

IN THE MATTER OF
**ALBERT LANE, TRADING AS CONSUMERS BUREAU OF
STANDARDS**

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

Docket 3718. Complaint, Feb. 18, 1939—Decision, Apr. 28, 1941

Where an individual engaged in interstate sale and distribution of publications purporting to list and grade consumers' merchandise and services sold and distributed throughout the United States, including, at different periods, his "Consumers' Preference" with Chicago address, his "Consumers' Bureau Reports" with New York address—of each of which only one number issued—and finally, his "Consumers Bureau Guide"; selling his said publications through personal interviews or correspondence principally to manufacturers or distributors whose products were listed favorably, to induce them to finance the printing or distribution of a great number of said publications, or to purchase a large number of copies thereof for their own use, and to pay from \$50 to \$150 for each favorable listing of their respective products, he representing that he would use the money thus received to distribute free copies; and in substantial competition with organizations similarly engaged which did not make use of such acts and practices as employed by him, as below set forth—

- (a) Represented and implied, through use of trade name "Consumers Bureau of Standards," that he was engaged in making comparative tests of various products for the benefit of consumers, when in fact there was no such organization as "Consumers Bureau of Standards" or "Consumers Bureau" which trade names were used merely to further sale of his publications;
- (b) Represented, as aforesaid, and in statements in his publications that so-called "Bureau" was a "national non-profit consumers' research and educational organization which investigates, tests and reports on goods and services for the benefit of the ultimate consumer," and "to aid consumers in making wise and economical purchases";
- (c) Represented that a manufacturer or distributor had only to prove his products best by tests under supervision of so-called "Bureau," to secure free listing, and that in the event of a final difference of opinion between the manufacturer and Bureau on technical matters on such a test, the Bureau would "be glad to have the question at issue submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision";
- (d) Represented that the Bureau had a staff which collected and tested samples of merchandise as a basis for their reports, and that he, personally had a high professional standing and had been in the research business for years;
- (e) Represented that laboratory tests would be made to select the merchandise which gave the consumers the most for their money, and that the Bureau was a going concern with an established organization, representing a large

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consumers' research movement, carrying out scientifically the research work undertaken; and

- (f) Represented that his said publication would be issued quarterly, and that free distribution of one or two million copies thereof was contemplated;

Facts being he remained in no location for any considerable length of time; maintained no organization, laboratory equipment or staff; had neither employees nor assistants, except for occasional employment of not more than two stenographers at any one time, and the assistance of his wife, but conducted the entire enterprise personally; was not a graduate of any college, university, or technical school, had no particular knowledge of laboratory testing and was not an expert on the testing of any of the products listed in his publications or upon the subjects concerning which he wrote; did not test in any real sense the articles and goods listed, excepting canned fruits, vegetables and salmon, which he submitted to Government organization for such purpose; selections made by him as outstanding values or "best buys" were haphazard and arbitrary; he had no arrangements for testing with either the Mellon or Massachusetts Institutes, and no connection with the National Bureau of Standards or any Government bureau or organization; and each of his said publications was issued, not quarterly, but only once; and

- (g) Intimated to manufacturers or distributors whose products had been favorably listed in his publications and whom he solicited as aforesaid, that if his demands were not met he would write disparagingly of them or their products, with tendency and capacity to intimidate and coerce them and cause them to finance distribution of his publications or purchase a substantial number thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public and manufacturers and distributors into the erroneous belief that all of his aforesaid representations were true, with result, because of such mistaken belief and of his threatening and coercive acts and practices, that a substantial number of the consuming public and manufacturers and distributors whose products were listed in his said publications purchased the same, and interstate trade and commerce was unfairly diverted to him from his competitors:

Held, That such acts and practices 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. Edward E. Reardon* and *Mr. Webster Ballinger*, trial examiners.

Mr. Fletcher G. Cohn for the Commission.

Mr. Irwin Panken, of New York City, for respondent, and also *Mr. Albert Lane*, *pro se*.

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

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Trade Commission, having reason to believe that Albert Lane, 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, Albert Lane, is an individual doing business under the name and style of "Consumers Bureau of Standards," with his principal place of business located at 319 West 48th Street, New York, N. Y.

Respondent, under the aforementioned name of Consumers Bureau of Standards, is now, and has been for more than two years last past, engaged in the business of selling and distributing in commerce, as hereinafter set out, a publication purporting to list and grade certain consumers' goods sold and distributed throughout the United States. At the present time said publication is known as "Consumers Bureau Reports." During 1937, when respondent's place of business was located at 37 West Van Buren Street, Chicago, Ill., said publication was known as "Consumers' Preference."

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, causes and has caused said publications, "Consumers' Preference" and "Consumers Bureau Reports," when same are, or were, sold, or when respondent is, or was, seeking to sell them, to be transported from the States of Illinois and New York, respectively, to purchasers or prospective purchasers thereof located in States of the United States other than the States of Illinois and New York. Respondent has maintained, and is still maintaining, so far as the publication, "Consumers Bureau Reports," is concerned, a course of trade in said publications in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business, respondent is, and has been, in substantial competition with other persons, and with corporations and firms, engaged in the sale and distribution between and among the various States of the United States, and in the District of Columbia, of publications which actually contain unbiased scientific opinions based on proper tests as to the comparative merits of the products listed therein.

PAR. 4. In the course and conduct of his business, as aforesaid, respondent has made, and is still making, for the purpose of inducing, and which were, and are, likely to induce, directly and indirectly, the purchase of his aforesaid publications in said commerce, certain statements and representations, by means of advertisements contained in

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said publications and in circulars, and through sales talks and letters to prospective purchasers thereof.

Among, and typical of, said statements and representations are the following:

Consumers Bureau of Standards.

Consumers' Bureau of Standards is a national, non-profit consumers' research and educational organization, which investigates, tests, and reports on goods and services for the benefit of the ultimate consumer.

Towards this end Consumers' Bureau of Standards hopes to serve as a national clearing-house in securing and publishing outstanding values in a wide variety of consumer products, based on comparative tests or examinations as to quality and price.

With well over a million branded products on the market, our first selection was, of necessity, confined to a small percentage. The extensive distribution of Consumers' Preference should, however, overcome this difficulty inasmuch as a manufacturer or distributor of competitive products has only to prove his products best by tests, under our supervision, to secure our free listing. In the event of a fixed difference of opinion between the manufacturer and ourselves on technical matters on such a test, we will be glad to have the question at issue, submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision.

The following samples of canned fruit were graded for us by official graders of the United States Bureau of Agricultural Economics.

Consumers Bureau Reports are published four times a year in 32-page magazine form and they contain the results of Consumers Bureau of Standards' search for the outstanding values in a wide variety of consumers' products and services.

By the means and in the manner aforesaid, and through other statements of similar import and meaning to those herein set out, respondent represents and implies that the Consumers Bureau of Standards is affiliated or connected with the National Bureau of Standards of the Department of Commerce of the United States; that said Consumers Bureau of Standards is a national nonprofit organization which makes comparative tests of various articles and products used by the consuming public, and which advises the public, through the publications aforementioned, as to the best values on the market; and that over a million copies of said publications, which are to be published four times a year, will be distributed to the public free of charge; that respondent maintains a staff of technicians to make scientific comparative tests or examinations of the various articles and products listed in said publications; that the respondent has had tests made for him by the United States Bureau of Agricultural Economics; that in case of dispute between the respondent and manufacturers whose products and articles are being tested, the question at issue will be submitted to the Mellon Institute of Industrial

Research or the Massachusetts Institute of Technology for decision; and that large numbers of said publications have been purchased by manufacturers having products listed therein.

The respondent has also represented that his said publications were magazines designed to present the manufacturer's side of the picture in advertised articles and products in competition with prevailing consumers' analysis magazines like "Consumers' Research" and "Consumers' Union"; that the publications would be sold and distributed nationally; with a million copies distributed free; and that he would make actual tests of the articles and products listed in his said publications.

PAR. 5. The above and foregoing statements and representations as to the nature, extent, and purpose of the business conducted by the respondent are grossly exaggerated, misleading, and untrue. In truth and in fact, the Consumers Bureau of Standards is not in any way affiliated or connected with the National Bureau of Standards of the Department of Commerce of the United States. Said Consumers Bureau of Standards is not a national nonprofit consumers' research and educational organization for securing and publishing outstanding values in a wide variety of consumers' products, based on comparative tests or examinations as to quality and price. Respondent does not investigate, test, examine, or report on articles, products, or services for the benefit of consumers. Respondent has not maintained a staff to conduct comparative tests or examinations of the various articles and products listed in said publications, and he has never made any comparative tests or examinations. Respondent has no means or methods of submitting disputed questions to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision. No tests have been conducted for the respondent by the United States Bureau of Agricultural Economics or by anyone connected with the Department of Agriculture. The publications of the respondent do not present the manufacturers' side of the picture of advertised products and said publications are not published four times a year, and they are not distributed nationally, and neither one million copies nor any other substantial number of respondent's publications have been distributed free. Neither of said publications is substantially distributed, nor have they been purchased in substantial numbers by manufacturers listing products or articles therein. The true facts are that Consumers Bureau of Standards is a trade name under which the respondent individually engages in business for a profit. The respondent has no means or method, nor has he ever had any means or method, of making investigations,

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tests, or examinations to determine the comparative quality or price of articles listed in his said publications; he has no employees, nor does he possess any laboratories or any other equipment to make any test or examination. Respondent, since 1937, has owned and published one edition of "Consumers' Preference" and one of "Consumers Bureau Reports," the former being in the autumn of 1937 and the latter in the summer of 1938. Respondent's purpose in selling and distributing these publications is not to inform, protect, or advise the consuming public, but to induce the manufacturers and producers whose products and articles are listed in the publications to purchase large numbers of said publications in consideration of respondent's so listing their articles and products. With the exception of the free copies sent by the respondent to those whose products were listed in his publications, which copies were sent in an effort to induce the purchases of a large number of other copies, none have been given free to the public.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading representations made in commerce, in the manner aforesaid, was, and is, calculated to, and had, and now has, a tendency to mislead and deceive a substantial portion of the purchasing public and the manufacturers and producers, whose products respondent seeks to list, and has listed, in his publications, into the erroneous belief that all of said representations are true. Further, as a true consequence of the mistaken and erroneous beliefs induced by said representations of respondent, a substantial number of the consuming public and the manufacturers and producers, whose products were and are listed in the publications of respondent, have purchased a substantial number of said publications, with the result that trade has been unfairly diverted to the respondent from his competitors, who do not misrepresent their businesses or the contents of their publications, and substantial injury has been, and is now being, done by respondent to his said competitors in the commerce hereinbefore described.

PAR. 7. In soliciting the purchase of his publications by manufacturers and producers, whose products respondent sought, and seeks, to list in his publications, respondent has threatened that if said manufacturers and producers did not make such purchases, their products would be listed disparagingly in respondent's publications. This practice and method used by respondent, in said commerce, between and among the various States of the United States, has, and has had, the tendency and capacity to, and does, intimidate and coerce the manufacturers and producers, whose products are listed

in respondent's publications, to purchase a substantial number of copies of said publication. As a result thereof, respondent has a competitive advantage over his competitors in said commerce who do not use or employ such practices and methods.

PAR. 8. All the aforesaid acts and practices of respondent, as hereinbefore alleged in Paragraphs Four and Seven, are to the prejudice of the public and 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 February 18, 1939, issued its complaint in this proceeding and caused same to be served upon respondent Albert Lane, an individual, charging him with the use of unfair methods of competition in commerce and with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Irwin Panken, attorney for the respondent, and also by the respondent, pro se, before examiners for 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, the answer thereto, testimony and other evidence, report of the trial examiners and exceptions thereto, briefs in support of the complaint and in opposition thereto (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. Respondent Albert Lane is an individual who, under the trade names of Consumers Bureau of Standards and Consumers Bureau, has been, and is, engaged in the business of selling and distributing in commerce between and among the various States of the

United States and in the District of Columbia certain publications, purporting to list and grade consumers' merchandise, goods, and services sold and distributed throughout the United States.

PAR. 2. While conducting the aforesaid business under the trade name of Consumers Bureau of Standards respondent Albert Lane in 1937 published, sold, and distributed a publication known as "Consumers' Preference," with the address of said publication being given as 37 West Van Buren Street, Chicago, Ill. In 1938 respondent, under the same trade name, published, sold, and distributed a publication known as "Consumers Bureau Reports," with the address of said publication being given as 319 West Forty-eighth Street, New York, N. Y. Respondent personally compiled each of said publications and was the author or compiler of the representations contained therein. One issue of each of said publications was printed, sold, and distributed and thereafter publication, sale, and distribution of each was discontinued.

PAR. 3. Respondent's said publications, "Consumers' Preference" and "Consumers Bureau Reports," were shipped by the respondent from his respective places of business in Chicago, Ill., and New York, N. Y., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintained a course of trade and commerce in said publications, "Consumers' Preference" and "Consumers Bureau Reports," between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the latter part of 1939, and subsequent to the institution of this proceeding, respondent, doing business under the trade name of Consumers Bureau, published, distributed, and sold in the aforesaid commerce a publication known as "Consumers Bureau Guide."

PAR. 5. Respondent, in the course and conduct of his business, made many representations in his publications regarding his business and said publications. Among, and typical of, such representations are the following:

Consumers Bureau of Standards is a national non-profit consumers' research and educational organization which investigates, tests, and reports on goods and services for the benefit of the ultimate consumer.

Consumers Bureau of Standards is a national non-profit consumers' research and educational organization which investigates, tests and reports on goods, services and sources of supply to aid consumers in making wise and economical purchases.

It (referring to Consumers Bureau of Standards) aims to aid consumers in making wise and economical purchases.

Toward this end, Consumers Bureau of Standards hopes to serve as a national clearing-house in securing and publishing outstanding values in a wide variety of consumer products based on comparative tests or examinations as to quality and price.

As a start, we have selected 700 products which we believe are outstanding values.

A manufacturer or distributor of competitive products has only to prove his products best by tests, under our supervision, to secure free listing. In the event of a final difference of opinion between the manufacturer and ourselves on technical matters on such a test, we will be glad to have the question at issue submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision.

Consumers Bureau Reports are published four times a year in thirty-two page magazine form and they contain the results of Consumers Bureau of Standards' search for the outstanding values in a wide variety of products and services on the basis of the unbiased and impartial competitive tests or examinations as to quality and price, hundreds of products are recommended by brand name.

PAR. 6. Respondent, in the course and conduct of his business, also represented, among other things, that his publications "Consumers' Preference" and "Consumers Bureau Reports" would be issued quarterly; that respondent, doing business under the trade name of Consumers Bureau of Standards, had a staff which collected samples of merchandise and goods and tested the same, after which the said staff would compile reports to show the results of said tests; that respondent had a high professional standing and had been in the research business for years; that respondent, doing business under the aforesaid trade names, would make laboratory tests to select the merchandise and goods which gave the consumers the most for their money; that respondent, doing business under the aforesaid trade names, contemplated free distribution of one or two million copies of his publications; that the "Bureau" was a going concern with an established organization; that respondent represented a large consumers' research movement; or that the research work to be done by the "Bureau" would be done scientifically.

PAR. 7. During the years 1937, 1938, and 1939 respondent resided and conducted his business at various locations in New York, N. Y.; Chicago, Ill.; Philadelphia, Pa.; and Long Island City, N. Y. Respondent did not remain in any one location for any considerable length of time. Respondent has never maintained an organization, laboratory equipment, or staff for testing consumer goods. Except for the occasional employment of not more than two stenographers at any one time and the assistance of his wife, the respondent has had neither employees nor assistants and has conducted the entire enterprise by himself as an individual. Respondent is not a gradu-

ate of any college, university, or technical school and has no particular knowledge of laboratory testing, nor is he an expert on the testing of any of the products listed in his publications or upon the subjects concerning which he wrote in these publications. Before respondent began operating under the trade name of Consumers Bureau of Standards he was a real estate salesman who, from time to time, sold subdivisions in various parts of the country.

PAR. 8. The respondent did not test, in any real sense, the articles and goods listed in his publications. When manufacturers of radios furnished samples at the respondent's request, he conducted "tests of selectivity," which consisted of listening to the radios. Respondent made some inquiries of merchants and buyers as to costs and trade-in value of such radios, but conducted no tests of any kind with reference to the mechanical parts or efficiency of same. Respondent also wrote to manufacturers of different kinds of wearing apparel asking them to send him particular sizes of same in order that he might test such apparel. The sizes thus requested by respondent were those of respondent and his wife. The articles of apparel which respondent received in response to such requests were then worn by the respondent and his wife, the respondent claiming that by doing this he was giving these articles an "actual wear test." None of the inquiries conducted by the respondent into the goods listed in his publications were of such a nature as to provide sufficient information or data to determine the consumer value of the articles so examined, either separately or in comparison with competitive articles.

The only products submitted by the respondent for any sort of laboratory test were canned fruits, vegetables, and salmon, which were submitted by respondent to a Government organization for testing. These products were listed in "Consumers' Preference." None of the products listed in respondent's publication "Consumers Bureau Reports" were submitted for any tests or examinations by Government agencies, and none of the products or articles listed in either of said publications was submitted to any non-Government laboratories for tests or examinations.

The representations by respondent that certain articles are outstanding values or "best buys" implies that the selections were made after consideration and tests of all competing articles of substantial importance. Respondent did not so consider and test all articles of competitive importance with those selected by him. On the contrary, his selections were haphazardly and arbitrarily made.

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PAR. 9. Respondent never had any arrangements with either the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology to test anything for him and no products were submitted to them by the respondent for testing or grading. Under date of February 11, 1937, or approximately eight months before publication of "Consumers' Preference," respondent made written inquiry of the Mellon Institute of Industrial Research to ascertain whether it would test certain articles for the purpose of determining which among them was "the best buy to the ultimate user or consumer," and under date of February 15, 1937, respondent was advised that the Mellon Institute of Industrial Research was not in a position to make such tests. Respondent's so-called "Consumers Bureau of Standards" was not in any way connected with the National Bureau of Standards of the Department of Commerce of the United States or with any Bureau, Division, or Department of the United States Government.

PAR. 10. The trade name "Consumers Bureau of Standards" imports and implies that respondent is an organization engaged in making comparative tests of various articles and products for the benefit of consumers. There was, and is, no such organization as Consumers Bureau of Standards or Consumers Bureau. As hereinabove stated, these are merely trade names under which respondent conducted his said business. The subscribers to respondent's publications, who paid a dollar per year for same and whom respondent classified as "members" of his said "Consumers Bureau of Standards," were not members of any such organization and never held any meetings. The "Bureau" never had any permanent address and was not a going concern, but was merely a project of the respondent to further the sale of his publications.

PAR. 11. Subscriptions to "Consumers' Preference" and "Consumers Bureau Reports" were solicited through subscription coupons which appeared on the last page of both publications and also in pamphlets distributed by respondent. Said coupons were as follows:

Subscription Coupon

\$1.00 for one year

Issued quarterly

CONSUMERS BUREAU OF STANDARDS

347 West 55 Street

New York, N. Y.

I enclose \$----- Please send

Consumers Bureau Reports for one year to:

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NAME-----

ADDRESS-----

Please accompany subscription with check, dollar bill or money order.

A similar subscription coupon appeared in respondent's publication known as "Consumers' Preference" and likewise in various pamphlets which respondent distributed advertising said publications. None of the said subscribers ever received four copies per year of respondent's "Consumers' Preference" or "Consumers Bureau Reports" as the subscription coupons represented that they would.

PAR. 12. The principal sales of respondent's publications were to manufacturers or distributors. One of respondent's methods of selling his publications to such manufacturers and distributors was to interview personally or write to those whose products were listed favorably in his publications to induce or seek to induce them to finance the printing or distribution of a great number of said publications or to purchase a large number of copies thereof for their own use, and many letters soliciting such sales or financial aid were written by respondent to such manufacturers and distributors.

PAR. 13. Another method employed by respondent to sell and distribute his publications was by means of letters or personal visits to attempt to induce each manufacturer or distributor whose products were listed favorably in his publications to pay amounts varying from \$50 to \$150 for each favorable listing of their products. Respondent represented that he would use the money thus received to distribute free copies of his publications. The following is from a letter written by respondent to certain hosiery manufacturers:

We are going to make a serious attempt to select, through laboratory tests, the Best Buys, within given price ranges, of the branded hosiery on the market.

We believe most manufacturers of genuine quality products will welcome such a comparative test, fairly conducted. All are invited to participate in this test, to be made under our supervision, on the basis of a laboratory charge of \$22 for each number they wish tested plus the cost of the samples. This method has not only solved what might otherwise prove an almost prohibitive cost if we had to test everything on the market but has proved a most effective means of centering our tests to the best.

The laboratory selected and the factors governing the tests will be those most apt to create a ready consumer acceptance of the soundness of our findings.

Those numbers which rate as the BEST BUYS will be listed in a Consumers Buying Guide which we are preparing for annual distribution. It will list, by brand name and number, a wide variety of commodities in common use and recommend as Best Buys those which, under similar tests, grade accordingly.

The Guide will be offered nationally to retailers and the ultimate consumers for practically the cost of compiling, printing and mailing or twenty five cents. This

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should secure an extensive Nation-wide circulation but, to further assure this, we contemplate the free distribution of about one million Guides, the expense of which is to be allotted to the participants on a basis of 150 for each listing.

PAR. 14. In soliciting the sale to or financing of his publications by manufacturers and distributors whose products had been favorably listed therein, the respondent intimated and inferred that if his demands were not met he would write disparagingly or in a derogatory manner of them or their products. This method used by respondent has had, and now has, the tendency and capacity to intimidate and coerce the manufacturers and producers whose products are listed in respondent's publications, and to cause them to finance the distribution of his publications or to purchase a substantial number of same.

PAR. 15. In the course and conduct of his business respondent is, and has been, in substantial competition with organizations engaged in the publication, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of publications purporting to list and grade consumers' merchandise, goods, and services sold and distributed throughout the United States. Said organizations have not engaged in the acts and practices used by respondent, and the aforesaid acts and practices of the respondent have been, and are, injurious to the business in commerce of said competitors.

PAR. 16. The grossly exaggerated, false, and deceptive representations by respondent as hereinabove set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public, and manufacturers and distributors whose products respondent sought to or did list in his publications, into the erroneous belief that all said representations are true. As a result of the mistaken and erroneous belief induced by such grossly exaggerated, false, and deceptive representations, and of the threatening and coercive acts and practices of respondent with respect to manufacturers and distributors, a substantial number of the consuming public and the manufacturers and distributors whose products were listed in the publications of respondent have purchased said publications, and trade and commerce among and between States of the United States and of the District of Columbia has been unfairly diverted to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of the respondent 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.

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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 in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners and exceptions thereto, and briefs filed herein; 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 respondent Albert Lane, trading or doing business as Consumers Bureau of Standards or Consumers Bureau, or under any other name, his representative, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any book, magazine, periodical, circular letter, or any other printed or written matter which gives or purports to give appraisals or classifications of merchandise, goods, or services, do forthwith cease and desist, directly or by implication, from:

1. Representing in any manner, or using any trade or other name which imports or implies, that such publication is compiled, issued, sold, or offered for sale by or under the direction of any bureau, institute, or organization engaged in research work for the benefit of consumers, or devoted to aiding consumers in making wise or economical purchases, or which by means of any scientific or adequate tests of any nature designates the comparative consumer value of any merchandise, goods, or services.

2. Representing that any such publication is or will be issued, printed, or distributed at any stated time or times other than those at which it is actually issued, printed, or distributed.

3. Representing that respondent's business is operated on a non-profit basis.

4. Representing that respondent's business is national in scope, or representing in any manner that such business is greater in size or scope than is the fact.

5. Representing that respondent is, or represents, any consumers' research group or movement.

6. Representing that respondent has any arrangement with the Mellon Institute of Industrial Research, Massachusetts Institute of Technology, or any similar organizations or institutions, for the sub-

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mission thereto for determination of any questions concerning the value or comparative value of merchandise, goods, or services.

7. Representing that respondent personally is qualified by any special training, education, or experience to determine or has any employees, staff equipment, or facilities for determining, by any scientific method or adequate investigation or tests, the value or comparative value of any merchandise, goods, or services.

8. Threatening, inferring, or implying to any manufacturer or distributor of merchandise, goods, or services that a refusal to buy copies of or contribute financially to such publication or directly or indirectly to respondent, will or may result in unfavorable, disparaging, or derogatory listing of, or reference to, such manufacturer or distributor or his merchandise, goods, or services in or in connection with said publication.

It is further ordered, That 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.

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IN THE MATTER OF

ETHEL BELLAMY, INC.

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

Docket 4424. Complaint, Dec. 19, 1940—Decision, Apr. 28, 1941

Where a corporation engaged in interstate sale and distribution of its cosmetic and drug preparation designated as "Ethel Bellamy Eyelash Luxuriant"; by means of advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets, and other advertising literature—

Represented, directly and by implication, that its said product was of substantial therapeutic value in the treatment of granulated eyelids, and that use thereof promoted growth of eyelashes, supplied pigment thereto, and darkened them permanently;

Facts being that it possessed no therapeutic value in the treatment of granulated eyelids, was wholly incapable of affecting the growth of eyelashes and, while its properties as a dye might darken eyelashes temporarily, it had no permanent effect upon color thereof and did not supply any pigment thereto;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous and mistaken belief that such representations were true and of inducing thereby its purchase of substantial quantities of such product:

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. Donovan Divet for the Commission.

Mock & Blum, of New York City, for respondent

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ethel Bellamy, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ethel Bellamy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its general offices and principal place of business located at 30 Elm Street, Nutley, N. J.