

Syllabus

IN THE MATTER OF
CONRAD SCHICKERLING, TRADING AS CONRAD
SCHICKERLING RESEARCH LABORATORY

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

Docket 4042. Complaint, Feb. 28, 1940—Decision, Apr. 30, 1940

Where an individual engaged in sale and distribution of various types of incandescent lamps for use with photography, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of such lamps adapted to and used for same general purposes—

- (a) Represented, in advertisements of said products in newspapers, periodicals and other publications in general circulation among the various States, and in circulars, price lists and other printed or written matter distributed among purchasers and prospective purchasers, that his "Mushroom Bulb Photo Flood Lamp," or "Full Sun Spectrum Photo Flood Krypton Lamp," was 8 amperes and had output of 38,000 lumens, and contained a coil filament or cooling coil between wire and filament peculiar to said particular device and not found in the ordinary lamp, facts being said lamp was not 8 amperes, but substantially less, had a lumen output substantially less than that set forth, and did not contain coil filament or cooling coil between wire and filament, peculiar to device in question, but only such a coil as is used in practically all lamps of said general nature;
- (b) Represented, as aforesaid, that said lamp was more effective in blackening a negative than other lamps used for the same purpose, and had a 10-hour peak performance, was covered by United States patent rights belonging to him and contained rare gases not ordinarily contained in other lamps of same type, and that said lamp contained crypton gas and had average life of 20 hours at 115 volts, and contained, or had, or brought about, color balance, facts being it did not have an improved color balance, or color balance of any kind whatsoever, was not more effective in blackening a negative than other lamps used for said purpose, had a peak performance of substantially less than 10 hours, was not covered by patent as aforesaid, contained no rare gases not ordinarily used in such devices of same type, but contained ordinary argon nitrogen gases used in majority of other lamps of same kind or type, did not contain crypton gas, except for small amount found in all argon gas, and average life of said bulb was substantially less than 20 hours at 115 volts;
- (c) Represented that his said "Photo Enlarging Lamp" contained coil filament or cooling coil between wire and filament, and that such a device or arrangement was peculiar to his lamp and not be found in ordinary lamp, and that his said lamp contained crypton gas, facts being it did not contain such a cool coil or cooling coil, which, found in practically all lamps of such general nature, would not be peculiar to his said device, and it did not contain crypton gas except for small amount found in all argon gas, used in most other lamps of same type;
- (d) Represented that his "'1,000 Flash' Photo-Flash-Flood-Lamp" had Dufay color correction, and that he might rightfully use such correction with or

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in said lamps, and that it was a flash bulb or flashed instantaneously, and that for a split second it produced flash or light more intense than at any other time, facts being it did not have such correction and he had no right to use same with or in said device, which was not a flash bulb, but a flood lamp, and it did not flash instantaneously as do flash bulbs, nor have a split second, or any other period of time, producing flash or light more intense than that produced at any other time;

- (e) Represented that his "200 Flash' Photo Lamp" was a flash lamp which worked automatically, and would flash 200 times and replace 200 ordinary flashlight bulbs, and that it was made under his United States patent rights, facts being it was not a flash lamp, but primarily a flood lamp, did not work automatically since it was necessary to shut off current or remove lamp from socket after each flash, failing which it would not light up accurately when next used, and it would not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs, and was not covered by a United States patent; and
- (f) Made use of trade name including words "Research Laboratory," for the conduct of his said business, and displayed such name in his aforesaid advertisements, and thereby represented that, as part of business in question, he owned, controlled, and directed a research laboratory where such work was conducted in connection with the production of his said lamps, facts being he neither owned, controlled, nor directed any such laboratory, and at no time concerned engaged in direction, control, or conduct of any such research work;

With tendency and capacity to mislead purchasers and prospective purchasers into erroneous and mistaken belief that his said representations, as above set forth, were true, and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to him from competitors engaged in sale in commerce of incandescent lamps used in photography, and including those who, in the sale of their said products, do not similarly or in any manner misrepresent the same or matters pertaining thereto; to the substantial injury of competition in commerce:

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

Mr. Donovan R. Divet 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 Conrad Schickerling, an individual trading as Conrad Schickerling Research Laboratory, hereinafter referred to as respondent, has violated the provisions of 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 Conrad Schickerling is an individual trading as Conrad Schickerling Research Laboratory, with his office

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and principal place of business at 589 Central Avenue, in the city of Orange, State of New Jersey.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States of various types of incandescent lamps, including incandescent lamps known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, Schickerling Photo Enlarging Lamps, Schickerling "1,000 Flash" Photo-Flash-Flood-Lamps, and Schickerling "200 Flash" Photo Lamps, all of which said lamps are sold and distributed by respondent for use in connection with photography. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said lamps, when sold, to be transported from his said place of business in New Jersey, to, into, and through States of the United States other than New Jersey and into the District of Columbia to the purchasers thereof.

PAR. 3. During the time above mentioned, other individuals, and firms and corporations, in various States of the United States have been and are now engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of incandescent lamps adapted to and used for the same general purposes as respondent's said lamps. Respondent has been, during the time aforesaid, and now is in substantial competition in commerce between and among the various States of the United States in the sale of his said incandescent lamps with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of his aforesaid business and in furtherance of the sale of his products, respondent has caused various statements and representations relative to said products to be inserted in newspapers, periodicals and other publications having a general circulation among and between the various States of the United States, and in circulars, price lists, and other printed and written matter distributed among purchasers, and prospective purchasers. Among and typical of the statements and representations made by respondent concerning the said Schickerling Mushroom Bulb Photo Flood Lamp, sometimes described as Full Sun Spectrum Photo Flood Krypton Lamp, are the following:

- 8 amperes
- 38,000 lumens
- Concentrated cool coil filament
- Improved color balance
- Much higher actinic value
- 10 hour peak performance

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Made under license of United States patent rights of Conrad Schickerling
Rare inert gases
"Krypton" Lamp
Rated average laboratory life at 115 volts is 20 hours

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling Photo Enlarging Lamp is that it is a "Koolcoil Krypton" lamp.

Among and typical of the statements and representations disseminated and caused to be disseminated as aforesaid, concerning respondent's said Schickerling "1,000 Flash" Photo-Flash-Flood-Lamp, are the following:

Dufay Color Correction Lamps and
Dufay-Flash Color Correction Lamps

Automatic controlled—each extra ordinary instantaneous flash of approximately 52,000 lumens of a few seconds durations, producing artificial sunlight illumination at split second peak of light.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling "200 Flash" Photo Lamp, are the following:

Schickerling "200 Flash" (works automatically) Photo-Lamp; 200 flashes in one bulb.

This new bulb replaces 200 ordinary flash light bulbs

Made under license of United States patent rights of Conrad Schickerling.

PAR. 5. Through the use of the above and foregoing statements and representations, as well as others of similar import and meaning not herein set out, the respondent represents and implies:

That respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is 8 amperes and has a lumen output of 38,000 lumens; contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; is more effective in blackening a negative than other lamps used for the same purpose, and has a 10-hour peak performance; is covered by United States patent rights belonging to respondent, and contains rare gases not ordinarily contained in other lamps of the same type; contains crypton gas and has an average life of 20 hours at 115 volts; and contains, or has, or brings about, color balance.

That respondent's said Schickerling Photo Enlarging Lamp contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; and that said lamp contains crypton gas.

That respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp has Dufay color correction, and that respondent may rightfully use Dufay color correction with or in said lamp; and that it is a flash bulb or flashes instantaneously, and for a split second produces a flash or a light more intense than at any other time.

That respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically; that it will flash 200 times and replace 200 ordinary flashlight bulbs; and is made under United States patent rights of respondent.

PAR. 6. The above and foregoing statements and representations are false, misleading and deceptive for, in truth and in fact, respondent's said Mushroom Bulb Photo Flood Lamp sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is not 8 amperes but is substantially less, and it has a lumen output of substantially less than 38,000 lumens. It does not contain a coil filament and a cooling coil between the wire and filament which is peculiar to respondent's lamp but only such a coil as is used in practically all lamps of this general nature, nor does it have an improved color balance or a color balance of any kind whatsoever. It is not more effective in blackening a negative than other lamps used for the same purpose, and it has a peak performance of substantially less than 10 hours, and it is not covered by a United States patent. It does not contain rare gases not ordinarily used in incandescent lamps of the same type, but, on the contrary, contains the ordinary argon nitrogen gases used in the majority of other incandescent lamps of this kind or type. It does not contain crypton gas except for the small amount found in all argon gas. The average life of this bulb is substantially less than 20 hours at 115 volts.

Said Schickerling Photo Enlarging Lamp does not contain a cool coil or a cooling coil between the wire and filament. A cooling coil between the wire and filament would not be peculiar to respondent's said lamp, for such cooling coils are found in practically all lamps of this general nature. Said bulb does not contain crypton gas except for the small amount found in all argon gas which argon gas is used in most other lamps of this same type.

Respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp does not have Dufay color correction and respondent does not have and never has had the right to use Dufay color correction with or in said lamp. It is not a flash bulb but is a flood lamp. It does not flash instantaneously as do flash bulbs and it does not for a split second or for any period of time produce a flash or a light more intense than that produced at any other time. In truth and in fact, the bulb known in photography as a flash bulb can be used but once as it burns out in one lighting. Respondent's said "200 Flash"

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Photo Lamp is not a flash lamp but is primarily a flood lamp. It does not work automatically because it is necessary to shut off the electric current or to remove the lamp from the socket after each flash, for without such shutting off or removal the said lamp will not light up accurately the next time it is used. Said globe will not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs and it is not covered by a United States patent.

PAR. 7. Respondent at all times herein mentioned has conducted and now does conduct his said business under the name of Conrad Shickerling Research Laboratory, and on the said advertisements heretofore mentioned has printed and does print or cause to be printed the words "Conrad Shickerling Research Laboratory." By the use of said name and said words respondent represents that as a part of said business he owns, controls, and directs a laboratory where research work is conducted in connection with the production of his said lamps. In truth and in fact, respondent does not own, control, or direct and never at any time herein mentioned has owned, controlled, or directed a laboratory where such research work is conducted, and respondent is not now and at no time herein mentioned has been engaged in the direction, control, or conduct of any such research work.

PAR. 8. The aforesaid acts and practices, used by respondent in connection with the offering for sale and sale of his said incandescent lamps, have had and now have the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that said representations as herein alleged are true and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of incandescent lamps used in photography. There are among the competitors of respondent mentioned in paragraph 3 hereof of those who in the sale of their incandescent lamps do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 9. The aforesaid acts and practices of 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 28th day of February 1940, issued and served its complaint in this proceeding upon the respondent, Conrad Schickerling, an individual, trading as Conrad Schickerling Research Laboratory, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of said act. On the 15th day of March 1940, the respondent filed his 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. Respondent Conrad Schickerling is an individual trading as Conrad Schickerling Research Laboratory, with his office and principal place of business at 589 Central Avenue, in the city of Orange, State of New Jersey.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution, in commerce between and among the various States of the United States, of various types of incandescent lamps, including incandescent lamps known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, Schickerling Photo Enlarging Lamps, Schickerling "1,000 Flash" Photo-Flash-Flood-Lamps, and Schickerling "200 Flash" Photo Lamps, all of which said lamps are sold and distributed by respondent for use in connection with photography. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said lamps, when sold, to be transported from his said place of business in New Jersey to, into, and through States of the United States other than New Jersey and into the District of Columbia, to the purchasers thereof.

PAR. 3. During the time above mentioned, other individuals, and firms and corporations, in various States of the United States have been and are now engaged in the sale and distribution, in commerce among and between the various States of the United States and in

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the District of Columbia, of incandescent lamps adapted to and used for the same general purposes as respondent's said lamps. Respondent has been, during the time aforesaid, and now is in substantial competition, in commerce between and among the various States of the United States, in the sale of his said incandescent lamps with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of his aforesaid business and in furtherance of the sale of his products, respondent has caused various statements and representations relative to said products to be inserted in newspapers, periodicals, and other publications having a general circulation among and between the various States of the United States, and in circulars, price lists, and other printed and written matter distributed among purchasers and prospective purchasers. Among and typical of the statements and representations made by respondent concerning the said Schickerling Mushroom Bulb Photo Flood Lamp, sometimes described as Full Sun Spectrum Photo Flood Krypton Lamp, are the following:

- 8 amperes
- 38,000 lumens
- Concentrated cool coil filament
- Improved color balance
- Much higher actinic value
- 10-hour peak performance
- Made under license of U. S. Patent rights of Conrad Schickerling.
- Rare inert gases
- "Krypton" Lamp
- Rated average laboratory life at 115 volts is 20 hours.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling Photo Enlarging Lamp is that it is a "Koolkoil Krypton" lamp.

Among and typical of the statements and representations disseminated and caused to be disseminated as aforesaid, concerning respondent's said Schickerling "1,000 Flash" Photo-Flash-Flood-Lamp, are the following:

- Dufay Color Correction Lamps and
- Dufay-Flash Color Correction Lamps.

Automatic controlled—each extra ordinary instantaneous flash of approx. 52,000 lumens of a few seconds durations, producing artificial sunlight illumination at split second peak of Light.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling "200 Flash" Photo Lamp, are the following:

Schickerling "200 Flash" (works automatically) Photo-Lamp; 200 flashes in one bulb.

This new bulb replaces 200 ordinary flashlight bulbs.

Made under license of U. S. Patent rights of Conrad Schickerling.

PAR. 5. Through the use of the above and foregoing statements and representations, as well as others of similar import and meaning not herein set out, the respondent represents and implies:

That respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp is 8 amperes and has a lumen output of 38,000 lumens; contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; is more effective in blackening a negative than other lamps used for the same purpose, and has a 10-hour peak performance; is covered by United States patent rights belonging to respondent, and contains rare gases not ordinarily contained in other lamps of the same type; contains crypton gas and has an average life of 20 hours at 115 volts; and contains, or has, or brings about, color balance.

That respondent's said Schickerling Photo Enlarging Lamp contains a coil filament; or that it contains a cooling coil between the wire and filament and that such a device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; and that said lamp contains crypton gas.

That respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp has Dufay color correction, and that respondent may rightfully use Dufay color correction with or in said lamp; and that it is a flash bulb or flashes instantaneously, and for a split second produces a flash or a light more intense than at any other time.

That respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically; that it will flash 200 times and replace 200 ordinary flashlight bulbs; and is made under United States patent rights of respondent.

PAR. 6. The above and foregoing statements and representations are false, misleading, and deceptive for, in truth and in fact, respondent's said Mushroom Bulb Photo Flood Lamp sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is not 8 amperes but is substantially less, and it has a lumen output of substantially less than 38,000 lumens. It does not contain a coil filament, or a cooling coil between the wire and filament which is peculiar to respondent's lamp but only such a coil as is used in practically all lamps of this general nature, nor does it have an improved color balance or a color balance of any kind whatsoever. It is not more effective in blackening a negative than other lamps used for the same purpose, and it has a peak performance of substantially less than 10 hours, and it is not covered by a United States Patent.

It does not contain rare gases not ordinarily used in incandescent lamps of the same type, but, on the contrary, contains the ordinary argon nitrogen gases used in the majority of other incandescent lamps of this kind or type. It does not contain crypton gas except for the small amount found in all argon gas. The average life of this bulb is substantially less than 20 hours at 115 volts.

Said Schickerling Photo Enlarging Lamp does not contain a cool coil or a cooling coil between the wire and filament. A cooling coil between the wire and filament would not be peculiar to respondent's said lamp, for such cooling coils are found in practically all lamps of this general nature. Said bulb does not contain crypton gas except for the small amount found in all argon gas which argon gas is used in most other lamps of this same type.

Respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp does not have Dufay color correction and respondent does not have and never has had the right to use Dufay color correction with or in said lamp. It is not a flash bulb but is a flood lamp. It does not flash instantaneously as do flash bulbs and it does not for a split second or for any period of time produce a flash or a light more intense than that produced at any other time. In truth and in fact, the bulb known in photography as a flash bulb can be used but once as it burns out in one lighting. Respondent's said "200 Flash" Photo Lamp is not a flash lamp but is primarily a flood lamp. It does not work automatically because it is necessary to shut off the electric current or to remove the lamp from the socket after each flash, for without such shutting off or removal the said lamp will not light up accurately the next time it is used. Said globe will not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs and it is not covered by a United States patent.

PAR. 7. Respondent at all times herein mentioned has conducted and now does conduct his said business under the name Conrad Schickerling Research Laboratory, and on the said advertisements heretofore mentioned has printed and does print or cause to be printed the words "Conrad Schickerling Research Laboratory." By the use of said name and said words respondent represents that as a part of said business he owns, controls and directs a laboratory where research work is conducted in connection with the production of his said lamps. In truth and in fact, respondent does not own, control, or direct and never at any time herein mentioned has owned, controlled, or directed a laboratory where such research work is conducted, and respondent is not now and at no time herein mentioned has been engaged in the direction, control, or conduct of any such research work.

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PAR. 8. The aforesaid acts and practices, used by respondent in connection with the offering for sale and sale of his said incandescent lamps, have had and now have the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that said representations as herein alleged are true and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of incandescent lamps used in photography. There are among the competitors of respondent mentioned in paragraph 3 hereof those who in the sale of their incandescent lamps do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint, 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, Conrad Schickerling, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the incandescent lamps now known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, and of the incandescent lamps now known as Schickerling Photo Enlarging Lamps, and of the incandescent lamps now known as "1,000 Flash" Photo-Flash-Flood-Lamps, and of the incandescent lamps now known as "200 Flash" Photo Lamps, whether sold under these names

or under any other names in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the amperage of respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is 8 amperes or any number of amperes in excess of that actually present, or that the lumen output is 38,000 lumens or any other number of lumens in excess of the lumens actually produced; or that said lamp contains a coil filament, or contains a cooling coil between the wire and filament; that said lamp is more effective in blackening a negative than other lamps used for the same purpose, or has a 10-hour peak performance or is covered by United States patent rights; that it contains rare gases not ordinarily contained in lamps of the same type, or that it contains krypton gas; that it contains or has or brings about color balance, when such is not the fact; that such a device or arrangement as a coil filament, or cooling coil between wire and filament, is peculiar to respondent's said lamp or is not to be found in the ordinary lamps used for the same purpose; or that the average life of its said lamp is 20 hours on a 115-volt circuit.

2. Representing that respondent's said Schickerling Photo Enlarging Lamp contains a coil filament, or that it contains a cooling coil between the wire and filament; or that such a device or arrangement is peculiar to respondent's said lamp, or is not to be found in the ordinary lamp, or that said lamp contains krypton gas.

3. Representing that respondent's said "1,000 Flash" Photo-Flash-Flood Lamp has Dufay color correction, or that respondent may rightfully use Dufay color correction with or in said lamp, or in any lamp, or that said lamp is a flash bulb, or flashes instantaneously, or for a split second produces a flash or a light more intense than at any other time.

4. Representing that respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically, or that it is made under United States patent rights of the respondent, or in any way misrepresenting the number of times it will flash.

5. Using the words "research laboratory" or the word "laboratory" or any other similar word, words, or phrases in his trade name or in connection with his business, when respondent does not own and operate or directly and absolutely control an appropriately equipped laboratory where research work in connection with said business is conducted by trained technicians.

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
STANDARD BRANDS INCORPORATED AND STANDARD
BRANDS OF CALIFORNIA ¹

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED

Docket 2986. Complaint, Nov. 21, 1936—Decision, May 1, 1940

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHETHER DUE ALLOWANCE
ONLY FOR DIFFERENCES IN COST OF MANUFACTURE, SALE OR DELIVERY RESULTING
FROM DIFFERING METHODS, ETC.—COST ASCERTAINMENT—ESTIMATES—COSTS—
ITEMS, UNITS AND ALLOCATIONS.

In proceeding in which corporation and its subsidiary, engaged on national scale in manufacture and sale of bakers' yeast, chiefly, to some 25,000 customers, under schedule of price differentials and practices in application thereof, challenged as constituting discrimination in price in violation of aforesaid section, offered cost studies, computations, and allocations based upon lump sum estimates demonstrated by their own tabulations as erroneous, distributed results of such error throughout their cost study on basis of re-assumed correctness of demonstrated errors, applied repeatedly such lump sum estimates directly and indirectly throughout their allocations of costs, and augmented "by difference" partial cost data obtained by actual survey in order to adjust final and vital results to coincide with lump sum estimates made at outset, resorted to use of such lump sum estimates in allocations of all costs, and included in costs allocated to bakers' yeast many items of cost not incurred in manufacture, sale, and delivery of such product, and many items of cost which should be allocated equally to each pound of such yeast: *Held*, (1) That their lump sum estimates cannot be made the basis for price differentials; and (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

¹ The original findings and order are published in 29 F. T. C. 121. The effect of Commission order of May 1, modifying such original findings and order, is to include, as set forth in the new paragraph 15 of the findings, in lieu of the old paragraph 15 of the original findings, respondents' theretofore methods in sale of foil yeast as discriminatory in violation of the statute involved, and to include such methods of selling said foil yeast within the prohibitions of the order, as set forth in the paragraph thereof relating thereto, on page 1157, *infra*.