

Syllabus

IN THE MATTER OF

AVERBACH COMPANY, INC., MAID-O-BEST, INC., G. M. MOSES, AND ESTHER AVERBACH, MORRIS AVERBACH AND JEROME AVERBACH TRADING AS THE MURIEL COMPANY AND AMERICAN CHEMICAL COMPANY

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

Docket 3342. Complaint, Mar. 1, 1938—Decision, Sept. 11, 1939

Where a corporation which engaged in sale and distribution in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties, and business of which was taken over by a corporation organized and financed by an individual who was the moving and dominant spirit in connection with the conduct, affairs and operations of several trade name businesses, of said corporation, and of said acquiring corporation, organized and financed, as aforesaid set forth, by said individual and members of his family, who (1) were officers thereof and who, (2) along with president of said corporation first referred to, were variously engaged in direct and substantial competition with others engaged in sale and offer in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties of various kinds;

In selling products through medium of traveling salesmen, agents and solicitors, among whom they variously distributed bulletins and circulars as instructions in connection with sales talks to be made to housewives, customers and consumers throughout the various States—

(a) Represented that a fictitious person was its "Director of Sales," and that it had a national sales organization, through depictions in bulletins, circulars and instructions, as such "Director of Sales," of a supposed "J. M. Gebhardt," and through invitation to prospective salesmen to join its "national sales organization without risking one penny"; and

(b) Represented, as aforesaid, through use of words "Manufactured only by," followed by name and address of said corporation, and through such statements in such circulars as "Long-established manufacturer makes startling announcement," etc., "We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities," that it or they were the manufacturers of the products sold by them, and purchased as aforesaid;

Facts being individual depicted was not said supposed and fictitious "J. M. Gebhardt," but the then president and moving spirit in said corporation, and said corporation did not have, as thus implied or inferred, large selling organization, national in scope and character, nor own, operate, or control any mills, factory or laboratory wherein products which it sold and distributed were made or compounded, but such products were made or packed by individual who, as aforesaid, acquired control thereof and was engaged in such manufacture under separate trade name, and said corporation was not long-established manufacturer or business, had no manufacturer-backer, and did not purchase ingredients in tremendous quantities nor pack products distributed by it, but merely furnished bottles and labels

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to individual aforesaid, who, as above set forth, prepared certain quantities which such corporation advertised and sold under such corporate or trade name;

- (c) Set forth, in periodicals and advertising folders of wide interstate circulation, as the "regular retail prices" of the various extracts or flavors or products there offered, prices which were fictitious and greatly in excess of those at which said products ordinarily were sold, and in excess of prices at which their sale in usual course of trade was intended or contemplated; and
- (d) Made such statements, in such periodicals and advertising folders, and in connection with such assorted offers of such various extracts or flavors, together with 1-pound can of Chocolate Toddy free, and with aggregate value of assortment arrived at as \$3.70, as "You Sell it Complete For 97¢," "5 Big Bottles 47¢," "Sells at Sight For 97¢," "With Can of Chocolate Toddy Free!";

Facts being articles thus mentioned as being free were not in truth gratuitous and without cost to donee, but recipient thereof was required to purchase other articles in order to obtain free goods, and price or value was included in sum paid for other;

- (e) Made use of term, in its advertising matter and price lists, "Vanilla Extract" to describe imitation vanilla flavor, and stated in advertising matter that "we are particular about the quality of such products as Vanilla beans, Vanillin, Coumarin, Glycerin, Lemon, Maple, Orange, and other commodities that go into the making of our flavorings," "* * * Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price. * * * composed of Vanillin * * * and a liberal quantity of pure vanilla made from the choicest vanilla beans";

Facts being said product first referred to was not true extract, but cheap flavoring compound which lacked alcohol content required as vehicle to carry genuine flavoring extract, it had not used "liberal quantity of pure vanilla" in preparation thereof, etc., and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" were composed largely of cheap, inferior ingredients, including synthetic chemical substitute suspended largely in cheap oils or gum emulsions instead of ethyl alcohol, recognized as most valuable and desirable vehicle used in dissolving and preserving food flavorings, and its said products in no manner equalled or approached quality and excellence claimed therefor;

- (f) Represented, in circular, that its said products described as "exceptionally fine quality" and "made of purest ingredients," were "guaranteed to you and to your customers" and to "give complete satisfaction," failing which every penny involved in purchase price would cheerfully be refunded, and that such guarantee was "Backed By \$3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution For This Purpose," and further referred thereto as "\$3,000 Guarantee of Quality," and "Your Assurance of Success," etc., and urged its salesmen or agents to give customers such guarantee and emphasize its supposed financial backing;

Facts being products referred to were not made of purest ingredients, and were not strong and delicious, and said corporation did not retain in any bank, in a special account or otherwise, any such fund to guarantee its

products and refund purchase price, but sum referred to was withdrawn shortly after made, and bonds substituted therefor were also later withdrawn; and

Where individual above referred to, following the acquisition of the business of said corporation and continuance thereof under trade name used by him, and continued use, in connection with offer of his products, of same cuts and advertising matter theretofore employed by said corporation, and using said corporate name as trademark on products sold and advertised by him—

- (a) Made such statements, in printed advertisements regarding his said products, as "Amazing Way to Earn Big Pay," "Up to \$15 Every Day is Easy," etc., facts being it was not easy, or in fact hardly possible, for any representative to earn up to \$15 every day nor any day in selling products in question;
- (b) Made such statements as "We sell all over the United States in large quantities, therefore our purchasing power is great," and "Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you," facts being business in question was a relatively small one and did not and could not buy as aforesaid and accomplish such savings;
- (c) Referred to his various food flavors as "High Quality Flavoring Extracts," etc., facts being they were not extracts dissolved and carried in alcoholic solution, but were made of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions, and oils and ingredients therein were not high quality or the purest and finest;
- (d) Set forth, as aforesaid, in connection with his so-called "deals" or offers of flavoring compounds, "selling prices" or "values" which were fictitious and greatly in excess of prices at which such compounds were sold or intended to be sold; and
- (e) Falsely represented therein as manufactured by company used by him as trade name in conduct of his said business, product advertised and designated as "Choc-O-Toddy"; and

Where corporation organized by aforesaid individual, as above set forth to take over and carry on business variously conducted as above indicated—

