a chemist. His branch establishments in New Orleans and San Francisco, which are also separate and distinct from the places of business that the Gotham Sales Co., Inc., operates in those cities, are in charge of persons in the employ of said Martin Gottsegen. All of the equipment in the places of business thus separately leased, controlled, and operated by said Martin Gottsegen, consisting of crocks and filling apparatus, is his individual property.

Said Martin Gottsegen maintains no branch establishment on behalf of his various individual enterprises in New York City.

PAR. 3. In the course and conduct of their business as aforesaid, the said Gotham Sales Co. Inc., the corporate respondent herein, and each of the said Gottsegen brothers, the individual respondents herein, in soliciting the sale of and in selling their commodities, and for the purpose of creating a demand upon the part of the purchasing public for said commodities, now cause and have caused their commodities to be advertised through the medium of catalogs, price lists, and other printed matter published, issued, and circulated through the United States mails, to their customers and prospective customers in the various States of the United States, and in the District of Columbia. By means of said advertising, as aforesaid, respondents make and have made to the general public many misleading and deceptive statements with reference to the commodities offered by them for sale.

PAR. 4. In said catalogs, price lists, and other printed matter, respondents represent through fictitious pricing and through other means that their products are customarily and regularly sold at prices greatly in excess of the prices for which such products are actually ordinarily and customarily offered for sale and sold to ultimate purchasers and greatly in excess of the true and actual retail value of such products. It was not contemplated or intended by the respondents that said products would be sold for the fictitious prices so represented, but these prices are advertised and so represented as the customary and regular prices thereof in order to place in the hands of retail dealers a means and instrumentality whereby the purchasing public might be deceived and mislead into the belief that it is purchasing merchandise at a price lower than that at which such merchandise is ordinarily sold.

Representative of such statements and representations made by the respondents in their advertising literature regarding the selling price and value of the commodities thus offered by them for sale are the following:

Rio Rita Skin and Complexion Soap. Richly scented. Refreshing and Luxurious. Price 50¢.

4-Piece Stropper Outfit—Consists of 1 stropper for all make blades, 1 genuine Pigskin Leather strop with swivel, 1 box of Strop Dressing in tin foil (in box), 1 large Display Printed Carton that holds entire Outfit. A good 50¢ outfit and a knockout at 25¢.

Tip Top Tooth Brush. Sanitary * * * Sterilized. 15¢.

Dental Creams—a beautiful range of popular 25¢ and 35¢ tubes. * * *

Chewing Laxatives—20 envelopes on a display card. (Yields \$1.00)

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United Blades Brushless Shaving Cream. Price 50¢.

Flavoring Extracts—Vanilla, Lemon, Almond * * *. Packed in tall panel bottles. 2 dozen to a shipping case. 4 oz. (Label priced 50¢) 8 oz. (Label priced \$1.00)

Mother's Pride Flavor. 8 Fluid oz. Imitation Vanilla Flavor. * * * Value \$1.00.

Pipe Sets—4 pieces.—Each set in a colorful modernistic box. A handsome flash with a retail value of \$2.50.

Old Gotham Old Fashioned Needle Book * * *. Each book inserted in individual envelope marked 75¢ each. A very handsome flash.

PAR. 5. Articles offered for sale by respondents are thus advertised as having definite and specified retail values far in excess of their true and retail values.

The prices or values, represented as aforesaid, are shown below side by side with the prices at which said respondents actually offer and sell the articles to retailers, and with the percentage of mark-up for the dealer involved in each price:

<i>Represented resale price</i>	<i>Price to dealer</i>	<i>Mark-up (percent)</i>
Rio Rita Soap, 50¢-----	90¢ per doz-----	567
Stroppler Outfit, 50¢, 25¢-----	\$1.20 per doz-----	400-150
Toothbrush, 15¢-----	78¢ per doz-----	130
Dental Cream, 25¢, 35¢-----	66¢ per doz-----	354-536
Chewing Laxative, \$1.00-----	\$1.80 per doz-----	567
Shaving Cream, 50¢-----	90¢ per doz-----	567
Flavors, 4-oz., 50¢-----	60¢ per doz-----	900
Flavors, 8-oz., \$1.00-----	84¢—\$1.20 per doz-----	900-1328
Pipe Sets, \$2.50-----	\$7.20 per doz-----	316
Needle Book, 75¢-----	60¢ per doz-----	1400

The catalogs and other advertising literature of the respondents contain many other instances of fictitious retail prices or values.

Respondents admit that their products so advertised and priced for resale do not actually resell at that price, and are worth much less.

The retail prices so advertised by respondents are greatly in excess of the actual selling price of the said items or articles of merchandise thus sold by respondents, and in no sense represent either the true value or the true selling price of said articles. Many purchasers are led to believe and do believe that said products so advertised are composed of superior ingredients, and that by purchasing at less than the prices so advertised they are securing bargains not obtainable in the usual course of trade.

PAR. 6. Respondents also represent to dealer-customers that said dealers can make introductory combination offers to the public of "Free" goods in connection with merchandise sold to them by respondents, such as a \$1 value steel casserole oven, a five-piece garnishing set, a utility knife, or a 50-cent bottle of black walnut flavor with

each purchase of a \$1 one-half pint bottle of imitation vanilla flavor at respective prices of 98 cents, 59 cents, 49 cents, and 39 cents.

In truth and in fact, no merchandise is given away free by said respondents. Such goods are paid for by purchasers at prices yielding the dealer substantial profits. The sales price of the article or articles purported to be offered "Free" is covered in the price paid for the other article or articles in the sales deal.

PAR. 7. In their catalogs and other advertising literature, respondents offer for sale "Giant" sizes of dental and shaving creams. Characteristic of such advertising is the following:

RX Dental Cream. A new line of creams.
Giant 50¢ size-----a dozen \$1.00.

The statements and representations in such catalogs that their said dental and shaving creams are put up in "Giant" sizes were and are inaccurate and misleading. Said dental and shaving creams are not put up in sizes known to the trade and purchasing public as "Giant" sizes, but are in fact put up in the same sizes in which similar products are ordinarily packaged by competitors who do not describe such packages as "Giant" sizes, and said products as packaged do not have a resale value or price approaching 50 cents each, nor do they usually and customarily sell for 50 cents or any sum approximating 50 cents.

Through the use of designations such as "Dr. Ross'—Dental Creams" and "Dr. Sach's—Dental Creams," respondents represent that said products are made under a formula perfected by a member of the medical or dental profession and are made under the supervision and direction of a doctor and have superior or special qualities which are the result of the use of such formula and said supervision.

The products so advertised are sold in commerce between and among the various States of the United States and in the District of Columbia, and were not and are not made in accordance with a formula perfected by a member of the medical or dental profession. Said products are not made under the supervision of a doctor, as represented, and do not possess superior or special qualities which were or are the result of the use of such formula and said supervision.

PAR. 8. In their catalogs and other advertising literature respondents refer to certain perfumes sold by them as "Odeurs de Paris," "Perfumes of France," "Parfums de Paris," and prominently display the words "Paris" and "France," thus representing to purchasers and prospective purchasers of their products that said perfumes are manufactured in and imported from France.

Findings

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For many years a substantial part of the purchasing public has had, and still has, a marked preference for perfumes which are manufactured or compounded in, and imported from, France and other foreign countries.

In truth and in fact, the aforesaid perfumes are not made in or imported from France. Said perfumes are imitations made, compounded, and bottled in the United States.

The complaint charges that the South Sea turtle oil ingredient in the "Three Charms Turtle Oil Tissue Cream" and the cod liver, mineral, and olive oils sold by respondents are not imported oils as represented.

Testimony and other evidence of record establish that the various oils thus sold by respondents were and are in fact imported.

PAR. 9. The acts and practices of the respondents in making the representations hereinabove detailed in connection with the sale and promotion of the sale of their peddlers' and retail dealers' supplies, including cosmetics, perfumes, dental and shaving creams, toilet accessories, spices, extracts, and similar household notions have had and now have the tendency and capacity to confuse and mislead and do confuse and mislead the public with respect to the true facts and into the erroneous and mistaken beliefs that the public can secure some of respondents' products "Free"; that some of respondents' products are packaged in larger sizes than similar products are ordinarily packaged by competitors; that some of said products are composed of superior ingredients and are made under the supervision of a doctor and possess special or scientific properties which were or are the result of the advice or supervision of a doctor in the compounding thereof; that respondents import certain of their perfumes from France; and that the retail prices advertised in connection with the sale of said products represent the true value or the true selling price of said products.

PAR. 10. Over a period of many years manufacturers and distributors in many industries have adopted and followed the custom of advertising in their catalogs and other advertising literature various products offered for sale by them and the retail prices at which they suggest the retailer should sell such products to the ultimate consumer purchaser because of the quality, quantity, or other desirability of such products. The consuming public generally understands this custom and has been led to and does place its confidence in the representations so made as to the quality, quantity, or other desirability of such products, to the extent that it purchases a substantial volume of such products in reliance upon this aforesaid cus-

tom in the belief that the prices so represented indicate the true or actual and customary retail sales price or value of such products.

When such products are offered for sale at reduced prices which are substantially lower than the prices so represented and advertised, the purchasing public is led to believe and does believe that in purchasing said products it is securing a bargain not ordinarily obtainable in the usual course of trade.

PAR. 11. The respondents, in soliciting the sale of and selling their products for the purpose of creating a demand on the part of the purchasing public for such products, now represent and have for several years last past represented, through the use of the various trade names herein set out, and through the use of the word "Manufacturers" on letterheads and circulars, order blanks, and general business stationery that they are manufacturers, that they own, operate, and control laboratories wherein they manufacture the products which they sell.

For many years a substantial number of retailers have shown a marked preference for products sold and distributed to the public by the manufacturers thereof, said preference resulting from the belief that the manufacturer is able to offer better prices, superior products, and other advantages not obtainable from jobbers or other middlemen.

In truth and in fact, the respondents manufacture none of the merchandise which they sell and distribute, but purchase their said products from various manufacturers. They are not manufacturers of the products sold and distributed by them in the ordinary and accepted sense of that term. They are not owners and operators of laboratories. They do not directly and absolutely or in any other manner control any factory, plant, or laboratory wherein the various products sold by them are manufactured.

PAR. 12. The aforesaid misleading and deceptive statements and representations on the part of the respondents, together with their aforesaid fictitious price representations, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the purchasing public, by enabling such dealers to represent and offer for sale and sell respondents' said household products and notions as being genuinely superior or imported products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general purchasing public at and for approximately the same retail prices advertised by said manufacturer.

Conclusion

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PAR. 13. There are among the competitors of respondents manufacturers, sellers, and distributors of like and similar products who refrain from advertising or representing through their catalogs and other advertising media, that the merchandise offered for sale by them has a merit, origin, or value that it does not have, and that they are manufacturers when such is not the case.

PAR. 14. The effect of the aforesaid misleading and deceptive representations and acts of the respondents in selling and offering for sale such items of merchandise, as hereinbefore referred to, is to mislead a substantial portion of the purchasing public in the several States of the United States, and in the District of Columbia, by inducing them to mistakenly believe that the merchandise described, as aforesaid, sells at retail prices and has retail values closely approximating the prices as represented; that said products are composed of superior ingredients; that some of said products are packaged in larger sizes than similar products are ordinarily packaged by competitors; that respondents give certain merchandise "Free," and that respondents have "free deal transactions"; that respondents are manufacturers and own and operate laboratories; and that respondents are importers of perfumes from France and other foreign countries.

PAR. 15. The foregoing misleading and deceptive statements and representations on the part of respondents have induced and still induce a substantial number of retail merchants as well as the consumer-purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been unfairly diverted to respondents from those competitors engaged in similar businesses, referred to in paragraph 13 hereof. As a consequence thereof substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Gotham Sales Co., Inc., a corporation, also trading as Universal Merchandise Co.; Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, individually and as officers of said corporation, and as copartners, also trading as Universal Merchandise Co., and Martin Gottsegen, trading individually as Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Labora-

tories, and Lady Fair Laboratories are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto, taken before John W. Addison, W. C. Reeves, and Edward E. Reardon, examiners of the Commission theretofore duly designated by it, on a stipulation of facts entered into between Samuel J. Ernstoff, attorney for respondents, and W. T. Kelley, the Commission's chief counsel, which said stipulation has been accepted and approved by the Commission and upon brief filed herein by counsel for the Commission (oral arguments not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Gotham Sales Co., Inc., a corporation, trading under its own name and also as Universal Merchandise Co.; Harry J. Gottsegen, Alfred Gottsegen, Max Gottsegen, Martin Gottsegen, and Alexander Gottsegen, individually and as officers of said corporation, and as copartners, trading as Universal Merchandise Co., or under any other name, and Martin Gottsegen, also trading as Tip Top Laboratories, Scientific Food Products Co., Prize Medal Laboratories, Scientific Beauty Institute, RX Manufacturing Co., Scientific Laboratories, and Lady Fair Laboratories, or under any other name, and their respective agents, representatives, or employees, individual or corporate, in connection with the offering for sale, sale, and distribution of cosmetics, perfumes, toilet articles, spices, extracts, and other drug and household sundries and novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, as the customary or regular retail prices for such products, prices which are in fact fictitious and greatly in excess of the prices at which said products are regularly and customarily offered for sale and sold at retail;

2. Representing, through the use of the words "laboratories," "manufacturing" and "manufacturers" in their corporate or trade names, or through the use of any words or terms of similar import and meaning, or through any other means or device or in any manner, that said respondents or any of them are the manufacturers of

the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them;

3. Representing, through the use of the terms "Odeurs de Paris," "Parfums de Paris," "Perfumes of France," or the words "Paris" and "France," or any other terms or words of similar import and meaning as descriptive of their products, or through any other means or device or in any other manner, that perfumes made, compounded, and bottled in the United States are made, compounded, or bottled in France, or any other foreign country, or are imported;

4. Representing that merchandise is given "Free" or as a "gift," in consideration of or in connection with the purchase of other products, when the cost of such merchandise is included as a part of the purchase price charged for another product or combination of products.

5. Representing, through the use of the term "giant size," or any other term of similar import and meaning as descriptive of their products, or through any other means or device or in any manner, that respondents' products are offered for sale and sold in larger packages than the usual and customary size package, when such is not the fact.

6. Representing that any of the said products are designed by or are compounded under the supervision of a doctor or one possessing special knowledge of dental hygiene and pharmacology, when such is not the case.

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

Syllabus

IN THE MATTER OF

BUNTE BROTHERS, INC.

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

Docket 2695. Complaint, Jan. 29, 1936—Decision, Sept. 7, 1938

Where a corporation engaged in Illinois in manufacture, sale, and distribution, to and through 95 percent of said State's candy jobbers, of chance or so-called "break and take" assortments, demand for which by school children is stimulated by advertising, and purchase of which by them is made in preference to "straight" goods by reason of chance or gaming feature connected therewith, and sale of which through same type of channels is in direct competition with candies so packed as to be displayed and sold as "straight" goods only, and with purchase of which chance goods from jobber by retailer are often included by latter, for his convenience and preference, entire candy requirements thereof—

Sold to wholesalers, jobbers, and retailers in various States of the United States, and particularly in the State of Illinois as aforesaid, such chance assortments, composed of (a) number of individually wrapped penny caramels of uniform size, shape, and quality, together with number of larger pieces of candy to be given as prizes to purchasers securing by chance one of a relatively few of said caramels, concealed color of which differs from that of majority, and also together with box of candy to be given to purchaser of last of said caramels in assortment, and (b) of large number of units of similar pieces of penny candy, together with number of larger pieces to be given as prizes to those securing by chance relatively few of aforesaid uniform pieces, colored centers of which differ from majority thereof; knowingly so assembled and packed that without alteration or rearrangement such assortments might be and were used, exposed, and sold by retailer buyers thereof to purchasing and consuming public in accordance with aforesaid sales plan and by lot or chance; in competition with others located in various other States and engaged in manufacture, sale, and distribution of such products in commerce between and among the various States and particularly from their respective States of manufacture to said State of Illinois, and sale of whose products in such interstate commerce, as "chance" or "break and take," "draw," or "deal" assortments, may not lawfully be made, and including large number specifically prohibited by order of Commission from thus selling in such commerce their said products;

With result that use of such chance assortments and methods of sales and distribution in said State of its candies, made available practically wherever candy is sold therein and sold by many retailers who attract children's patronage from nearby schools, encouraged gambling among children, enticed by element of chance to purchase candy thus sold in preference to other or so-called "straight" goods, salesmen who could offer in said State