

IN THE MATTER OF

ROBERT R. CHARNEY, DOING BUSINESS AS NATIONAL
SALES COMPANY AND WINDSOR PEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3610. Complaint, Nov. 22, 1938¹—Decision, June 8, 1939*

Where an individual engaged in sale and distribution of fountain pens, pencils, and jewelry such as necklaces and rings; in advertising his pens and pencils and necklaces for sale, along with so-called certificates—

- (a) Represented that the customary and usual retail prices at which, said various articles were offered and sold were greatly in excess of the prices at which they were offered and sold under terms and conditions set out in advertisements in question, and that the certificates referred to in said advertisements were actually worth \$4.41 each when offered as part payment of purchase price of such various articles, through such statements, among others, as "THIS CERTIFICATE IS WORTH \$4.41" and "This certificate and 59c entitles the bearer to one of our Genuine Indestructible \$5.00 Vacuum Filler Sackless Fountain Pens * * *," and "Price After Sale \$5.00," and "* * * \$1.50 PENCILS TO MATCH ABOVE PEN, 26c," and similarly referred to and offered, for 59 cents plus the certificate of said alleged worth of \$4.41, its "GENUINE FULL CARAT FACSIMILE DIAMOND RINGS" or its "Regular \$5.00 CROSS NECKLACES in Plain Gold, Silver or Beautiful Facsimile DIAMONDS", and similarly set forth that price of necklaces would be \$5 after the sale, and that there was a limit of two to a coupon and limited supply, and offer was made possible by the manufacturer, facts being said pens and pencils were generally offered and sold for 59 cents and 26 cents each, respectively, and did not have any such value as attributed to them as aforesaid, and rings and necklaces were customarily sold for former figure, and certificates in question did not have value of \$4.41, or any value whatever;
- (b) Represented that fountain pens sold and distributed by him as above set forth would last a lifetime and never need repair, and had greater ink capacity than ordinary pens, and that the points thereof were made from sensational or new material known as "Durium," and were of a design materially different from other pen points, through such statements, among others, as "A LIFETIME GUARANTEED WITH EACH PEN", "Genuine Indestructible", and "* * * holds 200% more ink than any ordinary fountain pen on the market," and "You can write for 3 months with one filling!" "No repair bills!" etc., and, through form letters distributed, that pen points used therein were the "latest design points," made from "Durium, a sensational new material," facts being said pens were not superior to competitive products offered at approximately same price, and other statements as to their capacity, long life, freedom from need of repair, and points of sensational new material and materially different design from other pen points, were untrue; and

¹ Amended and supplemental.

- (c) Represented that his said rings or necklaces were set with diamonds and could be worn a lifetime and would remain free from tarnish, discoloration, loss of brilliancy or loss of stones, and that they were 14K gold or silver through various statements to such effect, facts being they were not set with diamonds, could not be worn a lifetime or any appreciable period and remain free from tarnish, etc., or loss of stones, and were not 14K gold or silver;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and of causing portion of purchasing public, because of such mistaken belief, to purchase substantial quantities of his said products, and of thereby unfairly diverting trade to himself from competitors engaged in sale and distribution of similar products in commerce among the various States and in the District of Columbia, and who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which offered and sold:

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

Mr. DeWitt T. Puckett, for the Commission.

Mr. Edward I. Baker, of Atlantic City, N. J., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, 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 had reason to believe that Robert R. Charney, an individual, doing business as National Sales Co. and as Windsor Pen Co., hereinafter referred to as respondent, had violated the provisions of the said act, and it having appeared to the Commission that a proceeding by it in respect thereof was in the public interest, did issue its complaint against the respondent herein on September 28, 1938, charging him with violation of said act; and

Whereas, This Commission having reason to believe that the respondent herein has violated the provisions of the aforesaid act by acts and practices other than and in addition to those described in said complaint, and it appearing to the Commission that a further proceeding by it in respect thereof would be in the public interest;

Now, therefore, 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 hereby issues this its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co. at

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1315 Atlantic Avenue, Atlantic City, N. J., is now, and for more than 1 year last past has been engaged in the sale and distribution of fountain pens, pencils, and jewelry, such as necklaces and rings.