- (a) Made such statements, with respect to supposed "free goods," as "Bib Apron Free," in connection with "Jack Foster's Famous 4 Bottle Deal," etc., or "Valuable Hosiery Gift Coupon Free!," etc., facts being such articles were not given away free but person was required to purchase "deal" in order to obtain bib apron or gift coupon, and price or value of alleged gift was included in sum obtained in each instance for particular "deal";
- (b) Labeled as "composed of vanillin, coumarin, vanilla, and caramel," 8-ounce bottle of imitation vanilla flavor included in deal which it distributed among agents or purchasers in various States, and designed as "Special Advertising Offer," and labeled as "Terpeneless Lemon Flavor," 8-ounce bottle of such flavor included in deal in question, and as "Terpeneless Orange Flavor," 4-ounce bottle of such flavor, facts being said last two flavors were not made from essential oils as thus represented, but were composed largely of cheap, inferior ingredients including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equalled or approached quality and excellence claimed therefor in its advertising matter; and

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- (c) Set forth, in connection with its "free goods" and "special" offers and deals, including one for free apron and for "2 pair form-fashioned ladies' hose for only 49¢," that the time within which such offers and deals might be secured, or number of persons who might secure same, was limited, and that supposed offer of one dozen deals free with each purchase of twelve was "To help defray freight cost," facts being its offers were not thus limited and its said selling plans did not help purchaser defray such costs; and

Where other individuals interested and concerned in conduct of business here involved, as above noted—

- (a) Falsely represented, through acts, practices and methods such as above set forth, to respective agents and to consuming public, that certain of their products were worth, and ordinarily sold for, retail prices stated, facts being they were not sold nor intended to sell at such prices;
- (b) Falsely represented, as aforesaid, character, contents and value of said products;
- (c) Made false and misleading statements and representations to effect that certain goods and articles of merchandise were being and would be given away free, when such was not the fact; and
- (d) Made false and misleading statements and representations concerning above described guarantee fund of \$3,000;

With result that public, through use of such false and misleading representations in their circulars and other advertising matter, passed on by agents and representatives to purchasing public, was deceived concerning character, quality, and value of their products and induced to purchase same under erroneous belief that they were of high grade and quality, containing only ingredients of purity and excellence claimed therefor, and of value claimed in fictitious prices quoted thereon, to the detriment and injury of sellers of similar products, and with capacity and tendency to divert to them trade of competitors engaged in selling in interstate commerce products of nature of those sold by them, to the substantial injury of competition in such commerce, and with result of placing in the hands of their dealers, agents and distributors instruments through which purchasing public was misled and deceived by them:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Marshall Morgan and *Mr. Merle P. Lyon* for the Commission.
Stacker & Stacker, of St. Paul, Minn., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Averbach Co., Inc., a corporation; Maid-O-Best, Inc., a corporation; G. M. Moses, an individual; and Esther Averbach, Morris Averbach and Jerome Averbach, individually, and trading variously under the

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names The Muriel Co. and American Chemical Co., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Maid-O-Best, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business having been located at 695 Selby Avenue, St. Paul, Minn. Respondent Maid-O-Best, Inc., from August 29, 1932, until March 1, 1933, was engaged in the sale and distribution in interstate commerce of flavoring compounds, foodstuffs, toilet articles and novelties. Respondent G. M. Moses, during the period next above stated, was the president of Maid-O-Best, Inc., and directed the activities and controlled the business affairs and policies of said respondent corporation. About January 1, 1933, G. M. Moses resigned as president of Maid-O-Best, Inc., being succeeded in such office by one Esther Averbach, one Marie Ryan becoming vice president of said corporation.

Respondent Morris Averbach, in the year 1932, trading under the name of The Muriel Company at St. Paul, Minn., likewise became engaged in the manufacture and in the selling and the offering for sale in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. About July 1, 1935, respondent Morris Averbach, in connection with the sale of the herein mentioned products, began to trade under the name American Chemical Co. Thereafter, in July, 1936, the manufacturing businesses which had theretofore been conducted by G. M. Moses through Maid-O-Best, Inc., and by Morris Averbach employing the trade name companies, The Muriel Company and the American Chemical Co., were taken over by a corporation organized and financed by the said respondent Morris Averbach and members of his family under the corporate name and designation of Averbach Co., Inc. The officers of the said corporation are: Jerome Averbach, son of respondent Morris Averbach, president; Pearl Berkus, a relative of respondent Morris Averbach, vice president; and respondents Morris Averbach, secretary-treasurer. The present address under which the Averbach Co., Inc., is now operating through its own corporate name and the trade names, The Muriel Co., the American Chemical Co., and Maid-O-Best, Inc., is 1449 University Avenue, St. Paul, Minn.

The said Morris Averbach, is, and for several years last past has been, the moving and dominant spirit successively in connection with the conduct, affairs and operations of The Muriel Co., Maid-O-Best,

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Inc., the American Chemical Co., and Averbach Co., Inc. Throughout the successive years in which the said Morris Averbach has been in the business of manufacturing flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds, the said respondent has dominated said companies and controlled their respective policies and activities.

In the course and conduct of their respective businesses, respondents Maid-O-Best, Inc., G. M. Moses, Morris Averbach, Jerome Averbach, Esther Averbach, and Averbach Co., Inc., have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in selling and offering for sale in interstate commerce flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds.

PAR. 2. In the course and conduct of their respective businesses as described in paragraph 1 hereof, the said named respondents have offered their products for sale and have sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers, through the medium of travelling salesmen, agents and solicitors. Said goods are and were shipped in response to orders taken by such travelling salesmen, agents, and solicitors and transported or caused to be transported in commerce among the several States of the United States.

In the course and conduct of their said businesses, as hereinafter related, respondents have caused various false, deceptive, and misleading statements to be inserted and to appear in advertising circulars and bulletins distributed by them. The statements contained in said bulletins and circulars are addressed to and are and have been distributed among salesmen or prospective salesmen, and are intended to be and constitute instructions to them in connection with sales talks to be made to housewives, customers, and consumers throughout the various States of the United States. In this manner the said various false and misleading statements and representations inserted in advertising bulletins and circulars by respondents are, and have been, passed on to the ultimate consumer by respondents' salesmen and representatives and the consuming public have been induced to purchase the goods offered for sale and sold by respondents under the erroneous belief that said false and misleading statements and representations were true.

PAR. 3. Respondent Maid-O-Best, Inc., in connection with the sale and distribution in interstate commerce of the aforementioned products, printed in bulletins and circulars and instructions a picture of a person supposed to be one J. M. Gebhardt, wherein the alleged Gebhardt was designated as "Director of Sales, Maid-O-Best, Inc.," and he

invites prospective salesmen to "join Maid-O-Best's national sales organization without risking one penny," when in truth and in fact the said "J. M. Gebhardt" is a fictitious person and the picture printed was instead a picture of G. M. Moses, then president and moving spirit of Maid-O-Best, Inc. Said picture and accompanying statements and announcements were and have been used for the manifest purpose of creating the impression upon prospective agents and representatives who would in turn convey such impression to the consuming public, that Maid-O-Best, has and has had a large selling organization, national in scope and character, when such was and is not the fact.

PAR. 4. In a circular issued by respondent Maid-O-Best, Inc., in furtherance of the sale, in interstate commerce, of Maid-O-Best products, the following statements and representations appeared:

1. Long-established manufacturer makes startling announcement to those who want ready cash; (2) The large manufacturing company back of Maid-O-Best products has made it possible for me to offer you better quality products at much lower resale prices. And of great importance to you is the fact that your margin of profit is a generous one. Every sale repays you handsomely for your efforts; (3) We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities.

Said Maid-O-Best, Inc., further caused to appear in advertising matter distributed in interstate commerce the words:

Manufactured only by Maid-O-Best, Inc.,
St. Paul, Minn., U. S. A.

When in truth and in fact the said Maid-O-Best, Inc., did not and has not owned, operated or controlled any mills, factory or laboratory wherein the products which it sells or sold and distributes or distributed in interstate commerce are and were manufactured or compounded, said products on the contrary, having been manufactured or packed by Morris Averbach, trading as The Muriel Co., Maid-O-Best, Inc., is not a long-established manufacturer, concern or business, has not had any large manufacturing company back of its products, and has not purchased ingredients in tremendous quantities, nor packed the products distributed by it in interstate commerce; said Maid-O-Best, Inc., on the contrary, merely furnishing bottles and labels to Morris Averbach, who prepares and has prepared certain quantities of the products which respondent Maid-O-Best has advertised and sold under the name "Maid-O-Best."

PAR. 5. In the further course and conduct of its business respondent, Maid-O-Best, Inc., caused to appear in periodicals and advertising folders having a wide interstate circulation advertisements containing representations regarding the usual and customary retail

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sale price and value of the various products sold by the respondent and regarding certain so-called "free" goods allegedly given in connection with the purchase of various products. Typical of these advertisements is the following:

A \$3.70 Value 47¢

1 8 Ounce Bottle Imitation Vanilla Extract, Value_____	\$1. 00
1 4 Ounce Bottle Lemon Flavor, Value_____	. 60
1 4 Ounce Bottle Almond Flavor, Value_____	. 60
1 2 Ounce Bottle Orange Flavor, Value_____	. 50
1 2 Ounce Bottle Maple Flavor, Value_____	. 50
1 1 Pound Can Choc-o-Toddy FREE, Value_____	. 50

3. 70

YOU SELL IT COMPLETE FOR 97¢

5 BIG BOTTLES 47¢

SELLS AT SIGHT FOR 97¢

WITH CAN OF CHOCOLATE TODDY

FREE!

Similar representations have been made by all of the other respondents in connection with the sale and distribution of their products in said commerce as aforesaid. In truth and in fact the "regular retail prices" as set forth in such advertisements and advertising matter were and are fictitious and greatly in excess of the prices at which said products ordinarily were and are sold and greatly in excess of the prices at which the respondents intended or contemplated that said products would be sold in the usual course of trade. The articles mentioned in said advertisements as being free are not in truth a gratuity without cost to the donee, the recipient thereof being required to purchase other articles in order to obtain so called free goods, and the price or value of the free goods is included in the sum paid for such other articles.

PAR. 6. Respondent Maid-O-Best, Inc., in its advertising matter and price lists distributed in interstate commerce has used the term "Vanilla Extract" to describe an imitation vanilla flavor, when in truth and in fact such preparation is not a true extract but a cheap flavoring compound, lacking the alcohol content that would be required as a vehicle to carry the genuine flavoring extract.

And said Maid-O-Best, Inc., in its advertising matter further has stated that "we are particular about the quality of such products as Vanilla beans, Vanillin, Coumarin, Glycerin, Lemon, Maple, Orange and other commodities that go into the making of our flavorings," and "You cannot tell how good imitation Vanilla extract is until you try it. Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price.

Maid-O-Best Vanilla Extract is composed of Vanillin, Coumarin, Caramel color and a liberal quantity of pure vanilla made from the choicest vanilla beans," when in truth and in fact said respondent Maid-O-Best, Inc., has not used "liberal quantities" of "pure vanilla" in the preparation of said alleged "extract," nor vanillin made from vanilla beans, and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes, suspended largely in cheap oils or gum emulsions, instead of ethyl alcohol, recognized as the most valuable and desirable vehicle that can be used in dissolving and preserving food flavorings, and said Maid-O-Best, Inc., flavorings in no manner equal or approach the quality and excellence claimed for them in said respondent's advertising matter.

PAR. 7. Said Maid-O-Best, Inc., further in a circular marked "New Big Free Deal * * *," caused the following statements to appear:

Maid-O-Best products are exceptionally fine quality. They are made of purest ingredients—they are guaranteed to you and to your customers—guaranteed that they will give complete satisfaction, otherwise every penny involved in the purchase price of any of the products is cheerfully refunded. This Guarantee is Backed by \$3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution for This Purpose. The guarantee is bona-fide, iron clad—it is your protection for those to whom you sell Maid-O Best products.

* * * * *

Guaranteed Quality * * * Lower Prices to You * * * Lower Prices for Your Customers. \$3,000 Guarantee of Quality. This is Your Assurance of Success With Maid-O-Best.

Maid-O-Best, Inc., has deposited in a leading banking institution \$3,000 to back up its iron-clad guarantee of customer-satisfaction or money back. If any question as to quality arises in the minds of your customers don't hesitate to give them the Maid-O-Best Guarantee. Don't hesitate to mention that the Guarantee is backed by money set aside in the bank.

* * * * *

Whereas, in truth and in fact, respondent Maid-O-Best, Inc., did not retain in any bank or banking institution in a special account or otherwise, any fund to guarantee Maid-O-Best products and to refund purchase price of the same upon the return of the goods purchased, the said sum of \$3,000.00 or any other sum, but on the contrary, said Maid-O-Best, Inc., withdrew said cash deposit shortly after it was made with the Western State Bank of St. Paul, Minn., substituted bonds therefor and then withdrew said bonds. Said representations in connection with said guarantee fund are and were further false and misleading in fact in that the flavoring products manufactuerd by Maid-O-Best, Inc., are not and have not been made from the purest ingredients, and are not and never were pure, strong, and delicious.

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PAR. 8. On or about January 15, 1933, the respondent Morris Averbach took over the business of the respondent Maid-O-Best, Inc., and continued the business under the name The Muriel Co., and flavoring and other products have been made by him under the same formulae as used by Maid-O-Best, Inc., and he has continued to use in connection with the advertising, sale and offering for sale of that company's products in interstate commerce, the same cuts and advertising matter, periodical and otherwise, which had been theretofore employed, as herein alleged, by Maid-O-Best, Inc., in connection with the sale of Maid-O-Best products in interstate commerce. Said Morris Averbach, trading as The Muriel Co., further continued using Maid-O-Best as a trade mark on products sold by him and in advertising and offering said products for sale.

In the course and conduct of his business, the respondent Morris Averbach caused statements to be made and circulated in printed advertisements regarding the price and quality of the various products sold, regarding the nature and extent of said business and, regarding the opportunity afforded representatives. Typical of these statements are the following:

Amazing Way to Earn Big Pay
Up to \$15 Every Day is Easy * * *
Here's the Best of Its Kind

Here's big money for you every day * * *
sensational food flavoring extract * * * deals.

* * * * *

We sell all over the United States in large quantities, therefore our purchasing power is great. Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you.

* * * * *

HIGH QUALITY FLAVORING EXTRACTS FRESH FROM OUR FACTORY

* * * * *

We present herewith 4 Great Money-Saving Combination Deals for the purchase of the Maid-O-Best brand of high quality Flavorings and Extracts.

* * * * *

Only the purest of ingredients are used. * * *

DEAL NO. 10

1 8 Ounce Bottle Vanilla, Value.....	\$1. 00
1 4 Ounce Bottle Lemon, Value.....	. 60
1 4 Ounce Bottle Almond, Value.....	. 60
1 2 Ounce Bottle Orange, Value.....	. 50
1 2 Ounce Bottle Maple, Value.....	. 50
1 Pound Choc-O-Toddy FREE, Value.....	. 50
Total Value.....	\$3. 70

5 FLAVORS AND TODDY FOR 97¢

(Three other such "deals" of substantially the same character are also set out.)

In truth and in fact said statements and representations made by the respondent Morris Averbach were and are false, deceptive, and misleading in the following, among other particulars:

1. It is not "easy" nor in fact hardly possible for an agent or representative to "earn up to \$15 Every Day" nor any day in selling Muriel Company products.

2. Respondent's food flavors were not and are not "extracts," dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions and oils.

3. The ingredients contained in respondent's flavoring preparations were and are not "high quality" or the "purest and finest".

4. Respondent's business is a relatively small one and does not and cannot buy the various raw materials in "tremendous quantities" and thereby effect "greater savings which are passed on" to housewives of America.

5. The "selling prices" or "values" published in connection with so-called "deals" of flavoring compounds were and are fictitious and greatly in excess of the prices at which such flavoring compounds were and are sold or were ever intended or contemplated to be sold.

6. The said product advertised and designated in advertising matter as "Choc-O-Toddy" and as "manufactured by The Muriel Company" is not and never has been manufactured by The Muriel Company.

PAR. 9. In the course and conduct of its business, the respondent Averbach Company, Inc., in connection with the interstate distribution of said products has caused various statements regarding "free goods," "special" offers and deals to be printed and circulated. Among and typical of such statements are the following:

JACK FOSTER'S FAMOUS

4 BOTTLE DEAL

PLUS A FINE QUALITY

11B APRON FREE!

VALUABLE HOSIERY

GIFT COUPON

FREE!

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THIS APRON FREE!

\$1 brings you complete sales equipment, including free apron and hosiery sample, postage paid

WHEN THEY SEE THIS AMAZING FREE OFFER!

Bungalow Bib Apron Free. 2 pair form-fashioned ladies hose for only 49¢.
Ask representative for free coupon

SPECIAL DEAL NO. 1 AND NO. 2

Bungalow Bib Apron FREE with Deal

PLUS

2 Pair Hosiery Coupon

FREE!

FREE GOODS

To help defray freight cost, we will give you one dozen deals Free with each purchase of twelve dozen, or when your combined order totals twelve dozen. Order must be confined to one deal to get Free Goods

In connection with said "free" goods and "special" offer and deal representations, the representation is made, in many instances, that the time within which the "free" goods or "special" offers and deals may be secured is limited or that the number of persons who may secure the same is limited.

In the further course of its dealings, respondent Averbach Company, Inc., has distributed among agents or purchasers in various States a combination deal entitled "American Brand of Guaranteed Flavors—All For Only 99¢." Said deal presented as a "Special Advertising Offer" offers respectively:

One 8-ounce Imitation Vanilla Flavor
One 8-ounce Lemon Flavor
One 4-ounce Orange Flavor
One 4-ounce Almond Flavor

Plus

Bungalow Bib Apron FREE

Said 8-ounce bottle of Imitation Vanilla Flavor contains a statement on its label that said Flavor is "composed of vanillin, coumarin, vanilla, and caramel"; said 8-ounce bottle of lemon flavor is labeled "Terpeneless Lemon Flavor," and the said 4-ounce bottle of orange flavor is labeled "Terpeneless Orange Flavor," thereby indicating that they are made from the essential oils instead of synthetic chemical flavors. In truth and in fact said statements and representations

made by respondent Averbach Co., Inc., are false, misleading and deceptive in the following, among other particulars:

1. Genuine vanillin made from vanilla beans has not been employed in the preparation of respondent's said vanilla flavoring. Respondent's flavoring compounds designated as "lemon," "orange," and "almond" are not manufactured from the essential oils, as their labels indicate, but instead are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equal or approach the quality and excellence claimed for them in respondent's advertising matter.

2. Various articles advertised and represented by respondent as being given away "Free" are not, in fact, given away "Free," a person being required to purchase a deal in order to obtain a bib apron or a gift coupon, and the price or value of the alleged gift is included in the sum obtained in each instance for the particular deal.

3. The offer of two pairs of hose for 49 cents is not limited in time or a special offer, nor are the other so-called "special deals" and "special offers" special in the sense that such deals and offers are limited to a given period of time or to a given number of persons for they are not limited as to time or the number of persons who may secure them, and respondent's selling plans do not help a purchaser to defray freight costs.

PAR. 10. In addition to the respondents expressly named in connection with the acts and practices enumerated in paragraphs 3 to 9 hereof inclusive, all of the other parties respondent have used the acts, practices and methods alleged in paragraphs 3 to 9 hereof inclusive. Said respondents, by their acts, practices, and methods as hereinabove alleged, have falsely represented to respective agents and to the consuming public that certain of their products were worth and were ordinarily sold for the retail prices stated, when in truth and in fact said products are not sold, and said respondents did not contemplate or intend that they would be sold, at the prices stated, and they have falsely represented the character, contents, value and quality of said products, and they have made false and misleading statements and misrepresentations to the effect that certain goods or articles of merchandise are being, and would be given away "free," when such was not and is not the fact. They have made false and misleading statements and misrepresentations concerning the above described guaranty fund of \$3,000.

PAR. 11. By the use of the aforesaid false and misleading representations appearing in respondents' circulars and other advertising matter, which representations are passed on to the purchasing public

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by agents and representatives of respondents, the public are and have been thereby deceived concerning the character, quality, and value of respondents' products, and have thereby been induced to purchase such products under the erroneous belief that the same are and were of high grade and quality, containing only ingredients of the purity and excellence claimed for them, and of the value claimed for them in said fictitious prices quoted thereon.

The aforesaid practices are further to the detriment and injury of sellers of products similar to those sold by respondents, and have and have had the capacity and tendency to divert to respondents the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondents. Thereby, substantial injury is done and has been done by the respondents to competition in interstate commerce, and there is and has been placed in the hands of respondents' dealers, agents and distributors instruments by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 12. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 1, 1938, issued, and on March 3, 1938, served, its complaint in this proceeding upon respondents, Averbach Co., Inc., a corporation; Maid-O-Best, Inc., a corporation; G. M. Moses, an individual; and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co., and American Chemical Co., 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 an answer by the respondents Averbach Co., Inc., a corporation; Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., the Commission, by order entered herein, granted said respondents' motion for permission to withdraw said answer and to substitute therefor an amended 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. Subsequently, the respondents Maid-O-Best, Inc., a corporation, and G. M. Moses, an individual, filed their separate answer, in which answer they 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 answer and amended answer, 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 Maid-O-Best, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business having been located at 695 Selby Avenue, St. Paul, Minn. Respondent Maid-O-Best, Inc., from August 29, 1932, until March 1, 1933, was engaged in the sale and distribution in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. Respondent G. M. Moses, during the period next above stated, was the president of Maid-O-Best, Inc., and directed the activities and controlled the business affairs and policies of said respondent corporation. About January 1, 1933, G. M. Moses resigned as president of Maid-O-Best, Inc., being succeeded in such office by one Esther Averbach, one Marie Ryan becoming vice president of said corporation.

Respondent Morris Averbach, in the year 1932, trading under the name of The Muriel Co. at St. Paul, Minn., likewise became engaged in the manufacture and in the selling and the offering for sale in interstate commerce of flavoring compounds, foodstuffs, toilet articles, and novelties. About July 1, 1935, respondent Morris Averbach, in connection with the sale of the herein mentioned products, began to trade under the name American Chemical Co. Thereafter, in July 1936, the manufacturing businesses which had theretofore been conducted by G. M. Moses through Maid-O-Best, Inc., and by Morris Averbach employing the trade name companies, The Muriel Co. and the American Chemical Co., were taken over by a corporation organized and financed by the said respondent Morris Averbach and members of his family under the corporate name and designation of Averbach Co., Inc. The officers of the said corporation are: Jerome Averbach, son of respondent Morris Averbach, president; Pearl Berkus, a relative of respondent Morris Averbach, vice president; and respondent Morris Averbach, secretary-treasurer. The present address under which the

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Averbach Company, Inc., is now operating through its own corporate name and the trade names, The Muriel Company, the American Chemical Co., and Maid-O-Best, Inc., is 1449 University Avenue, St. Paul, Minn.

The said Morris Averbach, is, and for several years last past has been, the moving and dominant spirit successively in connection with the conduct, affairs and operations of The Muriel Co., Maid-O-Best, Inc., the American Chemical Co., and Averbach Co., Inc. Throughout the successive years in which the said Morris Averbach has been in the business of manufacturing flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds, the said respondent has dominated said companies and controlled their respective policies and activities.

In the course and conduct of their respective businesses, respondents Maid-O-Best, Inc., G. M. Moses, Morris Averbach, Jerome Averbach, Esther Averbach, and Averbach Co., Inc., have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in selling and offering for sale in interstate commerce flavoring compounds, foodstuffs, toilet articles, and novelties of various kinds.

PAR. 2. In the course and conduct of their respective businesses as described in paragraph 1 hereof, the said named respondents have offered their products for sale and have sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers, through the medium of travelling salesmen, agents, and solicitors. Said goods are and were shipped in response to orders taken by such travelling salesmen, agents and solicitors and transported or caused to be transported in commerce among the several States of the United States.

In the course and conduct of their said businesses, as hereinafter related, respondents have caused various false, deceptive, and misleading statements to be inserted and to appear in advertising circulars and bulletins distributed by them. The statements contained in said bulletins and circulars are addressed to and are and have been distributed among salesmen or prospective salesmen, and are intended to be and constitute instructions to them in connection with sales talks to be made to housewives, customers, and consumers throughout the various States of the United States. In this manner the said various false and misleading statements and representations inserted in advertising bulletins and circulars by respondents are, and have been, passed on to the ultimate consumer by respondents' salesmen and representatives and the consuming public have been induced to purchase the goods offered for sale and sold by respondents under the erroneous belief

that said false and misleading-statements and representations were true.

PAR. 3. Respondent Maid-O-Best, Inc., in connection with the sale and distribution in interstate commerce of the aforementioned products, printed in bulletins and circulars and instructions a picture of a person supposed to be one J. M. Gebhardt, wherein the alleged Gebhardt was designated as "Director of Sales, Maid-O-Best, Inc.," and he invites prospective salesmen to "join Maid-O-Best's national sales organization without risking one penny," when in truth and in fact the said "J. M. Gebhardt" is a fictitious person and the picture printed was instead a picture of G. M. Moses, then president and moving spirit of Maid-O-Best, Inc. Said picture and accompanying statements and announcements were and have been used for the manifest purpose of creating the impression upon prospective agents and representatives who would in turn convey such impression to the consuming public, that Maid-O-Best, has and has had a large selling organization, national in scope and character, when such was and is not the fact.

PAR. 4. In a circular issued by respondent Maid-O-Best, Inc., in furtherance of the sale, in interstate commerce, of Maid-O-Best products, the following statements and representations appeared:

1. Long-established manufacturer makes startling announcement to those who want ready cash; (2) The large manufacturing company back of Maid-O-Best products has made it possible for me to offer you better quality products at much lower resale prices. And of great importance to you is the fact that your margin of profit is a generous one. Every sale repays you handsomely for your efforts; (3) We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities.

Said Maid-O-Best, Inc., further caused to appear in advertising matter distributed in interstate commerce the words:

Manufactured only by Maid-O-Best, Inc., St. Paul, Minn., U. S. A.

When in truth and in fact the said Maid-O-Best, Inc., did not and has not owned, operated or controlled any mills, factory, or laboratory wherein the products which it sells or sold and distributes or distributed in interstate commerce are and were manufactured or compounded, said products on the contrary, having been manufactured or packed by Morris Averbach, trading as The Muriel Co. Maid-O-Best, Inc., is not a long-established manufacturer, concern or business, has not had any large manufacturing company back of its products, and has not purchased ingredients in tremendous quantities, nor packed the products distributed by it in interstate commerce; said Maid-O-Best, Inc., on the contrary, merely furnishing bottles and labels to Morris Averbach, who prepares and has prepared certain

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quantities of the products which respondent Maid-O-Best has advertised and sold under the name "Maid-O-Best."

PAR. 5. In the further course and conduct of its business respondent, Maid-O-Best, Inc., caused to appear in periodicals and advertising folders having a wide interstate circulation advertisements containing representations regarding the usual and customary retail sale price and value of the various products sold by the respondent and regarding certain so-called "free" goods allegedly given in connection with the purchase of various products. Typical of these advertisements is the following:

A \$3.70 Value 47¢

1 8 Ounce Bottle Imitation Vanilla Extract, Value-----	\$1. 00
1 4 Ounce Bottle Lemon Flavor, Value-----	. 60
1 4 Ounce Bottle Almond Flavor, Value-----	. 60
1 2 Ounce Bottle Orange Flavor, Value-----	. 50
1 2 Ounce Bottle Maple Flavor, Value-----	. 50
1 1 Pound Can Choc-o-Toddy FREE, Value-----	. 50
	\$3. 70

YOU SELL IT COMPLETE FOR 97¢

5 BIG BOTTLES 47¢

SELLS AT SIGHT FOR 97¢

WITH CAN OF CHOCOLATE TODDY

FREE!

Similar representations have been made by all of the other respondents in connection with the sale and distribution of their products in said commerce as aforesaid. In truth and in fact the "regular retail prices" as set forth in such advertisements and advertising matter were and are fictitious and greatly in excess of the prices at which said products ordinarily were and are sold and greatly in excess of the prices at which the respondents intended or contemplated that said products would be sold in the usual course of trade. The articles mentioned in said advertisements as being free are not in truth a gratuity without cost to the donee, the recipient thereof being required to purchase other articles in order to obtain so-called free goods, and the price or value of the free goods is included in the sum paid for such other articles.

PAR. 6. Respondent Maid-O-Best, Inc., in its advertising matter and price lists distributed in interstate commerce has used the term "Vanilla Extract" to describe an imitation vanilla flavor, when in truth and in fact such preparation is not a true extract but a cheap flavoring compound, lacking the alcohol content that would be required as a vehicle to carry the genuine flavoring extract.

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And said Maid-O-Best, Inc., in its advertising matter further has stated that "we are particular about the quality of such products as vanilla beans, vanillin, coumarin, glycerin, lemon, maple, orange, and other commodities that go into the making of our flavorings," and "You cannot tell how good imitation Vanilla extract is until you try it. Please assure your customers that Maid-O-Best Vanilla Extract has no equal for quality. It is the finest available at any price. Maid-O-Best Vanilla Extract is composed of vanillin, coumarin, caramel color and a liberal quantity of pure vanilla made from the choicest vanilla beans," when in truth and in fact said respondent Maid-O-Best, Inc., has not used "liberal quantities" of "pure vanilla" in the preparation of said alleged "extract," nor vanillin made from vanilla beans, and its flavoring compounds designated as "orange," "lemon," "maple," and "almond" are composed largely of cheap inferior ingredients, including synthetic chemical substitutes, suspended largely in cheap oils or gum emulsions, instead of ethyl alcohol, recognized as the most valuable and desirable vehicle that can be used in dissolving and preserving food flavorings, and said Maid-O-Best, Inc., flavorings in no manner equal or approach the quality and excellence claimed for them in said respondent's advertising matter.

PAR. 7. Said Maid-O-Best, Inc., further in a circular marked "New Big Free Deal * * *," caused the following statements to appear:

Maid-O-Best products are exceptionally fine quality. They are made of purest ingredients—they are guaranteed to you and to your customers—guaranteed that they will give complete satisfaction, otherwise every penny involved in the purchase price of any of the products is cheerfully refunded. This Guarantee Is Backed by \$3,000.00 of This Company's Money Which Has Been Deposited in a Special Account in a Big Banking Institution for This Purpose. The guarantee is bona-fide, iron clad—it is your protection for those to whom you sell Maid-O-Best products.

* * * * *

Guaranteed Quality * * * Lower Prices to You * * * Lower Prices For Your Customers. \$3,000 Guarantee of Quality. This is Your Assurance of Success With Maid-O-Best.

Maid-O-Best, Inc., has deposited in a leading banking institution \$3,000 to back up its iron-clad guarantee of customer-satisfaction or money back. If any question as to quality arises in the minds of your customers don't hesitate to give them the Maid-O-Best Guarantee. Don't hesitate to mention that the Guarantee is backed by money set aside in the bank.

* * * * *

Whereas, in truth and in fact, respondent Maid-O-Best, Inc., did not retain in any bank or banking institution in a special account or otherwise, any fund to guarantee Maid-O-Best products and to refund purchase price of the same upon the return of the goods purchased, the

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said sum of \$3,000 or any other sum, but on the contrary, said Maid-O-Best, Inc., withdrew said cash deposit shortly after it was made with the Western State Bank of St. Paul, Minn., substituted bonds therefor and then withdrew said bonds. Said representations in connection with said guarantee fund are and were further false and misleading in fact in that the flavoring products manufactured by Maid-O-Best, Inc., are not and have not been made from the purest ingredients, and are not and never were pure, strong, and delicious.

PAR. 8. On or about January 15, 1933, the respondent Morris Averbach, took over the business of the respondent, Maid-O-Best, Inc., and continued the business under the name The Muriel Co., and flavoring and other products have been made by him under the same formulae as used by Maid-O-Best, Inc., and he has continued to use in connection with the advertising, sale, and offering for sale of that company's products in interstate commerce, the same cuts and advertising matter, periodical and otherwise, which had been theretofore employed, as herein alleged, by Maid-O-Best, Inc., in connection with the sale of Maid-O-Best products in interstate commerce. Said Morris Averbach, trading as The Muriel Co., further continued using "Maid-O-Best" as a trade mark on products sold by him and in advertising and offering said products for sale.

In the course and conduct of his business, the respondent Morris Averbach caused statements to be made and circulated in printed advertisements regarding the price and quality of the various products sold, regarding the nature and extent of said business and, regarding the opportunity afforded representatives. Typical of these statements are the following:

Amazing Way to Earn Big Pay
Up to \$15 Every Day is Easy * * *
Here's the Best of Its Kind
Here's big money for you every day * * *
sensational food flavoring extract * * * deals.

We sell all over the United States in large quantities, therefore our purchasing power is great. Our various raw materials and ingredients are purchased in tremendous quantities, thus effecting greater savings which are passed on to you.

HIGH QUALITY FLAVORING EXTRACTS FRESH FROM OUR FACTORY

We present herewith 4 Great Money-Saving Combination Deals for the purchase of the Maid-O-Best brand of high quality Flavorings and Extracts.

Only the purest of ingredients are used. * * *

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DEAL NO. 10

1 8 Ounce Bottle Vanilla, Value-----	\$1. 00
1 4 Ounce Bottle Lemon, Value-----	. 60
1 4 Ounce Bottle Almond, Value-----	. 60
1 2 Ounce Bottle Orange, Value-----	. 50
1 2 Ounce Bottle Maple, Value-----	. 50
1 Pound Choc-O-Toddy FREE, Value-----	. 50
Total Value-----	\$3. 70

5 FLAVORS AND TODDY FOR 97¢

(Three other such "deals" of substantially the same character are also set out.)

In truth and in fact said statements and representations made by the respondent Morris Averbach were and are false, deceptive and misleading in the following, among other particulars:

1. It is not "easy" nor in fact hardly possible for an agent or representative to "earn up to \$15 Every Day" nor any day in selling Muriel Company products.

2. Respondent's food flavors were not and are not "extracts," dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of cheap flavoring materials, largely imitation and synthetic, dissolved and carried in cheap emulsions and oils.

3. The ingredients contained in respondent's flavoring preparations were and are not "high quality" or the "purest and finest".

4. Respondent's business is a relatively small one and does not and cannot buy the various raw materials in "tremendous quantities" and thereby effect "greater savings which are passed on" to housewives of America.

5. The "selling prices" or "values" published in connection with so-called "deals" of flavoring compounds were and are fictitious and greatly in excess of the prices at which such flavoring compounds were and are sold or were ever intended or contemplated to be sold.

6. The said product advertised and designated in advertising matter as "Choc-O-Toddy" and as "manufactured by The Muriel Co." is not and never has been manufactured by The Muriel Co.

PAR. 9. In the course and conduct of its business, the respondent Averbach Co., Inc., in connection with the interstate distribution of said products has caused various statements regarding "free goods", "special" offers and deals to be printed and circulated. Among and typical of such statements are the following:

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JACK FOSTER'S FAMOUS

4 BOTTLE DEAL

PLUS A FINE QUALITY

BIB APRON FREE!

VALUABLE HOSIERY

GIFT COUPON

FREE!

THIS APRON FREE!

\$1 brings you complete sales equipment, including free apron and hosiery sample, postage paid

WHEN THEY SEE THIS AMAZING FREE OFFER!

Bungalow Bib Apron Free. 2 pair form-fashioned ladies hose for only 49¢.

Ask representative for free coupon

SPECIAL DEAL NO. 1 and NO. 2

Bungalow Bib Apron FREE with Deal

PLUS

2 pair Hosiery Coupon

FREE!

FREE GOODS

To help defray freight cost, we will give you one dozen deals FREE with each purchase of twelve dozen, or when your combined order totals twelve dozen. Order must be confined to one deal to get Free Goods

In connection with said "free" goods and "special" offer and deal representations, the representation is made, in many instances, that the time within which the "free" goods or "special" offers and deals may be secured is limited or that the number of persons who may secure the same is limited.

In the further course of its dealings, respondent Averbach Company, Inc., has distributed among agents or purchasers in various States a combination deal entitled "American Brand of Guaranteed Flavors—All For Only 99¢." Said deal presented as a "Special Advertising Offer" offers respectively:

One 8-ounce Imitation Vanilla Flavor

One 8-ounce Lemon Flavor

One 4-ounce Orange Flavor

One 4-ounce Almond Flavor

Plus

Bungalow Bib Apron FREE

Said 8-ounce bottle of Imitation Vanilla Flavor contains a statement on its label that said Flavor is "composed of vanillin, coumarin, vanilla, and caramel"; said 8-ounce bottle of lemon flavor is labeled "Terpeneless Lemon Flavor," and the said 4-ounce bottle of orange flavor is labeled "Terpeneless Orange Flavor," thereby indicating that they are made from the essential oils instead of synthetic chemical flavors. In truth and in fact said statements and representations made by respondent Averbach Co., Inc., are false, misleading, and deceptive in the following, among other particulars:

1. Genuine vanillin made from vanilla beans has not been employed in the preparation of respondent's said vanilla flavoring. Respondent's flavoring compounds designated as "lemon," "orange," and "almond" are not manufactured from the essential oils, as their labels indicate, but instead are composed largely of cheap, inferior ingredients, including synthetic chemical substitutes suspended in cheap oils or gum emulsions, and in no manner equal or approach the quality and excellence claimed for them in respondent's advertising matter.

2. Various articles advertised and represented by respondent as being given away "Free" are not, in fact, given away "Free," a person being required to purchase a deal in order to obtain a bib apron or a gift coupon, and the price or value of the alleged gift is included in the sum obtained in each instance for the particular deal.

3. The offer of two pairs of hose for 49 cents is not limited in time or a special offer, nor are the other so-called "special deals" and "special offers" special in the sense that such deals and offers are limited to a given period of time or to a given number of persons for they are not limited as to time or the number of persons who may secure them, and respondent's selling plans do not help a purchaser to defray freight costs.

PAR. 10. In addition to the respondents expressly named in connection with the acts and practices enumerated in paragraphs 3 to 9 hereof inclusive, all of the other parties respondent have used the acts, practices and methods alleged in paragraphs 3 to 9 hereof inclusive. Said respondents, by their acts, practices, and methods as hereinabove alleged, have falsely represented to respective agents and to the consuming public that certain of their products were worth and were ordinarily sold for the retail prices stated, when in truth and in fact said products are not sold, and said respondents did not contemplate or intend that they would be sold, at the prices stated, and they have falsely represented the character, contents, value, and quality of said products, and they have made false and misleading statements and misrepresentations to the effect that certain goods or articles of merchandise are being, and would be given away "free," when such was not and is not the fact. They have made false and misleading statements and misrepresentations concerning the above described guaranty fund of \$3,000.

PAR. 11. By the use of the aforesaid false and misleading representations appearing in respondents' circulars and other advertising matter, which representations are passed on to the purchasing public by agents and representatives of respondents, the public are and have been thereby deceived concerning the character, quality, and value of respondents' products, and have thereby been induced to purchase such

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products under the erroneous belief that the same are and were of high grade and quality, containing only ingredients of the purity and excellence claimed for them, and of the value claimed for them in said fictitious prices quoted thereon.

The aforesaid practices are further to the detriment and injury of sellers of products similar to those sold by respondents, and have had the capacity and tendency to divert to respondents the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondents. Thereby, substantial injury is done and has been done by the respondents to competition in interstate commerce, and there is and has been placed in the hands of respondents' dealers, agents, and distributors instruments by means of which they mislead and deceive and have misled and deceived the purchasing public.

CONCLUSION

The aforesaid acts and practices of the respondents have been and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Averbach Co., Inc., a corporation and Maid-O-Best, Inc., a corporation, their officers, agents, servants, and employees, G. M. Moses, individually, and his agents, servants, and employees, and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., and their agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of flavoring compounds, foodstuffs, toilet articles, and novelties in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by photographs or in any other way that J. M. Gebhardt, a fictitious person, or any other fictitious person, is a Director of Sales of Maid-O-Best, Inc.

2. Representing that Maid-O-Best, Inc., has a national sales organization until and unless said Maid-O-Best, Inc., actually has and maintains a selling organization through and by which sales are made by said Maid-O-Best, Inc., generally throughout the United States.

3. Representing, through the use of the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minn. U. S. A.," or through the use of any words or terms of similar import and meaning, or through any other means or device or in any manner, that said respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

4. Representing as the customary or regular prices or values for respondents' 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.

5. Representing through fictitious prices marked or stamped on or affixed to food flavoring or other products, sold in combination deals or otherwise, or on the containers thereof, or through any other means or device or in any manner, that said prices so marked, stamped, or affixed are the regular or customary retail prices for such products.

6. Using the term "vanilla extract" to describe a flavoring product, unless prepared with a vehicle of ethyl alcohol and containing a flavoring content at least 50 percent of which shall consist of true vanilla made from the vanilla bean.

7. Representing that respondents' so-called vanilla extract has no equal for quality, or that it is the finest available at any price, or that it is composed of vanillin, coumarin, caramel color, and a liberal quantity of pure vanilla made from the choicest vanilla beans, unless and until a liberal quantity of pure vanilla, made from vanilla beans, is actually used in the preparation of said alleged extract, the whole suspended or carried in a vehicle of ethyl alcohol.

8. Using the words "orange," "lemon," "maple," and "almond" in combination or connection with the word "extract" until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol.

9. Representing that a special account of \$3,000 or any other amount represented to be used to cover refunds for returned Maid-O-Best products is deposited in the Western State Bank of St. Paul,

Minn., or in any other financial institution, until and unless said sum be actually deposited and maintained on deposit in such bank or other financial institution and there kept available in liquid form for the said purpose.

10. Representing that it is easy for agents or representatives to earn up to \$15 or any other sum of money per day in selling respondents' products, unless and until the sum named is a true representation of the average net earnings or profits consistently made by respondents' agents or representatives in the ordinary course of business under normal conditions and circumstances.

11. Designating any so-called food flavors as extracts until and unless they are genuine extracts dissolved and carried in alcoholic solution.

12. Representing that cheap, inferior ingredients contained in flavoring preparations are of "high quality" or "purest and finest."

13. Representing that respondents buy their raw materials in "tremendous quantities," and from representing that greater savings are thereby passed on to the housewives of America, until and unless said statements are true in fact.

14. Representing that the product "Choc-O-Toddy" or any other product is manufactured by the respondents unless and until such respondents actually own or operate, or directly and absolutely control, a manufacturing plant wherein said product is manufactured by them.

15. Representing, designating, or describing articles of merchandise regularly included in a combination offer with other identical, similar, or other articles of merchandise as "free," "included free," or any other term of similar import or meaning.

16. Using the word "free" to describe or refer to goods, wares, or merchandise forming a part of any combination offer unless all of the terms and conditions of such offer are clearly and unequivocally stated in immediate connection or conjunction with the word "free" in words, letters, or figures of equal conspicuousness and there is no deception as to the price, quality, character, or any other feature of any items in the offer.

17. Representing that so-called "special offers" or "special deals" are limited to a given period of time or to a given number of persons, if in truth and in fact the prices stated in such offers and deals are the regular, usual, and customary prices at which the products therein mentioned are offered for sale.

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

Complaint

IN THE MATTER OF

LELAND F. BENHAM, TRADING AS THE ZELLE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3854. Complaint, July 17, 1939—Decision, Sept. 11, 1939

Where an individual engaged in sale and distribution of two medical preparations for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," to purchasers in various other States and in the District of Columbia; in advertisements which he disseminated through the mails, through insertions in newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of his said preparations—

- (a) Represented that his said medicinal products, designated as "Zellets No. 1" and "Zellets No. 2," were a competent and effective remedy for delayed menstruation, and were harmless, and would accomplish results without pain or inconvenience, facts being they were not such a competent and effective remedy for said condition, and would not accomplish results as aforesaid claimed, and were not safe and harmless in that said "Zellets No. 1" contained aloes and oil of savin, and said "Zellets No. 2" contained aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin, and aforesaid drugs were present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual; and
- (b) Failed to reveal, in advertisements disseminated as above, that use of said preparation, under conditions prescribed therein or under conditions such as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and to induce, because of such belief, purchase of his said injurious, drug-containing, medicinal products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Leland F. Benham, an individual, trading as The Zelle Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing