

IN THE MATTER OF

K & S SALES COMPANY AND MRS. FANNYE COHN

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

Docket 3497. Complaint, July 16, 1938—Decision, Aug. 12, 1939

Where an individual engaged in sale and distribution of premium certificates, coupons, or cards redeemable in chinaware, and in the chinaware with which the same were redeemed, to purchasers in various States and in the District of Columbia, in substantial competition, in commerce as aforesaid, with others engaged in sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and with those engaged in sale and distribution of the chinaware or other merchandise with which the sales-stimulator devices are redeemed, and including those who do not falsely represent that the chinaware or merchandise redeemed is procurable by merchants or their customers at cost sufficient merely to cover that of handling, packing, and shipping, and do not cause cost of transportation to be paid by recipient of such products after previously receiving amount sufficient to include same, and also including those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising terms and conditions for procuring their said products will be sent to those whose names appear upon mailing lists submitted by contracting merchants, and do not falsely represent to such merchants that sum or sums of money to be deposited upon delivery of such certificates, etc., constitute merely temporary deposit, to be returned to merchants as part of such plan:

In selling her said certificates, etc., through agents or salesmen whom she employed personally to solicit retail merchants, and who, acting in the scope of their employment and under her direction and supervision in offering and selling her certificates, etc., in connection with and as part of so-called sales-stimulator plan under which, as represented, merchant was to pay certain amount as deposit on receiving certificates, coupons or cards, to be issued to customers of the contracting merchant, and to be redeemed upon the purchase by the particular customer from the merchant of goods, wares, or merchandise of any kind or nature of a value of \$5 or multiples thereof, upon being sent to said individual, through shipment to merchant or directly to customer by her of 10-piece set of chinaware, as more particularly below set forth—

- (a) Represented that such certificates, coupons, or cards could be redeemed in chinaware or other merchandise, and at cost to customer of amount sufficient only to cover cost of packing, handling, and transportation, facts being contracting merchant or customer receiving sets was required to pay, in advance of shipment, sum of 89 cents as such purported cost of handling, packing, and transporting same, cost of transportation was required to be paid by merchant or customer to transporting carrier unless units of 100 or more sets were ordered in each shipment, merchant was not apprised of such requirement until such certificates had been presented for redemption, and majority of customers of merchants participating who procured

redemption certificates failed and refused to redeem same upon learning of said cost of 89 cents and additional cost of transporting said chinaware, actual cost of which to said individual was 65 cents per unit;

- (b) Represented to contracting merchant that, in consideration of his adopting such sales-stimulator plan, there would be mailed to each person whose name might appear on a mailing list to be furnished by such merchant circulars, pamphlets, and other matter advertising to such potential customers terms and conditions upon which so-called "free" sets of chinaware might be secured, facts being she did not mail or cause to be mailed to such persons whose names appeared upon the list furnished her by contracting merchants any such circulars, pamphlets, or other advertising matter as above described;
- (c) Represented, as aforesaid, that shipment would be made upon receipt of certificates, cards, or coupons representing sales of \$5 at cost to customer of amount sufficient only to cover cost of packing, handling, and transportation, and thus exacted, in advance of shipment, sum of 89 cents as purported cost of handling, packing, and transporting said chinaware, facts being, as aforesaid noted, that 65 cents covered actual cost to her per unit;
- (d) Represented to merchant that sales-promotion plan in question was conducted by her at no financial benefit, and that amount of \$20, required of contracting merchant upon receipt of certificates, coupons, or cards issued by her for each 100 units, was a deposit which she undertook to return to merchant at rate of 20 cents per \$5 certificate, as received and redeemed as hereinbefore described, and justified use of plan in question by representing that profit was expected to inure to her from subsequent orders of purchasers for necessary fill-in of the 10-piece sets procured through redemption of certificates, facts being majority of customers of merchants participating in plan in question, and who procured redemption certificates as before noted, failed and refused to redeem same upon learning of said cost of 89 cents and additional transportation cost, contracting merchant was thereby prevented from securing return in full of such purportedly temporary outlay of \$20 per 100 certificates, and said individual was aware from previous experience that such redemption certificates would not be returned by purchasers from contracting merchants, and relied on such failure to return to keep from paying to said merchants said 20 cents per \$5 certificate; and
- (e) Represented to contracting merchant that adoption of such so-called sales-stimulator plan would greatly stimulate his general sales, facts being it did not have such result, but merely afforded a market for chinaware sold and distributed by her through the marketing of the initial sets and pieces necessary to fill in the same;

