

## Syllabus

IN THE MATTER OF  
HY-TEST CEMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3779. Complaint, May 2, 1939—Decision, July 16, 1940*

Where a corporation engaged for more than 15 years past in sale and distribution of certain masonry cement under trade name of Hy-Test and which, through its president and principal executive officer who owned controlling interest therein, had taken part, along with other members and organizations of general trade and industry concerned, in tests conducted by Bureau of Standards of the various products involved of the different participating members in the interest of the public, the trade, State governments, and the United States Government, and which, through active participation therein by its said president and through conferences with officials of said Bureau and notices therefrom and otherwise, was fully advised as to the policy adopted and respected generally in said connection of divulging to participant's results of said tests only as concerned particular participant's product and of not divulging at all to general public results thereof as respects particular products or manufacturers' data—

- (a) Divulged and made public results of such research by overprinting on Bureau's circular describing same, symbol identifying its own particular product, and distributed and made known to its salesmen and through them to general public, results of the tests or research by said Bureau as they affected not only its own product but those of competitors;
- (b) Published under same title as made use of by chief of section concerned of said Bureau in article entitled, "Brick Laying to Avoid Leaks," and included in its own article thus published, and at its own expense, statement identifying and praising its own particular product, and on a comparative basis, as a result of particular tests in question and investigations and research by said Bureau; and
- (c) Published, through its agents and through advertising in sales promotional literature from time to time during the years, the results of said tests of the Bureau and information with reference thereto, in which it identified all masonry cements as used therein and not disclosed in the Bureau's research paper, in violation, as aforesaid, of the established policy and practice in the Bureau, and contrary to its rules and instructions, and understandings between it and participants and in bad faith;

With results, through its said acts and practices in advising purchasing public as to identity of cements used in said tests, made under supervision of said Bureau as aforesaid, and through use of reports of tests and articles prepared by said section chief, for advertising publicity and sales promotion purposes, of placing it at a competitive advantage over its competitors who participated in said tests under the Research Associates plan of bureau in question, above described, and were unwilling to adopt and use such or any other method or methods contrary to policy of said Bureau with reference to plan in question, and complied with rules, regulations, and instructions issued by said Bureau, and did not use reports of tests

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for advertising publicity or sales promotion purposes, or divulge identity of products used in making tests in question, and with consequence and as a result that substantial portion of purchasing public was induced to buy its said product, and trade in commerce among the various States and in said District of Columbia was diverted unfairly to it from its competitors:

*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.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Curtis C. Shears* for the Commission.

*Mr. Percy H. Russell, Jr.*, and *Mr. Edward K. Wheeler* of Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for respondent.

COMPLAINT <sup>1</sup>

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 Hy-Test Cement 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, Hy-Test Cement Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the Fox Building, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the business of advertising, offering for sale and selling masonry cement under the trade name "Hy-Test" Masonry Cement. In the conduct of its business, as aforesaid, respondent causes and has caused said cement when sold to be transported from its place of manufacture in Pennsylvania to purchasers thereof in various other States of the United States and in the District of Columbia, at their respective places of busi-

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<sup>1</sup> By order dated August 10, 1939, and in response to motion of acting chief counsel and counsel for Commission pars. 4 and 5 of the complaint as originally issued were amended to read as set forth in the complaint as published herewith.

Said order in response to such motion of said acting chief counsel and trial attorney for the Commission in the proceedings in question further provided, "that all testimony and other evidence heretofore received at hearings held in this proceeding be made a part of the record in connection with the complaint as amended and be considered in like manner and to the same effect as though said testimony and other evidence had been originally received at hearings held upon the allegations contained in said complaint as amended, saving, however, to the respondent its right to rebut said testimony or other evidence by any proper means at any such subsequent hearings as may be held therein.

ness. There is now and has been for some time last past, a course of trade in said cement by said respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cement in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The National Bureau of Standards in the Department of Commerce of the United States, hereinafter referred to as the Bureau, has as one of its chief functions the discovery and evaluation of material standards and the solution of basic technical problems by the use of its unique research and testing facilities. Its establishment of more precise values for the standard constants furnishes an exact basis for scientific experiment and design and makes possible the efficient technical control of industrial processes. Its work on standards of quality sets up attainable standards to assure high utility in the products of industry and furnishes a scientific basis for cooperation between the Bureau and industry in research charged with the public interest. In the course of its work in the fields involving the standards above described, it makes researches and tests for the determination of the properties of stone, clays, cement, and other structural materials. The Bureau's functions are exercised for the United States Government, State governments, and the general public. In the case of the general public, researches are made by persons designated as "Research Associates," assigned to the Bureau by an association representing an industry, or by a group of associations. Researches made by Research Associates have for their object the solution of problems considered important to the entire industry concerned. In such cases, the facts found are made public in order that the industry as a whole and the public dealing with it may benefit. In order to obtain the cooperation of industry, it is necessary that all members of an industry be assured that no one member shall profit at the expense of the other members of the industry. To secure the benefits resulting to the public from such researches, it is the rule and policy of the Bureau to omit from the report the names of the manufacturers whose products are utilized, as well as the names or other identification of their brands. Each such manufacturer is given a key which will enable him to identify in such report his own product, but not the products of other participants. In transmitting this key number, it is the practice of the Bureau to inform each manufacturer receiving the same that he may not utilize the information so disclosed for advertising or sales promotion purposes.

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PAR. 3. During the years 1931-32 an investigation of masonry mortars was undertaken by said bureau, at the request of the American Face Brick Association, the National Lime Association, and certain producers of masonry cements, under the "Research Associate" procedure described in paragraph 2 hereof, and more fully outlined in Bureau Circular 296, entitled "Research Associate Plan." Upon the completion of such investigation, the results were printed in the Bureau's "Research Paper 683, A study of the properties of mortars and bricks and their relation to bond"; and information respecting the same was also given out in the following papers:

"Permeability Tests of 8-inch brick wallettes."

Proceedings of the American Society for Testing Materials, 1934.

"Rate of stiffening of mortars on a porous base," Rock Products, September 10, 1932.

All of the manufacturers whose products had been used in carrying out such tests were sent by the Bureau a copy of its Research Paper No. 683 containing the results of the investigation, and informed of the key numbers of their products, as used in the test and shown by said report; and all of said manufacturers were at the same time informed that the information contained in the report was not to be used for advertising, publication, or sales promotion, as provided in said Circular 296, "Research Associate Plan."

The respondent was one of the manufacturers whose product was used in making the tests described and a report upon which formed part of Research Paper No. 683. On or about July 5, 1934, respondent was informed in writing by the Bureau:

Replying to your letter of July 2, your material is designated in Research Paper 683 as masonry cement No. 6 used in making mortar B-VI. This information is not to be used for advertising, publication, or sales promotion.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of inducing the purchase of said products in said commerce, respondent is now and for some time last past has been, publishing in connection with its advertising and sales promotion of said cement the identity of the various brands of cement of the manufacturers participating in said investigation as described in paragraph 3 hereof, and particularly the identity and information that the masonry cement used in making mortar B-VI as designated in said Research Paper 683 was "Hy-Test" Masonry Cement, and is now and has been distributing said information widely in commerce. The use by respondent of said method of sales promotion in revealing said information, is a practice of the sort which is contrary to the established rules and policies of the Bureau and the public policy of the United States. Many persons, firms, and corpo-

rations, participating in said tests as described in paragraph 2 hereof, who are in competition with the respondent, as above alleged, are unwilling to adopt and use said methods or any methods that are contrary to a policy or rule of practice established by the Bureau in connection with the Bureau's said "Research Associate Plan." Many persons, firms, and corporations are induced by said method employed by respondent in the sale of said cement to buy respondent's cement in preference to cement offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent of not observing the policy and rules of the Bureau, has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or equivalent method and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States.

PAR. 5. In the course and conduct of its business as aforesaid and for the purpose of inducing the purchase of said cement in said commerce, respondent is making and has made many misleading representations, among and typical of which are representations contained in a booklet respondent has caused to be prepared, published and circulated, entitled "Bricklaying To Avoid Leaks." In addition to publishing in said booklet the information alleged in paragraph 4 hereof showing the identity of respondent's said product as used in said test in violation of the rules and policy of the Bureau and of the public policy of the United States as hereinbefore alleged, said booklet is and has been prepared, published, and circulated in such a manner as to import and imply that it is in whole or substantially an official report of the Bureau, when in truth and in fact it is not a report of said Bureau, but contains many misleading representations as well as containing in a changed and modified form, an altered reprint of an article written by one D. E. Parsons, chief of the Masonry Construction Section of the Bureau. Among and typical of said representations used and caused to be used by the said respondent are and have been the following:

Does not this report of the Bureau of Standards point to the following essential conclusions?

Here is real information from the Bureau of Standards, real help-worthy views. The Bureau of Standards' report points out the danger of depending on single walls to keep water out.

Here is what the U. S. Bureau of Standards says on the subject.

Listen to the views of your own Bureau of Standards.

Each and all of said statements and representations and other statements contained in said booklet made by respondent were and are calculated to and have had a tendency and capacity to and do mislead

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and deceive a substantial portion of the purchasing public into the erroneous belief that said publication is in whole or substantially an official report of said Bureau, and that statements which are quoted in said booklet are taken from official reports of said Bureau. The use of said booklet containing said representations and the information of the purchasing public as to the identity of said keys used in said test as aforesaid by respondent has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been, done by respondent to competition in commerce between and among the various States of the United States.

PAR. 6. The aforesaid acts and practices of the 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 the 2nd day of May 1939, issued, and subsequently served, its complaint herein charging Hy-Test Cement Co., a corporation, with the use of 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. Said complaint was amended on the 10th day of August 1939. After issuance of said complaint and the filing of answer thereto by respondent, testimony and other evidence in support of the allegations of the complaint were introduced by Curtis C. Shears, attorney for the Commission, and in opposition to the allegations of the complaint by Percy H. Russell, Jr., of the firm of Kirkland, Fleming, Green, Martin & Ellis, attorneys for the respondent, before Randolph Preston, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and oral argument of counsel for the Commission and counsel for the respondent, 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.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hy-Test Cement Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the Fox Building, Philadelphia, Pa. Abraham T. Malmé is, and since the organization of the corporation has been, its president and principal executive officer, owning a controlling interest in said corporation.

Respondent is now and for more than 15 years has been engaged in the sale and distribution of a certain masonry cement under the trade name Hy-Test Masonry Cement.

PAR. 2. The National Bureau of Standards of the Department of Commerce of the United States, hereinafter referred to as "The Bureau," has as one of its chief functions the discovery and evaluation of materials, standards, and the solution of basic technical problems by the use of its unique and unusually efficient research and testing facilities; its establishment of more precise values for the standard constants furnishes an exact or approximately exact basis for scientific experiments and designs, and thus makes possible a more efficient and technical control of various industrial processes. The Bureau's work on standards of quality thus sets up practical and attainable standards for assuring better utility of the products of the industry and furnishes a scientific basis for cooperation between the said Bureau and industry in researches which are in the public interest.

In the course of the aforesaid work, the Bureau makes researches and tests for the determination of the purposes and comparative usefulness in structural work of stone, clays, cement, and other similar materials. These functions and activities are exercised for the United States Government, for the various State governments and for the general public. In the case of investigations on behalf of the general public, researches are made by persons designated as "Research Associates," assigned to the Bureau by some individual or individuals, association or group of associations, connected with the production and use of the materials thus to be investigated. The researches made by said Research Associates have for their object the solution of problems considered important to the entire industry concerned. In such cases, the facts found are made public, in order that the industry as a whole and the public dealing with it may be benefited thereby. In order to obtain the cooperation of industry, the Bureau has had a general policy of assuring all persons and associations thus cooperating that the work of a Research Associate is one of peculiar trust, often confidential, on problems of concern to the entire industry; that the work of such Associates is

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directed exclusively to research projects approved by the director of the Bureau of Standards; that no member participating shall profit thereby at the expense of other members of said industries or industry. Such policy and rules have been authorized by acts of Congress.

To secure the benefits resulting to the public from such researches, it is and has been the rule and policy of the Bureau to omit from the report of its findings upon materials submitted as aforesaid, the names of the manufacturers or other persons whose products are thus tested, as well as the trade names or other identification of the particular brands or products submitted. Each participant is given a key, or symbol, which will enable him to identify in such report his own product, but is given no information whereby he may identify the products of the other participants. In transmitting this key it is and has been the practice of the Bureau to inform each participant receiving the same that he may not utilize the information thus furnished him for advertising or sales-promotional purposes.

As early as March 27, 1929, respondent had notice of the policy of the Bureau with respect to the use of reports of its findings upon materials tested for advertising or sales promotional purposes and the divulgence of the identity of products tested, for on that date the Director of the Bureau wrote the president of respondent a letter which was in part as follows:

We have received from an architect in New Jersey a copy of your advertisement the first page of which contains in large print the heading, "U. S. Bureau of Standards," and following this, various excerpts and references to our Circular 360.

\* \* \* \* \*

The Bureau does not wish its publications to be used in this manner and would like very much for you to withdraw this circular of yours from circulation.

PAR. 3. Beginning with the year 1931 and continuing until the year 1934, under the plans and policies of the Bureau above set forth, and at the request of the American Face Brick Association, the National Lime Association, the respondent Hy-Test Cement Co., and certain other producers of masonry cement, the Bureau conducted, under its Research Associate procedure as described in paragraph 2, *supra*, a certain series of tests in regard to mortars, bricks, their relation to bond, and other related questions.

During the period of the said investigation there were many conferences and much correspondence between the various firms above mentioned (hereinafter called "participants") and the Bureau, with reference to the nature and progress of said investigation. The respondent through its president, Malmed, actively participated in prac-

tically all of same and was fully advised as to the methods, policies, and practice of the Research Associates in making the test as to respondent's products and those of other participants.

Respondent was present at one or more meetings when a paper writing entitled "Tentative Outline of Proposed Investigation of Masonry Mortar" was discussed. Paragraph 4 of same contains, in part, the following language:

In any report or publication of results, no material will be designated by its trade name. Any organization may learn of the performance of its own material provided it adheres to the Bureau's policy of regarding all of the information as strictly confidential.

PAR. 4. A final report of the results of the test was embodied in and formed a part of Bureau's Research Paper No. 683, which bears date March 14, 1934, and which was generally distributed, to respondent and the other participants, some time thereafter. In said research paper, respondents product, Hy-Test Masonry Cement, was referred to by the symbol "B-VI," and all cements tested were designated by similar symbols.

Shortly thereafter, respondent, in violation of the rules and policy of the Bureau, to which it had agreed, made known to the public in various ways that the said symbol referred to its product, one of such ways being by overprinting, in large blue type, on the first page of said Bureau's Research Paper 683, the following words and figures, to wit:

Hy-Test Cement in this paper is designated as B-VI. See pages 638-39,—'41-42.

On April 13, 1934, the respondent through its president, Malmed, wrote a letter to said Bureau which contained the following among other statements:

We originally agreed to all rules for conducting these tests.

In the month of May or early part of June 1934, respondent distributed to its salesmen information regarding "Secret tests made by the Bureau of Standards on various types of mortar and brick—1931-34." The identification on all of the key numbers of the masonry cement used in the mortars represented by the symbols were by this means made known to the agents of respondent and, through them, to a substantial portion of the purchasing public.

On July 2, 1934, respondent wrote said Bureau, requesting that it be officially notified as to the key number used to identify its product. Malmed had theretofore known this and had distributed information identifying respondent's symbols and those of other participants in the said tests.

On July 5, 1934, the said Bureau advised respondent, in writing, of the symbol used to designate its cement only, and it further cautioned respondent as follows:

This information is not to be used for advertising, publication, or sales promotion.

On July 7, 1934, all the other participants were similarly advised.

In the month of July 1934, Malmed, president of the respondent, had a conference in Washington, D. C., with Dr. Bates, chief of the Clay and Silicate Products Division of the said Bureau, with reference to the Bureau's letter prohibiting disclosure of the identity of the symbols, which had been so generally done by respondent and its agents. Thereafter there was some correspondence and conversations between the Bureau and Malmed and other participants as to the divulgence of said symbols.

On July 5, 1935, respondent wrote to said Bureau in part as follows:

I thoroughly understand that they (results of tests and symbols) must not be used for advertising purposes, and you have my word of honor on this.

On July 30, 1935, the said Bureau advised Malmed:

This information (as to said tests) is confidential and not to be used for advertising, publication, or sales promotion.

Said respondent was at other times advised by the said Bureau to the same effect.

During the years 1935 to 1938, inclusive, respondent continued to insert an advertisement in Sweet's Catalogue, a publication in general use by architects, engineers, and contractors in the United States, which advertisement contained much of the confidential information which respondent had obtained as the result of being a participant in said tests.

PAR. 5. In September 1937, an article entitled "Bricklaying to Avoid Leaks," prepared by D. E. Parsons, chief of the Masonry Construction Section of said Bureau, was published in "The American Builder and Building Age," a magazine generally used and relied upon by the building trades in the United States.

In the early part of the year 1938 respondent, at his own expense, caused to be published and distributed in commerce, as an advertisement in promotion of the sale in commerce of respondent's product, a pamphlet bearing the same title "Bricklaying to Avoid Leaks," which pamphlet contained what erroneously purported to be an exact reprint of the said Parsons article of the same title, and which gave the impression to the general public that it was a Government pub-

lication. On page 10 of this second, or private, publication, in the last paragraph, it is stated:

An investigation took place at the Bureau of Standards from 1931 to 1934, which was paid for by the American Face Brick Association, the Portland Cement Association, and a group of cement manufacturers. The Hy-Test Masonry Cement, known as "Mortar B-VI," was mentioned as one of the five outstanding mortars that provided good bonding efficiency, and it is a matter of record that it is the only one of the five leaders that came forth with a perfect record on durability of bond tests.

Said pamphlet also contained other statements and conclusions which greatly praised the Hy-Test Masonry Cement.

Shortly thereafter, Dr. L. J. Briggs, and other officials of said Bureau, called said Malmed, president of respondent, to Washington for a conference and directed that he cease the distribution of said pamphlet until he had obliterated therefrom all the confidential information obtained from the said tests. To this Malmed agreed, but the first copies sent out did not completely obliterate such information, if at all. After subsequent communications from the Bureau the said obliteration was made.

Most of the other participants in said tests neither identified their cements nor otherwise made public any of the results of said tests, but abided by their understanding and agreement with said Bureau to conform to its policy as to maintaining the confidential nature of the results of said tests.

PAR. 6. In the course and conduct of its business as hereinbefore described, during the years 1934 to 1939, inclusive, and for the purpose of promoting the purchase of its products in commerce, the respondent from time to time published, through its agents and by advertising in sales promotional literature, the results of said tests and information with reference thereto, identifying all masonry cements used in said tests but not disclosed in said Research Paper 683. The use by the respondent of said information was in violation of the established policy and practices of said Bureau of Standards, and contrary to the rules and written instructions of said Bureau and the understanding between said Bureau and the participants in said tests—all of which was done in bad faith; and persons, firms, and corporations have been induced by said methods employed by respondent as aforesaid to buy respondent's cement in preference to cement offered for sale and sold by competitors of respondent who do not use the same or similar methods.

PAR. 7. The other participants in said tests hereinbefore described, and who are in competition with respondent in said cement business, have been and are unwilling to adopt and use such methods, or any

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other method or methods contrary to the policy of the said Bureau with reference to the said Research Associates plan as hereinbefore described.

PAR. 8. The aforesaid acts and practices of the respondent in advising the purchasing public as to the identity of the cements used in said tests made under the supervision of the National Bureau of Standards of the Department of Commerce as aforesaid and the use of the reports of tests and the articles prepared by the said D. E. Parsons, chief of the Masonry Construction Section of said Bureau, for advertising, publicity, and sales-promotion purposes, places the respondent at a competitive advantage over its competitors who participated in said test but who comply with the rules, regulations, or instructions issued by said Bureau of Standards and do not use reports of tests for advertising, publicity, or sales-promotion purposes or divulge the identity of the products used in making such tests. As a result a substantial portion of the purchasing public has been induced to buy said product and trade in commerce between and among the States and in the District of Columbia has been diverted unfairly to the respondent from its competitors.

#### CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and the 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 respondent, testimony, and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument by Curtis C. Shears, counsel for the Commission, and by Percy H. Russell, Jr. (with Edward K. Wheeler on the brief) of Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Hy-Test Cement Co., a corporation, its officers, representatives, agents, and employees, directly or

indirectly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of Hy-Test Masonry Cement or any other cement, or any other product, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Divulging, in any manner, or assisting the purchasing public in determining, by any means, the identity of the manufacturer or the brand name of any cement which was tested by the Bureau of Standards of the United States Department of Commerce; the results of which tests were published by the Bureau of Standards of the United States Department of Commerce in "Research Paper 683, A Study of the Properties of Mortars and Brick and Their Relation to Bond."

2. Using, in whole or in part, for advertising, publicity, or sales-promotion purposes, any report by any bureau, department, or other agency of the United States Government, or by any official or employee thereof, where such use of said report is violative of any rule, regulation, or instruction issued by said bureau, department or other agency, or where such use imports or implies, directly or inferentially, that said bureau, department, or other agency has approved or recommended the use of respondent's products.

*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.

## IN THE MATTER OF

## ROY T. EHRENZELLER, TRADING AS MAPLE LAWN POULTRY FARM AND MAPLE LAWN HATCHERY

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

*Docket 3941. Complaint, Nov. 3, 1939—Decision, July 16, 1940*

Where an individual doing business as Maple Lawn Poultry Farm and Maple Lawn Hatchery and engaged in sale and distribution of baby chicks; in advertisements which he disseminated through newspapers, trade magazines, and other publications having general circulation throughout various States, and through letters, catalogues, circulars, leaflets, and other printed and written matter distributed among prospective purchasers—

- (a) Represented that he personally supervised and controlled flocks from which his eggs were produced and owned and controlled same, through statements referring to his flocks, trade name, alleged methods, etc., such as "We leave in our breeding flocks only those birds," etc., "We will not tolerate any unsanitary or careless management of breeders," etc., and "our careful selection of breeding stock," etc.;

Facts being he did not own, control, or supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business, but purchased same from various sources and had no personal knowledge as to whether or not the flocks producing such eggs were blood-tested or culled or free from disease; and

- (b) Represented that the eggs from which his baby chicks were hatched were from blood-tested and culled flocks and that his said eggs and chicks were of superior grade, origin, quality, and type, character, and nature, and were from blood-tested and culled flocks and free from disease, through such statements among others as "Every Breeder is BLOOD-TESTED," "Blood-testing means the testing of a sample of blood, \* \* \*" and "We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this (pullorum) disease in their veins," and all flocks "are of superior worth, coming from proven varieties \* \* \* all from vigorous, hardy breeders blood-tested annually \* \* \*";

Facts being that, as above indicated, he purchased eggs from various sources, and had no personal knowledge as to whether or not flocks producing such eggs were blood tested or culled or free from disease, purchased in many instances eggs from flocks which had not been thus blood tested, etc., and, as understood from term "bloodtested" by purchasers of baby chicks, all chicks sold by him were hatched from eggs purchased as above detailed, and he therefore could not truthfully represent that chicks hatched by him from eggs purchased as aforesaid from flocks which were not blood tested nor culled nor free from disease, were themselves from blood tested and culled flocks or, as aforesaid, free from disease;