

IN THE MATTER OF

J. H. TIGERMAN, DOING BUSINESS AS EVER-KEEN DRY
SHAVER COMPANY AND ROYCE DRY SHAVER
COMPANY

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

Docket 3757. Complaint, Apr. 12, 1939—Decision, June 14, 1939

Where an individual engaged in assembling, and in selling and distributing electric razors to dealers in various States and in the District of Columbia—

- (a) Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said merchandise to ultimate consumers wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including push cards, order blanks, pamphlets illustrating his products, and circulars explaining his plan of selling the same and allotting premiums or prizes under such plan, by which person selecting from long list of feminine names that corresponding with name concealed under card's large master seal, was awarded electric dry shaver being thus disposed of, and amount, if any, paid for chance by customers was contingent upon particular number pushed by chance, in accordance with cards' explanatory legends, and solicitor or operator of card was likewise thus compensated, and customer-purchaser of said individual was compensated by difference between aggregate receipts from each card and cost to him of two shavers involved in operation thereof; and
- Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with aforesaid or similar sales plans involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, or without cost, and under which articles of merchandise involved were distributed to purchasing public wholly by lot or chance, contrary to an established public policy of the Government of the United States, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;
- With the result that many persons were attracted by said sales plan or method employed by said individual in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, because of said game of chance, of unfairly diverting substantial trade to said individual from his competitors aforesaid who do not use such or equivalent method; and
- (b) Represented, in advertising disseminated through periodicals of general circulation and through circulars and other printed matter, that his said products were equal in value to a \$15 electric dry shaver and would give

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performance equal to that of such a device, through such statements, among others, as " * * * a genuine \$15 dry shaver in type and actual value," " * * * has all the features of \$15 devices—and many others besides," and "Acclaimed as the best dry shaver on the market regardless of price," facts being products in question were of inferior grade and workmanship, last only a very short period of time, and will not accomplish the results as satisfactorily as a higher grade mechanism sold at a higher price;

- (c) Represented, in his advertising disseminated as aforesaid, that his products were sold on a 10-day trial or money-back basis, and that one of his said shavers thus sold was guaranteed for 1 year and another for 5 years. against mechanical defects, facts being he did not sell his said product on such a basis, but failed and refused to make any refund to purchasers, and did not guarantee products referred to for periods alleged, but refused to make repairs unless cost thereof was paid by purchaser; and
- (d) Represented that the possible and average earnings of agents and salesmen in the ordinary course of business was from \$50 to \$100 a week, and that certain of his salesmen were earning average profits of from \$300 to \$500 a month and more in the ordinary course of business, through such statements, among others, as "Make up to \$100 a week introducing this new low priced precision built electric dry shaver," and "If you are making less than \$300 a month, drop whatever you are doing and get in on this sensational, new money making proposition," facts being possible and average earnings of salesmen and agents were not \$50 to \$100 a week, said sums were not true representation of average net earnings or profits consistently made by his active full-time agents or salesmen in ordinary course of business and under normal conditions and circumstances, they earned only a fraction of the amount represented, and none of them earned \$300 to \$500 a month, and said sums were never consistently earned by any agent or salesman in ordinary course of business and under normal conditions and circumstances;

With effect of misleading substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of his products by reason of such belief, and of thereby unfairly diverting, through such statements and representations, trade to himself from many competitor-dealers in like and similar products engaged in commerce among the various States and in the District of Columbia, and who do not make such false, deceptive and misleading statements and representations concerning their products and their methods of doing business:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson 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 J. H. Tigerman,

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individually, and trading as Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., hereafter 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 is an individual trading under the names of Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., with his principal office and place of business located at 43 East Ohio Street, in the city of Chicago, Ill. Respondent is now and for some time past has been engaged in the business of assembling electric razors and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be shipped or transported from his place of business in the State of Illinois into and through other States of the United States and the District of Columbia to purchasers thereof at their respective points of location. There is now and has been for some time last past a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and selling and distributing his merchandise in said commerce, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public in said commerce certain literature and instructions including, among other things, push cards, order blanks, pamphlets containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting extra premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name

selected. Said push card has 81 small partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, concealed within which is one of the feminine names appearing on the reverse side of the said push card. The push card bears printed legends or instructions as follows:

NAME UNDER SEAL
RECEIVES A

\$15
VALUE

ELECTRIC
DRY
SHAVER

Numbers 1 to 16
FREE
All Numbers Over 16
Pay Only 15 Cents.
NO HIGHER

Do not remove
seal until
entire card
is sold.

Respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push card, which are as follows:

PLAN NO. 3
SALES CARD PLAN

Here is a plan that brings big profits without selling. It is the sales card method. You actually give away Ever-Keen Electric Shavers. You distribute sales cards to friends, neighbors and others. They in turn present their cards to their friends who "take selections" paying the small sums of 1¢ to 15¢ for an opportunity to own an Ever-Keen Dry Shaver. The person selecting the name corresponding with the one appearing under the seal on the card receives an Ever-Keen Dry Shaver. Each one of your solicitors collects a total of \$10.00 from his sales card which he turns over to you. You give him 2 Ever-Keen Dry Shavers 1 for himself and for the person who selected the name corresponding with the one appearing under the seal. Two Ever-Keen Dry Shavers cost you as little as \$5.50—so you can make as much as \$4.50 on every sales card. Think of the big profits that can come from operating a dozen to two dozen cards at one time.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by

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means of a game of chance, gift enterprise, or lottery scheme. Such push cards are similar to the push cards hereinabove described and vary only in detail.

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

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof or without cost. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, respondent has disseminated and does now disseminate false and misleading representations with reference to his electric razors designated as "New Royce Dry Shaver" and "Ever-Keen Electric Dry Shaver" by means of advertising copy inserted in magazines and periodicals having a general circulation and by circulars and by other printed matter, which representations purport to be descriptive of said products and the effectiveness of their use. By means of this advertising disseminated as aforesaid the respondent represents that said products are equal in value to a \$15 electric dry shaver and will give per-

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formance equal to that of a \$15 device. Typical of such representations are the following:

It has everything claimed for any other dry shaver—and more. It is closer cutting, self-starting—a genuine \$15 dry shaver in type and actual value.

The Royce Dry Shaver has all the features of \$15 devices—and many others besides.

Acclaimed as the best dry shaver on the market regardless of price.

We build a dry shaver that will do everything a \$15 shaver will do and do it much better than many higher priced shavers.

In truth and in fact respondent's products designated as New Royce Dry Shaver and Ever-Keen Electric Dry Shaver are not equal in value and will not give the performance of a \$15 electric dry shaver. Instead these products are of inferior grade and workmanship and last only a very short period of time. They will not accomplish the results as satisfactorily as a higher-grade mechanism sold at a higher price.

PAR. 6. In his advertising disseminated as aforesaid respondent represents that his products are sold on a "10 day trial or money-back basis" and that the New Royce Dry Shaver is guaranteed for 1 year and that the Ever-Keen Electric Dry Shaver is guaranteed for 5 years against mechanical defects.

In truth and in fact the respondent does not sell said products on a 10-day-trial basis but instead fails and refuses to make any refund to purchasers. Furthermore, the respondent does not guarantee said products for the periods alleged but instead refuses to make repairs unless the cost thereof is paid by the purchaser.

PAR. 7. For the purpose of inducing salesmen and agents to sell his products, respondent represents that the possible and average earnings of agents and salesmen in the ordinary course of business is from \$50 to \$100 per week and that certain of his salesmen are earning average profits of from \$300 to \$500 per month and more in the ordinary course of business. Typical of these representations are the following:

Make up to \$100 a week introducing this new low priced precision built electric dry shaver.

If you are making less than \$300 a month, drop whatever you are doing and get in on this sensational, new money making proposition.

Profits up to \$5—\$10—even \$25 in a day are possible.

If \$50, \$60 or \$75 a week sound good to you, don't delay.

The same proposition is paying others up to \$300, \$400, \$500 and more every month in all sections of the country.

In truth and in fact the possible and average earnings of salesmen and agents are not \$50 to \$100 a week and said sums are not a true representation of the average net earnings or profits consistently

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made by respondent's active full-time agents or salesmen in the ordinary course of business and under normal conditions and circumstances. In fact such agents and salesmen earn only a fraction of the amount represented. Furthermore, none of the respondent's salesmen have earned or now earn \$300 to \$500 per month, and said sums so represented have never been consistently earned by any agent or salesman in the ordinary course of business and under normal conditions and circumstances.

PAR. 8. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's products as a result of such erroneous belief. There are among said competitors of respondent many dealers in like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their method of doing business. By the aforesaid statements and representations by respondent trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done, and has been done, by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of 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 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 April 12, 1939, issued and served its complaint in this proceeding upon respondent J. H. Tigerman individually and trading as Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., charging him with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 15, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said 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 complaint and the answer thereto, and

the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is an individual trading under the names of Ever-Keen Dry Shaver Co. and Royce Dry Shaver Co., with his principal office and place of business located at 43 East Ohio Street in the city of Chicago, Ill. Respondent is now and for some time past has been engaged in the business of assembling electric razors and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused said merchandise, when sold, to be shipped or transported from his place of business in the State of Illinois into and through other States of the United States and the District of Columbia to purchasers thereof at their respective points of location. There is now and has been for some time last past a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and selling and distributing his merchandise in said commerce, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was and is substantially as follows:

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selected. Said push card has 81 small partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, concealed within which is one of the feminine names appearing on the reverse side of the said push card. The push card bears printed legends or instructions as follows:

NAME UNDER SEAL

RECEIVES A

\$15

VALUE

Numbers 1 to 16

ELECTRIC

Do not remove

FREE

DRY

seal until

All Numbers over 16

SHAVER

entire card

Pay Only 15 Cents.

is sold

NO HIGHER

Respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push card, which are as follows:

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Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such

push cards are similar to the push cards hereinabove described and vary only in detail.

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

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof or without cost. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, respondent has disseminated and does now disseminate false and misleading representations with reference to his electric razors designated as "New Royce Dry Shaver" and "Ever-Keen Electric Dry Shaver" by means of advertising copy inserted in magazines and periodicals having a general circulation and by circulars and by other printed matter, which representations purport to be descriptive of said products and the effectiveness of their use. By means of this advertising disseminated as aforesaid the respondent represents that said products are equal in value to a \$15 electric dry shaver and will give per-

formance equal to that of a \$15 device. Typical of such representations are the following:

It has everything claimed for any other dry shaver—and more. It is closer cutting, self-starting—a genuine \$15 dry shaver in type and actual value.

The Royce Dry Shaver has all the features of \$15 devices—and many others besides.

Acclaimed as the best dry shaver on the market regardless of price.

We build a dry shaver that will do everything a \$15 shaver will do and do it much better than many higher priced shavers.

In truth and in fact respondent's products designated as New Royce Dry Shaver and Ever-Keen Electric Dry Shaver are not equal in value and will not give the performance of a \$15 electric dry shaver. Instead these products are of inferior grade and workmanship and last only a very short period of time. They will not accomplish the results as satisfactorily as a higher-grade mechanism sold at a higher price.

PAR. 6. In his advertising disseminated as aforesaid respondent represents that his products are sold on a "10 day trial or money-back basis" and that the New Royce Dry Shaver is guaranteed for 1 year and that the Ever-Keen Electric Dry Shaver is guaranteed for 5 years against mechanical defects.

In truth and in fact the respondent does not sell said products on a 10-day-trial basis but instead fails and refuses to make any refund to purchasers. Furthermore, the respondent does not guarantee said products for the periods alleged but instead refuses to make repairs unless the cost thereof is paid by the purchaser.

PAR. 7. For the purpose of inducing salesmen and agents to sell his products, respondent represents that the possible and average earnings of agents and salesmen in the ordinary course of business is from \$50 to \$100 per week and that certain of his salesmen are earning average profits of from \$300 to \$500 per month and more in the ordinary course of business. Typical of these representations are the following:

Make up to \$100 a week introducing this new low priced precision built electric dry shaver.

If you are making less than \$300 a month, drop whatever you are doing and get in on this sensational, new money making proposition.

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If \$50, \$60 or \$75 a week sound good to you, don't delay.

The same proposition is paying others up to \$300, \$400, \$500 and more every month in all sections of the country.

In truth and in fact the possible and average earnings of salesmen and agents are not \$50 to \$100 a week and said sums are not a true representation of the average net earnings or profits consistently

made by respondent's active full-time agents or salesmen in the ordinary course of business and under normal conditions and circumstances. In fact such agents and salesmen earn only a fraction of the amount represented. Furthermore, none of the respondent's salesmen have earned or now earn \$300 to \$500 per month, and said sums so represented have never been consistently earned by any agent or salesman in the ordinary course of business and under normal conditions and circumstances.

PAR. 8. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's products as a result of such erroneous belief. There are among said competitors of respondent many dealers in like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their method of doing business. By the aforesaid statements and representations by respondent trade is unfairly diverted to respondent from such competitors who are likewise engaged in commerce between and among the various States of the United States, and in the District of Columbia.

CONCLUSION

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

It is ordered, That the respondent J. H. Tigerman, individually, and trading as Ever-Keen Dry Shaver Co., and as Royce Dry Shaver Co., or under any other name or names, his representatives, agents,

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and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric razors or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, for the purpose of enabling such persons to dispose of, or sell, any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents, or to distributors or to members of the public, push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

4. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

5. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor for any given period of time, which has not in fact been consistently earned net by such agent, salesman, representative, or distributor in the ordinary course of business, under normal conditions and circumstances.

6. Representing that electric razors or any similar products which are of inferior grade and workmanship are equal in value to products sold at a much higher price, or will give performance equal to such higher-priced products.

7. Representing that respondent's products are sold on a "trial" or "money-back basis," or on any similar plan unless the respondent does in fact make refunds to dissatisfied purchasers.

8. Representing that respondent's electric razors or similar products are guaranteed for any specified period of time 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
STANDARD BRANDS INCORPORATED AND STANDARD
BRANDS OF CALIFORNIA

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 2986. Complaint, Nov. 21, 1936—Decision, June 15, 1939

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHETHER DUE ALLOWANCE
ONLY FOR DIFFERENCES IN COST OF MANUFACTURE, SALE OR DELIVERY
RESULTING FROM DIFFERING METHODS, ETC.—COST ASCERTAINMENT—ESTI-
MATES—COSTS—ITEMS, UNITS, AND ALLOCATIONS.

In proceeding in which corporation and its subsidiary, engaged on national scale in manufacture and sale of bakers' yeast, chiefly, to some 25,000 customers, under schedule of price differentials and practices in application thereof, challenged as constituting discrimination in price in violation of aforesaid section, offered cost studies, computations and allocations based upon lump sum estimates demonstrated by their own tabulations as erroneous, distributed results of such error throughout their cost study on basis of reassumed correctness of demonstrated errors, applied repeatedly such lump sum estimates directly and indirectly throughout their allocations of costs, and augmented "by difference" partial cost data obtained by actual survey in order to adjust final and vital results to coincide with lump sum estimates made at outset, resorted to use of such lump sum estimates in allocations of all costs, and included in costs allocated to bakers' yeast many items of cost not incurred in manufacture, sale and delivery of such product, and many items of cost which should be allocated equally to each pound of such yeast: *Held*, (1) That their lump sum estimates cannot be made the basis for price differentials; and (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS AND DIFFERENTIALS—WHERE UNJUSTIFIED BY DIFFERENCES IN COST, ETC.; BASED ON MONTHLY PURCHASE OR REQUIREMENT; APPLICABLE EQUALLY TO MULTI-UNIT-DELIVERY BUYERS; AND SPECIAL OFF-SCALE CONCESSIONS.

Where a corporation and its Pacific Coast subsidiary, which were engaged in the manufacture, sale and distribution of foil yeast, and, chiefly, of bakers' yeast of uniform grade and quality; and which—