

Syllabus

IN THE MATTER OF

LOUIS G. MEYERS, DOING BUSINESS AS NATIONAL PEN
COMPANY AND PHOENIX SALES COMPANY.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3796. Complaint, May 31, 1939—Decision, Jan. 15, 1940*

Where an individual engaged in sale and distribution of specialty merchandise, including fountain pens, pencils, jewelry, and various other products; in statements concerning his said products in various advertising circulars, coupons, and other printed matter and in newspapers and other publications distributed among prospective purchasers thereof in the various States and in the District of Columbia—

- (a) Represented, in connection with offer of his fountain pens, rings and necklaces, that the certificate or coupon referred to in connection with offer of such pens was worth \$4.41, and, together with 59 cents, entitled bearer to one of his "\$5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS," and that coupon referred to in connection with offer of his rings and necklaces was worth similar amount and, with 59 cents, entitled bearer to one of his "regular \$5.00 Facsimile Diamond Rings" or one of his regular \$5.00 "CROSS NECKLACES," facts being the prices referred to as customary retail prices of such products were greatly in excess of those at which they were ordinarily offered and sold in normal course of business, and said certificates or coupons had no such value or any value whatever, as price charged in addition thereto was regular and customary one at which he sold his said products in usual course of business;
- (b) Represented, in such various advertisements, that said pens were tested in every case and guaranteed to be unbreakable for life, and held 200 percent more ink than ordinary fountain pen on market, and required no repairs, and that so-called "facsimile" diamonds in his said rings had practically same blue-white color, same perfect cutting and brilliance as genuine diamonds costing one hundred times as much, and were not mere imitations, but represented utmost skill of modern science, and that each ring carried with it a lifetime guarantee and that guarantee covered tarnish of mountings, loss of stone or brilliancy, facts being such pens did not have greater capacity than ordinary fountain pens, would not last a lifetime or be free from necessity of repair, and jewelry was not guaranteed against tarnish nor stones against loss of brilliancy, said jewelry was a very cheap grade and would tarnish immediately or shortly, and was not set with diamonds or facsimile diamonds having same quality, etc., as above set out, as the genuine stones, and purported stones were of no better grade or quality than ordinary cheap imitations; and said rings, necklaces and other articles of jewelry sold and distributed by him would not last a lifetime and were not guaranteed so to do; and
- (c) Represented, in such various advertisements, that offers there referred to of such products were limited and special or introductory, through such statements as "Limit 3 pens to each Certificate," "Price After Sale \$5.00," "MANUFACTURER'S INTRODUCTORY OFFER," "Limit Two Rings to a Coupon,"

Complaint

30 F. T. C.

"This offer made possible by the manufacturer," and "introductory offer," facts being he was not conducting an introductory or special offer, but price charged, as above set forth, was regular and customary one at which he sold his products in usual course of business, and did not, as asserted by him, represent cost of advertising and sales expense, but, as aforesaid, was usual and ordinary retail price, and number of articles, as above set forth, was not limited by him, but he sold as many thereof as purchaser was willing to buy;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true and that he had truthfully represented quality, material, construction, and durability of his various products and price at which they were sold, and with result, by reason of such belief, that number of purchasing public bought substantial volume of his products and trade was thereby diverted unfairly to him from his competitors engaged in sale and distribution in commerce of fountain pens, pencils, jewelry, and similar products and who do not misrepresent quality and characteristics of their goods or price at which they are sold; to the injury of competition in commerce:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Bergner & Bergner, of New York City, 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 Louis G. Meyers, an individual, doing business as National Pen Co. and Phoenix Sales Co., 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. The respondent, Louis G. Meyers, is an individual doing business as National Pen Co. and Phoenix Sales Co. and has his place of business located at Birmingham, Ala., and at various other points. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of specialty merchandise including fountain pens, pencils, jewelry, and various other products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said products, when sold, to be transported from his said places of business to the purchasers thereof, located in the various States of the United States other than the State of

origin of such shipments. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said fountain pens, pencils, jewelry, and similar products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of specialty merchandise such as fountain pens, jewelry, and other products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business the respondent has engaged in the practice of falsely representing the quality, material, construction, and durability of his various products and the price at which said products are sold and distributed by him, by means of false statements in various advertising matter. In the furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused said false statements and representations to be inserted in various advertising circulars, coupons, and other printed matter and in advertisements appearing in newspaper and other publications, all of which are distributed among prospective purchasers of said products located in the various States of the United States and in the District of Columbia, which false statements and representations purport to be descriptive of such products, their quality, construction, and durability and the price at which said products are offered for sale.

PAR. 3. Among and typical of the acts and practices above described are false statements and representations made and disseminated by the respondent in the manner aforesaid with reference to fountain pens and jewelry sold and distributed by the respondent. Among and typical of such statements and representations are the following:

1. Representations made in connection with the sale and distribution of Fountain Pens:

50¢—This Certificate Is Worth \$4.41—59¢.

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible \$5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS. A lifetime guarantee with each pen.

Price After Sale \$5.00.

Every pen tested and guaranteed to be unbreakable for life.

This pen holds 200% more ink than any ordinary fountain pen on the market. No repair bills.

Limit 3 pens to each Certificate.

Complaint

30 F. T. C.

2. Representations made in connection with the sale and distribution of rings:

MANUFACTURER'S INTRODUCTORY OFFER.

This Coupon worth \$4.41 Toward This Ring Purchase.

This Coupon and Only 59¢.

Entitles Bearer to One Facsimile \$5.

DIAMOND RING

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Facsimile Diamond Rings.

LIFETIME GUARANTEE ON EACH RING.

These facsimile diamonds have practically the same blue-white color, the same perfect cutting, the same dazzling brilliance as genuine diamonds costing 100 times as much.

These facsimile diamonds are not merely imitations but represent the utmost skill of modern science.

Guarantee covers tarnish of mountings, loss of stone or brilliancy.

Limit Two Rings to a Coupon.

CERTIFICATE OF GUARANTEE

This ring is sold to you with an unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or defect in any other form.

Send fifteen cents in postage stamps to cover return postage, packing, handling, etc.

DO NOT RETURN THIS RING TO STORE WHERE PURCHASED BUT TO ADDRESS BELOW
PHOENIX SALES CO.

P. O. Box 1272

Birmingham, Ala.

3. Representations made in connection with the sale and distribution of Cross Necklaces:

THIS COUPON AND ONLY 59¢ Entitles Bearer to One of our Regular \$5.00
CROSS NECKLACES

In Plain or With Facsimile DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Cross Necklaces. You save exactly \$4.41 . . . This 59¢ merely helps pay for local advertising, expenses, salespeople, etc.

Limit 2 to a Coupon.

This offer made possible by the manufacturer.

This is an introductory offer, and the Cross Necklaces will be \$5.00 after this sale.

Mail orders add 6¢ extra.

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents, both directly and indirectly, that the customary and usual retail prices at which his various products are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate or coupon referred to is actually worth \$4.41 when offered as

part payment of the purchase price of any specified article. By the same means the respondent represents that he is conducting a special or introductory offer and that the price charged for said products in addition to the coupon is merely to pay local advertising expenses and cost of sale. The respondent further represents that the offer of said products at the price specified in said advertisements is a limited offer for a limited period of time and that the purchasers of said products are limited to two or three products to each coupon, as therein specified. By the same means the respondent further represents that the fountain pens sold and distributed by him are guaranteed to last a lifetime; that they have an ink capacity greater than the ordinary fountain pen and that the pens never need repair. By the same means also the respondent represents that the diamond rings, necklaces, and other articles of jewelry sold and distributed by him will not tarnish and will last a lifetime and that said fountain pens and articles of jewelry carry a lifetime guarantee and also a guarantee against tarnishing of mountings and loss of stone brilliancy. By use of the word "facsimile" as descriptive of his diamonds, respondent represents that the various articles of jewelry sold by him are equipped with stones having the general appearance, qualities, and brilliance possessed by diamonds and are of a quality and value greater than an imitation diamond.

PAR. 4. In truth and in fact the prices represented by the respondent as the customary retail prices of his products are, in fact, fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold by the respondent in the normal course of business. The respondent is not conducting an introductory or special offer, and the certificate or coupon referred to in said advertisements does not have the value of \$4.41 or any value whatsoever as the price charged by the respondent in addition to the certificate or coupon is the regular and customary price at which respondent sells his products in the usual course of business. The price charged by the respondent in addition to the coupon is not the cost of advertising and sales expense, but represents the retail price usually and ordinarily charged by the respondent for such products. The respondent does not limit the number of articles which may be purchased by any customer but sells as many of such articles as the purchaser is willing to buy. The fountain pens sold and distributed by the respondent do not have a greater capacity than ordinary fountain pens, will not last a lifetime or be free from necessity of repair. The diamond rings, necklaces, and other articles of jewelry sold and distributed by the respondent will not last a lifetime and said articles of jewelry and fountain pens are not guaranteed to last

Findings

30 F. T. C.

a lifetime or the jewelry guaranteed not to tarnish or the stones to lose brilliancy. In fact said jewelry is of a very cheap grade and quality and will tarnish immediately or within a very short time. The jewelry sold and distributed by the respondent is not set with diamonds or facsimile diamonds and the purported stones do not have the same quality, color, or brilliance of genuine diamonds, and are not of any better grade or quality than ordinary cheap imitations.

PAR. 5. The use by the respondent of the aforesaid acts and practices has had and now has a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondent has truthfully represented the quality, material, construction, and durability of his various products and the price at which said products are sold. On account of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of fountain pens, pencils, jewelry, and similar products and who do not misrepresent the quality and characteristics of their products or the price at which said products are sold. As a consequence thereof, injury has been done and is now being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 31, 1939, issued and served its complaint in this proceeding upon respondent Louis G. Mayers, an individual, doing business as National Pen Co. and Phoenix Sales Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. At a regularly scheduled hearing in the matter on November 8, 1939, the respondent dictated on the record an answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter,

the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Louis G. Meyers, is an individual doing business as National Pen Co. and Phoenix Sales Co. and has his place of business located at Birmingham, Ala., and at various other points. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of specialty merchandise including fountain pens, pencils, jewelry, and various other products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said products, when sold, to be transported from his said places of business to the purchasers thereof, located in the various States of the United States other than the State of origin of such shipments. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens, pencils, jewelry and similar products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of specialty merchandise such as fountain pens, jewelry, and other products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business the respondent has engaged in the practice of falsely representing the quality, material, construction, and durability of his various products and the price at which said products are sold and distributed by him, by means of false statements in various advertising matter. In the furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused said false statements and representations to be inserted in various advertising circulars, coupons, and other printed matter and in advertisements appearing in newspapers and other publications, all of which are distributed among prospective purchasers of said products located in the various States of the United States and in the District of Columbia, which false statements and

Findings

30 F. T. C.

representations purport to be descriptive of such products, their quality, construction, and durability and the price at which said products are offered for sale.

PAR. 3. Among and typical of the acts and practices above described are false statements and representations made and disseminated by the respondent in the manner aforesaid with reference to fountain pens and jewelry sold and distributed by the respondent. Among and typical of such statements and representations are the following:

1. Representations made in connection with the sale and distribution of Fountain Pens:

59¢—This Certificate Is Worth \$4.41—59¢.

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible \$5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS. A lifetime guarantee with each pen.

Price After Sale \$5.00.

Every pen tested and guaranteed to be unbreakable for life.

This pen holds 200% more ink than any ordinary fountain pen on the market. No repair bills.

Limit 3 pens to each Certificate.

2. Representations made in connection with the sale and distribution of rings:

MANUFACTURER'S INTRODUCTORY OFFER

This Coupon worth \$4.41 Toward This Ring Purchase.

This Coupon and Only 59¢.

Entitles Bearer to One Facsimile \$5.

DIAMOND RING

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Facsimile Diamond Rings.

LIFETIME GUARANTEE ON EACH RING

These facsimile diamonds have practically the same blue-white color, the same perfect cutting, the same dazzling brilliance as genuine diamonds costing 100 times as much.

These facsimile diamonds are not merely imitations but represent the utmost skill of modern science.

Guarantee covers tarnish of mountings, loss of stone or brilliancy.

Limit Two Rings to a Coupon.

CERTIFICATE OF GUARANTEE

This ring is sold to you with an unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or defect in any other form.

Send fifteen cents in postage stamps to cover return postage, packing, handling, etc.

DO NOT RETURN THIS RING TO STORE WHERE PURCHASED BUT TO ADDRESS BELOW

PHOENIX SALES CO.

P. O. Box 1272

Birmingham, Ala.

3. Representations made in connection with the sale and distribution of Cross Necklaces:

THIS COUPON AND ONLY 59¢

Entitles Bearer to One of our Regular \$5.00

CROSS NECKLACES

In Plain Or With Facsimile DIAMONDS

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Cross Necklaces. You save exactly \$4.41 . . . This 59¢ merely helps pay for local advertising, expenses, salespeople, etc.

Limit 2 to a Coupon.

This offer made possible by the manufacturer.

This is an introductory offer, and the Cross Necklaces will be \$5.00 after this sale.

Mail orders add 6¢ extra.

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents, both directly and indirectly, that the customary and usual retail prices at which his various products are offered for sale and sold are greatly in excess of the retail prices at which they are offered for sale and sold under the terms and conditions as set out in said advertisements; that the certificate or coupon referred to is actually worth \$4.41 when offered as part payment of the purchase price of any specified article. By the same means the respondent represents that he is conducting a special or introductory offer and that the price charged for said products in addition to the coupon is merely to pay local advertising expenses and cost of sale. The respondent further represents that the offer of said products at the price specified in said advertisements is a limited offer for a limited period of time and that the purchasers of said products are limited to two or three products to each coupon, as therein specified. By the same means the respondent further represents that the fountain pens sold and distributed by him are guaranteed to last a lifetime; that they have an ink capacity greater than the ordinary fountain pen and that the pens never need repair. By the same means also the respondent represents that the diamond rings, necklaces and other articles of jewelry sold and distributed by him will not tarnish and will last a lifetime and that said fountain pens and articles of jewelry carry a lifetime guarantee and also a guarantee against tarnishing of mountings and loss of stone brilliancy. By use of the word "facsimile" as descriptive of his diamonds, respondent represents that the various articles of jewelry sold by him are equipped with stones having the general appearance, qualities and brilliance possessed by diamonds and are of a quality and value greater than an imitation diamond.

PAR. 4. In truth and in fact the prices represented by the respondent as the customary retail prices of his products are, in fact, fictitious

and greatly in excess of the prices at which such products are customarily offered for sale and sold by the respondent in the normal course of business. The respondent is not conducting an introductory or special offer, and the certificate or coupon referred to in said advertisements does not have the value of \$4.41 or any value whatsoever as the price charged by the respondent in addition to the certificate or coupon is the regular and customary price at which respondent sells his products in the usual course of business. The price charged by the respondent in addition to the coupon is not the cost of advertising and sales expense but represents the retail price usually and ordinarily charged by the respondent for such products. The respondent does not limit the number of articles which may be purchased by any customer but sells as many of such articles as the purchaser is willing to buy. The fountain pens sold and distributed by the respondent do not have a greater capacity than ordinary fountain pens, will not last a lifetime or be free from necessity of repair. The rings, necklaces, and other articles of jewelry sold and distributed by the respondent will not last a lifetime and said articles of jewelry and fountain pens are not guaranteed to last a lifetime. The jewelry is not guaranteed against tarnish and the stones are not guaranteed against loss of brilliancy. In fact said jewelry is of a very cheap grade and quality and will tarnish immediately or within a very short time. The jewelry sold and distributed by the respondent is not set with diamonds or facsimile diamonds and the purported stones do not have the same quality, color, or brilliance of genuine diamonds, and are not of any better grade or quality than ordinary cheap imitations.

PAR. 5. The use by the respondent of the aforesaid acts and practices has had and now has a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true and that the respondent has truthfully represented the quality, material, construction, and durability of his various products and the price at which said products are sold. On account of this erroneous and mistaken belief a number of the purchasing public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of fountain pens, pencils, jewelry, and similar products and who do not misrepresent the quality and characteristics of their products or the price at which said products are sold. As a consequence thereof, injury has been done and is now being done by the

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

CONCLUSION

The aforesaid acts and practices of the respondent, Louis G. Meyers, an individual doing business as National Pen Co. and Phoenix Sales Co., as herein found, are all to the injury and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Louis G. Meyers, an individual, doing business as National Pen Co. and as Phoenix Sales Co. or trading under any other name, his agents, his employees and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fountain pens, pencils, necklaces, and rings or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular prices or values for any of respondent's 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 respondent's business.

2. Representing that any articles of merchandise customarily and regularly sold through the use of any purported certificate, coupon, or other similar device have any value in excess of the actual money price required to be paid.

3. Representing that any certificate, coupon, or similar device has any monetary value in the purchase of an article which is customarily or regularly sold by the respondent at the price required to be paid with or without such device.

Order

30 F. T. C.

4. Representing that any of the various products sold and distributed by the respondent are of a character and quality different from and superior to other similar products of comparable price.

5. Representing that the number of respondent's articles of merchandise which may be purchased by any customer is limited, or that such articles may be purchased for a limited time only.

6. Representing that the fountain pens sold and distributed by the respondent will last a lifetime, are unbreakable, will never need repair or that they have a greater ink capacity than ordinary fountain pens.

7. Representing that respondent's rings or necklaces are set with diamonds or facsimile diamonds or possess color or brilliance in any way comparable to diamonds, or that they can be worn a lifetime or any appreciable period of time and remain free from tarnish, loss of brilliancy or loss of stones.

8. Representing that the respondent is conducting a special or introductory advertising offer or that the price charged for respondent's products, in addition to the coupon, is only to cover cost of advertising and sales expense.

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

Syllabus

IN THE MATTER OF
MENTHO-MULSION, INCORPORATED (FORMERLY M. L.
CLEIN & COMPANY), AND MAX L. CLEIN AND SADIE B.
CLEIN

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

Docket 3674. Complaint, Dec. 23, 1938—Decision, Jan. 16, 1940

Where a corporation, and two individuals who were president and vice president thereof and had dominant control of its advertising policies and business activities and cooperated with one another and acted in concert in doing acts and things below set forth, engaged in sale and distribution of certain cough and cold medicines under designation "Mentho-Mulsion" and "Malco Cold Tablets," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar and other medicinal products intended and sold for relief of such ailments and conditions, and including many who do not make any misrepresentations or false statements concerning the therapeutic value or efficacy of their respective products; in advertisements which they disseminated through the mails, newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, through continuities broadcast from radio stations of extrastate audience, and through various means, and which were intended and likely to induce purchase of their said preparations—

- (a) Represented that their said "Mentho-Mulsion" was a cure or remedy for coughs and would stop cough spasms, and remedy, cure or relieve every cough, irrespective of the cause thereof, through such statements as "* * * quick, safe remedy for coughs", "The proven remedy for bad coughs," "* * * stops cough spasms immediately" and others of similar tenor, facts being it did not constitute a cure or remedy for coughs generally, and would not stop cough spasms or relieve every cough, irrespective of cause thereof, and, while having a palliative effect in cases of coughs due to common colds, was not effective in frequent cases in which coughs are manifestations of certain serious physical disorders; and
- (b) Represented that their "Malco Cold Tablets" would drive common colds out of the system, and constituted a cure or remedy for colds, irrespective of the cause thereof, through such statements as "* * * fight colds five ways" and "* * * designed to drive common colds completely out of your system", facts being they would not accomplish such last result and, while having a palliative effect in partially relieving symptoms commonly encountered in colds, did not constitute remedies or cures therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all such representations were true, and with consequence, as direct result thereof, that number of consuming public purchased their products and trade was diverted unfairly to them from competitors aforesaid, engaged in sale and distribution of similar and other products designed and sold for relief of such ailments and conditions, and who truthfully advertise their respective products and effectiveness thereof: