

IN THE MATTER OF

WALTER JACKSON, DOING BUSINESS AS JACKSON
UNIVERSITY, JACKSON UNIVERSITY OF BUSINESS,
EDUCATIONAL FINANCE COMPANY, AND WORLD'S
DESIRE BUREAUCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3348. Complaint, Mar. 4, 1938—Decision, Dec. 7, 1938*

Where an individual engaged, under various trade names, in selling courses of instruction known as "combination secretarial and business administration" courses, consisting, respectively, of lessons in shorthand, typewriting, business English, and correspondence, and in bookkeeping, correspondence, salesmanship, business administration, accounting, and auditing, and available separately, and in maintaining both correspondence and residence school, and in soliciting purchasers for his said courses through so-called "registrars" or agents who called upon young men and women and their parents and guardians, and induced many to enroll and obligate themselves for said courses, and of whom substantial cash contract was required at time of purchase, and, as aforesaid engaged, in substantial competition with others selling and distributing similar courses of instruction in commerce among the various States and in the District of Columbia, and including those who truthfully represent the character of their organization and prices, terms, and conditions of offer and sale of their courses, and refrain from untruthfully representing that they will guarantee procurement of positions for students who have completed their courses, and who do not make use of fictitious firm names or in any other manner unfairly and untruthfully represent their methods of doing business—

- (a) Represented, through use of words "University" and "University of Business" as included in his trade names, to prospective students and parents or guardians, and to those enrolling, that his said school or business was a university or institution of higher learning, and, through contracts, circulars, advertising matter, and otherwise, that he operated night school as well as residence and correspondence school, and made available, or offered, to enrolled students services of so-called "World's Desire Bureau," letterhead of which set forth "The Wisdom, Knowledge, Experience of the World, at Your Command," facts being he did not and had not, for a number of years, operated night school, and the service of his so-called "World's Desire Bureau," original purpose of which was to perform certain services for members for annual fee or other compensation, apparently consisted in imparting to students such philosophy, advice, and general information deemed necessary by him, but usefulness and value of which was in fact doubtful and rather esoteric, and said "Bureau" did not represent separate and independent institute teaching wisdom, knowledge, and experience of the world or anything other than a medium of advertising his said school;
- (b) Represented, to prospective students, that they had been specially selected for an offer of enrollment in his courses because of their high scholastic standing, and that his agents were empowered to select such prospects and

offer them an introductory scholarship of \$50, and that such offer was open for a limited time only, and that number of applicants eligible therefor was likewise limited, and, in his advertising literature and contracts, that he guaranteed positions to graduates, facts being prospective students were not thus specially selected for aforesaid or any other reason, alleged reduced price was in fact regular one quoted to all alike, no offers were limited with respect to time, and his so-called guarantee consisted in merely assisting graduates in securing positions by writing letters of recommendation and bringing them in touch with employment agencies;

- (c) Made use, in his pamphlets and circulars, of purported quotations from testimonials, and represented, through advertising matter and agents, that his said school was the "most original, most independent, most thoroughly modern," and was equipped with a variety of recreational facilities, and, in his contracts, circulars, letters, and otherwise, to purchasers and prospective purchasers, that bookkeeping, accounting, and auditing were taught until pupils were thoroughly qualified to handle 16 different systems of bookkeeping, and that course was the most thorough one in business methods ever taught, facts being testimonials involved were in fact given by those who had never purchased any of his said courses or been pupils of his said residence school, said school was not most original, independent, and thoroughly modern one, but was located on the third floor of an old building, furniture and equipment had been in use for many years, characterization "most thoroughly modern" was not justified, there were no recreational facilities of any kind, and course in business methods referred to as aforesaid, consisted only of most elementary principles of bookkeeping, no system of accounting was taught, and graduates from school were not qualified as expert auditors or accountants; and
- (d) Made use of trade name "Educational Finance Co." on his letterheads, implying that said company was an innocent purchaser of school notes without notice, and an independent organization, facts being such supposed company was nonexistent and name in question was used by him solely to collect tuition notes given by his pupils or their parents;

With tendency and capacity to lead substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and with result, as a direct consequence of such mistaken and erroneous beliefs induced by aforesaid acts and representations, that substantial number of consuming public purchased substantial volume of his said courses of instruction, and trade was unfairly diverted to him from those likewise engaged in sale of similar correspondence courses and who truthfully advertise and represent the nature of their respective businesses:

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

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

Mr. William L. Pencke for the Commission.

COMPLAINT

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

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Trade Commission, having reason to believe that Walter Jackson, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Walter Jackson, is an individual trading and doing business under the firm names and styles of "Jackson University," "Jackson University of Business," "Educational Finance Co.," and "World's Desire Bureau," with his principal office and place of business located in the Wallbrunn Building, at Chillicothe, State of Missouri. Said respondent is now, and for many years last past has been, engaged in the business of selling courses of instruction known as "combination secretarial and business administration" courses. Said courses may also be purchased separately. The secretarial course consists of lessons in shorthand, typewriting, business English, and business correspondence. The business administration course is represented to consist of bookkeeping, correspondence, salesmanship, business administration, accounting, and auditing. Respondent maintains, in addition to the correspondence school, a residence school in said city of Chillicothe.

When students are enrolled by contracts satisfactory to respondent, he transports the lessons comprising said courses, or causes the transportation of such lessons, from his place of business at Chillicothe, Mo., to the various students located at their respective residences in States of the United States other than the State of Missouri.

PAR. 2. In the course and conduct of his business herein described the respondent is in substantial competition with other persons, and with firms, partnerships, associations, and corporations, which are likewise engaged in the sale and distribution of similar courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent solicits purchasers for said courses of instruction through agents designated by him as "registrars," who personally call upon young men, young women, and their parents and guardians throughout the United States and induce many of them to enroll as students and to purchase, receive, and agree to pay for respondent's courses of instruction and attend either the residence school, or the correspondence school, or both.

Lessons are furnished to the correspondence students and payment on their contracts are made through the United States mail. Correspondence pupils are urged to complete their courses at the residence school. In all cases the agents require a payment of \$25 in cash

at the time the contract for the course is entered into. The number of correspondence pupils is considerably larger than the number of students who attend the residence school.

Respondent, in his transactions with the public and with students and prospective students, uses the trade names "Jackson University," and "Jackson University of Business." The use of the said trade names including the word "university" serves as a representation to prospective students, their parents or guardians, and to students who enroll, that said "Jackson University" or said "Jackson University of Business" is a university. The use of the term "university" to describe or refer to respondent's business or school is false and misleading in that it creates in the minds of a part of the public, and especially those members of the public who are interested in obtaining an education by correspondence, the impression that the respondent trading under the names of "Jackson University" or "Jackson University of Business," is in truth and in fact operating and conducting a university which term is generally accepted and understood to mean an educational institution of higher learning with the power to confer degrees and with a faculty of learned persons acting as instructors in various branches of learning, which include the liberal arts and sciences and one or more special branches of learning such as theology, law, and medicine; when in truth and in fact the courses taught and sold in commerce by respondent do not constitute courses in liberal arts and sciences, nor can respondents' instructors be considered learned persons.

PAR. 4. In the course and conduct of his business herein described, respondent represents to prospective students that they have been specially selected for an offer of enrollment in the courses given by respondent because of said prospects' high scholastic standing; that said agents are empowered to select said prospects and to offer said prospects an introductory scholarship of \$50; that such offer is open for a limited time only and that the number of applicants eligible for such introductory scholarships is likewise limited. In truth and in fact prospective students are not specially selected for enrollment because of their high scholastic standing or for any other reason, and the alleged reduced price offered the prospective students is in fact the regular price and is quoted to all prospects alike, and said offer of introductory scholarship is in fact not limited with respect to time.

PAR. 5. In the course and conduct of his said business respondent in his contract, circulars, advertising matter, and otherwise represents to prospective purchasers of his said courses that he operates a residence school, a night school, and a correspondence school, when

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in truth and in fact no night school is being operated by respondent and has not been so operated for a number of years immediately preceding the filing of this complaint.

PAR. 6. In the course and conduct of his business as aforesaid, respondent, in his pamphlets, circulars, and otherwise, makes use of purported quotations from testimonial letters, of which the following are typical examples:

Your training has made it possible for me to secure a fine position as an Accountant. My salary enables me to educate my younger brother * * * I sincerely appreciate everything you have done for me!

Today our President appointed me his personal secretary, at \$50.00 a week! Only two years ago I was a secretarial student at your College * * * certainly is a recommendation for a practical business training!

By the use of said testimonials respondent represents that the writers thereof were purchasers of his said courses of training and gained positions and promotions as a result of his methods of business training. In truth and in fact said testimonials were given by individuals who had never purchased any of respondent's courses of training and had never been pupils of respondent's said school.

PAR. 7. In the course and conduct of his said business, the respondent, by means of letters, circulars, statements by his agents, and otherwise as an inducement for prospective pupils residing outside of the city of Chillicothe to attend said residence school, represents to purchasers and prospective purchasers of his said courses of study that his said business school is "most original, most independent, most thoroughly modern," and is equipped with a variety of recreational facilities for the use and entertainment of resident students. In truth and in fact, said school is not most thoroughly modern but, on the contrary, is located upon the third floor of an old office building, and contains antiquated and inferior furniture and teaching equipment. There are in fact no recreational facilities whatever provided for the use of the students.

PAR. 8. In the course and conduct of his said business the respondent, in his contract, circulars, letters, and otherwise, represents to purchasers and prospective purchasers of his said courses of instruction that bookkeeping, accounting, and auditing are taught until said pupils are thoroughly qualified to handle 16 different systems of bookkeeping and that said course is the most thorough course in business methods ever taught. In truth and in fact no course in auditing or accounting is given. Said course is not the most thorough course in business methods ever taught, and does not include the teaching of 16 different systems of bookkeeping, but on the contrary, said course consists only of the most elementary principles of bookkeeping.

PAR. 9. In the course and conduct of his business the respondent, in his contract, circulars, advertising matter, and otherwise, represents to purchasers and prospective purchasers as follows:

POSITIONS GUARANTEED: Every student who completes the combination course in a satisfactory manner will be awarded a diploma, the cost of which will not exceed \$2.50, and said diploma will entitle the holder to the cooperation of the Jackson University in securing a bona fide position within thirty days after receiving diploma.

FIRST TO GUARANTEE POSITIONS—The Jackson University was the first business college in the Midwest to guarantee positions.

In truth and in fact the respondent does not guarantee positions to pupils who are graduated from his said school, but said pupils are required to find such positions, and the respondent's services in fact consist only of assisting such students in obtaining the position after the same has been located by the latter.

PAR. 10. In the course and conduct of his said business the respondent uses the trade name "World's Desire Bureau" and in his said circulars, letterheads, letters, and other advertising matter leads the purchasing public into the mistaken and erroneous belief that the said "World's Desire Bureau" is an institution or organization operated separately and apart from said "Jackson University" or "Jackson University of Business" and that it is operated for the purpose of teaching to pupils of said "Jackson University" a general philosophy of life and to make available to them "the wisdom, knowledge, and experience of the world." Respondent further represents that:

The World's Desire Bureau, cooperating with the Jackson University's Secretarial Department, affords the machinery and the equipment required to place the Jackson University graduates on a level with the experienced, successful, high-grade workers of the business world. No other business college is prepared to render this useful, helpful and practical service.

In truth and in fact said "World's Desire Bureau" does not exist, but on the contrary is a designation employed by respondent for advertising purposes only, and the representations hereinabove quoted are untrue.

PAR. 11. In the course and conduct of his said business the respondent uses the trade name "Educational Finance Co." The letterhead of said company is as follows:

Educational Finance Company
Chillicothe, Missouri

T. K. Campbell, Mgr.
Lena Devaul, Sec.
Taylor & Taylor,
Legal Advisers

School Notes Bought and
Sold
10% Profit Guaranteed
Deserving Students Assisted

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By the use of said trade name and letterhead and by stating in circulars, letters, and otherwise that the notes given by students and their parents to respondent for the balance due on the purchase price of said course of instruction are sold to innocent purchasers for value in the regular course of business, respondent leads said students and their parents into the erroneous and mistaken belief that said "Educational Finance Co." is an independent and separate organization which purchases school notes as an innocent purchaser for value and makes collections of debts. In truth and in fact said "Educational Finance Co." is operated solely by the respondent, and the names appearing upon said letterhead are the names of individuals in nowise connected with said "Educational Finance Co." or with respondent's business; and the notes given by students and parents as aforesaid remain in the possession of respondent and are never sold to any innocent purchaser for value.

PAR. 12. There are among competitors of the respondent those who truthfully represent the character of their organizations, the prices, terms, and conditions of offer for sale and sale of their courses of instruction; who refrain from untruthfully representing that they will guarantee the procurement of positions for students who have completed their courses of instruction; who do not make use of fictitious firm names and who do not in any other manner unfairly and untruthfully represent their methods of doing business.

PAR. 13. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out are calculated to, and now have a tendency and capacity to, and they do, lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the aforesaid acts and representations of respondent, a substantial number of the consuming public has purchased a substantial volume of respondent's courses of instruction with the result that trade has been unfairly diverted to the respondent from other individuals, firms, and corporations likewise engaged in the business of selling similar correspondence courses of instruction who truthfully advertise and represent the nature of their respective business. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States.

PAR. 14. The aforesaid acts and practices of respondent are all to the prejudice of the public and of competitors of respondent and 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 4, 1938, issued, and on March 7, 1938, served its complaint in this proceeding upon respondent, Walter Jackson, an individual doing business as Jackson University, Jackson University of Business, Educational Finance Co., and World's Desire Bureau, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, no testimony being offered by the respondent in opposition to the allegations of the complaint, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. 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 in support of the complaint (respondent neither filing brief nor requesting oral argument); 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, Walter Jackson, is an individual trading and doing business under the firm names and styles of "Jackson University," "Jackson University of Business," "Educational Finance Co.," "World's Desire Bureau," with his principal office and place of business located in the Wallbrunn Building, at Chillicothe, State of Missouri. Said respondent is now, and for many years last past has been, engaged in the business of selling courses of instruction known as "combination secretarial and business administration" courses. Said courses may also be purchased separately. The secretarial course consists of lessons in shorthand, typewriting, busi-

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ness English, and business correspondence. The business administration course is represented to consist of bookkeeping, correspondence, salesmanship, business administration, accounting, and auditing. Respondent maintains, in addition to the correspondence school, a residence school in said city of Chillicothe.

The lessons comprising said courses are transported from respondent's place of business at Chillicothe, Mo., to the various students located at their respective residences in States of the United States other than the State of Missouri.

PAR. 2. Respondent is in substantial competition with other persons, and with firms, partnerships, associations, and corporations, which are likewise engaged in the sale and distribution of similar courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent solicits purchasers for said courses of instruction through agents designated by him as "registrars," who personally call upon young men, young women, and their parents and guardians throughout the United States and induce many of them to enroll as students and to purchase, receive and agree to pay for respondent's courses of instruction and attend either the residence school, or the correspondence school, or both.

Lessons are furnished to the correspondence students and payment on their contracts are made through the United States mail. Correspondence pupils are urged to complete their courses at the residence school. In all cases the agents require a payment of \$25 in cash at the time the contract for the course is entered into. The number of correspondence pupils is considerably larger than the number of students who attend the residence school.

Respondent, in his transactions with the public and with students and prospective students, uses the trade names "Jackson University," and "Jackson University of Business." The use of the said trade names, including the word "university," serves as a representation to prospective students, their parents or guardians, and to students who enroll, that said "Jackson University," or said "Jackson University of Business" is a university.

PAR. 4. In the course and conduct of his business, respondent represents to prospective students that they have been specially selected for an offer of enrollment in the courses given by respondent because of said prospects' high scholastic standing; that his agents are empowered to select said prospects and to offer them an introductory scholarship of \$50; that such offer is open for a limited time only and that the number of applicants eligible for such introductory scholarships is likewise limited. In truth and in fact prospective students are not specially

selected for enrollment because of their high scholastic standing or for any other reason, and the alleged reduced price offered the prospective students is in fact the regular price and is quoted to all prospects alike, and said offers are in fact not limited with respect to time.

PAR. 5. In the course and conduct of his said business respondent in his contract, circulars, advertising matter, and otherwise represents to prospective purchasers of his said courses that he operates a residence school, a night school, and a correspondence school, when in truth and in fact no night school is being operated by respondent and has not been so operated for a number of years.

PAR. 6. In the course and conduct of his business the respondent, in his pamphlets and circulars, made use of purported quotations from testimonials, when such testimonials were in fact given by individuals who had never purchased any of respondent's courses and had never been pupils of his said residence school.

PAR. 7. As an inducement for prospective pupils to attend the residence school in Chillicothe, respondent represented in his advertising literature and through his agents that his said school is the "most original, most independent, most thoroughly modern," and is equipped with a variety of recreational facilities. Such representations are grossly exaggerated. Said school is not the most original, most independent, or most thoroughly modern school, but is located on the third floor of an old business building, and the furniture and equipment have been in use for many years and the characterization most thoroughly modern is not justified. There are no recreational facilities of any kind.

PAR. 8. The respondent, in his contract, circulars, letters, and otherwise, represents to purchasers and prospective purchasers of his said courses of instruction that bookkeeping, accounting, and auditing are taught until said pupils are thoroughly qualified to handle 16 different systems of bookkeeping and that said course is the most thorough course in business methods ever taught. In truth and in fact said course consists only of the most elementary principles of bookkeeping, and no system of accounting is taught. The graduates from said school are not qualified as expert auditors or accountants.

PAR. 9. Respondent represents in his advertising literature and in his contract that he guarantees positions to graduates, while in fact he merely assists graduates in securing positions by writing letters of recommendation and bringing them in touch with employment agencies.

PAR. 10. Prior to the organization of the school now conducted by him, respondent operated what he termed "the World's Desire Bureau," the purpose of which was to perform certain services for the members, for which an annual fee of \$10 was charged and life member-

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ships were given for \$50. After respondent began the operation of the school, no fee was charged and any student enrolled in the school is entitled to the services of the bureau. The letterhead of said bureau contained the following: "The Wisdom, Knowledge, Experience of the World, at Your Command."

The service of the World's Desire Bureau appears to consist of imparting to students such philosophy, advice, and general information as respondent deems necessary, but its usefulness and value is in fact doubtful and rather esoteric. Nevertheless the representations with respect thereto made in the advertising literature and by respondent's agents serve as an inducement to purchase said correspondence courses and attend said school.

PAR. 11. The respondent also uses the trade name, "Educational Finance Company," the letterheads of which imply that said company is an innocent purchaser of school notes without notice, and that it is an independent organization. In truth and in fact said Educational Finance Company is nonexistent. The name is used by the respondent solely for the purpose of collecting tuition notes given by pupils or their parents.

PAR. 12. There are among competitors of the respondent those who truthfully represent the character of their organizations, the prices, terms, and conditions of offer for sale and sale of their courses of instruction; who refrain from untruthfully representing that they will guarantee the procurement of positions for students who have completed their courses of instruction; who do not make use of fictitious firm names and who do not in any other manner unfairly and untruthfully represent their methods of doing business.

PAR. 13. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out are calculated to, and had, and now have a tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the aforesaid acts and representations of respondent, a substantial number of the consuming public have purchased a substantial volume of respondent's courses of instruction with the result that trade has been unfairly diverted to the respondent from other individuals, firms, and corporations likewise engaged in the business of selling similar correspondence courses of instruction who truthfully advertise and represent the nature of their respective businesses.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged 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, the answer of respondent, Walter Jackson, an individual doing business as Jackson University, Jackson University of Business, Educational Finance Co., and World's Desire Bureau, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed by William L. Pencke, counsel for the Commission (respondent neither filing brief nor requesting oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provision of the Federal Trade Commission Act.

It is ordered, That the respondent, Walter Jackson, individually and trading as Jackson University, Jackson University of Business, Educational Finance Co., and World's Desire Bureau, or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of courses of instruction in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Representing, through the use of the word "university" in the trade name, catalogs, advertising literature, or otherwise, that the business conducted by respondent is a university or institution of higher learning;
2. Representing that students or prospective students of respondent have been specially selected for an offer of enrollment in respondent's courses;
3. Representing that the respondent has limited the offer of his courses of instruction to a limited number of persons in a given locality, city, or county;
4. Representing that respondent operates a night school, unless and until such night school is in fact operated by him;

5. Representing in his pamphlets, circulars, or otherwise that certain named individuals have given testimonials with respect to respondent's school when such is not the fact;

6. Representing that respondent's school is the most original, most independent, and most thoroughly modern, unless and until the equipment and teaching facilities justify such descriptions or descriptions of similar import;

7. Representing that auditing, accounting, and many different systems of bookkeeping are taught in respondent's courses of instruction when such is not the fact;

8. Representing that respondent will procure positions for those students who complete respondent's courses of instruction;

9. Representing that the "World's Desire Bureau" is anything other than a medium of advertising respondent's school, or that it is separate and independent institute, or that the wisdom, knowledge, and experience of the world may be taught by said bureau;

10. Representing that the "Educational Finance Co." is a business separate and apart from respondent's school and is an innocent purchaser of respondent's negotiable paper without notice;

11. Making any other representations of similar import and effect to those above set out.

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

Syllabus

IN THE MATTER OF

METZLER-McKEAN CORPORATION, ALSO DOING BUSINESS AS LADY FRANCES LABORATORIES, AND LADY FRANCES

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

Docket 3399. Complaint, May 4, 1938—Decision, Dec. 7, 1938

Where a corporation engaged, under its own name and trade name "Lady Frances," in sale and distribution of facial creams and cosmetics to and through distributors who solicit purchase orders for such products from members of the public in various States, and in substantial competition with others selling and distributing preparations designed and intended for use for the same general purposes for which it represented its said creams and cosmetics as effective; in advertising its said products in various publications, newspapers, circulars, and bulletins distributed among the various States—

- (a) Represented that use thereof would build new tissues to replace those old and broken down, and would prevent or remove wrinkles, and eliminate sallowness and enlarged pores, and produce the lovely clear glow of natural youth, and that its "Acne Creme" would relieve or assist in removal of acne, through such statements as "Lady Frances treatments invigorate circulation, build new, young, live tissues to replace old, worn out and broken-down tissues," etc., facts being use thereof would not build new tissues as aforesaid, nor would any external application bring about such result, accomplished only by internal assimilation of food into the blood stream and into the various glands, from which the cells of the body are fed, nor would such use prevent or remove wrinkles caused by change in tissues and removable, in exceptional cases and to a limited extent, by massage and consequent increase in circulation, and use thereof would not, as aforesaid, eliminate sallowness or enlarged pores or produce lovely clear glow of natural youth, and its so-called "Acne Creme" would not, as claimed, assist in removal of acne or relieve the same;
- (b) Represented that "The Lady Frances Method—using the Lady Frances Facial Youth Cup and Lady Frances Preparations especially prescribed for your type and condition of skin offers you the surest, easiest and safest method of personal beauty care available anywhere at any price," and invited the prospective purchaser "to take advantage of the Personal Prescription Service offered by Lady Frances" with "all orders * * * filled according to Personal Analysis and Prescription Information," facts being use of local mechanical treatments, such as its said "Youth Cup," and use of its said creams, would not, as aforesaid, prevent, erase, or remove wrinkles, and it maintained no personal prescription service for customers and did not compound and mix facial creams and cosmetics for them or cause same to be done according to personal prescription made by it for each;
- (c) Represented, through use of word "Indelible" in connection with its creme rouge and lipstick, that said products possessed such qualities, facts being they were neither indelible nor ineffaceable, but applications thereof were

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rubbed off by ordinary usage and would not remain in place for substantial period of time; and

- (d) Misrepresented earnings of its salesmen, representatives, or dealers from soliciting orders for it, through such statements as "Lady Frances offers attractive, widely acquainted woman over 25, capable earning up to \$38.00 weekly. A real opportunity," "The Lady Frances Outfit, a thing of beauty, with which representatives are making \$3.00 to \$15.00 in a single day," and other statements of similar tenor, facts being average income earned by distributors under normal conditions and circumstances was much less than amounts represented as earned in statements and representations above indicated, and said distributors did not and had not consistently earned amounts equal to those described in such advertisements, such as \$15 a day, or other amounts indicated therein;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said facial creams and cosmetics possessed properties claimed and represented and would accomplish results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to buy substantial quantities thereof, and of further misleading and deceiving substantial portion of members of public and prospective distributors of its said products, into erroneous and mistaken belief that such false statements, representations, and advertisements with respect to earnings of distributors of its said preparations were true, and into contracting or agreeing with it to distribute same in preference to those of competitors, and with result that trade was thereby diverted unfairly to it from competitors aforesaid in commerce involved:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. John L. Wheelock and *Mr. Joseph C. Fehr* for the Commission.

Mr. Earle W. Frost, of Kansas City, Mo., 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 Metzler-McKean Corporation, a corporation doing business under its own name and also under the trade names of Lady Frances Laboratories and Lady Frances, 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. The respondent, Metzler-McKean Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and has its office and principal place of business in the city of Kansas City, State of Missouri. The

respondent, under its own name and also under the trade names of Lady Frances Laboratories and Lady Frances, is now, and has been for more than 4 years last past, engaged in the sale and distribution of facial cremes and cosmetics. Respondent offers for sale and sells its cremes and cosmetics through and by means of distributors who solicit purchase orders for said facial cremes and cosmetics from members of the public situated in various States of the United States. Respondent causes the facial cremes and cosmetics so ordered to be transported from its place of business in the city of Kansas City, Mo., to the purchasers thereof located in various States of the United States other than the State of Missouri. In so carrying on its business, respondent maintains a course of trade and commerce in said products sold by it, among and between the various States of the United States.

PAR. 2. During all the times mentioned herein, other corporations, and individuals and partnerships have been engaged in the business of selling and distributing facial cremes and cosmetics. Such other corporations and such individuals and partnerships, have caused and do cause their said preparations, when sold by them, to be transported from their respective places of business in various States of the United States to, into and through States other than the State of origin of the shipment thereof to the respective purchasers thereof. In selling and distributing its facial cremes and cosmetics in commerce as herein described, the respondent has been, during all the times mentioned herein, and is now, in competition with such other corporations and such individuals and partnerships.

PAR. 3. In selling its facial cremes and cosmetics, in commerce as herein described, and for the purpose of inducing the purchase of said products, the respondent has caused and now causes statements and representations purporting to be descriptive of its facial cremes and cosmetics and of their effectiveness in use to appear in newspapers, publications, circulars, and bulletins having an interstate circulation. The following are illustrative, but not all inclusive, of the statements and representations thus made by respondent:

Lady Frances treatments invigorate circulation, build new, young, live tissues to replace old, worn out and broken-down tissues, improve facial contours, remove blackheads and whiteheads, assist in removal of acne when not caused by faulty diet or organic difficulties, smooth out wrinkle lines, reduce double chins, exercising facial and neck muscles giving them renewed youth, vigor and tone, eliminate sallowness and enlarged pores, producing the lovely, clear glow of natural youth and beauty.

To prevent or eliminate the tiny wrinkles around the eyes called "crowsfeet" apply Lady Frances Eyeline Creme.

The Lady Frances Method—using the Lady Frances Facial Youth Cup and Lady Frances Preparations especially prescribed for your type and condition of

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skin offers you the surest, easiest and safest method of personal beauty care available anywhere at any price.

Thousands report success with Lady Frances Protective, corrective and restorative home treatments.

The Lady Frances Method is not intended merely to cover defects of the skin, but to correct them, to make the skin clear, soft and naturally beautiful.

We invite you to take advantage of the Personal Prescription Service offered by Lady Frances. All orders are filled according to Personal Analysis and Prescription Information.

Indelible Creme Rouge.

Indelible Lipstick.

Acne Creme is sold in a small jar usually sufficient to bring relief, if any external application will.

In addition to the aforesaid statements the respondent made or caused to be made in such advertisements, the statement that its facial cremes are to be used in conjunction with a device designated by respondent as "Youth Cup," which device is offered for sale and sold by respondent in commerce, as herein described, or is given by respondent without additional charge to purchasers of substantial amounts of its facial cremes.

In addition to the aforesaid statements and representations and in furtherance of the sale of its facial cremes and cosmetics, and to procure the services of distributors to sell its facial cremes and cosmetics, the respondent made or caused to be made in newspapers, publications, and bulletins, having an interstate circulation, statements and representations of the following nature and to the following effect:

Lady Frances offers attractive, widely acquainted woman over 25, capable, earnings up to \$38.00 weekly. A real opportunity.

The position we have in mind for you is worth from \$1,800 to \$3,500.00 a year and I hope you qualify for it.

The Lady Frances Outfit, a thing of beauty, with which representatives are making \$3.00 to \$15.00 in a single day.

It is not extraordinary to make from \$165 to \$225 a month while establishing a clientele, and increased earnings from an established clientele are ample for a comfortable living and creation of financial reserve, the purchase of a new automobile, the education of a boy or girl or other investment. An established clientele should mean a steady income of from \$2,800 to \$4,000 yearly.

The aforesaid statements, together with many others similar thereto not set out herein, but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public and prospective distributors of facial cremes and cosmetics of respondent that: (1) The use of such preparations build new tissues to replace old and broken-down tissues; (2) the use of the said acne creme will relieve or assist in the removal of acne;

(3) the use of such preparations will prevent or remove wrinkles; (4) the use of such preparations will eliminate sallowness and enlarged pores; (5) the use of such preparations will produce the lovely, clear glow of natural youth; (6) respondent's lipstick and creme rouge are indelible or ineffaceable in that applications of the same are not rubbed off by ordinary usage and will remain in place for a substantial period of time; (7) the respondent has and maintains a personal prescription service and that for each customer using such service the respondent prescribes the proper facial cremes and cosmetics to be used by such customer, and prepares for such customer such facial cremes and cosmetics according to such personal prescription; (8) the average income earned by the distributors of the facial cremes and cosmetics of respondent are comparable to the income described in the aforesaid advertisements and that a person who contracts or agrees with the respondent to sell its facial cremes and cosmetics may expect, under normal conditions and circumstances, to earn such amounts.

PAR. 4. In truth and in fact, the use of such preparations will not build new tissues to replace old and broken-down tissues. No external application will create new cells or build up old tissues because such a result is accomplished only by the internal assimilation of food into the blood stream and into the various glands, from which the cells of the body are fed.

The use of the said acne creme will not relieve or assist in the removal of acne. Acne cannot be successfully treated by local applications such as the use of the said acne creme. The use of such facial cremes will not prevent or remove wrinkles. Wrinkles are caused by a change in tissues and in the great majority of cases the use of a local mechanical treatment such as the said "Youth Cup" and the use of facial cremes such as respondent's will not remove or erase wrinkles. It is possible in exceptional cases and to a limited extent to remove wrinkles by massaging the skin and thereby increasing the circulation of the blood, but it is the massage that is effective for such purpose and not the use of facial cremes such as respondent's. The use of such preparations will not eliminate sallowness or enlarged pores and will not produce the lovely clear glow of natural youth to the users thereof.

The said lipstick and creme rouge are not indelible or ineffaceable. Applications of such preparations are rubbed off by ordinary usage and such applications will not remain in place for a substantial period of time. Respondent does not maintain a personal prescription service for its customers and it does not compound and mix facial cremes

and cosmetics for its customers, or cause same to be done, according to a personal prescription made by it for each of such customers.

The average earnings of the distributors of the facial cremes and cosmetics of the respondent under normal conditions and circumstances are much less than the amounts represented as being earned by such persons in the aforesaid statements and representations. Such distributors do not consistently earn amounts equal to or comparable to the amounts described in such advertisements. All of the aforesaid statements and representations relative to the efficacy of the facial cremes and cosmetics of the respondent and of the earnings of the distributors of the respondent's facial cremes and cosmetics are grossly inaccurate, incorrect, and exaggerated and are not true statements of the efficacy of such facial cremes and cosmetics or the earnings of such distributors.

PAR. 5. The false and misleading statements and representations of respondent as set out in paragraph 3 hereof relative to the efficacy of the respondent's facial cremes and cosmetics have a tendency and capacity to, and do, confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such facial cremes and cosmetics are efficacious for the purposes for which the said preparations are recommended and advertised, as aforesaid, and into the purchase of such preparations because of said erroneous and mistaken belief so engendered. The statements and representations of the respondent, as set out in paragraph 3 herein, relative to the earnings of the distributors of respondent's facial cremes and cosmetics, have a tendency and capacity to, and do, confuse, mislead, and deceive members of the public, prospective distributors of the facial cremes and cosmetics of the respondent, into the erroneous and mistaken belief that such statements and representations are true and because of said erroneous and mistaken belief so engendered into agreeing or contracting with respondent to become distributors of the facial cremes and cosmetics of the respondent and into distributing such facial cremes and cosmetics in preference to distributing the facial cremes and cosmetics of the said competitors of the respondent. As a direct result thereof the respondent has procured and is now procuring a large staff of distributors to sell its facial cremes and cosmetics. As a result of the aforesaid unfair and misleading acts, practices, and representations, as hereinabove set out, trade has been, and is, thereby unfairly diverted to the respondent from its competitors who are engaged in the sale and distribution of similar preparations or other preparations designed for similar usage who truthfully advertise the extent of the value of their

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respective preparations and the earnings of the distributors of such preparation. In consequence thereof injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 the 4th day of May 1938 issued and served its complaint in this proceeding upon said respondent, Metzler-McKean Corporation, doing business under its own name and under the trade name of Lady Frances Laboratories, and Lady Frances, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 26, 1938, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, and Joseph C. Fehr, trial attorney for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Metzler-McKean Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its office and principal place of business in the city of Kansas City, State of Missouri. Respondent, under its own name and under the trade name of

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Lady Frances, is now, and has been for more than 4 years last past, engaged in the sale and distribution of facial cremes and cosmetics. The respondent has also traded in such business under the trade name of Lady Frances Laboratories. Respondent offers for sale and sells its cremes and cosmetics through and by means of distributors who solicit purchase orders for said facial cremes and cosmetics from members of the public situated in various States of the United States. Respondent causes the facial cremes and cosmetics, when sold by it, to be transported from its aforesaid place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States other than the State of Missouri. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said facial cremes and cosmetics among and between the various States of the United States.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States with other corporations and with partnerships, firms, and individuals selling and distributing facial cremes and cosmetics designed and intended for use for the same general purposes for which respondent represents its facial cremes and cosmetics to be effective, as herein set forth.

PAR. 3. In the course and conduct of its business of selling its facial cremes and cosmetics, in commerce, as herein described, and in furtherance of the sale thereof, the respondent caused statements and representations to appear in newspapers, publications, circulars, and bulletins having a circulation among and between the various States of the United States, purporting to be descriptive of its facial cremes and cosmetics and of their effectiveness in use. In furtherance of the sale of such facial cremes and cosmetics and to create a public demand therefor, the respondent published, or caused to be published, in advertisements inserted in various publications, newspapers, circulars, and bulletins having a circulation among and between the various States of the United States, the following statements and representations:

Lady Frances treatments invigorate circulation, build new, young, live tissues to replace old, worn out, and broken-down tissues, improve facial contours, remove blackheads and whiteheads, assist in removal of acne when not caused by faulty diet or organic difficulties, smooth out wrinkle lines, reduce double chins, exercising facial and neck muscles giving them renewed youth, vigor and tone, eliminate sallowness and enlarged pores, producing the lovely, clear glow of natural youth and beauty.

To prevent or eliminate the tiny wrinkles around the eyes called "crowsfeet" apply Lady Frances Eyeline Creme.

The Lady Frances Method—using the Lady Frances Facial Youth Cup and Lady Frances Preparations especially prescribed for your type and condition of skin offers you the surest, easiest, and safest method of personal beauty care available anywhere at any price.

Thousands report success with Lady Frances Protective, corrective, and restorative home treatments.

The Lady Frances Method is not intended merely to cover defects of the skin, but to correct them, to make the skin clear, soft, and naturally beautiful.

We invite you to take advantage of the Personal Prescription Service offered by Lady Frances. All orders are filled according to Personal Analysis and Prescription Information.

Indelible Creme Rouge.

Indelible Lipstick.

Acne Creme is sold in a small jar usually sufficient to bring relief, if any external application will.

In addition to the aforesaid statements and representations, the respondent made, or caused to be made, in such advertisements the statement or recommendation that its facial cremes were to be used in conjunction with a device designated by respondent as "Youth Cup," which device is given by respondent without additional charge to purchasers of substantial amounts of its facial cremes.

In addition to the aforesaid statements and representations and in furtherance of the sale of its facial cremes and cosmetics and to procure the services of distributors to sell its facial cremes and cosmetics, the respondent published, or caused to be published, in advertisements in newspapers, publications, and bulletins having a circulation among and between the various States of the United States, the following statements and representations:

Lady Frances offers attractive, widely acquainted woman over 25, capable earning up to \$38.00 weekly. A real opportunity.

The position we have in mind for you is worth from \$1,800 to \$3,500.00 a year and I hope you qualify for it.

The Lady Frances Outfit, a thing of beauty, with which representatives are making \$3.00 to \$15.00 in a single day.

It is not extraordinary to make from \$165 to \$225 a month while establishing a clientele, and increased earnings from an established clientele are ample for a comfortable living and creation of financial reserve, the purchase of a new automobile, the education of a boy or girl or other investment. An established clientele should mean a steady income of from \$2,800 to \$4,000 yearly.

The aforesaid statements served as representations on the part of the respondent to members of the purchasing public and prospective distributors of facial cremes and cosmetics of respondent that (1) the use of such preparations builds new tissues to replace old and broken-down tissues; (2) the use of said acne creme will relieve or assist in the removal of acne; (3) the use of such preparations will prevent or remove wrinkles; (4) the use of such preparations will eliminate

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sallowness and enlarged pores; (5) the use of such preparations will produce the lovely clear glow of natural youth; (6) respondent's lipstick and creme rouge are indelible or ineffaceable in that applications of the same are not rubbed off by ordinary usage and will remain in place for a substantial period of time; (7) the respondent has and maintains a personal prescription service and that for each customer using such service the respondent prescribes the proper facial cremes and cosmetics to be used by such customer and prepares for such customer such facial cremes and cosmetics according to such personal prescription; (8) the average income earned by the distributors of the facial cremes and cosmetics of respondent are comparable to the income described in the aforesaid advertisements and that a person who contracts or agrees with the respondent to sell its facial cremes and cosmetics may expect under normal conditions and circumstances to earn such amounts.

PAR. 4. In truth and in fact the use of such preparations will not build new tissues to replace old and broken-down tissues. No external application will create new cells or build up old tissues because such a result is accomplished only by the internal assimilation of food into the bloodstream and into the various glands from which the cells of the body are fed.

The use of the said acne creme will not relieve or assist in the removal of acne. Acne cannot be successfully treated by local applications such as the use of the said acne creme. The use of such facial cremes will not prevent or remove wrinkles. Wrinkles are caused by a change in tissues and in the great majority of cases the use of a local mechanical treatment such as the said "Youth Cup" and the use of facial cremes such as respondent's will not remove or erase wrinkles. It is possible in exceptional cases and to a limited extent to remove wrinkles by massaging the skin and thereby increasing the circulation of the blood, but it is the massage that is effective for such purpose and not the use of facial cremes such as respondent's. The use of such preparations will not eliminate sallowness or enlarged pores and will not produce the lovely clear glow of natural youth to the users thereof.

The said lipstick and creme rouge are not indelible or ineffaceable. Applications of such preparations are rubbed off by ordinary usage and such applications will not remain in place for a substantial period of time. Respondent does not and has not maintained a personal prescription service for its customers. The respondent does not and has not compounded and mixed facial cremes and cosmetics for its customers or caused the same to be done according to a personal prescription made by it for each of such customers.

The average earnings of the distributors of the facial cremes and cosmetics of respondent under normal conditions and circumstances are and have been much less than the amounts represented as being earned by such persons in the aforesaid statements and representations. Such distributors do not and have not consistently earned amounts equal to the amounts described in such advertisements.

PAR. 5. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its facial cremes and cosmetics, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's facial cremes and cosmetics possess the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's facial cremes and cosmetics.

The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to the earnings of the distributors of its facial cremes and cosmetics, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of members of the public, prospective distributors of respondent's facial cremes and cosmetics, into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and into contracting or agreeing with respondent to distribute its facial cremes and cosmetics in preference to distributing the facial cremes and cosmetics of competitors of respondent.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein alleged, 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, the answer of respondent, and a stipulation as to the facts entered into between the respondent

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herein and Joseph C. Fehr, trial attorney for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Metzler-McKean, a corporation, doing business under its own name and under the trade names of Lady Frances Laboratories and Lady Frances, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its facial cremes and cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of such facial cremes and cosmetics will build new tissues to replace old and broken-down tissues;
2. That the use of respondent's acne creme will relieve or assist in the removal of acne;
3. That the use of such facial cremes and cosmetics will prevent or remove wrinkles;
4. That the use of respondent's "Youth Cup," or similar device, when used in conjunction with, or independent of, respondent's facial cremes and cosmetics, will prevent or remove wrinkles;
5. That the use of such facial cremes and cosmetics will eliminate sallowness and enlarged pores;
6. That the use of such facial cremes and cosmetics will produce the lovely clear glow of natural youth;
7. That respondent's lipstick and creme rouge are indelible;
8. That respondent maintains a personal prescription service for its customers, when such is not the fact;
9. That salesmen, representatives, or dealers of respondent who are engaged in the business of soliciting purchase orders for respondent's facial cremes and cosmetics earn \$15 a day or any other amount or amounts, whether expressed in terms of money or in words indicative of the same, unless such salesmen, representatives, or dealers of the respondent consistently earn such amount or amounts in the ordinary course of business under normal conditions and circumstances.

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

Complaint

IN THE MATTER OF

JULIUS LIPMAN, HERMAN LIPMAN AND SAMUEL LIPMAN, INDIVIDUALLY AND DOING BUSINESS AS LIPMAN BROTHERS

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

Docket 3494. Complaint, July 14, 1938—Decision, Dec. 7, 1938

Where a firm engaged in manufacture of dresses, including its so-called "Klassic Kool" garments, which had appearance and feel of silk but were in fact made from rayon, and in sale and distribution thereof to department and retail stores in the various States and in the District of Columbia—

Attached and caused to be attached to their said "Klassic Kool" garments tags and labels bearing said words and words "Pure Dye," and supplied to retailers, including retailer-purchaser by whom said garments were thus advertised and labeled, for retailers' use in attaching thereto, similar labels containing said words and retailer's name, without tagging, labeling, or otherwise distinguishing said products in such a way as to disclose their rayon composition, and thereby supplied means and inducement whereby retailers thereof might mislead and deceive consuming public into erroneous and mistaken belief that dresses in question were made of unweighted silk and not rayon;

With capacity and tendency to mislead and deceive substantial portion of purchasing and consuming public into mistaken and erroneous belief that products in question, labeled and designated as aforesaid, were composed of unweighted silk, as long associated in minds of substantial portion of such public with words "Pure Dye," and product of cocoon of silkworm, and not rayon, and of inducing such public, by reason of such representations and advertisements, to buy their said garments in mistaken and erroneous belief that they were composed as aforesaid and not of rayon, and with result that trade was thereby diverted unfairly to them from competitors selling similar silk or rayon products in commerce among the various States and who in no way misrepresent the nature, character, and quality of their respective garments:

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

Mr. George W. Williams 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 Julius Lipman, Herman Lipman, and Samuel Lipman, individually, and as co-partners, trading as Lipman Bros., hereinafter referred to as re-