

Syllabus

IN THE MATTER OF
McKESSON & ROBBINS, INC.

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

Docket 3791. Complaint, May 16, 1939—Decision, Dec. 28, 1939

Where a corporation engaged in manufacture of its "Calox Tooth Powder" or dentifrice, and in sale and distribution thereof to purchasers at various points in other States, in substantial competition with those likewise engaged in such sale and distribution of tooth powders or dentifrices, including among competitors some who do not in any way misrepresent the ingredients in or efficacy of their products in distribution thereof in commerce; in advertising its said product in newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and through broadcasts from radio stations of interstate scope and power—

- (a) Represented, directly and through implication, that use of said powder would assure possession of teeth which were white, clear and sparkling and which were beautiful as those of movie stars, and that such stars employed its said powder to the exclusion of other dentifrices and relied upon it alone in the care of their teeth, through such statements, among others, as "For teeth that 'Shine like the Stars' use Calox Powder," "* * * Take a cue from Hollywood * * *," "* * * gives teeth the whiteness and brilliance the screen demands. It deserves its popularity with the stars * * *," facts being no dentifrice alone is capable of giving all movie stars white, clear and sparkling teeth, use of its said tooth powder alone will not assure possession of such teeth or those as beautiful as teeth of such stars, and such stars do not employ said powder to exclusion of all other dentifrices nor rely thereon or upon any other dentifrice alone in the care of their teeth;
- (b) Represented, as aforesaid, that no tooth surface was neglected and that its said dentifrice would clean the proximal surfaces between the teeth, and that use thereof would result in the liberation of nascent oxygen in the mouth and would prevent film or decay and remove all types of stains, asserted three worst enemies of one's teeth, facts being said powder would not result in such liberation, but the foam resulting from use thereof, which it emphasized, was due largely to the soap content thereof, and it would not clean the proximal surfaces nor prevent film or decay or remove all types of stains, or any stain other than the ordinary surface stains;
- (c) Represented that sodium perborate in said powder would keep gums firm and healthy, and that use of a tooth powder was more effective in cleansing and polishing teeth than was use of a tooth paste, and would neutralize acid mouth conditions and constituted an effective antiacid, facts being said sodium perborate will not accomplish results claimed therefor and might not be a safe cleansing agent for continued use by one unusually sensitive or allergic thereto, dentists differ in their preference for tooth powders or tooth pastes for the brushing, polishing or cleansing of teeth,

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there is no consensus of opinion in the dental profession favoring use of tooth powders instead of tooth pastes, and said "Calox" will not neutralize acid mouth conditions, is not an efficient antacid and, except for use as a mild deodorant, has no substantial value for purposes other than cleansing and polishing the teeth; and

- (d) Represented that said "Calox" was more economical to purchase and use than competitive dentrifices and would accomplish results which could not be accomplished by such competing products, many of which it asserted had a greater tendency to injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues, facts being whether said powder was more economical to purchase and use than competitive tooth pastes would depend upon facts involved in any such comparison of costs and uses, cleansing ingredients of said powder were chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate, with foam largely due, as above set forth, to soap content and not to release of oxygen by other ingredients, most dentrifices, including pastes and powders, possess in common essential ingredients which are generally safe and effective for such cleansing purposes, many competing products have no more tendency to injure, scratch, or destroy tooth enamel, structure, or mouth tissue than has said "Calox," and effectiveness of any tooth powder or paste is dependent largely upon manner in which applied, with brush employed playing an important part in cleansing process;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such beliefs induced by said misrepresentations, that number of purchasing public bought substantial quantity of its said powder and trade was unfairly diverted to it from others likewise engaged in sale and distribution of dentrifices truthfully advertised and vended by them; to the substantial injury of competition in commerce:

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

Mr. Merle P. Lyon for the Commission.

Mr. William J. Wardall, Trustee, Estate of McKesson & Robbins, Inc., of New York City and *Mr. Clinton Robb*, of Washington, D. C., 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 McKesson & Robbins, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mary-

land, with its office and principal place of business located at Bridgeport, Conn. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of various drugs, pharmaceutical, and proprietary products, including, among others, a dentifrice known as "Calox Tooth Powder."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product, "Calox Tooth Powder," when sold, to be transported from its factory at Bridgeport, Conn., to purchasers located in States of the United States other than the State of origin of such shipments, and also in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned product sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now and has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of tooth powders, tooth pastes, and other products intended and used for cleansing teeth, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements, and representations

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contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:¹

The primary representation used by the respondent in its current advertising is the picturization of various popular movie stars, together with the picturization of a can of Calox Tooth Powder, accompanied by the slogan, "For Teeth that 'Shine like the Stars' use Calox Powder."

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's tooth powder and its effectiveness in cleansing the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things: (1) That movie stars have white, clear, and sparkling teeth because they use Calox Tooth Powder, and that Calox alone keeps their teeth white, clear, and sparkling, (2) That anyone who uses Calox Tooth Powder can have teeth as beautiful as those of the movie stars, and that the use of Calox Tooth Powder alone will result in beautiful teeth like those of movie stars, (3) That Calox Tooth Powder will help clean the proximal surfaces between the teeth as well as the broad exposed areas of the teeth, (4) That the sodium perborate contained in Calox Tooth Powder is a safe and efficient cleansing agent, and that it results in the liberation of nascent oxygen in the mouth in such manner as to effectively remove or prevent film, stain, or decay, (5) That the sodium perborate contained in Calox Tooth Powder will have a beneficial effect on the gums and help to keep them firm and healthy, (6) That the use of Calox Tooth Powder will make all normal sets of teeth white and brilliant, (7) That tooth powders, including Calox Tooth Powder are more effective for brushing, polishing, and cleansing teeth than tooth pastes, and are generally recommended by dentists in preference to tooth pastes, (8) That Calox Tooth Powder neutralizes acid mouth conditions, is an efficient antacid, and has substantial value for other purposes than cleansing the teeth, (9) That Calox Tooth Powder is a deodorant, and (10) That Calox Tooth Powder is more economical to purchase and use than competitive tooth pastes.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The

¹ The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of its said preparations, is also set forth in the findings, *infra*, at p. 283, and for that reason is here omitted in the interest of brevity.

true facts are that Calox Tooth Powder does not have any of the qualities or achieves any of the results claimed and represented as hereinabove described.

The only cleansing ingredients contained in Calox Tooth Powder are chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate. Sodium perborate is a drug which should be used in the mouth only under the supervision of a dentist or physician, and is so highly alkaline that indiscriminate use thereof, as in a dentifrice, may result in alkaline burns and lesions of the gums and oral tissues. The consistent use of a dentifrice containing sodium perborate in the concentration found in Calox Tooth Powder may have the tendency and effect of causing soreness, irritation, and chemical burns of the gums and oral tissues.

In truth and in fact, the movie stars do not depend upon Calox Tooth Powder or any other dentifrice alone, but they employ the services of dentists who give them regular prophylactic treatments. The white, clear and sparkling teeth of movie stars is not the result of the use of Calox Tooth Powder, and Calox Tooth Powder alone does not keep their teeth white, clear, and sparkling. Movie stars generally do not use Calox Tooth Powder exclusively or in preference to competing dentifrices, and the permitted use of pictures and testimonials of various movie stars in respondent's advertising of Calox Tooth Powder is the result of a reciprocal publicity arrangement primarily intended for the advertising value thereof in promoting the screen careers and popularity of said movie stars. The use of Calox Tooth Powder will not result in teeth comparable to, or as beautiful as, the teeth of movie stars pictured in respondent's advertising.

Neither Calox Tooth Powder nor any other dentifrice will help clean the proximal surfaces between the teeth or exert any cleansing effect beyond the parts actually reached by the toothbrush. The effect of the sodium perborate contained in Calox Tooth Powder, either alone or in conjunction with any other cleansing ingredients contained therein, in the liberation of active oxygen is extremely slow and will not take place to any marked degree during the short time that Calox Tooth Powder is applied to the teeth. The foam obtained from the use of Calox Tooth Powder is due to the soap content thereof, and not to oxygen released by the sodium perborate or any other ingredient contained therein. Calox Tooth Powder will not prevent film, stain, or decay of teeth. The use of sodium perborate in a dentifrice will not prevent or eradicate gum infection or have any beneficial effect on the gums, but on the contrary may result in painful burns and lesions of the gums. The

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use of Calox Tooth Powder will not make all normal sets of teeth white and brilliant. Many normal sets of teeth vary in all shades of color and translucency ranging from brilliant to dull and these shades cannot be altered or changed by the use of any dentifrice. Tooth powders, including Calox Tooth Powder, are no more effective for brushing, polishing, and cleansing teeth than tooth pastes. Tooth powders having a chalk base are very similar in properties to toothpastes, and there is no polishing ingredient contained in Calox Tooth Powder which is not found in other tooth powders or pastes. Most dentifrices, both pastes and powders, are composed essentially of chalk or other abrasives which are standardized and safe so far as their cleansing ingredients are concerned. Tooth powders are not generally recommended by dentists in preference to tooth pastes. Calox Tooth Powder is not an efficient antacid and is not effective to neutralize acid-mouth conditions. It does not have substantial value for oral hygiene purposes other than cleansing the teeth. The normal acid-alkali balance of the blood or other bodily fluids cannot be easily changed, and neither Calox Tooth Powder nor any other dentifrice will have any beneficial effect toward changing this balance. Calox Tooth Powder does not have any therapeutic value or any value other than to assist the toothbrush in the cleansing of the teeth. Calox Tooth Powder is not a competent and effective deodorant, and the only effect of the flavoring or other ingredients contained therein is to temporarily mask the breath or other unpleasant odors in some cases. Calox Tooth Powder is no more economical to purchase and use than other tooth powders or pastes. Calox Tooth Powder is no more concentrated or economical to use than other competing dentifrices, and its use does not accomplish results that cannot be accomplished by other competing preparations. Competitive dentifrices do not injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues to any greater extent than does respondent's tooth powder. The use of competitive dentifrices, including pastes, is neither unsafe nor dangerous. All tooth powders and pastes are essentially similar in properties and effect. Any cleansing effect accomplished by brushing the teeth with tooth paste or powder is due primarily to the mechanical action of the brush and not to the ingredients contained in the tooth paste or powder.

PAR. 7. There are among respondent's competitors many who manufacture, sell, and distribute tooth powders and tooth pastes and other products designed, intended and sold for the purpose of cleansing and beautifying the teeth who do not in any way misrepresent the qualities, effectiveness, or character of their respective products.

PAR. 8. The use of the aforesaid false and misleading statements, representations and advertisements by the respondent in designating or describing its said product, Calox Tooth Powder, and the effectiveness of said product in the cleansing and care of the teeth, in offering for sale and in selling its said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed.

PAR. 9. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Calox Tooth Powder, with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling tooth powders, tooth pastes, and similar products or other products designed, intended and sold for use in the cleansing and care of the teeth, and who truthfully represent the effectiveness and qualities of their respective products.

As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of May 1939, issued its complaint against said respondent McKesson & Robbins, Inc., and caused such complaint to be served as required by law, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On June 22, 1939, an answer was filed by the respondent. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the said respondent by its counsel, Clinton Robb, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and

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in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement 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, answer, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, McKesson & Robbins, Inc., is a corporation duly organized and existing under the laws of the State of Maryland with its chief office and principal place of business in the city of New York, N. Y., but with other offices in the city of Bridgeport, Conn., and elsewhere in the United States. Respondent is now and for some time has been engaged in the business of manufacturing, selling, and distributing in commerce among and between the various States of the United States a tooth powder or dentifrice known as "Calox Tooth Powder."

PAR. 2. By order of the District Court of the United States for the Southern District of New York, December 19, 1938, in Proceedings for the Reorganization of a Corporation Under Chapter 10 of the Bankruptcy Act, William J. Wardall was appointed sole trustee with authority to conduct the business of respondent corporation, under which authorization he since has continuously acted and now is acting.

PAR. 3. Respondent, being engaged in business as aforesaid, causes said preparation, when sold, to be transported from its place of business in the State of Connecticut to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent maintains a course of trade in commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 4. Respondent is now and has been in the course and conduct of its business as aforesaid in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth powders or dentifrices in commerce among and between the various States of the United States.

PAR. 5. Respondent, in the course and conduct of its business in such commerce for the purpose of inducing the purchase of that product, Calox Tooth Powder, has caused advertisements to be placed in newspapers and other periodicals in general circulation in the various States of the United States and in the District of Columbia and to be broadcast from radio stations of interstate scope and power. These advertisements contain statements concerning the ingredients in, and efficacy of, the product Calox Tooth Powder, and the results that may be expected to be obtained from the use thereof.

Prior to the date of the issuance of the complaint herein, respondent in those advertisements made in substance the following statements:

1. For teeth that "Shine like the Stars" use Calox Powder.

2. Let a star show you how to have teeth that shine like the stars! Brush your teeth as the movie stars do—Change to Calox! A star's teeth are precious as jewels. Only a superb dentifrice gets the job of protecting and polishing them. Many Hollywood stars—following the advice of dentists—have chosen *powder* for brushing their teeth. But not just *any* powder. The Hollywood choice is the safer, softer powder—Calox. Take a cue from Hollywood. Decide to change to Calox—today. Then watch ugly stains disappear. Watch Calox bring up a high mirror gloss on your teeth. Hollywood has no "patent" on beautiful teeth. You, too, can have * * * teeth that shine like the stars.

3. Why Hollywood says "O. K." 1. Gives "High-Luster" Polish. Five scientifically approved cleansing and polishing agents get to work. Teeth start to sparkle! 2. Double safe Because It Is * * * Double Sifted through 100-mesh screens. It *cannot* contain any grit or pumice. 3. Releases Oxygen. Oxygen is Nature's own purifying agent. 4. Made with Prescription Care by McKesson & Robbins who have supplied drugs to physicians since 1833.

4. Have teeth That Shine Like the Stars. Calox gives teeth the whiteness and brilliance the screen demands. It deserves its popularity with the stars. Out in Hollywood, where a "starry" smile is worth more cold cash than anywhere on earth, they found out how Calox makes teeth *sparkle*! So it's Calox in many of the stars' dressing rooms! Calox for that last important brushing before the picture is "shot." Could *you* use "starry" teeth? Then take your teeth seriously. Use the dentifrice that has been tested and proved in the greatest "Personality Laboratory" in the world * * * in the movie studios of Hollywood. Wake up the brilliance that your teeth have *naturally*. Make them * * * shine like stars! Calox is fine and soft * * * a product of pharmaceutical purity. It cleanses safely. And *doubly assures* cleansing by releasing live oxygen in the mouth. Oxygen is Nature's own purifying agent. Calox promotes mouth health * * * helps neutralize mouth acids * * * tends to strengthen gums.

5. Remember, Calox is safe. Screen stars make sure of safety * * * they wouldn't risk a scratchy polish.

6. Adds a charming sparkle to your smile—take this tip from Hollywood * * * use Calox Tooth Powder * * * the very same pure, safe, refreshing dentifrice that helps protect the radiant smile of Jean Parker, scores of other famous screen stars, and millions of people throughout the world.

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7. No tooth surface is neglected when your patient uses Calox. In practical mouth hygiene, you recognize the value of cleaning teeth *all over*, at least twice daily. Calox Tooth Powder does not stop with the broad exposed areas, but helps clean the proximal surfaces *between* the teeth as well. Its the safe and efficient amount of perborate in Calox that frees nascent oxygen to foam into the interstices and help force out debris with its penetrating bubbles.

8. It's so easy to combat the discoloration and damage caused by those three enemies lurking in your mouth—Film, Stain and Decay. Calox Tooth Powder contains a special polishing ingredient—marvelously effective and absolutely safe—which removes Film and banishes Stain. The teeth are restored to their natural, lustrous whiteness. And at the same time Calox fights decay. It frees a foam of live, bubbling oxygen that reaches and purifies. Some dentifrices aim at *one* of the Dental Enemies and some aim at another. The McKesson Laboratories perfected Calox to banish *ALL THREE*.

9. Film, Stain and Decay are the three worst enemies of your teeth. Stop them now—before any one says YOU have a "corn-on-the-cob" smile! Calox Tooth Powder removes film and banishes stains with marvelous effectiveness. It polishes the enamel gently, safely, restoring the gleaming natural whiteness of the teeth. A special ingredient tones the gums and helps to keep them firm and healthy. But the outstanding service of Calox is in fighting decay. It releases foaming oxygen that penetrates into the crevices where often dentifrices cannot reach—cleansing and protecting "The Forgotten 60" (hidden surfaces between the teeth).

10. Now—Oxygen Powder actually Foams All Over Teeth and Gums. Calox, as you know, is the famous formula containing Sodium Perborate which is universally used by dentists and physicians in treating Vincent's Infection or "trench mouth." This ingredient in combination with others is the reason why Calox Tooth Powder releases oxygen and lime-water upon contact with moisture in the mouth. You will feel the effects and see the benefits soon after starting to use it. Film and stain are speedily removed. Dull teeth begin to shine. Mouth acids are neutralized. The breath is actually deodorized and sweetened.

11. See how new-born Oxygen Whitens Teeth! Yes, it's true that Calox is not like ordinary tooth powders! It gives results in far shorter time because it contains genuine Sodium Perborate. This ingredient, frequently prescribed for "trench mouth" by dentists and physicians, releases 9 percent available oxygen. These oxygen bubbles force their way into tiny crevices not reached by many dentifrices. Decaying particles are swiftly deodorized. The breath is sweetened. Cleansing action on the teeth is many times more powerful. Calox is absolutely safe and non-irritating, entirely effective. Your own dentist will confirm the fact that Calox is actually healing to the gums and mucous membranes.

12. Dentists Use Powder For Whiter Teeth. Do likewise—and save 50% on Dentifrice.

13. Calox Tooth Powder is not an ordinary dentifrice. It is scientifically designed to accomplish what others neglect. In the mouth it liberates the purifying element oxygen, which foams in tiny penetrating bubbles, into every crevice. It reaches the forgotten areas where food debris ferments, and cleans them out. At the same time the whole mouth is sweetened and deodorized. Calox creates a gentle antacid, milk of lime, which flows over and around the teeth, neutralizing harmful acids. Calox is an ideal dentifrice for protecting the health of the gums. It cleanses, soothes and tones them up with a special ingredient, frequently prescribed by physicians in cases of Vincent's Infection, "trench mouth" and other gum diseases.

14. Calox cleans and polishes all five of the tooth surfaces, including the hidden 60 of the interstices * * * with absolutely no abrasion. The perborate in Calox releases germ-fighting, nascent oxygen bubbles. These penetrate into and force decaying, acid particles out of between-the-teeth spaces and aid greatly in whitening all above-the-gum areas. Calox stimulates normal salivary alkalinity and itself releases gentle, antacid milk of lime. The special ingredients of Calox soothe and tone the gums and keep them healthy.

15. Dentists Recommend It—Dental Authorities say, "Use Powder for home care of the teeth."

16. Saves You Money—Calox costs only one-third as much to use as less efficient dentifrices.

17. Safer, More Effective—Calox is 100% dentifrice. Contains no injurious or unnecessary substances.

18. Dentists Advise Use of Powder. Safer, More Effective. Decay germs breed on the 60 "forgotten" areas, out of sight, where no ordinary dentifrice disturbs them. When you use Calox Tooth Powder, bubbles of purifying OXYGEN penetrate and cleanse those danger spots. Calox chases germs, neutralizing acids, deodorizes food debris. Polishes teeth safely to marvelous whiteness. Keeps gums firm and healthy. Calox costs no more than most tooth pastes. Goes three times as far!

PAR. 6. It is stated by respondent that thirteen of these eighteen statements in the foregoing excerpts from the advertising of Calox Tooth Powder numbered 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 herein, were discontinued by respondent corporation in 1937. Respondent further states that statements or excerpts numbered 2, 3, and 5 were discontinued in 1938, and only statements or excerpts numbered 1 and 6 are stated to have been used in 1939.

PAR. 7. The use of the aforesaid advertisements, disseminated in the manner described, is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Calox Tooth Powder.

PAR. 8. There is no dentifrice which alone is capable of giving all movie stars white, clear, and sparkling teeth, and the use of Calox Tooth Powder alone will not assure the possession of teeth that are white, clear and sparkling. The use of Calox Tooth Powder will not assure beautiful teeth or teeth that are as beautiful as those of some movie stars. No dentifrice can clean tooth surfaces it does not contact and Calox Tooth Powder will not clean the proximal surfaces between the teeth. The Sodium Perborate contained in Calox Tooth Powder, which is approximately 10 percent, might not be a safe cleansing agent for continued use by a person unusually or peculiarly sensitive or allergic to that drug. The use of Calox Tooth Powder will not result in the liberation of nascent oxygen in the mouth. Calox Tooth Powder will not prevent film on teeth or decay of teeth and will not remove all types of stain from the teeth or any stain other than ordinary surface stains. The Sodium Perborate in Calox

Tooth Powder will not keep gums firm and healthy nor make all norfal sets of teeth white and beautiful. Dentists differ in their preference for tooth powders or tooth pastes for the brushing, polishing or cleansing of the teeth and there is no consensus of opinion in the dental profession favoring the use of tooth powders instead of tooth pastes. Calox Tooth Powder will not neutralize acid mouth conditions, is not an efficient antacid, and except for its use as a mild deodorant has no substantial value for purposes other than cleansing and polishing the teeth. Whether Calox Tooth Powder is more economical to purchase and use than competitive tooth pastes will depend upon the facts involved in any such comparison of costs and uses.

PAR. 9. Movie stars do not employ Calox Tooth Powder to the exclusion of all other dentifrices, nor do movie stars rely upon this or any other dentifrice alone in the care of their teeth. The cleansing ingredients of Calox Tooth Powder are chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate. The foam obtained from the use of Calox Tooth Powder is largely due to the soap content thereof and not to oxygen released by any other ingredient. Most dentifrices, including pastes and powders, possess in common essential ingredients which are generally safe and effective for such cleansing purposes. Many competing dentifrices have no more tendency to injure, scratch or destroy tooth enamel, tooth structure, or mouth tissues than has Calox Tooth Powder. The effectiveness of any tooth powder or tooth paste in the cleansing of the teeth depends largely upon the manner in which applied, and the brush employed with such paste or powder plays an important part in the cleansing process.

PAR. 10. Among the competitors of the respondent are some who do not in any way misrepresent the ingredients in, or the efficacy of, their products in distributing the same in commerce.

PAR. 11. The aforesaid acts and practices of this respondent had, and some of them now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that these representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of respondent as aforesaid, a number of the purchasing public has purchased a substantial quantity of respondent's product, Calox Tooth Powder, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of dentifrices who truthfully advertise and vend the same. As a result thereof, substantial injury has been, and is now being done by the said respond-

ent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, practices, and representations of the said respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the statement of facts contained therein may be made a part of the record herein, and 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 the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, McKesson & Robbins, Inc., a corporation, its officers, agents, and representatives, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a dentifrice now designated by the name of Calox Tooth Powder, or any other dentifrice composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce,

Order

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as commerce is defined in the Federal Trade Commission Act, of said dentifrice, which advertisements represent, directly or through implication, that the use of Calox Tooth Powder alone will assure the possession of teeth that are white, clear, and sparkling, or will assure beautiful teeth or teeth that are as beautiful as those of some movie stars; that said dentifrice will clean the proximal surfaces between the teeth; that the use of Calox Tooth Powder will result in the liberation of nascent oxygen in the mouth; that Calox Tooth Powder will prevent film on teeth or decay of teeth or that it will remove all types of stain from the teeth or any stains other than ordinary surface stains; that the sodium perborate in Calox Tooth Powder will keep gums firm and healthy and make all normal sets of teeth white and beautiful; that the use of a tooth powder is more effective in cleansing and polishing the teeth than is the use of a tooth paste; that Calox Tooth Powder will neutralize acid mouth conditions, or is an effective antacid; that, except for its use as a mild deodorant, it has any substantial value for purposes other than cleansing and polishing the teeth; that Calox Tooth Powder is more economical to purchase and use than competitive dentifrices unless such is the fact; that movie stars employ Calox Tooth Powder to the exclusion of all other dentifrices, or rely upon it or any other dentifrice alone in the care of the teeth; that the foam obtained from the use of Calox Tooth Powder is due to the oxygen released by any ingredient thereof or is due to anything other than the soap content thereof; that many competing dentifrices have a greater tendency to injure, scratch or destroy tooth enamel, tooth structure, or mouth tissues than has Calox Tooth Powder; or that Calox Tooth Powder will accomplish results which could not be accomplished by competing dentifrices.

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

Complaint

IN THE MATTER OF

MICHAEL P. BRIGANTI AND FRED C. MATTIA, TRADING
AS PREMIER COLOR WORKS AND MATTIA AND BRIGANTI COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3826. Complaint, June 19, 1939—Decision, Dec. 28, 1939*

Where an individual engaged in manufacture and sale, under brand name "Ave Maria," of line of effervescent and laxative products—

Set forth on tin containers in which his "Ave Maria Effervescent Preparation" and "Ave Maria Laxative Preparation" were packed, and on cardboard cartons in which such containers were enclosed, legend "* * * Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of 'Reggio Università Di Napoli' (Italy)," and depicted reproductions of three gold medals and decorations and, immediately thereunder, legend "Highest awards in the Hygienic Divisions of International Expositions";

Facts being said products had not, as thus represented, been made from formulas recommended by such a person, and medals and decorations were not reproductions of original medals and decorations awarded such products at expositions, and products in question had not been exhibited at exhibitions as aforesaid nor thus awarded medals or other prizes at expositions, such as preferred by substantial number of persons among purchasing public, and especially Italian-Americans, as superior merchandise to that which has not received any such awards;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true, and with result, as direct consequence of such mistaken belief, that number of said purchasing public bought substantial volume of his said products and trade in commerce was thereby diverted unfairly to him from competitors engaged in sale of effervescent and laxative products and who truthfully represent their merchandise; to the injury of competition in commerce:

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

Mr. Robert P. Bellinger for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Michael P. Briganti and Fred C. Mattia, individually and as copartners trading as Premier Color Works and Mattia and Briganti Co., hereinafter referred to as respondents, have violated the provisions of said act, and it