

IN THE MATTER OF
ADOLPH SPATER, INDIVIDUALLY AND TRADING AS
LEE SALES COMPANY

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

Docket 3492. Complaint, July 14, 1938—Decision, Oct. 6, 1938

Where an individual engaged in sale and distribution of watches, cameras, china and silverware, razors, clothing, clocks, and various other articles of merchandise, and in the distribution in said connection to representatives and prospective representatives of advertising literature, including sales circular designating number of items of merchandise and prices thereof—

- (a) Supplied to its representatives and prospective representatives, as part of sales circular aforesaid and opposite listing of items and purported prices of such merchandise, pull card for use in distribution and sale of products in question under a plan in accordance with which article of merchandise secured and price paid therefor and value, or apparent value, secured were determined by chance in accordance with item and price disclosed under tab selected, and person or representative operating card was compensated, after sale of all tabs or chances and remission of amounts, by premium, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise, in accordance with plan hereinabove set forth, contrary to established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt game of chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many were attracted by his said method and element of chance involved in sale of merchandise, offering opportunity to procure by chance article of merchandise at price much less than apparent normal retail price thereof, and thereby induced to buy and sell his said products in preference to those offered and sold by competitors who do not use such or equivalent method, and with effect, by reason thereof, of unfairly diverting trade and custom to him from competitors who do not use such or equivalent method; and

- (b) Made such false, deceptive, and misleading statements in his advertising matter as "Gifts or cash *YOURS absolutely* without cost," "Big, valuable rewards at no cost to you," "Free gifts to everybody," and "No extra charge on any of our premiums," facts being none of his so-called premiums or gifts were given away free or without cost, but were purchased either with labor of representatives or prices thereof were included in those of other articles which representatives had to sell or procure sale of before they could obtain such so-called premiums or gifts, and, in a number of cases, certain money payments were required in addition to labor performed or services rendered;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of his said products as a result thereof, and of unfairly diverting trade to him from competitor manu-

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facturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the same:

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

Mr. Henry C. Lank, Mr. P. C. Kolinski, and Mr. D. C. Daniel for the Commission.

Mr. Oscar L. Dann, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Adolph Spater, individually and trading as Lee Sales Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Adolph Spater, is an individual trading under the name of Lee Sales Co., with his principal office and place of business located at 306 Marcy Avenue, Brooklyn, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razors, razor blades, pens, mirrors, dolls, dresser sets, clothing, clock, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold

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and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said methods in the sale of his merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as hereinabove related, respondent causes and has caused various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash *YOURS absolutely* without cost.

2 extra surprise gifts free.

Big, valuable rewards at no cost to you.

Free gifts for everybody.

How to get your gifts without any cost to you.

No extra charge on any of our premiums.

PAR. 6. In truth and in fact, none of respondent's so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 14, 1938, issued and served its complaint in this proceeding upon the respondent Adolph Spater, individually and trading as Lee Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 4, 1938, respondent by his counsel, Oscar L. Dann, filed his answer, in which answer he admitted all the

material allegations of the complaint to be true and waived all intervening procedure and further hearing on the charges set forth in said complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Adolph Spater, is an individual trading under the name of Lee Sales Co., with his principal office and place of business located at 306 Marcy Avenue, Brooklyn, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razors, razor blades, pens, mirrors, dolls, dresser sets, clothing, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device com-

monly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with

the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner herein found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as herein found, respondent causes and has caused various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash YOURS *absolutely* without cost.

2 extra surprise gifts free.

Big, valuable rewards at no cost to you.

Free gifts for everybody.

How to get your gifts without any cost to you.

ⓂNo extra charge on any of our premiums.

PAR. 6. In truth and in fact, none of respondent's so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be

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procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's 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 and the answer of the respondent, in which answer respondent admits all the material allegations set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Adolf Spater, individually and trading as Lee Sales Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of various articles of merchandise including, among others, watches, cameras, china and silverware, lamps, razors, razor blades, pens, mirrors, dolls, dresser sets, clothing, clocks, cigarette lighters, jewelry, cosmetics, bedding, and kitchenware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon, or other lottery devices for the

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purpose of enabling such persons to dispose of or sell such merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof.

3. Selling or otherwise disposing of such merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

4. Representing directly or indirectly that the articles of merchandise which he sells or offers for sale have a retail value greatly in excess of the usual or normal retail value thereof.

5. Representing directly or indirectly that his merchandise is distributed free or without cost when such is not the fact.

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

that the said doctor's prescription is an effective remedy for colds, la grippe, and headaches, and that said Gallsto is efficacious in relieving gallstones, colic and liver troubles and that the use thereof may avoid operations.

PAR. 5. In truth and in fact, said statements and representations were and are false and misleading in that the said doctor's prescription does not warrant the claims that it will be of effective therapeutic value in the treatment of colds, la grippe, and headaches; nor is the product designated as Gallsto a competent or effective remedy in the treatment for gallstones, colic, dizziness or liver troubles, and its use will not prevent or avoid operations for gallstones or other disorders in which surgery may be indicated.

PAR. 6. In the course and conduct of her business as hereinbefore described, respondent is and has been in competition with individuals, and with corporations, partnerships, and firms engaged in the sale and shipment in commerce among and between the several States of the United States and in the District of Columbia of similar medicinal preparations, which said competitors do not misrepresent the therapeutic value and effects of their said competitive preparations.

PAR. 7. The aforesaid misleading and deceptive statements and representations hereinabove set forth made by respondent in selling said medicinal preparations have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said doctor's prescription and Gallsto, in the erroneous belief that such representations are true and that the use of said products will accomplish the results set out or indicated in said advertisements and statements. As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been diverted unfairly to her from her said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 8. The aforesaid acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 24, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Mary Rosenheimer, an individual, trading and doing business under

the firm name and style of "Gallsto Co.," charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 3, 1938, respondent filed an answer in which she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mary Rosenheimer, is an individual, presently trading and doing business under the firm name and style of "Gallsto Co.," with her office and place of business at 2359 North Palmer Street, in the city of Milwaukee, State of Wisconsin. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain medicinal preparations for the relief of colds, grippe, headaches, and gall and liver complaints under various trade names in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes such preparations, when sold, to be transported from her place of business in the State of Wisconsin to the purchasers thereof located in the various States of the United States other than the State of Wisconsin and in the District of Columbia. Respondent is in competition with other individuals and with corporations, partnerships and firms engaged in the sale and distribution of medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In connection with the sale and distribution of said preparations, and for the purpose of inducing the purchase thereof, respondent makes certain statements as to the therapeutic properties of said preparations in advertisements placed in magazines and other advertising media. Among the statements made and used by the respondent are the following:

COLDS, LA GRIPPE, HEADACHES

Relieved quickly by this Doctor's prescription during twenty years private practice. Made of purest medicine by reg. Phar. Sample 10¢. Gallsto Co., 2359A North Palmer Street, Milwaukee, Wis.

GALLSTO Relieves Gallstone, Colic, Liver Trouble. May avoid operation.
Try sample 10¢

Gallsto Co., 2359A North Palmer Street, Milwaukee, Wis.

that the said doctor's prescription is an effective remedy for colds, la grippe, and headaches, and that said Gallsto is efficacious in relieving gallstones, colic and liver troubles and that the use thereof may avoid operations.

PAR. 5. In truth and in fact, said statements and representations were and are false and misleading in that the said doctor's prescription does not warrant the claims that it will be of effective therapeutic value in the treatment of colds, la grippe, and headaches; nor is the product designated as Gallsto a competent or effective remedy in the treatment for gallstones, colic, dizziness or liver troubles, and its use will not prevent or avoid operations for gallstones or other disorders in which surgery may be indicated.

PAR. 6. In the course and conduct of her business as hereinbefore described, respondent is and has been in competition with individuals, and with corporations, partnerships, and firms engaged in the sale and shipment in commerce among and between the several States of the United States and in the District of Columbia of similar medicinal preparations, which said competitors do not misrepresent the therapeutic value and effects of their said competitive preparations.

PAR. 7. The aforesaid misleading and deceptive statements and representations hereinabove set forth made by respondent in selling said medicinal preparations have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said doctor's prescription and Gallsto, in the erroneous belief that such representations are true and that the use of said products will accomplish the results set out or indicated in said advertisements and statements. As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been diverted unfairly to her from her said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 8. The aforesaid acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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the firm name and style of "Gallsto Co.," charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 3, 1938, respondent filed an answer in which she admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter, 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

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PAR. 2. In connection with the sale and distribution of said preparations, and for the purpose of inducing the purchase thereof, respondent makes certain statements as to the therapeutic properties of said preparations in advertisements placed in magazines and other advertising media. Among the statements made and used by the respondent are the following:

COLDS, LA GRIPPE, HEADACHES

Relieved quickly by this Doctor's prescription during twenty years private practice. Made of purest medicine by reg. Phar. Sample 10¢. Gallsto Co., 2359A North Palmer Street, Milwaukee, Wis.

GALLSTO Relieves Gallstone, Colic, Liver Trouble. May avoid operation.
Try sample 10¢

Gallsto Co., 2359A North Palmer Street, Milwaukee, Wis.

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Through the use of said statements and other statements of similar import and meaning used in respondent's advertising matter, respondent represents that the preparation referred to as "doctor's prescription" is an effective remedy and treatment for colds, la grippe, and headaches, and that the preparation referred to as "Gallsto" is efficacious as a treatment for gallstones, colic, and liver troubles, and that the use thereof will obviate the necessity for surgical operations for gallstones and other disorders.

Said representations are false and misleading for in truth and in fact the properties of the preparation referred to as "doctor's prescription" do not warrant the representations and claims that said preparation will be of effective therapeutic value in the treatment of colds, la grippe, and headaches. The preparation referred to as Gallsto is not a competent or effective remedy in the treatment for gallstones, colic, or liver troubles, and the use of said preparation will not obviate the necessity for operations for gallstones and other disorders where surgery is indicated.

Among the competitors of the respondent in commerce between and among the several States of the United States and in the District of Columbia are many who do not misrepresent in any manner the therapeutic value and effect of their competitive preparations.

The use by the respondent of the false and misleading statements and representations as hereinabove set forth in connection with the offering for sale, sale, and distribution of said medicinal preparations has a capacity and tendency to and does mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true, and that said preparation "doctor's prescription" is an effective remedy and treatment for colds, la grippe, and headaches, and that the preparation "Gallsto" is efficacious as a treatment for gallstones, colic, and liver troubles and that the use thereof will obviate the necessity for surgical operations for gallstones and other disorders; and cause a substantial number of the purchasing public to buy said preparations as a result of such erroneous and mistaken belief, thereby unfairly diverting to the respondent from her competitors trade 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 respondent Mary Rosenheimer, trading as Gallsto Co., are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Mary Rosenheimer, trading as Gallsto Co., or under any other trade name, her representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of medicinal preparations, under whatever name sold, for the relief of colds, grippe, headaches, gallstones, colic and liver complaint, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or by inference:

1. That the preparation now designated and described as "doctor's prescription" is an effective remedy or competent treatment for colds, la grippe, and headaches;

2. That the preparation now designated and described as "Gallsto" relieves, or that it is a competent treatment or effective remedy for, gallstones, colic or liver trouble;

3. That through the use of said preparation now designated and described as "Gallsto" surgical operations for gallstones or other disorders may be avoided or prevented.

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

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IN THE MATTER OF

FRANK SHAPIRO, INDIVIDUALLY AND DOING BUSINESS
AS NEWARK FELT NOVELTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3493. Complaint, July 14, 1938—Decision, Oct. 12, 1938*

Where an individual engaged in manufacture of hats and novelty hats and caps from second-hand, old, and used felt hats which he caused to be cleaned, steamed, ironed, and shaped, and fitted with new trimmings, sweat bands, size labels and, in some cases, with peaks or visors, and in sale thereof to retailers, jobbers, and wholesalers, in competition with those engaged in sale and distribution of new hats and caps and with those engaged in sale and distribution of products similar to his own—

Sold said products, with no label, marking, or designation thereon to indicate their less costly manufacture, as aforesaid, from old and used materials, for resale by direct or eventual retail purchaser-owners thereof to public, without disclosing fact that hats and caps in question had been made from felts previously worn and renovated and made over, and under circumstances such as to indicate that they were in fact new products;

With tendency and capacity to induce many wholesalers, jobbers, and retailers and many members of purchasing public to buy said less costly hats and caps made from old, used, and second-hand products, renovated and made over by him as aforesaid, as and for articles made from new and unused materials, and with result that a number of consuming public, as direct consequence of mistaken and erroneous belief induced as aforesaid, purchased substantial volume of his said caps and trade was unfairly diverted to him from those engaged in manufacture and sale of such products and who do not misrepresent the quality and type of material from which same are made:

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

Mr. George Foulkes for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frank Shapiro, individually, and doing business as Newark Felt Novelty Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows: