

IN THE MATTER OF
THE ROSS ROY SERVICE, INC., AND KELVINATOR
CORPORATION

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

Docket 3125. Complaint, May 8, 1937—Decision, Jan. 19, 1939

Where a corporation engaged in compilation of statistical data for use of manufacturers in advertising their respective products and in sale and distribution, in commerce among the various States, of books and literature containing such statistical data to manufacturers and dealers of products to which same apply, in substantial competition with others engaged in business of compilation, sale, and distribution of such data; in consideration of payment of sum of \$11,000 by, and in pursuance of agreement entered into with, second concern engaged in manufacture, sale, and distribution of electrical refrigerators to purchasers in the various States in substantial competition with others engaged in manufacture, sale, and distribution in commerce of such products—

Published, sold, and distributed to some 5,000 dealers and distributors of said concern's refrigerators and at the request of said concern and with its aid, assistance, encouragement, knowledge, acquiescence, and cooperation (1) "Comparative Handbook" in which, thus titled and put out under the name of said corporation it described itself as "An independent organization in no way affiliated with any manufacturer" and the book as an "accurate unbiased source of information," and in which were set forth data theretofore submitted to and approved by said concern relating in part to weight, cabinet, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability of mechanical refrigerators made and sold by various companies in the United States with schedules making comparisons between refrigerators of aforesaid concern and those of its competitors shown in red type in every case where one had an advantage over the other in the opinion of said corporation; and (2) bulletins designated as "Confidential" and devoted to publication of statistics, illustrations, and discussion respecting and concerning the merits and demerits of one make of refrigerator and comparison thereof with that of aforesaid concern;

Facts being said handbook and comparisons therein made were not "accurate, authoritative, and unbiased" but on the contrary were biased, inaccurate, and unauthoritative; it was not published entirely independent of all manufacturers but said corporation was subsidized as above set forth by aforesaid concern, refrigerators of equal size and capacity and selling value were not always used in the various tables and comparisons in said handbook and bulletins, and comparisons of temperature, hardware, finish, conveniences, cabinet, compressor and condenser units, insulation, cost of operation, and number of ice cubes frozen per hour, and number of kilowatts used per hour in rooms of various degrees of temperature were erroneously shown in handbook as in favor of the refrigerator made and sold by aforesaid subsidizing concern;

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With tendency and capacity through use of said handbook and bulletins by said corporation and said subsidizing concern to mislead and deceive members of purchasing public with respect to quality and value of refrigerators made and sold by latter, and particularly to mislead purchasers of latter's refrigerators into false and erroneous belief that such handbook and bulletins above described were "unbiased, authoritative, and accurate" and in no way affiliated with any company or corporation which made or sold refrigerators, and with result, due to misrepresentation aforesaid in such handbook and bulletins by said corporation, that trade was thereby diverted to said concern from its competitors who do not misrepresent the character, quality, or value of their refrigerators in advertising and statistics distributed by them in commerce among the various States:

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. William L. Pencke for the Commission.

Schmalzriedt, Frye, Granse & Frye, of Detroit, Mich., for Ross Roy Service, Inc.

Wiley, Streeter & Ford and *Cook, Smith, Jacobs & Beake*, of Detroit, Mich., for Kelvinator Corporation.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that The Ross Roy Service, Inc., and Kelvinator Corporation, corporations, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in 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, the Ross Roy Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan with its principal office and place of business at 403 West Baltimore Avenue, in the city of Detroit, State of Michigan. It is now, and has been for some time engaged in the business of compiling statistical data for the use of manufacturers, advertising their respective products and in the sale and distribution of books and literature containing such statistical data to manufacturers and to dealers in the products to which said data apply in commerce between and among the various States of the United States and in the District of Columbia. It causes the said statistical data, when sold, to be shipped from its place of busi-

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ness in the State of Michigan to purchasers thereof located in the various States of the United States other than the State of Michigan and in the District of Columbia. There is now, and has been at all times herein mentioned, a constant current of trade and commerce in said statistical data so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent, Kelvinator Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan with its principal office and place of business at 14250 Plymouth Road in the city of Detroit, State of Michigan. It is now, and has been for several years last past engaged in the manufacture, sale, and distribution of electrical refrigerators. It causes said refrigerators when sold to be shipped from its place of business in the State of Michigan to purchasers thereof located in the various States of the United States other than the State of Michigan and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said refrigerators so distributed and sold by the respondent, Kelvinator Corporation between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents in the course and conduct of their respective businesses, are now and have been at all times mentioned herein, engaged in substantial competition with other corporations, and with individuals, firms, and partnerships likewise engaged in the sale and distribution of similar information and statistical data and refrigerators in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The Crosley Radio Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located in the city of Cincinnati in said State. It has been for more than 1 year last past engaged in the manufacture, sale, and distribution of electrical refrigerators in commerce between and among the various States of the United States. It causes the same when sold to be shipped from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio. In the conduct of its business, Crosley Radio Corporation was at all times herein mentioned, and still is in competition with other corporations and with individuals, firms, and partnerships, among which is the respondent Kelvinator Corporation, likewise engaged in the sale and distribution of electrical re-

frigerators between and among the various States of the United States and in the District of Columbia.

PAR. 4. In such competition between the sellers of various mechanical refrigerators, one of the controlling influences upon the purchasing public is the popular opinion as to the relative consideration to be given to such features as weight, ice capacity, cabinet, hardware, finish, insulation, temperature, conveniences, mechanical action, economy, and warranty in determining the relative merits and dependability of the various electrical refrigerators.

PAR. 5. In the early part of the year 1936, the respondent Ross Roy Service, Inc., collected and compiled certain statistical data relating to the mechanical refrigerators manufactured and sold by the various concerns in the United States, which data in particular related to such features of the various refrigerators as weight, ice capacity, cabinet, hardware, finish, insulation, temperature, convenience, mechanical action, economy, and warranty. Thereupon Kelvinator Corporation entered into an agreement with the respondent Ross Roy Service, Inc., wherein and whereby the Ross Roy Service, Inc., undertook to and did publish the statistical data so collected in the form of a statistical bound book designated as "The Ross Roy Comparative Hand Book," hereinafter referred to as handbook and also published a series of bulletins which make comparisons between certain mechanical refrigerators. Said series of bulletins were and are known as "Confidential Bulletins." Each bulletin in the series referred to is devoted to the presentation of statistics, illustrations, and discussions respecting and concerning the merits or demerits of one make of refrigerator and especially to a comparison [sic] thereof with the Kelvinator refrigerator, always to the advantage of the Kelvinator. The publication of said information and data was made at the request of the respondent Kelvinator Corporation and with the aid, assistance, encouragement, knowledge, acquiescence, and cooperation of the said Kelvinator Corporation. The Ross Roy Service, Inc., disseminated and distributed the aforesaid handbooks and bulletins with the full knowledge and acquiescence and at the request of Kelvinator Corporation to approximately 5,000 dealers and distributors of Kelvinator refrigerators located in the various States of the United States. For such compilation of data and such distribution the respondent, Kelvinator Corporation agreed to and did pay the Ross Roy Service, Inc., the sum of \$10,000. The dealers and distributors of Kelvinator Corporation electrical refrigerators likewise paid the respondent, Ross Roy Service, Inc., a good and valuable consideration for such handbook, data, and bulletins,

and while Kelvinator Corporation lent its financial support to the Ross Roy Service, Inc., in the publication and distribution of such literature and statistics, no mention of the fact was made by either of the respondents at any time.

PAR. 6. In the course and conduct of its business the Ross Roy Service, Inc., in its advertisements and advertising matter which is circulated in the various States of the United States, and in the handbook and other literature sold and distributed to the dealers in Kelvinator Corporation electrical refrigerators, as above set out, stated and represented that it was and is an independent organization "in no way affiliated with any manufacturer," and that its literature, representations, and comparisons were "accurate, authoritative, and unbiased."

In truth and in fact the information contained in the said handbook and the comparisons therein made between such refrigerators were not and are not accurate, authoritative, or unbiased, and the handbook was not and is not published entirely independent of all manufacturers. On the contrary such information and data so published by the respondent the Ross Roy Service, Inc., was biased, inaccurate, and unauthoritative. As a matter of fact, the respondent Ross Roy Service, Inc., was subsidized by the respondent Kelvinator Corporation in the manner herein set out. The derogatory and disparaging comparisons referred to were and are made concerning various refrigerators that are competitive with Kelvinator Corporation's refrigerators. Among such refrigerators which were unfairly disparaged are the refrigerators of Crosley Radio Corporation. In the handbook and bulletins devoted to a description of the refrigerators made by the Crosley Radio Corporation and other competitors of the respondent, Kelvinator Corporation, various statements and representations are made which are unfairly derogatory to, or disparaging to, such refrigerators. Comparisons were made between various features of the Kelvinator refrigerators and various features of the Crosley refrigerator and other refrigerators of competitors to the disadvantage of the Crosley Radio Corporation's refrigerators and the refrigerators of other competitors of the respondent Kelvinator Corporation. Illustrative of the unfair comparisons and disparaging statements and representations concerning the various competitive refrigerators are the following statements, representations, and comparisons concerning the refrigerator made by Crosley Radio Corporation.

In the schedules contained in the handbook purporting to give the comparisons between the Kelvinator refrigerators and refrigerators of its competitors, it is stated at the top of the pages of said hand-

book that the specifications are shown in red in every case where one refrigerator has an advantage over the other in the opinion of the respondent Ross Roy Service, Inc.

Under the heading of "Hardware-Finish" respondents represent that the Kelvinator refrigerator was to be preferred to and had an advantage over the electrical refrigerator of the Crosley Radio Corporation known as "Shelvador" because of the fact that the finish of the Kelvinator was "Chrome Ivory" and the finish of the "Shelvador" was "Chromium." As a matter of fact, the only difference between the two refrigerators in this respect was one of color which is not a feature of any importance. In fact, one color finish is not superior to another and is purely a matter of personal taste.

Under the heading of "Temperature," respondents represent that the Kelvinator was favored and to be preferred because it has a built-in thermometer, whereas the "Shelvador" had none. As a matter of fact, a thermometer is supplied with each "Shelvador" sold and distributed by the Crosley Radio Corporation and is so designed that the thermometer may be placed in or left out of the "Shelvador." The fact as to whether the thermometer is built-in or not is not important and does not represent a feature generally considered in determining the relative merits of refrigerators, and in no event is the thermometer of the Kelvinator refrigerator superior to the thermometer furnished by the Crosley Radio Corporation with the refrigerators sold and distributed by it.

Under the caption of "Conveniences," the respondents represent that both the Kelvinator and Shelvador contained a utility basket. As a matter of fact the utility basket of the "Shelvador" refrigerator was and is an unique and distinctive feature which is highly advertised and much to be preferred to the utility basket of the Kelvinator refrigerator. Notwithstanding that fact it was not favored with a red letter as a superior feature lending advantage to the Crosley unit.

In a purported comparison of the cabinet compressor and condenser units of the Crosley and other refrigerators as against the Kelvinator, pictorial representations of the motors are shown in the bulletins. In such pictorial representations respondents portrayed the complete and assembled unit of the Kelvinator motor, while the pictures of the motors of the other refrigerators were incomplete and unassembled. In and by such pictorial representations the erroneous and mistaken impression is conveyed that the Kelvinator motor is larger and more complete and that the motors of the competing products are small and of inferior mechanism.

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Respondents also represent in the said "Confidential Bulletins" that while the Crosley refrigerator had thick side walls, back and top, the door opening in front of said refrigerator was very thin, and as a result thereof such unit was lacking in proper insulation. Respondents represent that the insulation of the Crosley refrigerator compared favorably in thickness with that used in the Kelvinator refrigerator cabinets, except as to the doors of each refrigerator, and that the Crosley unit is lacking in proper insulation. It was further stated in that connection:

Crosley insulation compares favorably in thickness when all but the doors are considered but to make room for the Shelvadors, the door insulation has been reduced to only $2\frac{1}{4}$ inches in two models, to $1\frac{3}{4}$ inches in two more, and to only $1\frac{1}{8}$ inches in four others.

That is somewhat similar to building a well insulated shanty for a railroad watchman and then putting on a door through which the heat can leak without difficulty.

In truth and in fact the figures as to the thickness of the "Shelvador" doors are and were inaccurate. Moreover such representations convey a false and erroneous impression, inasmuch as thickness does not in any manner mean proper and sufficient insulation. A thin door may be properly insulated and serve a greater degree of efficiency than a thick door. The purpose of such representations were and are to, and they do unfairly disparage the Crosley "Shelvador."

It was stated and represented that only the Kelvinator had an accurate, complete, and perfect temperature control and graduated thermometer, inasmuch as minute calculations appear in the scale of the Kelvinator. In truth and in fact the accuracy of the thermometer does not depend upon the minuteness of the markings on the scale used in the thermometer. In and by such representations, respondents unfairly disparage and discredit competing products of Kelvinator Corporation.

It was stated and represented in such bulletins that the Kelvinator refrigerator could be operated at a lower cost than the refrigerators of competitors; but no mention was made of the fact that with the refrigerators of the Crosley Radio Corporation and other refrigerator companies, more ice cubes per hour could be frozen than with the Kelvinator. Respondents failed to disclose that on the part of some manufacturers of refrigerators it is their policy to give their customers faster ice freezing even though at a slightly increased cost of operation, and, as a matter of fact, there is a preference on the part of some customers for refrigerators that accord fast ice freezing even though at an increased cost as compared to refrigerators that produce ice at a slower pace. In and by such representations

respondents unfairly disparage and discredit the competing products of the respondent, Kelvinator Corporation.

In said bulletins respondents make a comparison of operating cost of the Kelvinator and Crosley refrigerators and represented that in a room temperature of 80° the number of kilowatt-hours consumed by the Crosley refrigerator was 1.70 as against 1.65 for the Kelvinator in 24 hours; and for a room temperature of 90° the kilowatt-hours consumed by the Crosley refrigerator was 2.20 as against 0.85 per 24 hours for the Kelvinator. Such representations, made by the respondents, were and are grossly inaccurate and are greatly in excess of the actual consumption of the Crosley unit. As a matter of fact figures vary with respect to the kilowatt-hour consumption on all makes at varying temperatures and there is no established standard of comparison. The effect of such false and misleading statements is to unfairly disparage and discredit the refrigerators of the Crosley Radio Corporation.

In the various tables and comparisons referred to, used for comparison, respondents did not compare Kelvinator and "Shelvador" refrigerators of equal size, capacity, and selling value; but used instead a much larger Kelvinator, having a selling price of \$300 per unit, and a smaller "Shelvador" having a selling price of \$175 per unit, and such comparisons so made by respondents are and were unfair to the "Shelvador" refrigerator and tend to reflect discredit upon the refrigerator of Crosley Radio Corporation.

PAR. 7. The purpose, intent, and effect of the representations and comparisons made by the respondents as set forth in paragraph 6 hereof and many similar representations not herein set out, all of which are false, misleading, and inaccurate, was and is to disparage the products of competitors of respondent Kelvinator Corporation. The purpose and effect of the representations that the statistical handbook was accurate, authoritative, and unbiased, and published entirely independent of all manufacturers, was and is to mislead the trade and consuming public into believing that the representations and comparisons therein made were those of a disinterested organization having no affiliation or connection with the respondent, Kelvinator Corporation. The concealment of such affiliation was and is calculated to prevent competing manufacturers of the Kelvinator Corporation from fixing responsibility upon it for such representations. Said disparagements of said competing manufacturers' products handicap said competing manufacturers in defending their products. The methods devised and adopted by respondents as set forth herein were calculated to deceive the trade and consuming public as to the origin and weight of the attacks made upon competitive producers.

The distribution of such data and information as set out herein places in the hands of dealers in Kelvinator refrigerators a means whereby they may represent, offer for sale and sell to the purchasing public Kelvinator refrigerators under erroneous and misleading representations.

PAR. 8. The aforesaid false, misleading, and disparaging statements, representations, and comparisons so made by respondents, as above alleged, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous beliefs that such statements, representations, and comparisons are authoritative, accurate, unbiased, independent, and true, and that by reason of such representations and comparisons the refrigerators of the respondent Kelvinator Corporation, were recommended and favored, and in fact superior to the products of its competitors. Further, said false and misleading statements, representations, and comparisons have a tendency and capacity to, and do unfairly divert trade to respondents from their competitors, and induce the public to purchase the refrigerators of the respondent Kelvinator Corporation in preference to the refrigerators of competitors because of such erroneous beliefs brought about as above set out. As a result thereof substantial injury has been and is now being done by respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondents have been and are all to the prejudice of the public, and respondents' competitors, as aforesaid, and have been and are unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 8, 1937, issued and served its complaint in this proceeding upon respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said respondents filed answers to said complaint. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allega-

tions of the complaint Fred R. Schmalzriedt and Waldo C. Granse appeared for the said The Ross Roy Service, Inc., and Richard Ford represented the said Kelvinator Corporation, before Miles J. Furnas, 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 hearing before the Commission on the said complaint, testimony and other evidence and briefs in support of and against the complaint, 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, The Ross Roy Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Detroit in said State. Said respondent is engaged in the business of compiling statistical data for the use of manufacturers advertising their respective products and in the sale and distribution of books and literature containing such statistical data to manufacturers and dealers in the products to which said data applies in commerce between and among the various States of the United States. Respondent, Kelvinator Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in the city of Detroit in said State. On January 4, 1937 steps were taken to dissolve said corporation and to reincorporate the same under the name of Nash-Kelvinator Corporation. Said respondent was for several years last past as its successor is now, engaged in the manufacture, sale, and distribution of electrical refrigerators. It caused said refrigerators, when sold, to be shipped from its place of business located in the said State of Michigan to purchasers thereof located in the various States of the United States.

PAR. 2. Other persons, firms, and corporations have been and now are engaged in the business of compilation, sale, and distribution of statistical data, and the manufacture, sale, and distribution of refrigerators in commerce between and among various States of the United States in substantial competition with said respondents.

PAR. 3. The Crosley Radio Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Ohio. Its principal office and place of business is located in the city of Cincinnati in said State. For more than 5 years last past said corporation has been engaged in the manufacture, sale, and distribution of electrical refrigerators in commerce between and among the various States of the United States. Said corporation is now, and has been at all times herein mentioned, in substantial competition with other corporations and individuals, firms, and partnerships, including said respondent, Kelvinator Corporation.

PAR. 4. In competition between manufacturers and sellers of various mechanical refrigerators, purchasers give consideration to such features as weight, cabinet, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability of the various electrical refrigerators.

PAR. 5. In the early part of the year 1936, said respondent, The Ross Roy Service, Inc., collected and compiled statistical data relating to the mechanical refrigerators manufactured and sold by various concerns or companies in the United States. Said data related partly to the weight, cabinets, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability. Said data was submitted to said respondent, Kelvinator Corporation, for inspection and was approved by it. Thereupon, said Kelvinator Corporation entered into an agreement with said respondent, The Ross Roy Service, Inc., to publish a book designated as "The Ross Roy Comparative Handbook," hereinafter referred to as "handbook," and also to publish a series of bulletins making a comparison between said mechanical refrigerators. Said bulletins were designated as "Confidential Bulletins" and were devoted to the publication of statistics, illustrations, and discussion respecting and concerning the merits and demerits of one make of refrigerator and a comparison of said refrigerator with the Kelvinator refrigerator manufactured by said respondent, Kelvinator Corporation. Publication of said data and information was made at the request of the respondent, said Kelvinator Corporation, and with the aid, assistance, encouragement, knowledge, acquiescence, and cooperation of said Kelvinator Corporation. Said The Ross Roy Service, Inc. sold and distributed said handbooks and bulletins in commerce with the full knowledge and consent of the Kelvinator Corporation to approximately 5,000 dealers and distributors of said Kelvinator refrigerators, whose names and addresses were furnished to respondent, The Ross Roy Service, Inc., by said respondent, Kelvinator Corporation, located in various States of the United States. For compensation to said respondent, The Ross Roy Service, Inc., for the compilation of said data and bulletins and distribution of same, said respondent,

Kelvinator Corporation, agreed to, and did, pay said respondent, The Ross Roy Service, Inc., the sum of \$10,999. Notwithstanding the Kelvinator Corporation did lend financial aid and assistance to The Ross Roy Service, Inc., no mention was made of the fact in said handbooks or bulletins, but there was a statement incorporated in said handbooks by said respondent, The Ross Roy Service, Inc., that it was "An independent organization in no way affiliated with any manufacturer," and that it was an "accurate unbiased source of information." The facts plainly show, and the truth indicates, that said handbook and the comparison therein made between various refrigerators were not "accurate, authoritative, or unbiased," and said handbook was not published entirely independent of all manufacturers. The truth and facts clearly indicate said information and data so published by respondent, The Ross Roy Service, Inc., was biased, inaccurate, and unauthoritative. Also, it is a matter of fact that said respondent, The Ross Roy Service, Inc., was subsidized by said respondent, Kelvinator Corporation, in the manner hereinbefore set out. The derogatory and disparaging comparisons heretofore referred to were made concerning various refrigerators that are in competition with said respondent Kelvinator Corporation's refrigerators. One of such refrigerators which were unfairly disparaged was manufactured and sold by said Crosley Radio Corporation heretofore mentioned. Schedules contained in said handbooks making comparison between Kelvinator refrigerator and refrigerators of its competitors are shown in red type in every case where one refrigerator has an advantage over the other in the opinion of said respondent, The Ross Roy Service, Inc. In various tables and comparisons heretofore referred to in said handbook and bulletins used for comparison, refrigerators of equal size and capacity and selling value were not always used. The comparison of the temperature, hardware, finish, conveniences, cabinet, compressor, and condenser units, insulation, cost of operation, and number of ice cubes frozen per hour, and various numbers of kilowatts used per hour in rooms of various degrees of temperature were erroneously shown in said handbook to be in favor of the Kelvinator refrigerator manufactured and sold by said respondent, Kelvinator Corporation.

PAR. 6. The use of said respondents of the aforesaid handbooks and bulletins had the tendency and capacity to mislead and deceive members of the purchasing public with respect to the quality and value of refrigerators manufactured and sold by said respondent, Kelvinator Corporation, and to particularly mislead purchasers of said respondent Kelvinator Corporation's refrigerators into the false and erroneous belief that said handbooks and bulletins heretofore

described were "accurate, unbiased, and authoritative" and in no way affiliated with any company or organization who manufactured or sold refrigerators. Due to the aforesaid misrepresentations in said handbook and bulletins by respondent, The Ross Roy Service, Inc., trade was thereby diverted to the respondent, Kelvinator Corporation, from its competitors who do not misrepresent the character, quality or value of their refrigerators in advertising and statistics distributed by them in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, are to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Waldo C. Granse and Richard Ford, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, their respective officers, representatives, agents, employees, and successors, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of compilations of statistical data, books, and literature containing statistical data and other advertising material in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing directly or indirectly in connection with the publishing and offering for sale of statistical data and comparisons of various competitive products that such data or comparisons are authoritative and unbiased or that the respondent, The Ross Roy Service, Inc., is an independent organization not affiliated with any manu-

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facturer when the cost of such publication or any part thereof is borne by the manufacturer whose product is used as a base for such statistical data or comparisons.

2. Disparaging through the medium of advertising literature, or under the guise of statistical data, comparisons, or in any other manner, the products of competitors of those manufacturers whose products are used as a base for such comparisons.

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

IN THE MATTER OF
HARLAND L. HERB DOING BUSINESS AS NATIONAL
SCIENTIFIC PRODUCTS COMPANY

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

Docket 3240. Complaint, Oct. 8, 1937—Decision, Jan. 19, 1939

Where an individual engaged in manufacture, sale, and distribution of medicinal product known as "Prostories"; in advertising same in papers and magazines circulating among various States—

Represented that the same was a new medicinal principle and new medical discovery, and that it constituted a competent and effective remedy and cure

- for prostatitis, infection, and other disorders of the prostate gland and that it was a stimulant therefor and would restore, stimulate, or increase potency or sex power, and was a remedy or cure, or a competent and effective treatment for impotency;

Facts being it was not a new or scientific principle of stimulation of said gland, loss of power such as due to age and various diseases and conditions, treatment of diseases of said gland requires examination for purpose of determining cause of ailment, and said product was not an effective treatment for prostatitis and would not accomplish results claimed for it as above set forth, but only effect thereof would be by reason of irritant action of ingredients therein contained to act as an excitant and such irritant might be harmful, and it was not analgesic or pain-relieving;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that its said "Prostories" was an effective cure for diseases of prostate gland and would relieve pain and suffering caused thereby and increase power of user through stimulation thereof, and to induce number of purchasing public to buy said product because of aforesaid erroneous beliefs engendered by such false and misleading representations, and unfairly to divert trade to him from competitors who do not make use of such misrepresentations:

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. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes 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 Trade Commission, having reason to believe that Harland L. Herb, hereinafter referred to as respondent, has been for more than 1 year last past, and is now, using unfair methods of competition in