With effect of misleading and deceiving substantial number of retail merchants into mistaken and erroneous belief that, through use of such sales-stimulator plan, they could participate therein without cost, and that wide and general advertising for the benefit of such merchants would ensue, and the volume of their business would be greatly increased, and of misleading and deceiving them and their customers into mistaken and erroneous belief that said certificates, coupons, and cards would be redeemed by her by giving of free sets of chinaware, upon payment by said merchants or customers of amount sufficient only to cover cost of handling, packing, and transporting same, and with result, as direct consequence of such belief thus induced, that substantial number of merchants subscribed to said

Complaint

29 F. T. C.

so-called sales-stimulator plan, to their own financial loss and detriment, and substantial number of members of purchasing public bought goods and secured such certificates, and trade was thereby diverted unfairly to her from her competitors; to the injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Alden S. Bradley and *Mr. J. W. Brookfield, Jr.* for the Commission.

Nash & Donnelly, of Washington, D. C., for respondents.

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 K & S Sales Co., a corporation, and Mrs. Fannye Cohn, an individual, respondents hereinafter referred to, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent K & S Sales Co. is a corporation existing under the laws of the State of Illinois and having its principal office and place of business at 6227 North Broadway Avenue, Chicago, Ill. Respondent, Fannye Cohn, is an agent and employee of the respondent corporation, and maintains her principal office and place of business at 6227 North Broadway Avenue, Chicago, Ill. Respondent, K & S Sales Co., is engaged in the general retail merchandising business, and in its said merchandising employs various trade names, such as Universal Industries, Garden City Novelty Co., Montrose Silk Co., Lincoln Novelty Co., and others. Respondent, K & S Sales Co., acting by and through its officers, agents, and employees, is now, and has been for more than 2 years last past, engaged among other things in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of certain premium certificates, coupons, or cards redeemable in chinaware, and in chinaware with which the same were and are redeemed. This phase of respondents' merchandising is carried on largely under the name Universal Industries, and its policies and business operations at all times referred to have been, and now are, under the domination, management, and supervision of the respondent, Mrs. Fannye Cohn. The respondent corporation, in the manner aforesaid, causes the certificates, coupons, and cards, and the china-

600

Complaint

ware with which the same are redeemable, to be shipped and transported from its place of business in Illinois to purchasers located in various States of the United States and in the District of Columbia, and so maintains a constant current of trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondent, K & S Sales Co., in the course and conduct of said business is now, and at all times referred to has been, in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and engaged in the sale and distribution of the chinaware or other merchandise with which the sale are redeemed.

PAR. 3. It has been and is the practice of the respondent corporation to employ agents or salesmen personally to solicit retail merchants. Such agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondents, while offering for sale and selling said certificates, coupons, and cards, and chinaware have represented, and now represent, to the prospective purchasers thereof in order to induce such purchaser to purchase the same, that:

A certain so-called sales-stimulator plan, necessitating the use of such certificates, coupons, and cards, which plan is hereafter described, is obtainable by the merchant participating in the same at no ultimate cost, by such merchant making a temporary deposit of \$20 or multiples thereof, which is returnable to the merchant upon compliance with certain conditions. The plan, as represented, is the issuance of certificates, coupons, or cards, redeemable by respondent corporation, to customers of such contracting merchant who may purchase goods, wares or merchandise of any kind or nature of a value of \$5 or multiples thereof. The contracting merchant is required, upon receipt of the certificates, coupons, or cards issued by the respondent corporation, to deposit with it the sum of \$20 for each 100 units of the same. This sum the respondent corporation undertakes to return to the merchant at the rate of 20 cents per \$5 certificate as the same are received and redeemed by it as aforesaid. When purchases in such amount have been made by the customer, the card indicating the total sum purchased to be \$5 is surrendered to the contracting merchant and by him forwarded to the respondent corporation to be by it redeemed by shipping to the merchant for later delivery to the customer or by shipment to the customer direct a 10-piece set of chinaware, consisting of 2 pieces each of dinner plate, salad plate, butter plate, cup, and saucer. It is represented that this

shipment is made by the respondent corporation upon receipt of certificates, cards, or coupons, each representing sales of \$5 at a cost to the customer of an amount sufficiently only to cover the cost of packing, handling, and transportation.

PAR. 4. Respondents represent to the merchant that this sales-promotion plan is conducted by respondent corporation at no financial benefit to it but justifies the use of such plan by representing that a profit is expected to inure to its benefit from subsequent orders of purchasers for the necessary fill-in of the 10-piece sets which it procures through the redemption of certificates as aforesaid. Respondents likewise represent to the contracting merchant that in consideration of such merchant adopting this sales-stimulator plan, there will be mailed to each person whose name may appear upon a mailing list to be furnished by such merchant, circulars, pamphlets, and other matter advertising to such potential customers the terms and conditions upon which the so-called "free" sets of chinaware may be secured. It is further represented to the contracting merchant that adoption of this plan will greatly stimulate the general sales of such merchant.

PAR. 5. In truth and in fact the contracting merchant or the customer receiving sets of chinaware is required to pay in advance of shipment the sum of 89 cents as a purported cost of handling, packing, and transporting the same. Upon receipt of said sum of 89 cents, respondent corporation ships the chinaware, but causes the cost of transportation to be paid by the merchant or customer to the carrier transporting the same, unless units of 100 or more sets are ordered in each shipment. Of this requirement the merchant is not apprised until certificates, coupons, or card are presented for redemption.

The chinaware so redeemed by the certificates, coupons, or cards, is secured by the respondent corporation at an actual cost of 65 cents per unit.

The respondent corporation does not mail, or cause to be mailed, to those persons whose names appear upon the list furnished it by contracting merchants, any circulars, pamphlets, or other matter advertising the terms and conditions upon which the so-called "free" chinaware may be procured.

The so-called sales-stimulator plan, as here outlined, does not stimulate sales of the contracting merchant, but merely affords a market for the chinaware sold and distributed by respondent corporation through the marketing of the initial sets and pieces necessary to fill in the same.

PAR. 6. The majority of those customers of merchants participating in said plan who procure redemption certificates fail and refuse

to redeem the same upon learning of the cost of 89 cents and the additional cost of transportation, thereby preventing the contracting merchant from securing a return in full of the purportedly temporary outlay of \$20 per 100 certificates, cards, or coupons. Respondents are aware from previous experience that such redemption certificates will not be returned by purchasers from said contracting merchants and relies on such failure to return to keep from paying to such merchants the said 20 cents per \$5 certificate.

PAR. 7. Among the competitors of the respondent corporation in interstate commerce are those who issue, or cause to be issued by merchants with whom they contract, certificates, coupons, and cards, redeemable in chinaware or other merchandise, but who do not falsely represent that the chinaware or merchandise so redeemed is procurable by merchants or customers of merchants at a cost sufficient merely to cover the cost of handling, packing, and shipping, and who do not cause the cost of transportation to be paid by the recipient of such chinaware or merchandise after previously receiving an amount sufficient to include the same. There are also among such competitors those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising the terms and conditions for the procurement of free chinaware or other merchandise will be sent to persons whose names appear upon mailing lists submitted to them by contracting merchants, and who do not falsely represent to such contracting merchants that a sum or sums of money to be by them deposited upon delivery of like certificates, coupons, and cards is a merely temporary deposit to be returned to such merchants as a part of said plan.

PAR. 8. The acts and practices of the respondents have had and now have a tendency and capacity to, and do, mislead and deceive a substantial number of retail merchants into the mistaken and erroneous belief that by use of such sales-stimulator plan such merchants can participate in said plan without cost, that wide and general advertising for the benefit of such merchants will ensue, and that the volume of business of such merchants will be greatly increased. Such acts and practices also have the capacity and tendency to, and do, mislead and deceive such merchants, and customers of such merchants, into the mistaken and erroneous belief that the certificates, coupons, and cards above described are to be redeemed by the respondent corporation by the giving of free sets of chinaware upon the payment by said merchants or customers of such merchants of an amount only sufficient to cover the cost of handling, packing, and transporting the same.

Findings

29 F. T. C.

As a direct consequence of the mistaken and erroneous belief induced by the acts and practices of the respondents as aforesaid, a substantial number of merchants have subscribed to the so-called sales-stimulator plan of respondents to their own financial loss and detriment, and a substantial number of members of the purchasing public have purchased goods and secured said certificates, and the respondent corporation has diverted and now diverts trade to it from its competitors, to the injury of competition in commerce between and among the various States of the United States and the District of Columbia, and to the injury of the public.

PAR. 9. The acts, practices, and methods of respondents as hereinabove alleged are all to the prejudice of the public and the respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 16, 1938, issued and served its complaint in this proceeding upon respondents K & S Sales Co., a corporation, and Mrs. Fannye Cohn, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondents' answer, the Commission by order entered herein, granted the motion of respondent, Mrs. Fannye Cohn, for permission to withdraw her said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer of the said Mrs. Fannye Cohn, and on testimony with respect to the dissolution of respondent K & S Sales Co., 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, Mrs. Fannye Cohn, maintains her principal place of business at 6227 No. Broadway Ave., Chicago, Ill. Respondent has been and is engaged in the sale and distribution in commerce among and between the various States of the United States

and in the District of Columbia of certain premium certificates, coupons, or cards redeemable in chinaware and in the chinaware with which the same were redeemed. Respondent caused such certificates, coupons, and cards and the chinaware with which the same are redeemable to be shipped and transported from her place of business in the State of Illinois to purchasers located in various States of the United States other than Illinois, and in the District of Columbia, and so maintains a course of trade in said products in commerce between and among the various States and the District of Columbia.

PAR. 2. Respondent, Mrs. Fannye Cohn, in the course and conduct of said business is now and at all times referred to has been, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other individuals and with corporations and partnerships also engaged in the sale and distribution of certificates, coupons, and cards redeemable in chinaware or other merchandise, and engaged in the sale and distribution of the chinaware or other merchandise with which the sales stimulator devices are redeemed.

PAR. 3. It has been and is the practice of the respondent, Mrs. Fannye Cohn, to employ agents or salesmen personally to solicit retail merchants. Such agents or salesmen, acting in the scope of their employment and under the direction and supervision of respondent, while offering for sale and selling said certificates, coupons, and cards, and chinaware have represented, and now represent, to the prospective purchasers thereof in order to induce such purchasers to purchase the same, that:

A certain so-called sales-stimulator plan, necessitating the use of such certificates, coupons, and cards, which plan is hereafter described, is obtainable by the merchant participating in the same at no ultimate cost, by such merchant making a temporary deposit of \$20 or multiples thereof, which is returnable to the merchant upon compliance with certain conditions. The plan, as represented, is the issuance of certificates, coupons, or cards, redeemable by respondent, to customers of such contracting merchant who may purchase goods, wares, or merchandise of any kind or nature of a value of \$5 or multiples thereof. The contracting merchant is required, upon receipt of the certificates, coupons, or cards issued by the respondent, to deposit with her the sum of \$20 for each 100 units of the same. This sum the respondent undertakes to return to the merchant at the rate of 20 cents per \$5 certificate as the same are received and redeemed by her as aforesaid. When purchases in such amount have been made by the customer, the card indicating the total sum purchased to be \$5 is surrendered to the

Findings

29 F. T. C.

contracting merchant and by him forwarded to the respondent to be by her redeemed by shipping to the merchant for later delivery to the customer or by shipment to the customer direct a 10-piece set of chinaware, consisting of 2 pieces each of dinner plate, salad plate, butter plate, cup, and saucer. It is represented that this shipment is made by the respondent upon receipt of certificates, cards, or coupons, each representing sales of \$5 at a cost to the customer of an amount sufficient only to cover the cost of packing, handling, and transportation.

PAR. 4. Respondent, Mrs. Fannye Cohn, represents to the merchant that this sales-promotion plan is conducted by respondent at no financial benefit to her but justifies the use of such plan by representing that a profit is expected to inure to her benefit from subsequent orders of purchasers for the necessary fill-in of the 10-piece sets which she procures through the redemption of certificates as aforesaid. Respondent likewise represents to the contracting merchant that in consideration of such merchant adopting this sales-stimulator plan, there will be mailed to each person whose name may appear upon a mailing list to be furnished by such merchant, circulars, pamphlets, and other matter advertising to such potential customers the terms and conditions upon which the so-called "free" sets of chinaware may be secured. It is further represented to the contracting merchant that adoption of this plan will greatly stimulate the general sales of such merchant.

PAR. 5. In truth and in fact the contracting merchant or the customer receiving sets of chinaware is required to pay in advance of shipment the sum of 89 cents as a purported cost of handling, packing, and transporting the same. Upon receipt of said sum of 89 cents, respondent ships the chinaware, but causes the cost of transportation to be paid by the merchant or customer to the carrier transporting the same, unless units of 100 or more sets are ordered in each shipment. Of this requirement the merchant is not apprised until certificates, coupons, or cards are presented for redemption.

The chinaware so redeemed by the certificates, coupons, or cards, is secured by the respondent at an actual cost of 65 cents per unit.

The respondent does not mail, or cause to be mailed, to those persons whose names appear upon the list furnished her by contracting merchants, any circulars, pamphlets, or other matter advertising the terms and conditions upon which the so-called "free" chinaware may be procured.

The so-called sales-stimulator plan, as here outlined, does not stimulate sales of the contracting merchant, but merely affords a market for the chinaware sold and distributed by respondent through the marketing of the initial sets and pieces necessary to fill in the same.

PAR. 6. The majority of those customers of merchants participating in said plan who procure redemption certificates fail and refuse to redeem the same upon learning of the cost of 89 cents and the additional cost of transportation, thereby preventing the contracting merchant from securing a return in full of the purportedly temporary outlay of \$20 per 100 certificates, cards or coupons. Respondent is aware from previous experience that such redemption certificates will not be returned by purchasers from said contracting merchants and relies on such failure to return to keep from paying to such merchants the said 20 cents per \$5 certificate.

PAR. 7. Among the competitors of the respondent in interstate commerce are those who issue, or cause to be issued by merchants with whom they contract, certificates, coupons, and cards, redeemable in chinaware or other merchandise, but who do not falsely represent that the chinaware or merchandise so redeemed is procurable by merchants or customers of merchants at a cost sufficient merely to cover the cost of handling, packing, and shipping, and who do not cause the cost of transportation to be paid by the recipient of such chinaware or merchandise after previously receiving an amount sufficient to include the same. There are also among such competitors those who do not falsely represent to contracting merchants that circulars, pamphlets, and other matter advertising the terms and conditions for the procurement of free chinaware or other merchandise will be sent to persons whose names appear upon mailing lists submitted to them by contracting merchants, and who do not falsely represent to such contracting merchants that a sum or sums of money to be by them deposited upon delivery of like certificates, coupons, and cards is a merely temporary deposit to be returned to such merchants as a part of said plan.

PAR. 8. The acts and practices of the respondent, Mrs. Fannye Cohn, have had and now have a tendency and capacity to, and do, mislead and deceive a substantial number of retail merchants into the mistaken and erroneous belief that by use of such sales-stimulator plan such merchants can participate in said plan without cost, that wide and general advertising for the benefit of such merchants will ensue, and that the volume of business of such merchants will be greatly increased. Such acts and practices also have the capacity and tendency to, and do, mislead and deceive such merchants, and customers of such merchants, into the mistaken and erroneous belief that the certificates, coupons, and cards above described are to be redeemed by the respondent by giving of free sets of chinaware upon the payment of said merchants or customers of such merchants.

Order

29 F. T. C.

of an amount only sufficient to cover the cost of handling, packing, and transporting the same.

As a direct consequence of the mistaken and erroneous belief induced by the acts and practices of the respondent as aforesaid, a substantial number of merchants have subscribed to the so-called sales-stimulator plan of respondent to their own financial loss and detriment, and a substantial number of members of the purchasing public have purchased goods and secured said certificates, and trade has thereby been diverted unfairly to the respondent from her competitors to the injury of competition in commerce between and among the various States of the United States and in the District of Columbia, and to the injury of the public.

PAR. 9. The respondent, K & S Sales Co., a corporation, was formally dissolved on January 23, 1939.

CONCLUSION

The aforesaid acts and practices of the respondent, Mrs. Fannye Cohn, as herein set forth, are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon testimony with respect to the dissolution of the corporate respondent K & S Sales Co., and upon the answer of the individual respondent Mrs. Fannye Cohn, in which answer said respondent admits all the material allegations of fact set forth in said complaint and states that she waives all intervening procedure and further hearing as to said facts, and the Commission, having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mrs. Fannye Cohn, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of any sales-stimulator plan, including certificates, coupons, and cards, redeemable in chinaware or other merchandise, do forthwith cease and desist from:

1. Representing that certificates, coupons, or cards can be redeemed in chinaware or other merchandise, unless and until all of

600

Order

the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the prices to be paid in connection with obtaining such chinaware or other merchandise.

2. Representing that respondent supplies to her customers or to other persons circulars, pamphlets, or other advertising matter relating to said sales-stimulator plan when such is not the fact.

3. Misrepresenting that any specified sum is the actual cost to respondent of said chinaware or other merchandise or is the actual cost of packing, handling, and distributing said products, or misrepresenting in any other manner the actual cost to respondent of said products or the actual cost of packing, handling, and distributing said products.

4. Representing that payment made by respondent's customers for said sales-stimulator plan, or any part thereof, is a temporary deposit which will be refunded, or that any other payments made by said customers in connection with said plan will be refunded, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed in connection with the obtaining of such refund or refunds.

5. Representing that the general sales of respondent's customers will be increased by reason of their use of respondent's sales-stimulator plan.

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

It is further ordered, That this case be, and the same hereby is, closed as to the corporate respondent K & S Sales Co., without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with the Commission's regular procedure.

IN THE MATTER OF
LEON E. VAN LAETHEM, TRADING AS VAN 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 3743. Complaint, Mar. 21, 1939—Decision, Aug. 12, 1939

Where an individual engaged in compounding, selling, and distributing, under name of "No-No Germ Control," medical or pharmaceutical preparation to members of purchasing public in various States; in advertisements which he disseminated through the mails and newspapers and periodicals of general circulation, and through circulars and other printed matter distributed in commerce among the various States, and through various means, and which were intended and calculated to induce purchase of his said product in commerce—

- (a) Represented that his said preparation would kill all the germs in the body, and constituted an absolute germicide and absolute contraceptive, and preparation which was odorless and nonirritating to the organs involved, and that users thereof need have no fear as to its effectiveness, and that its vapors penetrated hidden recesses of the body and killed germs where other products composed of powder and liquid would not reach; and
- (b) Represented that it was an effective remedy for and would give quick relief from head colds and hay fever, and would clear the nasal passages, reduce swollen membranes, and clear away mucous, and would remove bunions and callouses from the feet and do away with the pain caused thereby;

Facts being statements, representations, and implications used and disseminated by him as above set forth were grossly exaggerated, misleading, and untrue, and constituted false advertisements, it was not an absolute germicide and would not kill all germs in the body or accomplish other results claimed therefor as above set forth, was not odorless, and was irritating to organs concerned, users thereof had no assurance that it would be effective, its vapors did not penetrate as aforesaid and kill germs not reached by powder and liquid preparations, and it was not effective in treatment of head colds and hay fever, would not operate as set forth in such cases, nor in connection with removal of bunions and callouses, nor relieve pain caused thereby, and constituted nothing more than a formaldehyde solution, with very distinctive odor and effective as antiseptic rather than as germicide, and inhalation of which irritated mucous membranes of nose and was likely to cause bronchitis or other catarrhal conditions, and his said claims as to therapeutic value or efficacy of said product greatly exceeded any claims with respect thereto which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that his said product possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said product: