

Syllabus

IN THE MATTER OF

CHARLES T. PIKE, ELBERT C. PIKE AND ERNEST C. PIKE,
TRADING AS MIDDLE WEST SUPPLY COMPANY AND THE
BEST GARDENSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3996. Complaint, Jan. 23, 1940—Decision, Feb. 19, 1941*

Where three individuals engaged, under two separate trade names, in interstate offer and sale of face powder and flower seeds of various kinds, in substantial competition with others engaged in offer and sale of said products in commerce, as aforesaid, and who do not make offers of so-called "free" goods or misrepresent prices of goods to induce their purchase;

In selling their said products under a plan of sending, through the mails, penny post cards making certain offers to addressee and holding out, or purporting to hold out, additional inducements to recipient in consideration of his sending in number of post cards addressed to friends or acquaintances, which cards were made use of by them for the further sending to such addressees of other similar offers, so as thereby to establish an endless chain of prospective customers for their merchandise—

- (a) Represented, under trade name "Middle West Supply Company," in offers thus sent to prospective purchasers through means aforesaid, that they were offering free of charge a box of face powder of represented value of \$1 as an introductory or special offer to introduce new brand of such powder if customer would remit sum of 10 cents to cover cost of postage, packaging, and handling, and send in also to them six postal cards addressed to friends who made use of such product, facts being, in large number of cases, no powder whatever was sent to those complying with said offer and sending amount thus called for, powder, in those instances in which sent, was not reasonably worth \$1 or more than 10 cents paid by customer, but cost thereof to said individuals was much less than said amount and said product was not "free" nor delivered, furnished, or supplied free of charge, and so-called offers were not special, introductory, or unusual, but customary methods employed by them in regular course of their business; and
- (b) Represented further, in offers made on post cards by them as above described, that to customers mailing in their dime and the six addressed postal cards within a 10-day period, they would send an additional premium or "promptness prize," represented as consisting, as case might be, of manicure sets, plush table covers, or similar merchandise, facts being, in cases in which face powder was sent at all, as hereinbefore set forth, and customer was entitled to such "promptness prize," they did not send same with powder, but required additional payment of 24 cents;
- (c) Represented, under trade name "The Best Gardens," in offer and sale of flower seeds under plan above described, on post cards sent to those whose names they had secured as above described, that they had a wonderful premium offer to send recipient "free," and stated that they would send "100

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Gladioli (Ruffled Varieties) 25 'Oriental Lilies' (also a wonderful house plant) and 5 full size packets of Flower Seeds for spring planting," and that if recipient would "just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing, and handling, this collection will be sent to you FREE," facts being in large number of cases no flower seeds were sent to customer upon receipt of dime called for, and in those instances in which they actually were sent they were worthless hulls that would not grow, it was not their practice to furnish free of charge any gladioli or oriental lilies, or any other bulb plants or flowers, flower seeds furnished by them were, as aforesaid, worthless and unfit for use and were not furnished free of charge, but cost to them of such seeds, purportedly given free, was included in the 10 cents required to cover purported mailing, packing and handling costs; and

- (d) Represented further purported "free" offer on cards sent as aforesaid, through statement reading "P. S. Sending us these names within 10 days enables you to receive FREE, a \$1.00 Silk Crushed Plush Table Cover," facts being in those cases in which flower seeds were sent at all, as aforesaid indicated, and customer was entitled to the "promptness prize" for sending in the 6 addressed postal cards within prescribed 10-day period, they did not send such prize as agreed, but instead another card requiring payment of 24 cents additional before so-called "promptness prize" would be sent;

With the result that said so-called "free" offers, advertised and distributed to public as above set forth, misled and deceived public into acceptance thereof and into purchase of their merchandise by paying them full value thereof in belief that such payment was merely to cover cost of mailing and packaging products in question, and with consequence that their use of such false and fraudulent representations and sales methods misled and deceived substantial portion of purchasing public into purchase of considerable quantities of their said merchandise, and trade, as consequence, was thereby diverted unfairly to them from competitors who do not misrepresent quality or value of their products or terms and conditions under which sold; to the 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.

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II and *Mr. Merle P. Lyon* 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 Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," hereinafter referred to as the respondents, have violated

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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. Respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, are individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," having their principal office and place of business at 310 Prairie Street in the city of St. Charles, in the State of Illinois. Respondents are now, and for several years last past have been, engaged in the business of offering for sale and selling face powder and flower seeds of various kinds in commerce among and between the various States of the United States. Said respondents cause said face powder and flower seeds, when sold, to be transported from their office and place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said face powder and flower seeds so offered for sale and sold by respondents, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals, and with firms, partnerships, and corporations also engaged in offering for sale and selling face powder and flower seeds in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business of offering for sale and selling face powder, respondents, under the trade name Middle West Supply Co., have sent through the United States mails by means of penny postal cards addressed to individuals located in various States of the United States, whose names are procured through the methods hereinafter set out, advertisements reading substantially as follows:

Dear Friend: This card was addressed to you by your friend so that you can also receive a \$1.00 box of our new "Velve-Ritz" Face Powder FREE. Being in the wholesale business we are introducing this New powder for the first time and we want you to tell us what you think of this powder. We have made this powder MOISTURE PROOF and does not clog the pores, and we are anxious to have you test it for us. Just tell us what shade you use and enclose 6 postal cards each addressed to friends of yours who use powder, with a few extra names of friends written on paper, together with a dime for postage, packing and handling this lovely \$1.00 box of our New Velve-Ritz Face Powder will be sent to you FREE. Middle West Supply Co., Box 132, St. Charles, Ill. P. S. If we receive the names within 10 days, we will give a lovely 4 piece Manicure set FREE.

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The name of the face powder does not appear the same on all cards. Some of the other names used are "Ideal," "Vel-O-Tex," "Royal Madonna," and "Mo-V-Star," and various other gifts are offered on different cards besides the manicure set, including, among others, a silk crushed plush table cover with a represented value of \$1, one-half dozen pure white linen handkerchiefs, or a jar of cold cream, all of the represented value of \$1.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph the same offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no face powder is sent to the customer upon receipt of the dime, and in the instances where powder is actually sent it is not reasonably worth \$1 or more than the 10 cents paid by the customer.

In cases where the face powder is actually sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the specified 10-day period, the respondents do not send the "promptness prize" or gift with the powder. In lieu thereof respondents send a card in the envelope containing the powder, which card reads substantially as follows:

Premium Offer. One \$1.00 silk crushed plush table cover. We thank you for your promptness in sending us the names. Kindly send us 24¢ to cover postage, packing and handling charges with your name and address written on the back of this card. Your PREMIUM will be sent to you at once. In case we are temporarily out of table covers, kindly check second choice of equal value. 1. ½ dozen pure white linen handkerchiefs. 2. Ladies' combination set, cold cream, perfume, lipstick, necklace, etc.

In a large number of cases where the recipient of this card accepts this offer and sends to respondents the 24 cents required, no premium is sent, or an alternative premium is sent. In all cases, however, the premium sent does not have the value of \$1 or a value greater than the 24 cents paid by the customer.

The face powder and free premium offer card are sent out by respondents in a manila envelope, on which appears an additional offer, which is substantially as follows:

FREE

FREE

So you may become acquainted with the new "Mo-V-Star" face powder—the powder that needs no Cold Cream base—the powder you can carry in your vanity when out—the new marvellous powder that makes you look like a "million dollars"—we will be glad to send you a big \$1.50 box absolutely FREE. Just send us the name of the firm You THINK carries the finest assortment of Cosmetics in your community and drop two dimes into this envelope to help cover postage, packing

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and handling and fold to fit an envelope addressed to the Middle West Supply Co. Dept. 10, St. Charles, Illinois. (Your name and address is on this envelope) and write the Dealer's name on the back you think carries the finest assortment of Cosmetics. (Your name not divulged). If we receive this within 10 days, we will include a New Powder Puff FREE.

In a large number of cases where this offer is accepted, no powder or powder puff is sent by respondents, and in any event such face powder is not worth the sum of \$1.50 or any sum in excess of the 20 cents paid by the customer.

In addition to the above offers, respondents insert another card in the envelopes in which face powder is sent, said card reading as follows:

Big Opportunity. Turn SPARE TIME into DOLLARS Addressing Postal Cards at Home. We supply everything and Pay Cash in advance. Earn Easy spare time money. Everything confidential.

When a customer responds to this offer, the respondents send him a form letter stating that they will send a supply of stamped cards to be addressed and will pay 2 cents a card for each card addressed and sent out, in addition to a 50 percent commission on every order received by respondents for the deal described on the cards sent out. In addition to the supply of cards they agree to give the customer free of charge a \$1.50 Box of Face Powder. They require the customer to put up a \$1 deposit to show good faith and cover the cost of materials.

In a large number of cases no cards are sent to the customer to be addressed, or in any case so few are sent that there is no opportunity for the customer to earn enough money to defray the cost of his \$1 deposit, and no face powder is sent, or if sent, it is not worth the sum of \$1.50 or any amount equal to the deposit paid by the customer.

PAR. 4. In truth and in fact, the products so offered by the respondents to the public as free were not and are not delivered, furnished or supplied free of charge, or without any compensation or return to the respondents, and the cost of such products purported to be given free of charge has been and is included by respondents in the price purchasers have been and are required to pay in accordance with the terms of their various so-called free offers.

The various offers have not been special or unusual, but have been and are the customary methods employed by the respondents in the regular course of their business, and are not in any sense advertising or introductory offers of newly offered merchandise. The face powder offered for sale and sold by respondents by the methods heretofore set out is not manufactured by them, but is purchased by them in bulk from wholesalers for not more than 15 cents per pound. The boxes of powder sold by respondents by the methods herein-

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before set forth each contain approximately 1 ounce of powder, and are not worth more than the 10 cents paid therefor, and are not free as represented. In many instances respondents have failed and refused to send any merchandise whatsoever after full payment has been made by the customer in accordance with the terms of the offers made by respondents.

PAR. 5. In the course and conduct of their business of offering for sale and selling flower seeds, respondents, under the trade name The Best Gardens, have sent through the United States mails by means of penny postal cards addressed to individuals located in various States of the United States, whose names are procured through the same methods used in the sale of face powder as hereinbefore set forth, advertisements reading substantially as follows:

Dear Friend: As your friend addressed this card to you as a Flower Lover, we have a wonderful PREMIUM OFFER to send you FREE. Will also send you 100 Gladioli (Ruffled Varieties) 25 "Oriental Lillies" (also a wonderful house plant) and 5 full size pkts. of Flower Seeds for spring planting. Just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing and handling, this collection will be sent to you FREE.

The Best Gardens, Box 10, St. Charles, Ill.

P. S. Sending us these names within 10 days enables you to receive FREE, a \$1.00 Silk Crushed Plush Table Cover.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph the same offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no merchandise is sent to the customer upon receipt of the dime, and in the instances where seeds are actually sent, they are not as represented in the advertisement, and are not worth more than the 10 cents paid by the customer.

In cases where the flower seeds are actually sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the specified 10-day period, the respondents do not send the "promptness prize" or gift. In lieu thereof respondents send a card reading substantially as follows:

Premium Offer. One \$1.00 silk crushed plush table cover. We thank you for your promptness in sending us the names. Kindly send us 24¢ to cover postage, packing and handling charges with your name and address written on the back of this card. Your PREMIUM will be sent to you at once. In case we are temporarily out of table covers, kindly check second choice of equal value. 1. ½ dozen pure white linen handkerchiefs. 2. Ladies combination set, cold cream, perfume, lipstick, necklace, etc.

In a large number of cases where the recipient of this card accepts this offer and sends to respondents the 24 cents required, no premium is sent, or an alternative premium is sent. In all cases, however, the premium sent does not have the value of \$1 or a value greater than the 24 cents paid by the customer.

PAR. 6. In truth and in fact, it has not been and is not the practice of respondents to furnish free of charge, nor have they furnished free of charge, 100 gladioli or 25 "Oriental Lilies" or any gladioli or oriental lilies to persons who, in compliance with the terms and conditions of respondents' offer on their said post cards, have transmitted to respondents the required names of flower lovers and the 10 cents to cover packing and postage. The products so offered by the respondents to the public as free were not and are not delivered, furnished, or supplied free of charge, or without any compensation or return to the respondents, and the cost of such products purported to be given free of charge has been and is included by respondents in the price purchasers have been and are required to pay in accordance with the terms of their various so-called free offers.

PAR. 7. The so-called free offers of respondents advertised and distributed to the public in the manner hereinbefore set forth have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, the public into acceptance of such so-called free offers and into the purchase of respondents' products by paying to respondents the full value thereof in the belief that such payment is merely to cover the cost of mailing and packing said merchandise.

The use by the respondents of the false and fraudulent representations and sales methods set forth in paragraphs 3 and 5 hereof was and is calculated to, and had and now has the tendency and capacity to, and did and now does, mislead and deceive a substantial portion of the purchasing public into the purchase of a considerable quantity of respondents' products, with the result that trade has been unfairly diverted to respondents from competitors who do not misrepresent the quality or value of their products or the terms and conditions under which they are sold. In consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices, and representations of the respondents, as herein alleged, have been and are, all to the prejudice of the public and of respondents' competitors as aforesaid, and constitute unfair methods of competition in commerce and unfair and

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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 January 23, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individually and trading as Middle West Supply Co. and The Best Gardens, charging them 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. After the issuance of such complaint, testimony, and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu II, attorney for the Commission, before John W. Addison, 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 the said complaint, testimony and other evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested), 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. Respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, are individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," having their principal office and place of business at 310 Prairie Street, in the city of St. Charles, in the State of Illinois. Respondents are now, and for several years last past have been, engaged in the business of offering for sale and selling face powder and flower seeds of various kinds in commerce among and between the various States of the United States. They cause said face powder and flower seeds, when sold, to be transported from their office and place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said face powder and flower seeds so offered for sale and sold by

respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms, partnerships, and corporations also engaged in offering for sale and selling face powder and flower seeds in commerce among and between the various States of the United States who do not make offers of so-called "free" goods or misrepresent the price of goods to induce their purchase.

PAR. 3. In the course and conduct of their business in offering for sale and selling face powder, respondents, under the trade name Middle West Supply Co., have sent through the United States mails penny post cards offering free of charge a box of face powder of the represented value of \$1 as an introductory or special offer to introduce a new brand of face powder, provided the customer remits the sum of 10 cents to cover the cost of postage, packaging and handling, and also sends in to the respondents six postal cards addressed to friends who use powder. Furthermore, an additional premium or "promptness prize" is offered by respondents to customers mailing in the dime and six addressed postal cards within a 10 day period, such premiums being represented to consist of manicure sets, plush table covers, or similar merchandise.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph a similar offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no face powder is sent to the customer upon receipt of the dime, and in the instances when powder is actually sent it is not reasonably worth \$1 or more than the 10 cents paid by the customer.

In cases where the face powder is sent and the customer is entitled to the "promptness prize" for sending in the six addressed postal cards within the prescribed 10-day period, the respondents do not send the "promptness prize" with the powder, but require an additional payment of 24 cents.

The United States Post Office Department has received nearly 5,000 complaints regarding the failure of respondents to live up to the offers thus made to the purchasing public. Of these complaints nearly 40 percent claimed that they had not received the merchandise for which they had remitted money, and the others complained that the merchandise was not as advertised. During the year 1937 the respondents purchased at the St. Charles, Ill.,

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post office 3,100,000 postal cards, and at one time respondents mailed about 50,000 cards per days to customers throughout the United States. The face powder sold by the respondents in the manner hereinbefore set-out was purchased by them in bulk at about 14 cents a pound, and each individual box of powder contained only about 1 ounce. The containers used cost the respondents about \$12 per thousand, and postage of 1½ cents was paid on each box for mailing.

PAR. 4. In truth and in fact, the face powder so offered by the respondents to the public as "free" was not and is not delivered, furnished or supplied free of charge, and the cost of such face powder to respondents has been and is much less than the 10 cents paid by the customer. The said face powder is not worth \$1 or more than the 10 cents paid by the customer. Respondents' offers are not special or unusual, but are the customary methods employed by them in the regular course of their business, and are not in any sense advertising or introductory offers of newly offered merchandise.

PAR. 5. In the course and conduct of their business in offering for sale and selling flower seeds, respondents, under the trade name, The Best Gardens, have sent through the United States mails by means of penny postal cards addressed to individuals located in the various States of the United States, whose names are procured by methods similar to those used in the sale of face powder as hereinbefore set forth, advertisements reading substantially as follows:

Dear Friend: As your friend addressed this card to you as a Flower Lover, we have a wonderful PREMIUM OFFER to send you FREE. Will also send you 100 Gladioli (Ruffled Varieties) 25 "Oriental Lilies" (also a wonderful house plant) and 5 full size pkts. of Flower Seeds for spring planting. Just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing and handling, this collection will be sent to you FREE.

The Best Gardens, Box 10, St. Charles, Ill.

P. S. Sending us these names within 10 days enables you to receive FREE, a \$1.00 Silk Crushed Plush Table Cover.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph a similar offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no flower seeds are sent to the customer upon receipt of the dime, and in the instances where seeds are actually sent, they are worthless hulls that will not grow.

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In cases where the flower seeds are sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the prescribed 10-day period, the respondents do not send the "promptness prize" as agreed. Instead they send another card requiring the payment of 24 cents additional before the "promptness prize" will be sent.

PAR. 6. In truth and in fact, it has not been and is not the practice of respondents to furnish free of charge, any gladioli or oriental lilies or any other bulbs, plants or flowers, and the flower seeds furnished by respondents are worthless and unfit for use, and are not furnished free of charge. The cost to respondents of such flower seeds purported to be given free of charge has been, and is, included by respondents in the 10 cents required to be paid to cover the purported cost of mailing, packaging, and handling.

PAR. 7. The so-called "free" offers of respondents advertised and distributed to the public in the manner hereinbefore set out have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, the public into acceptance of such so-called free offers and into the purchase of respondents' merchandise by paying to respondents the full value thereof in the belief that such payment is merely to cover the cost of mailing and packaging said merchandise.

The use by respondents of such false and fraudulent representations and sales methods was and is calculated to, and had and now has, the tendency and capacity to, and did and now does, mislead and deceive a substantial portion of the purchasing public into the purchase of a considerable quantity of respondents' merchandise, with the result that trade has been unfairly diverted to respondents from competitors who do not misrepresent the quality or value of their products or the terms and conditions under which they are sold. In consequence thereof, injury has been done, and is now being done, by respondents 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 respondents as herein found are all to the prejudice of the public and of respondents' 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, testimony and other

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evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief of counsel for the Commission filed herein in support of the allegations of said complaint (respondents not having filed answer or brief or introduced testimony or other evidence in opposition to the allegations of the complaint, and oral argument not having been requested or made), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individually and trading under the names Middle West Supply Co., The Best Gardens, or any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of face powder, flower seeds, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Using the words "free," "free offer," "gift," "prize," or "premium," or any other word or words of similar import or meaning, to designate, describe or refer to any of respondents' merchandise.

2. Representing that the amount required of the purchaser of respondents' merchandise represents anything other than the full retail price of such merchandise.

3. Representing as the customary or regular prices or values of any of respondents' merchandise prices and values which are in excess of the prices at which such merchandise is regularly and customarily offered for sale and sold by respondent in the normal course of business.

4. Representing that the respondents in the sale of their merchandise are conducting a special or introductory or advertising offer.

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

Syllabus

IN THE MATTER OF

CAROLINE R. MACHER AND ROBERT J. MACHER, TRADING AS MACHER WATCH & JEWELRY CO. AND AS WHOLESALE WATCH & JEWELRY CO.

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

Docket 4087. Complaint, Apr. 12, 1940—Decision, Feb. 26, 1941

Where two individuals engaged in interstate sale and distribution at retail of watches and jewelry, silverware and other merchandise—

- (a) Falsely represented through use of words "Wholesale" and "Jobbers" in or in connection with trade names employed by them, and set forth in their catalogs, circulars, cards, and other advertising material, that they, retailers, were wholesalers or jobbers, dealt with, in preference to retailers, by a portion of purchasing public due to fact or belief that they thereby obtained wholesale or less than customary retail prices;
- (b) Falsely represented that prices at which their merchandise was offered were wholesalers' and jobbers' prices and represented large discounts from customary retail prices, through such statements, in catalogs, circulars, cards, and other advertising material as "You save 50 and 10% from the retail value," "The buy of a lifetime at 50% discount;" fact being their prices were approximately those at which such merchandise is customarily offered at retail and represented no substantial discount or saving to the purchaser;
- (c) Falsely represented that their business was "Over half a century old" through such statements in catalogs, circulars, cards and other advertising material as "Direct Jobber * * * for a Half Century" and "Our 56th Year," facts being it was not started until year 1930; and
- (d) Falsely represented that certain rings offered and sold by them were set with genuine rubies and sapphires through statement "10K, yellow gold, with ruby or sapphire," when in fact such settings were merely artificial or synthetic stones which resembled the genuine;

With effect of misleading and deceiving a substantial portion of the purchasing public in regard to their business status, and as to prices, quality, and character of their merchandise, whereby purchasing public was induced to and did buy substantial quantities thereof:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Carb, Reichman & Luria, of New York City, for respondents.