Respondent now causes, and for more than 1 year last past has caused, his said fountain pens, pencils, necklaces, and rings, when sold by him, to be shipped from his said place of business in Atlantic City, N. J., to the purchasers thereof, located in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said fountain pens, pencils, necklaces, and rings so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business as aforesaid, the respondent has been, and is now, in substantial competition with other individuals and with corporations and partnerships also engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his fountain pens, pencils, necklaces, and rings, the respondent has caused, and still causes, false advertisements, containing representations and claims with respect to the retail values or prices at which said pens, pencils, necklaces, and rings are actually offered for sale and sold, to be circulated in newspapers having a circulation among and between the various States of the United States. Said advertisements also contain misrepresentations as to other characteristics and qualities of said products. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

59¢—THIS CERTIFICATE IS WORTH \$4.41—59¢

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible \$5.00 Vacuum Filler Sackless Fountain Pens. Visible Ink Supply. You See the Ink!

A LIFETIME GUARANTEE WITH EACH PEN

Limit—2
Sets to
Certificate

(Picture of pen)

Price After
Sale \$5.00

THE NEW PLUNGER FILLER—ZIP—ONE PULL AND IT'S FULL

This Pen holds 200% more ink than any ordinary fountain pen on the market! You can write for 3 months with one filling! No repair bills! No

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lever filler! No pressure bar! Every Pen tested and guaranteed to be unbreakable for life! GET YOURS NOW! This PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This certificate good only while advertising sale is on.

ALSO \$1.50 PENCILS TO MATCH ABOVE PEN, 26¢

Form letters distributed by the respondent, as aforesaid, contain the statements that the pen points used in said pens are the "latest design points," manufactured from "Durium, a sensational new material."

59¢

TWO DAYS ONLY

59¢

THIS CERTIFICATE IS WORTH

\$1.41

This certificate and 59¢ entitles bearer to one of our GENUINE FULL CARAT FACSIMILE

DIAMOND RINGS

LIFETIME GUARANTEE

* * * These rings are guaranteed against discoloration and tarnish for a lifetime.

THIS CERTIFICATE IS WORTH \$1.41

This Coupon and Only 59¢ entitles bearer to one of our Regular \$5.00

CROSS NECKLACES

in Plain Gold, Silver or Beautiful Facsimile

DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Cross Necklaces. You save exactly \$1.41. The fad has taken the country by storm and due to the great demand, only a limited number of Cross Necklaces could be obtained. Come early for best selection.

NEW STREAMLINE DESIGNS

These beautiful Cross Necklaces are the new fashion sensation, now being worn morning, afternoon and evening. Variety of styles for women and girls in plain or fancy designs, complete with chain.

LIFE-TIME GUARANTEE

Unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or in any other form.

LIMIT 2 TO A COUPON

This offer made possible by the manufacturer. Limited supply for this special sale. This coupon is good only while advertising sale is on.

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CHOICE OF 14K GOLD OR SILVER

This is an introductory offer, and the Cross Necklaces will be \$5.00 after this sale.

Through such statements, and others similar thereto but not herein set out, respondent, represents that the customary and usual retail prices at which said pens, pencils, rings, and necklaces are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate referred to is actually worth \$4.41 when offered as part payment of the purchase price of said fountain pens, necklaces, and rings; that said pens usually and customarily sell at retail for \$5 each and will last a lifetime; that they hold 200 percent more ink than any ordinary fountain pen on the market; that said pens never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points. Respondent represents further that his rings are set with diamonds and are guaranteed against discoloration and tarnish for a lifetime; that various necklaces are composed of 14K gold and others are composed of silver, some of which are set with diamonds, and that the necklaces are guaranteed for a lifetime against tarnishing, loss of brilliancy, and loss of stones.

PAR. 3. In truth and in fact the respondent's pens and pencils are not customarily or usually offered for sale and sold for \$5 and \$1.50 each, respectively, but the pens are customarily and generally offered for sale and sold for 59 cents each and the pencils are offered for sale and sold for 26 cents each. The certificate referred to in said advertising does not have the value of \$4.41 or any value whatever, as said pens and pencils are intended to be, and are, sold in the usual course of trade with or without the certificate at the aforesaid price of 59 cents and 26 cents, respectively. Said pens are not superior to competitive pens offered for sale at approximately the same amount for which respondent's pens are sold. The statements that said pens hold 200 percent more ink than any ordinary fountain pen on the market; that they last a lifetime; that they never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points, are untrue. None of respondent's said rings or necklaces are set with diamonds nor can they be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy, or loss of stones. Said necklaces are not 14K gold or silver.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which their said products are offered for sale and sold.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said products as the result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from his aforesaid competitors. 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 and in the District of Columbia.

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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 22, 1938, issued and served its amended and supplemental complaint in this proceeding upon respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 13, 1938, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said amended and supplemental complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co. at 1315 Atlantic Avenue, Atlantic City, N. J., is now, and for more than 1 year last past has been engaged in the sale and distribution of fountain pens, pencils, and jewelry, such as necklaces and rings.

Respondent now causes, and for more than 1 year last past has caused, his said fountain pens, pencils, necklaces, and rings, when sold by him, to be shipped from his said place of business in Atlantic City, N. J., to the purchasers thereof, located in the various States of the United States other than the State of New Jersey and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said fountain pens, pencils, necklaces, and rings so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business as aforesaid, the respondent has been, and is now, in substantial competition with other individuals and with corporations and partnerships also engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, and for the purpose of inducing the purchase of his fountain pens, pencils, necklaces, and rings, the respondent has caused, and still causes, false advertisements, containing representations and claims with respect to the retail values or prices at which said pens, pencils, necklaces, and rings are actually offered for sale and sold, to be circulated in newspapers having a circulation among and between the various States of the United States. Said advertisements also contain misrepresentations as to other characteristics and qualities of said products. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

59¢—THIS CERTIFICATE IS WORTH \$4.41—59¢

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible \$5.00 Vacuum Filler Sackless Fountain Pens. Visible Ink Supply. You See the Ink!

A LIFETIME GUARANTEE WITH EACH PEN

Limit—2

Sets to

Certificate

(Picture of pen)

Price After

Sale \$5.00

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Findings

THE NEW PLUNGER FILLER—ZIP—ONE PULL AND IT'S FULL

This PEN holds 200% more ink than any ordinary fountain pen on the market! You can write for 3 months with one filling! No repair bills! No lever filler! No pressure bar! Every pen tested and guaranteed to be unbreakable for life! GET YOURS NOW! THIS PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This certificate good only while advertising sale is on.

ALSO \$1.50 PENCILS TO MATCH ABOVE PEN, 26¢.

Form letters distributed by the respondent, as aforesaid, contain the statements that the pen points used in said pens are the "latest design points," manufactured from "Durium, a sensational new material."

59¢

TWO DAYS ONLY

59¢

THIS CERTIFICATE IS WORTH

\$1.41

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DIAMOND RINGS

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* * * These rings are guaranteed against discoloration and tarnish for a lifetime."

"THIS CERTIFICATE IS WORTH \$1.41

This Coupon and Only 59¢ entitles bearer to one of our Regular \$5.00

CROSS NECKLACES

in Plain Gold, Silver or Beautiful Facsimile

DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Cross Necklaces. You save exactly \$1.41. The fad has taken the country by storm and due to the great demand, only a limited number of Cross Necklaces could be obtained. Come early for best selection.

NEW STREAMLINE DESIGNS

These beautiful Cross Necklaces are the new fashion sensation, now being worn morning, afternoon and evening. Variety of styles for women and girls in plain or fancy designs, complete with chain.

LIFE-TIME GUARANTEE

Unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or in any other form.

LIMIT 2 TO A COUPON

This offer made possible by the manufacturer. Limited supply for this special sale. This coupon is good only while advertising sale is on.

CHOICE OF 14K GOLD OR SILVER

This is an introductory offer, and the Cross Necklaces will be \$5.00 after this sale.

Through such statements, and other similar thereto but not herein set out, respondent represents that the customary and usual retail prices at which said pens, pencils, rings, and necklaces are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate referred to is actually worth \$4.41 when offered as part payment of the purchase price of said fountain pens, necklaces, and rings; that said pens usually and customarily sell at retail for \$5 each and will last a lifetime; that they hold 200 percent more ink than any ordinary fountain pen on the market; that said pens never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points. Respondent represents further that his rings are set with diamonds and are guaranteed against discoloration and tarnish for a lifetime; that various necklaces are composed of 14K gold and others are composed of silver, some of which are set with diamonds, and that the necklaces are guaranteed for a lifetime against tarnishing, loss of brilliancy, and loss of stones.

PAR. 3. In truth and in fact the respondent's pens and pencils are not customarily or usually offered for sale and sold for \$5 and \$1.50 each, respectively, but the pens are customarily and generally offered for sale and sold for 59 cents each and the pencils are offered for sale and sold for 26 cents each. The certificate referred to in said advertising does not have the value of \$4.41 or any value whatever, as said pens and pencils are intended to be, and are, sold in the usual course of trade with or without the certificate at the aforesaid price of 59 cents and 26 cents, respectively, and the rings and necklaces are customarily sold for 59 cents each. Said pens are not superior to competitive pens offered for sale at approximately the same amount for which respondent's pens are sold. The statements that said pens hold 200 percent more ink than any ordinary fountain pen on the market; that they last a lifetime; that they never need repair; and that the points of said pens are manufactured from a sensational new material called "Durium" and are of a design materially different from other pen points, are untrue. None of respondent's said rings or necklaces are set with diamonds nor can they be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy, or loss of stones. Said necklaces are not 14K gold or silver.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations engaged in the sale and distribution of fountain pens, pencils, necklaces, and rings in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent the qualities and characteristics of their products or the retail values or prices at which their said products are offered for sale and sold.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and causes a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said products. As a result trade has been diverted unfairly to respondent from his aforesaid competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Robert R. Charney, an individual doing business as National Sales Co. and as Windsor Pen Co., as herein found, are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 amended and supplemental complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said amended and supplemental complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Robert R. Charney individually and doing business as National Sales Co. and Windsor Pen Co. or trading under any other name, his agents, his employees and representatives directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fountain pens, pencils, necklaces, and rings or other products in commerce, as

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commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing as the customary or regular prices or values for respondent's products, prices, and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

2. Representing that any articles of merchandise customarily and regularly sold in connection with the use of any purported certificate or other similar device have any value in excess of the actual money price required to be paid.

3. Representing that any coupon or similar device has any monetary value in the purchase of an article which is customarily or regularly sold by the respondent with or without such coupon or similar device at the price required to be paid.

4. Representing that the various products sold and distributed by the respondent are of a character and quality different from and superior to other similar products of comparable price.

5. Representing that the fountain pens sold and distributed by the respondent will last a lifetime, will never need repair or that they have a greater ink capacity than ordinary fountain pens.

6. Representing that the points of the fountain pens sold and distributed by the respondent are manufactured from a sensational or new material known as "Durium" or any similar name, or that they are of a design materially different from other pen points, when such is not the fact. /

7. Representing that respondent's rings or necklaces are set with diamonds or that they can be worn a lifetime or any appreciable period of time and remain free from tarnish, discoloration, loss of brilliancy or loss of stones.

8. Representing that the rings and necklaces sold and distributed by the respondent are 14K gold or silver or that they contain any substantial amount of gold or silver when such is not the fact.

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
LINCOLN LOCKER CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3345. Complaint, Mar. 3, 1938—Decision, June 13, 1939*

Where a corporation engaged in sale, distribution and installation of certain cold storage lockers which were purchased by it from manufacturers under special arrangement and distributed through jobbers and also direct to ultimate user, and consisted of separate compartments, individually locked, for installation in cold storage warehouses and leasing to individual patrons for use in storing and preserving perishable food stuffs so as to permit withdrawal as required; in advertising its said product through periodicals, circulars, advertising booklets, brochures, and leaflets—

- (a) Represented that said lockers were made or built of copper alloy galvanized sheet metal, and rustproof copper alloy steel, and that the box panels were fabricated of 22 gage copper alloy sheets, facts being said products were made of galvanized sheet steel, and contained none of the little more rust-resistant, but preferred, copper or copper alloy metal, and were not built of copper alloy galvanized sheet metal or rustproof copper alloy steel or copper alloy sheet steel, as set forth in advertisements thereof;
- (b) Represented that each box would hold from 300 to 400 pounds of meat or other produce, facts being that most popular sized locker, and one which it sold largest quantity of, representing from 50 to 75 percent of its total sales, was medium size, with maximum storage capacity of not more than 225 pounds of meat or other produce, two other sizes sold by it had still smaller maximum capacity, it never advertised or sold any of largest size or pictured any of next largest, and lockers customarily sold by it would not, as represented, hold from 300 to 400 pounds, as above set forth; and
- (c) Represented that locks for its said products were available in three types, namely, five-disc tumbler locks and padlocks, in which types key changes were practically unlimited, facts being 75 percent of lockers sold by it were equipped with five-disc tumbler locks having, in majority of cases, only 100 possible key changes, with consequent possibility of loss by theft in cold storage installations where there are more than 100 lockers equipped with such locks, and such key changes cannot properly be represented as "practically unlimited";

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that all said representations were true, and with effect of causing consuming public, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, to purchase substantial volume of its said lockers, and of thereby diverting trade unfairly from others engaged in sale of like and similar products intended for use in like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce: