

IN THE MATTER OF
WALDES KOH-I-NOOR, INC., AND THE GREY ADVERTISING AGENCY, INC.

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

Docket 3269. Complaint, Nov. 20, 1937—Decision, Nov. 16, 1939

Where a corporation engaged in manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners, and, on occasions and as means of promoting sale and distribution of its said products, in causing ladies' handbags, in which were included certain of its fastening devices, to be made and offered and sold in commerce among the various States; and a corporate advertising agency which had been long engaged as such in sale of advertising, advertising copy, mats, cuts, and sales stimulation and merchandising plans and similar material, and which functioned for said manufacturing company as its representative with respect to acts and practices below set forth, and in publication of advertisements in question, and in promoting sale and distribution of products made by or at instance of said manufacturing corporation, and including ladies' handbags in which were incorporated said manufacturer's "Kover-Zip" slide fastener or zipper; and, as thus engaged, in causing said zippers and handbags and mats, cuts, and advertising materials relating and referring thereto, to be offered, sold, and transported to prospective purchasers and purchasers in various other States and in the District of Columbia, in substantial competition with others offering, selling, and distributing in commerce ladies' handbags and other like or similar products of kind above described;

In pursuing and carrying out certain advertising and sales programs promotional of sale and distribution in various States of ladies' handbags or purses equipped with zippers and "Kover-Zips" of said manufacturer, which promotional sales plans had been laid out and executed by said advertising agency for said manufacturer and were financed by latter, and under which they (1) purchased from various couturiers in France number of ladies' handbags, designed and made by said couturiers, costing various prices ranging from \$11.38 to \$22.75, and representing, in case of each, one particular design only, (2) imported 32 of such bags, costs of which, after importation and payment of customs duties and other charges, were thereby increased and ranged from \$15.86 to \$31.21 per bag, (3) distributed among certain handbag manufacturers in the United States, for copying as to design and style and for production in commerce in quantity, to sell at prices ranging from \$2.95 to \$3.50, said handbags, and (4) caused 24 of said imported French-made bags to be illustrated in page advertisements in issues of fashion magazine of wide circulation in and throughout the several States and in said District, and to be there represented at retail prices ranging from \$35 to \$88 and \$95, for the purpose of creating price basis and promotional background for subsequent advertisement and sale of their American-made style copies of said bags, and for advertisement and sale thereof by retailers to members of buying public and not for

purpose of inducing purchase of the originals therein depicted, which were, in fact, not offered or sold to retailer or other selling channels or at prices as aforesaid—

- (a) Represented, in certain other advertising and sales promotion letters and literature, in which they offered and sold their American and domestic made ladies' handbags, and in which various advertising material they included facsimile copies of the aforesaid advertisements in said fashion magazine, and in advertising copy and sales promotion programs laid out and provided for sale and distribution of their said domestic-made handbags by retailers, that "For this 'Paris promotion'" said manufacturer had "sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for \$2.95," and that they were "Identical! Even to Invisible Kover-Zip Slide Fasteners!" and that their said handbags were, among other things, "EXACT COPIES OF PARIS BAGS As headlined in Vogue \$35 to \$80" and "Identical Facsimiles" and "* * * so faithful in every detail that the designers permitted their own labels to be used in them," and "Identical Copies of Expensive Paris Originals" and "Authentic and Identical Copies of Paris Bags at \$2.95" with "strong appeal to the woman who buys fashion," and advised reader that advertisement in said fashion magazine was purely "merchandising device" to enable "you to authenticate and substantiate your claim of the copied bags being identical in every detail to the high-priced"; and
- (b) Caused said various advertising and sales promotion letters and literature, with statements and representations therein as above set forth and indicated, to be circulated and distributed to certain department stores and other retail sellers of ladies' handbags in and throughout the various States and in said District, by whom their said American and domestic-made ladies' handbags, as consequence of aforesaid sales promotion program, etc., were advertised for sale by reference to said fashion magazine advertisements and by use of facsimile copies thereof, and through widely employing advertising copy supplied by said manufacturer and advertising agency, as "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," and "Exact Reproductions" of said imported French-made handbags; Facts being their said domestic products were not in all particulars true copies of French-made handbags which, as designed and made in France, and especially in Paris, and imported therefrom into the United States, command, among purchasers in latter country, a special and favorable reputation for high quality and value in matters of design, style, materials, and workmanship, and true copies of which are readily salable and in demand among purchasers of such products in and throughout the United States by reason of such reputation, but said domestic ladies' handbags, as actually offered and sold by them in course of their said business and in course of their said sales promotion programs as above described and referred to, were copies of the French-made bags in matters of style and design only, and in matters of ornament, materials, and workmanship were substantially cheaper and inferior in quality and value to the French-made handbags in question, and which did not command the retail values or prices represented in said fashion periodical advertisements, or command retail values or prices of more than about one-half of those there represented;

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With capacity and tendency, through aforesaid acts and practices in advertising, illustrating, and pricing imported French-made ladies' handbags in magazine or publication circulating to members of the buying public, and in referring thereto and causing same to be referred to by retailers in connection with offer, etc., of their domestic-made ladies' bags equipped with said manufacturer's fastening devices, and in representing and causing said domestic bags to be represented as "Authentic Copies," etc., of such imported products, to mislead and deceive members of buying public and purchasers of such domestic-made bags into false and erroneous belief that the imported products in question were actually offered and sold in retail selling channels and at prices represented, and that said domestic bags were true copies, and in all particulars, including design, style, etc., of said imported products and comparable and equal in quality and value thereto, and into purchase of said domestic products in reliance upon such erroneous belief, and with result, as consequence, of unfairly diverting trade in commerce in domestic-made ladies' handbags and fastening devices therefor to them from their competitors engaged in offer and sale of such bags or devices:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Karelsen & Karelsen, of New York City, for *Waldes Koh-I-Noor, Inc.*

Mr. George J. Beldock, of New York City, for *Grey Advertising Agency, Inc.*

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 *Waldes Koh-I-Noor, Inc.*, a corporation, and *The Grey Advertising Agency, Inc.*, a corporation, hereinafter designated as respondents, 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, *Waldes Koh-I-Noor, Inc.*, is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 47-52 Twenty-Seventh Street, Long Island City, N. Y., in said State of New York.

Respondent, *The Grey Advertising Agency, Inc.*, is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 128 West Thirty-first Street, New York, in said State of New York.

PAR. 2. Respondent, Waldes Koh-I-Noor, Inc., for a long time last past has been, and now is, engaged in the manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners, and on occasions such as hereinafter described has participated in the manufacture and sale of ladies' handbags in commerce among and between the various States of the United States. One of the devices regularly manufactured by it is a slide fastener or zipper which it terms the "Kover-Zip." These zippers were prominently featured in connection with the advertisement and sale of the handbags in the sales plan hereinafter described.

Respondent, The Grey Advertising Agency, Inc., for a long time last past has been, and now is, engaged in the operation of an advertising agency and in the sale of advertising, advertising copy, mats, cuts, sales stimulation, and merchandising plans and similar material. It functions for respondent Waldes Koh-I-Noor, Inc., as its representative with respect to the acts and practices herein charged and specifically in the publication of the advertisements hereinafter referred to, and in promoting the sale and distribution of the products manufactured by or at the instance of the said Waldes Koh-I-Noor, Inc., including the ladies' handbags herein referred to, in commerce among and between the various States of the United States.

PAR. 3. Respondents, engaged in business as aforesaid, cause, or participate in causing, said zippers, purses, handbags, mats, cuts, advertising plans and material to be transported, when sold, from the place of manufacture or from their principal places of business in the State of New York into and across the various States of the United States, to the respective purchasers thereof located at various places in States other than the States wherein said products are manufactured or said shipments originate, and in the District of Columbia. At all times referred to herein respondents have maintained, or aided, assisted and promoted, a constant current of trade and commerce in said products, advertising and sales plans so sold or promoted by them between and among the various States of the United States and in the District of Columbia.

Other corporations, firms, partnerships, and persons have been and are engaged in offering for sale, selling, and promoting the sale of competitive purses and other products as hereinabove described in commerce between and among the various States of the United States. Respondents are engaged in substantial competition with such other corporations, firms, partnerships, and persons in promoting the sale, sale and distribution of purses, zippers, handbags, and other products hereinbefore described, in such commerce.

PAR. 4. In promoting and offering for sale and selling its said zippers, ladies' handbags, and other products, the respondent, Waldes Koh-I-Noor, Inc., acting directly and through The Grey Advertising Agency, Inc., purchased in Paris, France, about 25 genuine French designed and manufactured ladies' handbags or purses of various designs and styles for use in copying and production of domestic bags in the United States. These imported purses cost varying prices, from \$12.68 to \$22.75 each (allowing 6½ cents as the rate of exchange for the French franc), which, plus duty at 35%, raises the cost thereof to the said respondents various sums ranging from \$17.11 to \$30.71 each. These bags, although purchased only as samples and not for the purpose of sale, were advertised by respondents in the nationally known and circulated magazine "Vogue," published by Conde Nast Publications, Inc., in a manner calculated to indicate and to represent they were, or had been, offered for sale to the purchasing public of the United States at retail at prices ranging from \$35 to \$80 each.

The handbags so imported by the respondents into the United States were distributed among various handbag manufacturers, who reproduced the same in commercial quantities along the same general design and with the same general appearance as the originals but without using the same kind or quality of materials and with other differences.

Thereafter, the said "Vogue" advertisements showing these false and fictitious retail values were featured in practically all advertisements and promotional literature published either directly by the respondents or by retailers at their behest, announcing the sale of the domestic reproductions. The deception created by this false comparison of domestic purses, which generally sold to the public at retail for \$2.95, with high-priced imported purses, which were advertised for sale but never sold or offered for sale, was furthered and emphasized by displays of the "Vogue" advertisements reproduced in large size for use in shop windows together with the domestic bags. The bags so manufactured and distributed in commerce as herein described as reproductions of the imported bags at the instance and cooperation of respondents, were all equipped with the zippers manufactured by the respondent, Waldes Koh-I-Noor, Inc. The sale to retailers of the said domestic bags was accomplished on orders taken by respondents or on orders sent direct to the factories therefor, at the option of the retailer, all as duly explained in the sales plans and order blanks transmitted by respondents to said retailers.

PAR. 5. In the course and conduct of their business as hereinabove described, the respondents, Waldes Koh-I-Noor, Inc., and The Grey

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Advertising Agency, Inc., acting concertedly and in cooperation with each other, in promoting the sale of and selling the slide fasteners and domestic purses hereinabove described, published, or aided and assisted in publishing, advertisements promoting the sale of these articles in newspapers and magazines of wide circulation, and caused copies of sample advertisement cuts, mats, and sales plans, descriptive of and elaborating on their promotional plans, to be distributed to retailers for similar use. These sales plans and suggested advertisements so furnished retailers by the respondents were widely adopted, used, and published, either in whole or in part, by retail merchants in all parts of the United States to assist in the sale of the said domestic purses. By the aforesaid means, the respondents herein make, and have made, representations, among others, such as the following:

For this "Paris promotion" the Waldes Company sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for \$2.95.

\$2.95

Identical!

Even to Invisible

KOVER-ZIP Slide Fasteners!

As Seen in Vogue
A Sensational Offering of
Authentic Copies

EXACT COPIES OF PARIS
BAGS

As headlined in Vogue
\$35 to \$80

Identical
Even to Invisible
KOVER-ZIP

Our copies are so faithful in every detail that the designers permitted their own labels to be used in them.

Couturiers Original Bags
\$32.50 to \$95
Our identical copies

Identical Copies of Expensive Paris Originals.

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Authentic and Identical Copies of Paris Bags
at \$2.95

have a strong appeal to the woman who buys fashion.

The Vogue advertisement is purely a merchandising device which enables you to authenticate and substantiate your claim to the copied bags being identical in every detail to the high-priced.

By this means and through these representations the public is, and has been, led to believe that the domestic purses so manufactured as above described, and retailed for \$2.95 or thereabouts, are identical copies of imported handbags regularly sold at retail in the United States at prices ranging from \$32.50 to \$80, and in some instances as high as \$95.00.

In truth and in fact, the said imported bags so illustrated and advertised were never sold or offered for sale to the purchasing and consuming public in the United States, and had no actual retail value or price whatsoever. The said advertisements appearing in the magazine "Vogue" were a pure subterfuge or device calculated and intended by the respondents to give the domestic bags so produced in imitation of the imported bags a false and fictitious value by virtue of the false comparison, thus creating a preference and exceptional demand therefor on the part of the purchasing public. Handbags identical or similar to those imported by the respondents do not have a regular retail sales price or value of from \$35.00 to \$80.00. On the contrary, such bags are regularly sold at retail at prices far below those figures. Said domestic bags are not authentic copies, identical facsimiles, exact reproductions or copies of said imported bags, but are made from materials far cheaper and inferior thereto and differ therefrom in other respects.

PAR. 6. There are among the competitors of respondents, other corporations, firms, partnerships, and individuals who sell or promote the sale of handbags, slide fasteners, zippers, sales plans, advertising, and advertising matter and other products, as hereinabove described, in interstate commerce, who do not in any manner misrepresent the character, quality, or value of their respective products, or of products the sale of which is advertised and promoted by them, or engage in practices similar to those hereinabove detailed.

PAR. 7. The acts and practices of respondents in falsely representing and advertising their products, or the products advertised and promoted by them, in the manner hereinabove set out, are calculated to mislead and deceive, and have the capacity and tendency to, and do, mislead and deceive, a substantial portion of the purchasing and

consuming public into the erroneous belief that all of said representations are true and into the purchase of the bags and zippers, or combinations thereof, sold, promoted or advertised by the respondents, in reliance upon the truthfulness of said representations. The respondents have also placed in the hands of wholesalers, jobbers and retailers the means of making false and misleading representations, as above described, to the purchasing and consuming public, by which means all, or some of them, have increased their own sales of ladies' handbags so advertised and represented, thereby lessening the market for similar goods sold by other manufacturers, merchants or dealers, the true value, grade, quality and nature of which is honestly stated.

As a result thereof, trade is unfairly diverted to respondents from competitors engaged in the advertisement, promotion and sale in commerce as herein defined, of similar ladies' handbags, zippers, and other products, who truthfully represent the value, nature, and quality of their respective products. Further, substantial injury has been and is now being done by respondents to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of respondents have been and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 20th day of November 1937, issued and served its complaint in this proceeding upon respondents, Waldes Koh-I-Noor, Inc., a corporation, and The Grey Advertising Agency, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 4, 1938, respondents filed their separate answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and their counsel, Max J. Rubin for respondent Waldes Koh-I-Noor, Inc., and George Beldock for respondent The Grey Advertising Agency, Inc., and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the ap-

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proval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed upon said statements of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Waldes Koh-I-Noor, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 47-52 Twenty-seventh Street, Long Island City, N. Y., in said State of New York.

Respondent, The Grey Advertising Agency, Inc., is a corporation organized and doing business pursuant to the laws of the State of New York, having its office and principal place of business at 128 West Thirty-first Street, New York, in said State of New York.

PAR. 2. Respondent, Waldes Koh-I-Noor, Inc., for more than 3 years last past has been, and now is, engaged in the manufacture of fastening devices, such as snap fasteners, snap buckles, hook and eye and slide fasteners. As a means of promoting the sale and distribution of said products, respondent on occasions, such as hereinafter described, has caused and causes ladies' handbags, which include certain of said products, to be manufactured, offered for sale, and sold in commerce among and between the various States of the United States. One of the devices regularly manufactured by respondent is a slide fastener or zipper, which is termed "Kover-Zip." These zippers have been and are prominently featured in connection with the advertisement and sale of the ladies' handbags hereinafter described.

Respondent, The Grey Advertising Agency, Inc., for a long time last past has been, and now is, engaged in the operation of an advertising agency and in the sale of advertising, advertising copy, mats, cuts, sales stimulation and merchandising plans and similar material. It functions for respondent Waldes Koh-I-Noor, Inc., as its repre-

sentative with respect to the acts and practices herein charged and specifically in the publication of the advertisements hereinafter referred to, and in promoting the sale and distribution of the products manufactured by or at the instance of the said Waldes Koh-I-Noor, Inc., including the ladies' handbags herein referred to in commerce among and between the various States of the United States.

PAR. 3. Respondents, engaged in the business aforesaid, have caused and cause said zippers, and handbags, and mats, cuts, and advertising materials, relating and referring to said zippers and handbags, to be offered for sale, sold, and transported from the State of New York to prospective purchasers and purchasers located in various States other than the State of New York and in the District of Columbia. At all times referred to herein respondents have maintained, or aided, assisted, and promoted, a constant current of trade and commerce in said products among and between the various States of the United States and in the District of Columbia.

Other corporations, firms, partnerships, and individuals have been and are engaged in the business of offering for sale, selling, and distributing ladies' handbags, and other like or similar products of the kind hereinabove described in commerce among and between the various States of the United States and in the District of Columbia. Respondents have been and are substantially engaged in competition with such other corporations, firms, partnerships, and individuals in offering for sale, selling, and distributing said products in such commerce.

PAR. 4. During the spring and fall of the year 1936, and at various times thereafter, respondents engaged in certain advertising and sales programs promotional of the sale and distribution, in various States of the United States, of ladies' handbags or purses, combined and equipped with, and inclusive of, the fastener products of respondent Waldes Koh-I-Noor, Inc. Said fasteners are otherwise known as "zippers" and more particularly as "Kover-Zips." The plans for these promotional sales were laid out and executed by respondent The Grey Advertising Agency, Inc. for respondent Waldes Koh-I-Noor, Inc., and were financed by the said latter company. In connection therewith respondents purchased a number of ladies' handbags designed and manufactured by various couturiers in France. Only one bag of each particular design was purchased. The said bags cost varying prices, ranging from \$11.38 (175 francs) to \$22.75 (350 francs), allowing \$.06½ per franc, the rate of exchange for the French franc at the time of purchase. The said handbags were then imported by respondents into the United States from France. The payment of customs duties at 35% raised the cost thereof to respond-

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ents to sums ranging from \$15.36 to \$30.71 per bag. Thirty-two such bags were imported. Cases and packing charges at 70.60 francs, insurance at 79.50 francs, and Consular fees and expenses at 43.75 francs, totaling 193.95 francs, plus delivery charges after import, raised the cost to respondents for each bag by \$0.50, more particularly, to sums ranging from \$15.86 to \$31.21 per handbag. The said handbags were then distributed among certain handbag manufacturers in the United States for copying as to design and style and for production in commercial quantities to sell at prices ranging from \$2.95 to \$3.50. Pursuant to the aforesaid sales promotional programs, respondent then caused 24 of the said imported French-made bags to be illustrated in page advertisements appearing in March and September issues of *Vogue*, a magazine having a wide circulation in and throughout the several States of the United States and in the District of Columbia, and in said advertisements caused the said French-made bags to be represented at retail prices ranging from \$35 to \$80 and \$95.

The purpose of the aforesaid *Vogue* advertisements was to create a price basis and promotional background for subsequent advertising and sale of respondents' American-made style-copies of the said French-made handbags and for the advertising and sale thereof by retailers to members of the buying public. The said advertisements were not for the purpose of inducing the purchase of the original French-made handbags therein pictured, and the said originals therein illustrated were not in fact offered for sale or sold to retailer or other selling channels or at prices ranging from \$35 to \$80 and \$95. Ladies' French-made and imported handbags, of the same quality, design, style and material, as the bags purchased by respondents in France and illustrated in the said *Vogue* advertisements, when and where offered for sale and sold through retail selling channels in the United States, did not and do not command the retail values or prices represented in said advertisements, and did not and do not command retail values or prices of more than about one-half of the values or prices represented in said advertisements.

PAR. 5. Thereafter, pursuant to the aforesaid sales promotion program, respondents caused certain other advertising and sales promotion letters and literature to be circulated and distributed to certain department stores and other retail sellers of ladies' handbags in and throughout the various States of the United States and in the District of Columbia, in which respondents offered for sale their American and domestic-made ladies' handbags, and in which respondents referred to and included facsimile copies of the aforesaid advertisements as the same appeared in *Vogue* magazine, and otherwise laid out and provided advertising copy and sales promotion programs

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for the sale and distribution of respondents' said domestic-made handbags by said retailers. Demonstrative of the statements and representations, among others, made by respondents in the said advertising and sales promotion, letters and literature, are the following:

For this "Paris promotion" the Waldes Company sent a stylist and an authority on handbags to Paris to get the finest Couturiers to design bags that could be faithfully reproduced here—for \$2.95.

\$2.95

Identical!

Even to Invisible

KOVER-ZIP Slide Fasteners!

As Seen in Vogue

**A Sensational Offering of
Authentic Copies**

EXACT COPIES OF PARIS

B A G S

**As headlined in Vogue
\$35 to \$80**

Identical Facsimiles.

Exact Reproductions

Our copies are so faithful in every detail that the designers permitted their own labels to be used in them.

Couturiers Original Bags

\$32.50 to \$95

Our identical copies

Identical Copies of Expensive Paris Originals.

Authentic and Identical Copies of Paris Bags at \$2.95 have a strong appeal to the woman who buys fashion.

The Vogue advertisement is purely a merchandising device which enables you to authenticate and substantiate your claim of the copied bags being identical in every detail to the high-priced.

As a consequence of the aforesaid sales promotion program and of the statements and representations made by respondent in the aforesaid sales promotion letters and literature, retailers of respondents' said products, in and throughout the United States and in the District of Columbia, advertised said products for sale by reference to said Vogue advertisements and by use of facsimile copies thereof and widely employed the advertising copy supplied by respondents and therein represented the said domestic-made handbags as "Au-

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thentic Copies," "Identical Copies," "Identical Facsimilies," "Exact Copies," and as "Exact Reproductions" of the aforesaid imported French-made handbags.

PAR. 6. Ladies' handbags which are designed and made in France, especially Paris, France, and imported into the United States, have heretofore commanded, and now command, among purchasers of ladies' handbags in the United States, a special and favorable reputation for high quality and value in matters of design, style, materials, and workmanship, and true copies of such handbags are readily salable and in demand among purchasers of ladies' handbags in and throughout the United States by virtue of said reputation. The unqualified word "copy," and such words as "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," and "Exact Reproductions," when used to describe domestic-made ladies' handbags by reference to French-made ladies' handbags, imply and represent, and induce members of the buying public to believe, that said domestic-made handbags are true copies of, and in all particulars are comparable and equal in quality and value to said French-made ladies' handbags.

PAR. 7. Respondents' said handbags were not and are not in all particulars true copies of French-made handbags, and were not and are not "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," or "Exact Reproductions," of the French-made ladies' handbags herein referred to. The ladies' handbags actually offered for sale and sold by respondents in the course of their said business and in the course of said sales promotion programs, all as hereinbefore described and referred to, were and are copies of French-made handbags in matters of style and design only. In matters of ornament, materials and workmanship, respondents' said handbags were and are substantially cheaper and inferior in quality and value to that of the said French-made handbags.

PAR. 8. Respondents' aforesaid acts and practices of advertising, illustrating, and pricing of imported French-made ladies' handbags in a magazine or publication having a circulation to members of the buying public in and among the various States of the United States, and in the District of Columbia, and in referring to the same, and causing the same to be referred to by retailer sellers, in connection with the offering for sale and sale of domestic-made ladies' handbags, equipped with fastening devices of respondent Waldes Koh-I-Noor, Inc., and in representing and causing said domestic-made ladies' handbags to be represented as "Authentic Copies," "Identical Copies," "Identical Facsimiles," "Exact Copies," "Exact Reproductions," or as "Copies" of such imported French-made ladies' hand-

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bags, has had and has the capacity and tendency to mislead and deceive members of the buying public and purchasers of such domestic-made ladies' handbags into the false and erroneous belief that such imported French-made ladies' handbags were and are actually offered for sale and sold in retail selling channels and at the prices so represented and that the said domestic-made ladies' handbags are true copies of, and in all particulars, inclusive of design, style, materials, ornaments, and workmanship, comparable and equal in quality and value to, such imported French-made ladies' handbags, and thus into the purchase of said domestic-made handbags in reliance upon such erroneous belief. In consequence thereof, trade and commerce in domestic-made ladies' handbags and fastening devices therefor has been and is unfairly diverted to respondents from their said competitors engaged in the business of offering for sale and selling ladies' handbags or fastening devices therefor.

CONCLUSION

The aforesaid acts and practices of respondents, Waldes Koh-I-Noor, Inc., and The Grey Advertising Agency, Inc., are to the injury and prejudice of the public and of respondents' 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, the answers of respondents, and a stipulation as to the facts entered into between respondents herein and W. T. Kelley, Chief Counsel of the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondents herein, findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, 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 Waldes Koh-I-Noor, Inc., and The Grey Advertising Agency, Inc., corporations, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of ladies' handbags or any other article of merchandise fitted or equipped with any fastening device sold by re-

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spondents Waldes Koh-I-Noor, Inc., in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, or causing, or inducing others to represent, that any imported French-made ladies' handbag has been or is regularly offered for sale and sold through retail channels, when such is not the fact, or that such handbag has been or is offered for sale and sold at a retail price for which the same has not been or is not regularly offered for sale and sold.

2. Representing, or causing or inducing others to represent, that any imported French-made ladies' handbag has a value which in fact such handbag does not have.

3. Representing, or causing or inducing others to represent, that any domestic-made ladies' handbags are "Copies," "Reproductions," or "Facsimiles," of any imported ladies' handbags, French-made or otherwise, unless such domestic-made handbags are true copies, reproductions, or facsimiles of, and in all particulars, inclusive of design, style, materials, ornament, and workmanship, comparable and equal in quality to, the imported handbags of which the domestic-made handbags are, or purport to be, copies, reproductions, or facsimiles.

It is further ordered, That said respondents do forthwith cease and desist from distributing any advertising matter in said commerce which contains any of the aforesaid representations for use in connection with the promotion of the sale of any such article.

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.

Syllabus

IN THE MATTER OF

AMERICAN CLINICAL LABORATORIES, INC., OFFICIAL
RESEARCH BUREAU OF NEW YORK, INC., FEDERAL
RESEARCH CORPORATION, AND SHELLEY BRAVER-
MANCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3415. Complaint, May 10, 1938—Decision, Nov. 16, 1939*

Where two corporations respectively engaged, as American Clinical Laboratories, Inc., and Federal Research Corporation, in sale and distribution of medicinal preparation designated "Retardo" for reduction of weight, and acting under direction and control of an individual who owned majority of the stock thereof; in advertising said preparation through newspapers, periodicals, bulletins and publications of general circulation among the various States, and through radio continuities broadcast from stations of extra-state audience—

- (a) Represented that said preparation afforded safe, competent, effective and reliable method of treatment for losing weight, which would accomplish such result without dieting or exercise, and constituted newest discovery for such purpose and contained no dangerous drugs, facts being it was not a safe method for losing substantial amount of weight, but contained, in substantial amount, boric acid, which had potential toxic properties and was cumulative in action if taken in daily or frequent doses, and would result, if taken according to their directions, in manifest toxic effects to large number of users, it was not newest discovery for treatment of excess weight, only competent, reliable, safe and effective method for treating which is proper exercise and diet, and it did contain a harmful or dangerous drug in boric acid content thereof as aforesaid, and had no substantial therapeutic value as remedy or cure for, or treatment of, obesity, and said statements and representations made relative thereto were grossly inaccurate, incorrect and exaggerated, and not true statements of therapeutic value of product in question; and

Where said corporation first referred to—

- (b) Represented to members of purchasing public, through use of word "Laboratories" as part of its corporate name, that it was manufacturer or compounder of said "Retardo," facts being it purchased said preparation from the manufacturer or compounder thereof and acted as middleman in distributing said product in commerce as aforesaid, and was not manufacturer, for the purchase of the products of which direct there is preference on part of substantial number of members of purchasing public as eliminating, in their belief, profit of so-called middleman and securing substantial financial saving and various other advantages; and

Where said corporation last referred to, and third corporation, name of which was "Official Research Bureau of New York, Inc.," and stock of which was owned entirely by individual aforesaid, who directed and controlled its