

IN THE MATTER OF
HEARST MAGAZINES, INC.

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

Docket 3872. Complaint, Aug. 17, 1939—Decision, May 13, 1941

Where a corporation engaged in publication, among other periodicals, of its "Good Housekeeping" magazine, and in competitive interstate sale and distribution thereof, and of various "seals of approval" to manufacturers and distributors, and in operation, prior to recent discontinuance thereof, of a "shopping service"; and in maintaining, incident to its activities, its Good Housekeeping Bureau for investigation of food, drugs, and cosmetics, and its Good Housekeeping Institute for investigation of mechanical devices and articles of household equipment; in its said magazine publicizing such testing services, and from time to time issuing buyers' guides for general distribution listing products or other commercial offerings represented by it as having been tested and approved by aforesaid Bureau and Institute—

(a) Represented that all products, services or other commercial offerings advertised in its said magazine were guaranteed by it, through statement, on certain page of each issue, "Good Housekeeping's GUARANTY PAGE Every Product Guaranteed as Advertised," and statements at the bottom of each page carrying advertisements, "Every product guaranteed as advertised—see page 6" or "Every product advertised is guaranteed—see page 6," and extensively publicized its guaranty, with tendency to cause readers to believe that guaranty in question was an unlimited one;

Facts being the undertaking, as stated on page referred to, was to investigate any advertised product found unsatisfactory by purchasers within 1 year and to replace product or refund money if product was defective;

(b) Authorized advertisers in its said magazine to publicize said guarantee in other publications and on labels attached to their products and on containers thereof, through use of emblems or shields reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping," with result that through such use, independent of explanation above set forth, there was a tendency and capacity to cause members of the purchasing public to believe that products in question were unconditionally guaranteed by it;

(c) Represented that various products had been adequately and thoroughly tested in such a manner as to insure quality, material and properties thereof in relation to their intended usage and the fulfillment of the claims made therefor, through the use of seals of approval which it both authorized and recommended for merchandise of those who had applied to it for such service—following issuance of certificate certifying that product had been tested and approved—reproduction of which it likewise authorized in various advertising and circulars, and upon which seals, usually elliptical, appeared words "Tested and approved by Good Housekeeping Institute (or Bureau)," followed by notation "Conducted by Good Housekeeping Magazine" (or, in case of meat products, with word "Recommended" in place of words "Tested and

approved") and through publicizing in its said magazine its testing services, and through issuance from time to time of "buyers guides," listing products or other commercial offerings which it represented had been tested and approved by its said bureau or institute;

Facts being that, while tests were made before such seals of approval were issued, tests of mechanical devices, in some instances, and of food, drugs, and cosmetics generally, were not sufficient to assure fulfillment of claims made, and in some instances, with respect to commercial offerings, seals were issued without even adequate preliminary investigation;

(d) Authorized use of a great many different designs or forms for its emblems or shields, and seals or insignia, by various advertisers and distributors, and directly associated therewith its aforesaid testing facilities through articles in its magazine, and through statements with reference to guarantee and in circulars, booklets, and other publications; with tendency and capacity to mislead and deceive purchasers and readers into believing that all products bearing any emblem of "Good Housekeeping" magazine or advertised in conjunction therewith, had been thoroughly and adequately tested and approved and guaranteed by it when such was not the case; and

(e) Represented, directly and by implication, that all representations of and claims made for products, services or other commercial offerings appearing in advertisements in its periodicals were true, through statements in its magazine—usually in connection with discussion of its testing facilities and effect or purport of its guaranty of all advertising—such as "It means that the products or service you see advertised in Good Housekeeping will perform what is promised for them and do what is claimed they will do as stated in their advertisements in Good Housekeeping," and "Good Housekeeping carefully investigates the essential claims and satisfactory qualities of products or services before advertising is accepted;"

Notwithstanding the fact that many of such advertisements contained misrepresentations with reference to medicinal preparations, cosmetics, fabrics, and wearing apparel, food products, results to be obtained from the use of various articles of merchandise and the efficiency and reliability of services and other commercial offerings;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous beliefs above set forth and to induce members of said public to purchase its magazine, merchandise advertised therein, and merchandise bearing its seal of approval, because of such mistaken beliefs, with result that trade was diverted unfairly to it from its competitors aforesaid:

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

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan*, and *Mr. Webster Ballinger*, trial examiners.

Mr. James L. Fort and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. Isaac W. Digges and *Mr. Gilbert H. Weil*, of New York City, and *Mr. Frederic B. Warder* of Guy & Brookes, of Washington, D. C., for respondent.

Complaint

32 F. T. C.

Mr. Elisha Hanson, of Washington, D. C., for American Newspaper Publishers Ass'n, amicus curiae.

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 Hearst Magazines, Inc., a corporation, 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. (a) Respondent Hearst Magazines, Inc., is a corporation incorporated under the laws of the State of Delaware on or about February 25, 1927, as Hearst Magazines, Incorporated. The present name, Hearst Magazines, Inc., was adopted on or about January 7, 1936. Prior to January 2, 1936, respondent owned and controlled a subsidiary corporation known as International Magazine Co., Inc., a Delaware corporation. International Magazine Co., Inc., in turn had among other subsidiaries a corporation known as Good Housekeeping, Inc., a New Jersey corporation, and both International Magazine Co., Inc., and Good Housekeeping, Inc., were subsidiaries of Hearst Magazines, Inc. On or about January 2, 1936, International Magazine Co., Inc., was merged with Hearst Magazines, Inc., the respondent herein, and Good Housekeeping, Inc., became the immediate and wholly-owned subsidiary of respondent.

The respondent's office and principal place of business is located at 57th Street and Eighth Avenue in the city of New York; State of New York.

(b) Respondent is now, and for more than 12 years last past has been, engaged in publishing various periodicals and magazines and in the sale and distribution of such publications in commerce among and between the various States of the United States and in the District of Columbia. Among such publications so sold and distributed is a magazine known as "Good Housekeeping."

(c) Respondent is also engaged in the issuance of various seals of approval, for a consideration, to manufacturers located in the various States of the United States, and was until January 1, 1939, also engaged in the sale and distribution in commerce among and between the various States of the United States of numerous articles of merchandise by means of a so-called "shopping service." Respondent

also issues a "Guaranty" to advertisers in Good Housekeeping magazine.

(d) In the course and conduct of its business in connection with the sale and distribution of the magazine known as Good Housekeeping, the respondent causes said magazine to be delivered to the purchasers and prospective purchasers thereof, located in the various States of the United States other than the State of publication. Respondent maintains, and at all times mentioned herein has maintained, a course in trade in said magazines and the enterprises related thereto in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States, and in the District of Columbia, with other corporations and with partnerships, firms, and individuals engaged in the following businesses in commerce among and between the various States of the United States and in the District of Columbia, to wit: Other magazines, newspapers, and periodicals, surety and guaranty insurance companies, mail order and other retail merchandisers, merchandisers who furnish a performance guaranty with their products, shopping services, testing laboratories, and others not specifically mentioned herein.

PAR. 3. For the purpose of inducing the purchase of the various articles advertised in said magazine, and thereby stimulating advertising in said magazine and the circulation thereof, the respondent has engaged in the following acts and practices:

(a) For several years immediately prior to and until January 1, 1939, respondent operated a shopping service through which readers of its magazine could and did purchase various articles of merchandise which were advertised in Good Housekeeping magazine. Orders for such merchandise, when received, were referred to the manufacturer of, or dealer in, such advertised article, who shipped direct to the purchasers located in the various States of the United States, the purchasers dealing entirely through the aforesaid shopping service. This shopping service was advertised as being a free service for the convenience of readers, when in truth and in fact, Good Housekeeping received substantial commissions from the sellers on all merchandise sold, amounting to 5 percent or more of the purchase price.

(b) Respondent publishes in each issue of its Good Housekeeping magazine, numerous claims and statements that it guarantees "EVERY product advertised in Good Housekeeping" and that every product is guaranteed as advertised. Throughout respondent's Good

Complaint

32 F. T. C.

Housekeeping magazine this alleged guarantee is featured in large display type, in connection with numerous statements with reference to the testing of the various products advertised in said magazine, in such a way as to import and imply that said Good Housekeeping magazine guarantees all products advertised in its pages to be as advertised and that they will perform as advertised.

(c) Throughout its advertising pages appears the foot-note: "EVERY product guaranteed as advertised—see page 6." On page 6 of each issue is printed in much smaller type than that used for the featured statements as to the guarantee, in an inconspicuous way, the following limitation on the general guarantee:

This is your guaranty. If you purchase any product advertised in this issue of Good Housekeeping within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint and if the product is defective it will be replaced or your money refunded.

(d) Respondent also publishes in each issue, usually under the title "Consumers' Forum," which appears customarily within the first ten or twelve pages of the magazine, an article of interest to consumers, in which is stressed the service rendered by Good Housekeeping magazine in testing articles offered for advertisement, and guaranteeing the product of accepted advertisers. Typical of such statements is the following, printed in the February, 1939, issue of Good Housekeeping:

In its April issue of 1902 GOOD HOUSEKEEPING announced to its readers that from that date on it would guarantee all the advertisements printed in its pages. It publicly assumed full responsibility both for the satisfactory quality of the merchandise and the essential claims made by advertisers.

(e) Respondent also issues a Seal of Approval (elliptical in form, containing the words, "Tested and Approved," a cut of a star, followed by a serial number), which is issued by a division of respondent designated "Good Housekeeping Institute," for a limited class of products allegedly tested to establish whether the product will do the jobs intended and give satisfactory service for the length of time to be expected of a good product. The testing scope of the Institute is confined to mechanical household equipment, devices and utensils, and to household soaps and cleansers. After the approval by the Institute, the manufacturer of such product is granted the right to display the official seal of the Institute on the product itself, on the tags, labels, cartons, and in all advertising and trade literature. The certificate of approval issued by the Institute requires the manufacturer "to fulfill his obligations to consumers by servicing his products when necessary, by adjusting complaints" and not to misuse or abuse the privileges

granted. The users of such Seal of Approval are not required to be advertisers in Good Housekeeping magazine; in fact, a large majority of such certificates and seals of approval are issued to manufacturers who do not advertise in said magazine.

(f) A Seal of Approval is also issued by another division of respondent, designated "Good Housekeeping Bureau" for food products, cosmetics and pharmaceuticals, allegedly tested in its laboratories, to establish whether they are pure and free from adulterants or ingredients that might be harmful. This Seal is identical in appearance to that of the seal issued by the Institute except that where the Institute seal uses the words "By Good Housekeeping Institute," the seal of the Bureau shows it is issued "By Good Housekeeping Bureau." After approval by the Bureau, the manufacturer of such product is given the Bureau's certificate of approval, practically identical with that issued by the Institute (omitting, however, the requirement to service the product and adjust complaints), and is granted the right to display the official seal of the Bureau in connection with all advertising or merchandising of said product. Like the seal of approval issued by the Institute, it is not necessary that the user be an advertiser in Good Housekeeping magazine.

(g) In the case of packaged meats, the respondent issues a seal of approval in the same form as described above, except that the word "Recommended" is used instead of the words "Tested and Approved." Formerly the representation as to packaged meats was that they had been tested and approved.

(h) Certain types of merchandise, such as wearing apparel, textile floor coverings, etc., do not come within the official testing scope of either the Institute or the Bureau. When offered for advertisement in Good Housekeeping magazine, they are allegedly checked in general for quality, serviceability, and with respect to their advertising claims. When accepted for advertising in Good Housekeeping, they are covered by the so-called "Guarantee" of Good Housekeeping. Such advertisers have the right to use an emblem, not in oval form, containing the words "Guaranteed as Advertised in Good Housekeeping Magazine."

(i) The guaranty issued by the respondent is not in all instances the result of a scientific test of a product, but frequently is based upon general investigation thereof by a staff member. In such cases, where the advertiser is currently advertising in Good Housekeeping magazine, such advertiser is given permission to use the guaranty. He is further authorized to use the phrases "Guaranteed by Good Housekeeping as Advertised Therein" or "Guaranteed as Advertised

in Good Housekeeping," enclosed in the form of an emblem (provided such emblem is not in the shape of an oval and does not contain a star) which may be affixed to the merchandise itself or to labels, tags, containers, display or descriptive material, or consumer advertising.

(j) Because of the similarity of the verbiage and the universal use of the name "Good Housekeeping" in all of the aforesaid seals and symbols, many of the purchasing and consuming public are, or may be, confused, and misled into the belief that all products bearing any of the several seals have been scientifically tested and are guaranteed by Good Housekeeping magazine.

(k) The respondent enters into a cooperative merchandising agreement with various manufacturers of women's wearing apparel and a number of large department stores of the country. In furtherance of this arrangement, the respondent publishes articles in the general table of contents classification of "Fashions," fully illustrated, describing some particular item or items of merchandise and the prices at which same are sold. In these articles are listed the various department stores at which such described or pictured items of merchandise may be obtained. In this way, the particular items of merchandise are agreed upon monthly by their makers and vendors and are nationally featured and widely sold. In some cases stores make window displays, showing the models as featured in Good Housekeeping magazine, together with a large poster, at the side of which is a reproduction of the article published and a sign prominently displayed, "As Seen in Good Housekeeping."

(l) The respondent also published annually, until and including 1936, a "DIRECTORY OF GUARANTEED MERCHANDISE" which it distributed throughout the United States. This directory listed all products advertised in Good Housekeeping magazine during the preceding year, and was described as "A Sales Manual and Reliable Buying Guide." Preceding the index to the guaranteed merchandise was set forth "Good Housekeeping's Guaranty to its Readers," substantially as it appears on page 6 of each issue of the magazine, to wit:

(NOTE.—Material hereafter underlined was italicized in Manual.)

It is the definite policy of GOOD HOUSEKEEPING to make its advertising pages trustworthy and reliable. *Every* product in GOOD HOUSEKEEPING is guaranteed by us as advertised herein.

If you purchase any product advertised in this issue of GOOD HOUSEKEEPING within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint. If the product is defective, it will be replaced or your money refunded.

Products which come within the testing scope of Good Housekeeping Institute or Good Housekeeping Bureau must be tested and approved before they may be

1440

Complaint

advertised in GOOD HOUSEKEEPING. Advertisers of those products in GOOD HOUSEKEEPING may use the Bureau or the Institute Seal of Approval in their advertisements.

All other products are carefully examined and investigated by competent experts.

GOOD HOUSEKEEPING, further, examines every advertisement offered to it for publication and makes every effort to assure itself that essential claims are justified.

In said directory of guaranteed merchandise appear statements such as the following:

Women prefer to buy products advertised in Good Housekeeping because they know these products are dependable and Good Housekeeping itself guarantees them.

Merchants everywhere report, "No matter how well a product is known, it sells better when we tell our customers that it is *guaranteed by Good Housekeeping*."

If you stock the products listed in this directory and tell your customers these products are *guaranteed as advertised in Good Housekeeping*, you will inevitably find selling easier. And you will inevitably make more sales.

This isn't mere theory. It's a fact that has been confirmed times without number by merchants handling all kinds of merchandise.

"Here is an example," says the salesperson, *"of the care Good Housekeeping takes to make sure that all cosmetics it advertises are satisfactory in quality and will do what they claim to do. Every cosmetic advertised in Good Housekeeping has been tested with the same care and thoroughness. You see why you can't possibly go wrong when you buy a cosmetic Good Housekeeping advertises."*

Because women everywhere believe that Good Housekeeping's Guaranty is a sure guide to satisfaction in buying, smart merchants find it pays to tie their own advertising up with Good Housekeeping. Ways in which this can be done are shown on these two pages and on page 20. Select products from this Directory to feature in your newspaper copy. List this merchandise in your advertisements with a caption like the following:

"Good Housekeeping advertises only products it has proved by actual test or other examination are good value and sure to give satisfaction to the purchaser. We feature the following products—all Guaranteed as Advertised in Good Housekeeping. You can buy any of them with full confidence that you are getting your money's worth."

The cosmetics listed in these pages are the cosmetics your customers prefer. Why should they?

Because they know that Good Housekeeping will not accept the advertising of any cosmetic preparation which contains harmful ingredients or which cannot perform what it promises.

Is a cosmetic safe to use? Will it perform what it promises? It's the job of the Bureau chemists—in cooperation with the experts of the Beauty Clinic—to make sure before the product is accepted for advertising in Good Housekeeping.

They satisfy themselves that the quality of the ingredients is satisfactory and that these same ingredients will enable the product to do what it claims to do.

Clothes and accessories offered to Good Housekeeping for advertising are checked for style and wearability before the advertising is accepted. This includes technical examination of such factors as color-fastness, launderability,

quality of materials and workmanship, and verification of special claims for the article; also a practical trying-out by 'wear squads' of women.

Remember—Good Housekeeping is today the buying guide for more than 2,000,000 women.

PAR. 4. (a) The use of the various forms of seals authorized and permitted by the several departments of Good Housekeeping magazine, coupled with the various assurances and representations appearing throughout articles and advertising matter in Good Housekeeping magazine, with reference to the testing facilities and the extent to which they are used by Good Housekeeping for the protection of its readers, is calculated to, and has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all articles advertised in Good Housekeeping magazine, or articles which bear the seal in one of its several forms, have been scientifically tested in properly constituted laboratories by some testing department of Good Housekeeping magazine.

(b) In truth and in fact, all the articles advertised in Good Housekeeping magazine, and all the articles carrying the various seals authorized by Good Housekeeping magazine, have not been tested and approved by any scientific laboratory, and the respondent does not sufficiently disclose to the readers of said magazine, and to the prospective purchasers of the articles advertised, that there is a difference in the seals, as a result of which such persons are led to believe that all such seals carry the assurance that all articles have been subjected to full testing facilities claimed by the respondent.

PAR. 5. (a) The use of such statements as that respondent "publicly assumed full responsibility both for the satisfactory quality of merchandise, and the essential claims made by advertisers" and other similar statements, all of which are emphasized and featured, is calculated to, and has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief that the guaranty covers the advertised performance of such merchandise.

(b) In truth and in fact, the so-called "Guaranty," is actually limited by its terms to a mere warranty of the physical construction or chemical composition of the product itself, with an agreement to replace or refund if, after complaint, Good Housekeeping deems such product "defective."

PAR. 6. The authorization of certain seals reading, "Guaranteed by Good Housekeeping as advertised therein," in the advertising pages of Good Housekeeping magazine and in various other consumer ad-

vertising, labeling, etc., is calculated to, and has the tendency and capacity to, and does, mislead and deceive members of the purchasing and consuming public into the erroneous belief that such articles so advertised, or labeled, are fully guaranteed by Good Housekeeping magazine. Such seals are so used, with the knowledge and consent of Good Housekeeping magazine, that they do not sufficiently disclose to such prospective purchaser or consumer that the only guaranty covering said product is a money-back guaranty of Good Housekeeping magazine.

PAR. 7. The aforesaid seals and certificates of approval have been so greatly publicized over a long period of years, together with the collateral advertisements and statements made in connection therewith, that there has been engendered in the minds of the purchasing and consuming public a belief that whenever any one of them is found on an article, or used in connection with the advertising of such article, the article itself is one which has been thoroughly tested and found to be as its advertiser claims it to be and to perform as its advertiser claims it will perform and that, failing such, the buyer thereof will be guaranteed against injury or loss.

PAR. 8. The practice of permitting the use of various seals by advertisers in periodicals other than Good Housekeeping and in other advertising, is calculated to, and does, have a tendency to mislead and deceive members of the purchasing and consuming public into the erroneous belief that such articles are advertised in Good Housekeeping magazine and are subject to, and covered by, the guaranty contained therein, when in fact the copy for many such advertisements is neither submitted to nor inspected by Good Housekeeping prior to publication.

PAR. 9. The practice of permitting and urging the use of the various forms of seals by advertisers and non-advertisers in describing, advertising, and labeling their products, places in the hands of such persons a means and instrumentality whereby members of the purchasing and consuming public are led to believe that all the statements in such advertising or representations are true and that said merchandise is fully guaranteed by Good Housekeeping or one of its various divisions, when in fact, many of such statements and representations are false, misleading, and untrue, and not guaranteed by Good Housekeeping.

PAR. 10. The use of the various seals, representations, and guaranties, together with statements appearing in various articles, principally under the heading of "Consumers' Forum," is calculated to, has the tendency to, and does, mislead and deceive members of the pur-

chasing and consuming public into the erroneous belief that Good Housekeeping verifies special claims made for an article, and accepts for advertising and advertises only those articles that will perform what is promised for them and do what it is claimed they will do.

PAR. 11. Through the use of the cooperative merchandising arrangement between the respondent and the various manufacturers and advertisers, together with the operation of the shopping service by the respondent company, and in its advertising generally, the representations in which are purportedly guaranteed, the respondent, acting in conjunction and cooperation with the manufacturers, advertisers, and distributors, falsely represents the constituent fiber or material of various articles of merchandise, the purity and wholesomeness of certain food products, the results which might be obtained from the use of certain cosmetics, the remedial or therapeutic qualities of various proprietary medicines, results obtained from, or the performance of, various other articles of merchandise, and benefits to be obtained from others among its "guaranteed" advertisers. Respondent's representations that it guarantees all advertisements lead its readers to believe that all things advertised in Good Housekeeping are and will perform as advertised, when in truth, such is not the fact.

PAR. 12. In the course and conduct of its business as above described, respondent in selling and distributing its magazine, Good Housekeeping, and in selling and promoting the sale and distribution of its seals and the sale of merchandise in interstate commerce, has engaged in the following acts and practices:

Represented in advertisements and articles the fiber content of various dresses and other clothing for women to be silk when, in truth and in fact, such dresses and other wearing apparel were composed of rayon, or fiber other than silk. Among and typical of such misrepresentations are the following:

In the June, 1937, issue of Good Housekeeping, in the style article entitled "Fashions" there is illustrated on page 73 a costume described as "Printed silk culottes by SPORTSEMBLE"; in the May 25, 1937, "Preview" sent by Good Housekeeping to retailers, describing the dresses to be featured in the forthcoming June Good Housekeeping, and sold by various department stores, is the same illustration just referred to, with the following representations:

Silk Culottes have desirable dressy look. These Sportsemble Culottes are smart burgundy and white silk; Saqui, 1350 Broadway, N. Y. C.

whereas the culottes pictured and all Saqui & Co. Sportsemble

1440

Complaint

Culottes were composed wholly of rayon and contained no silk whatsoever.

PAR. 13. Respondent has permitted the publication in its advertising pages of various advertisements, advertising products that were purportedly tested and guaranteed by Good Housekeeping, which contained grossly exaggerated and false claims for the products so advertised and purportedly guaranteed. Among and typical of this type of advertising were advertisements for products for which the following claims were made:

(a) A preparation alleged to have a vitamin content which would feed the capillaries and furnish nourishment to the skin; that it contained a life-giving element essential to the color and texture and that with its use dryness, wrinkles, coarse texture would disappear and youthful freshness would be swiftly restored, when in truth and in fact the product contained no such qualities.

(b) A preparation through which the reader was advised she could "Wash Sunlight into your Hair with New Shampoo and Rinse"; that she could bring out the full radiant loveliness of blonde or brown hair and that it washed the hair two to four shades lighter and brought out the lustrous golden sheen, the alluring highlights that make her so attractive. In truth and in fact, the preparation contained no such qualities.

(c) A bath powder which the manufacturers claimed would make the body beautiful easily and quickly, would cleanse the pores as they could not otherwise be cleansed and make skin imperfections disappear and the body take on new loveliness, when in truth and in fact the preparation contained no such properties.

(d) A cosmetic which it was claimed would furnish an extra supply of vitamins for the future needs of smart girls who cared to provide against the loss of the "Skin-Vitamin." The product would produce no such results.

(e) A hand lotion claimed to restore smoothness and beauty to hands within 37 seconds. The product would produce no such results.

(f) A cosmetic claimed to refine the pores to invisibility, remove puffiness from eyes, change sallowness to a transparent delicacy; cool, smooth, and freshen the texture of the skin and pick up the contours. In truth and in fact the preparation would produce no such results.

(g) A preparation represented to have been brought by a Traveling Merchant from Bagdad for use in treating chronic constipation, in

Complaint

32 F. T. C.

which it was alleged there were no drugs, when in truth and in fact it did contain drugs.

(h) A reducing preparation which was guaranteed "to cause the user to lose from one to three pounds the first week" and that users will not only look better but feel better; the preparation had no such qualities.

(i) A proprietary medicine which it was claimed would destroy pimples in 60 seconds and kill the "pimple germ," when in truth and in fact the preparation would not accomplish the results claimed.

(j) A preparation for the treatment of inflamed eyes which was allegedly endorsed by 6,000 eyesight specialists, when in truth and in fact the said preparation had not been endorsed as advertised.

(k) A butter featured as containing fine cream and "all its country sweetness", when in truth and in fact some of the butter was found to be, in whole or in part, composed of decomposed or putrid animal or vegetable substance.

(l) A butter which was advertised as of the highest quality, with a score of 93, when in truth and in fact it was shown that some of the alleged butter contained less than 80 per cent by weight of milk fat, which is the minimum required for butter.

(m) Raisins which were advertised as "California's finest—the most tender, meaty, full-flavored raisins you ever tasted", some of which were shown to have contained hydrocyanic acid in an amount which might have rendered them injurious to health.

(n) A powder to be sprinkled on false teeth plates for which it was claimed that the product "holds teeth firm and comfortable. Make breath pleasant", when in truth and in fact the powder did not accomplish the results claimed.

(o) The representation by an advertiser that the reader could earn an independent income, that hundreds were making big money, and that the reader was given an absolute warranty backed by a \$1,000 gold bond, when there was no gold bond or adequate warranty and the claims were in truth and in fact grossly exaggerated.

The foregoing are merely cited as examples of a great many such grossly exaggerated and false advertisements appearing in the advertising pages of Good Housekeeping during the last several years, with its assurance "Guaranteed as advertised" or "EVERY product advertised is guaranteed."

PAR. 14. (a) In availing themselves of the privilege of Good Housekeeping to use the statement, "Guaranteed by Good Housekeeping as Advertised Therein," certain advertisers, with the knowledge and sanction of Good Housekeeping, have caused the words "as Advertised

Therein" appearing in said statement to be so blurred and indistinct as to be not readily discernible by, or perceptible to, the reader. The said Good Housekeeping magazine, although having promulgated the rule that all the words in its aforementioned legend shall be "in type of sufficient size to be clearly legible," nevertheless has published, and now publishes, advertisements in its own pages containing the authorized guaranty statement where the phrase "as Advertised Therein" is so small or blurred as to be hardly decipherable, and in some cases totally indecipherable, by the reader. Typical examples are to be found in the March 1939, Good Housekeeping magazine on pages 107, 180, 195, 202, 213, and 219. By permitting the words "as Advertised Therein" to appear in the pages of its magazine in violation of the provision of respondent's rule with reference to the size of type, respondent acts in conjunction with such advertisers in misleading and deceiving members of the purchasing and consuming public insofar as said guaranty appears to be general and without qualification or limitation.

(b) The use of the statement "Guaranteed by Good Housekeeping as Advertised Therein," even when the words "as Advertised Therein" are clearly legible, by advertisers in magazines other than Good Housekeeping, is ambiguous, confusing, and misleading, in that many of the purchasing and consuming public may understand such statement to mean that the products advertised in magazines other than Good Housekeeping are guaranteed by Good Housekeeping, and will not interpret the phrase "as Advertised Therein" to be a limitation upon the general guarantee.

PAR. 15. The statements used in the publication and distribution of its directory of guaranteed merchandise, and in other advertising, wherein the respondent in effect verifies special claims made for the articles and statements to the effect that it will accept advertising or issue its seal of approval only for an article that "will perform what it promises" and "do what it claims to do" are misleading and deceptive when used under the general caption "Guaranteed Merchandise," or similar captions, insofar as they have, or may have, the capacity and tendency to lead members of the purchasing and consuming public to believe that the performance of such articles advertised is guaranteed when such is not the fact.

PAR. 16. The use by the respondent of the aforesaid representations, acts, and practices as hereinabove set forth, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs above set forth, and on account of such repre-

sentations members of the purchasing and consuming public have been, and are being, or may be, induced to purchase said respondent's magazine and the merchandise advertised therein in the mistaken and erroneous belief that such merchandise is, or was, as stated, and that the claims in connection therewith were, or are, justified and thereby trade has been, and is being, diverted unfairly to the respondent from its competitors hereinbefore mentioned who are likewise engaged in the publication and sale of magazines and who are engaged in the sale and distribution of various articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. As a result thereof, injury has been, and is now being, done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 17. 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 or 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 August 17, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Hearst Magazines, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair or 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 James L. Fort and L. E. Creel, attorneys for the Commission, and in opposition to the allegations of the complaint by Isaac W. Digges, Gilbert H. Weil, and Frederic B. Warder, attorneys for the respondent, before trial examiners 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, answer thereto, testimony and other evidence and report of the trial examiners upon the evidence and exceptions filed thereto (briefs in support of the complaint and in

1440

Findings

opposition thereto having been waived 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. The respondent, Hearst Magazines, Inc., is a corporation organized on or about February 25, 1927, under the laws of the State of Delaware, with its principal place of business located at 57th Street and 8th Avenue in the city of New York, State of New York. Prior to January 2, 1936, respondent owned and controlled a subsidiary corporation known as International Magazine Co., Inc., a Delaware corporation. International Magazine Co., Inc., in turn, had, among other subsidiaries, a corporation known as Good Housekeeping, Inc., a New Jersey corporation, and both International Magazine Co., Inc., and Good Housekeeping, Inc., were subsidiaries of Hearst Magazines, Inc. On or about January 2, 1936, International Magazine Co., Inc., was merged with Hearst Magazine, Inc., the respondent herein, and Good Housekeeping, Inc., became the immediate and wholly owned subsidiary of the respondent and since that date has been operated and controlled by the respondent.

PAR. 2. Respondent, Hearst Magazines, Inc., is now, and for more than 12 years last past has been, engaged in publishing various periodicals and magazines and in the sale and distribution of such publications in commerce among and between the various States of the United States and in the District of Columbia. Among such publications so sold and distributed is a magazine known as "Good Housekeeping." In the course and conduct of its business in connection with the sale and distribution of the magazine known as Good Housekeeping, the respondent causes said magazine to be shipped in commerce among and between the various States of the United States to purchasers and prospective purchasers thereof located in various States of the United States other than the State of publication.

Respondent is also engaged in the sale and distribution of various seals of approval to various manufacturers and distributors. Respondent causes such seals of approval, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States.

For several years prior to January 1, 1939, the respondent was also engaged in the sale and distribution in commerce among and between the various States of the United States of numerous articles of merchandise by means of a so-called "shopping service."

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said magazines, seals, and items of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals engaged in the following businesses in commerce among and between the various States of the United States and in the District of Columbia to wit: publishers and distributors engaged in the sale and distribution of other magazines, newspapers, and periodicals; mail order and other retail merchandisers; merchandisers who furnish a performance guaranty with their products; shopping services; and others not specifically mentioned herein.

PAR. 4. The respondent operated a shopping service from 1920 to January 1, 1939, through which readers of its magazine could, and did, purchase various articles of merchandise which were advertised in Good Housekeeping magazine. Respondent carried in its magazine under the heading "shopping service" illustrated articles depicting and describing various styles of women's dresses, together with the statement that this service was free of charge and with the direction to prospective purchasers to send check or money order, size, and color to Good Housekeeping. Respondent, upon receiving such order, forwarded same to the dealer or manufacturer, who made delivery to the purchaser and billed respondent monthly for its total purchases. In this manner, the respondent represented that the service so rendered by it was free or without compensation when in truth and in fact respondent received a commission of from 5 percent to 7 percent from the sellers of the merchandise purchased through said service.

The shopping service and the practices engaged in therewith were terminated on January 1, 1939.

PAR. 5. Respondent represents that all products, services, or other commercial offerings advertised in the Good Housekeeping magazine are guaranteed by the respondent. As an example of this practice

1440

Findings

there appears usually on page 6 of each issue of Good Housekeeping magazine, the following or some similar statement:

Good Housekeeping's
GUARANTY PAGE
Every Product Guaranteed
as Advertised

Beneath this title, which is usually in large type, appears an index of advertisers who have advertised in that particular copy of the magazine. Usually below the list of advertisers appears the following statement:

YOUR GUARANTY

It is the definite policy of Good Housekeeping to make its advertising pages trustworthy and reliable. Every product advertised in Good Housekeeping is guaranteed by us as advertised in our magazine.

Before we accept advertisements for mechanical household equipment, devices, and utensils; and household soaps and cleansers, such products are tested and approved by Good Housekeeping Institute. Before we accept advertisements for foods, cosmetics and pharmaceuticals, such products are tested and approved by Good Housekeeping Bureau. Advertising is not accepted on products that are disapproved. Approved products in these classifications are permitted to use the Good Housekeeping Seal of Approval.*

All other products are carefully examined by Good Housekeeping's technical staff. They, too, must prove satisfactory before advertising is accepted.

This is your Guaranty: If you purchase any product advertised in this issue of Good Housekeeping within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint and if the product is defective it will be replaced or your money refunded.

(*NOTE.—The award of the Seal of Approval to a product is not contingent upon advertising in Good Housekeeping. As a matter of fact, of all the products that have received the Seal of Approval less than 80% have ever been advertised in Good Housekeeping.)

In the various issues of Good Housekeeping magazine at the bottom of each page upon which advertisements appear is the following statement:

Every product guaranteed as advertised—see p. 6.

or

Every product advertised is guaranteed—see page 6.

The representations with reference to guaranty of products advertised in Good Housekeeping magazine, of which the above is a sample have the tendency to mislead readers of the magazine and to cause them to believe that the guaranty of the respondent is an unlimited guaranty. This is particularly true since the guaranty is extensively

publicized, with the true nature of the guaranty more or less inconspicuously placed on page 6 of said magazine.

PAR. 6. In addition to the representations of guaranty appearing in respondent's publication Good Housekeeping magazine, the respondent also authorizes advertisers in said magazine to publicize such guaranty in other publications, on labels attached to their products, and on containers of products by use of an emblem or shield reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping." Such advertisers, when advertising in newspapers and publications not owned or controlled by the respondent, and on labels and in circulars and other advertising material, use the above-described emblem or shield. Such use of such emblem or shield independent of the representations appearing in Good Housekeeping magazine in the manner hereinabove described, has the tendency and capacity to cause members of the purchasing public to believe that such products are unconditionally guaranteed by the respondent.

PAR. 7. In addition to the representations with reference to guaranty and the use of shields or emblems issued by the respondent as hereinabove described, the respondent also represents that various products have been tested or tested and approved by departments of the Good Housekeeping magazine. In this connection, respondent maintains departments known as Good Housekeeping Bureau and Good Housekeeping Institute for testing various products. The Good Housekeeping Bureau limits its activities to the investigation of food, drugs, and cosmetics, and the Good Housekeeping Institute to mechanical devices and articles of household equipment. In connection with the activities of these departments the respondent issues seals of approval, usually elliptical in form, containing the words "Tested and approved," a cut of a star followed by a serial number with the name "Good Housekeeping Institute" or "Good Housekeeping Bureau," as the case may be, with the further notation "Conducted by Good Housekeeping magazine." In the case of meat products the same form of seal is used except that the word "Recommended" is substituted for the words "Tested and approved." No charge is made by the respondent for the services rendered in making such tests preliminary to the issuance of seals, nor does it appear from the evidence that the issuance of any seal of approval is contingent upon advertising in Good Housekeeping magazine.

When the respondent issues a certificate certifying that the product has been tested and approved, it authorizes the use of seals of approval on the applicant's merchandise and the reproduction of such

seals in various advertising and in circulars as may be desired. The respondent issues price lists covering the cost of such seals, plates for the reproduction thereof, and duplicate and facsimile certificates. The applicant, under its contract with the respondent, is required to purchase all such seals, plates, and certificates from the respondent. In its various circulars the respondent recommends that the seal of approval be placed on the product itself and should follow the product right to the consumer and that the reproduction of the seal should appear in advertising in magazines, newspapers, trade papers, car cards, on outdoor billboards, in booklets, counter display cards, shipping cartons, and various advertising material.

In the Good Housekeeping magazine it is customary for the respondent to publish articles publicizing the testing services of the various departments of the Good Housekeeping magazine. In addition to these articles, the respondent from time to time issues Buyers' Guides for general distribution containing a list of products or other commercial offerings which it represents have been tested and approved by Good Housekeeping Bureau or Good Housekeeping Institute.

Through the use of such seals of approval and statements made with respect thereto, the respondent represents that all products bearing such seals of approval have been adequately and thoroughly tested in such a manner as to assure, at the time such products are sold to the consuming public, the quality, material, and properties of such products in relation to the intended usage thereof and the fulfillment of the claims made therefor in connection with the use of such insignia or representation.

Based upon the testimony of various witnesses with reference to the extent to which their products were investigated by the respondent and the volume of business conducted in said products, the Commission finds that while tests were made before seals of approval were issued by either of the above mentioned departments of Good Housekeeping magazine, tests of mechanical devices in some instances and tests of food, drugs, and cosmetics generally were not sufficient to assure the fulfillment of the claims made for such products. In some instances seals of approval with respect to services or commercial offerings have been issued without even an adequate preliminary investigation to fully protect those members of the purchasing public who might rely upon such seals of approval.

PAR. 8. The respondent does not require a uniform design for its shields, emblems, and insignia bearing the name Good Housekeeping magazine, but, instead, has authorized the use of a great many dif-

ferent designs by various advertisers and distributors. In addition, in discussing its various shields, emblems, and insignia in articles in its magazine, in recitations with reference to guaranty, and in various circulars, booklets, and other publications, the respondent directly associates and discusses the testing facilities and the operation of the various departments of Good Housekeeping magazine. The use and the authorization of the use, by the respondent of a great many different forms of seals, shields, emblems, and insignia and the association therewith of the testing facilities and operation of its various departments in various magazine articles and in booklets, circulars, and other advertising material are confusing to the average reader and have the tendency and capacity to mislead and deceive purchasers, prospective purchasers, and readers of respondent's magazine into believing that all products bearing a seal, shield, emblem, or insignia of Good Housekeeping magazine or advertised in conjunction with such seal, shield, emblem, or insignia have been thoroughly and adequately tested and approved and are guaranteed by the respondent, when in fact such products are not guaranteed by the respondent and have not been adequately tested by it.

PAR. 9. In addition to the acts and practices hereinabove set forth, the respondent also, by means of articles in its magazine and by other statements and representations, represents, directly and by inference, that all representations of, and claims made for, products, services, or other commercial offerings appearing in advertisements in its periodicals are true. Such representations are usually made in connection with discussion of the testing facilities of Good Housekeeping magazine and the effect or purport of the guaranty by it of all advertising appearing in its issues. Examples of such statements and representations are the following:

It means that the products or service you see advertised in Good Housekeeping will perform what is promised for them and do what is claimed they will do as stated in their advertisements in Good Housekeeping.

Good Housekeeping carefully investigates the essential claims and satisfactory qualities of products or services before advertising is accepted.

Based upon the testimony concerning advertisements issued on various products, the Commission finds that many of the advertisements appearing in Good Housekeeping magazine contain false, deceptive, and misleading statements and representations with reference to the therapeutic value of medicinal preparations, the properties and effectiveness of cosmetic preparations, the fiber content and qualities of fabrics and wearing apparel, the properties and purity of food products, the results to be obtained from the use of various articles of mer-

1440

Order

chandise, and the efficiency and reliability of services and other commercial offerings.

PAR. 10. The use by the respondent of the acts and practices as hereinabove set forth has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs above set forth, and on account of such representations, members of the purchasing and consuming public have been induced to purchase respondent's magazine, the merchandise advertised therein, and merchandise containing respondent's seal of approval in the mistaken and erroneous belief that such merchandise is as represented, that the claims in connection therewith are justified, and that said products have been thoroughly tested to fulfill all the claims made therefor, and as a result, trade has been diverted unfairly to the respondent from its competitors hereinbefore described.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the report of the trial examiners thereon and the exceptions of the respondent thereto (the filing of briefs by counsel and all other intervening procedure having been waived by 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, Hearst Magazines, Inc., a corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its periodicals, magazines, or other publications, and the issuance or authorization of various seals of approval, emblems, shields or other

insignia, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that all representations of, and claims made for, products, services or other commercial offerings described in advertisements appearing in any of its periodicals, magazines or other publications are true when any representation or claim contained in such advertisements is not in fact true.

2. Using, or authorizing, or allowing others to use, seals, emblems, shields, or other insignia, which represent in any manner that any food, drug, cosmetic, or therapeutic device, has been tested, or tested and approved by or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing or authorizing or allowing others to represent, in any manner, that any such product has been tested, or tested and approved by, or at the instance of, the respondent, or any organization owned or controlled by it, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such a manner as to assure, at the time such product is sold to the consuming public, the quality, nature, and properties of such product in relation to the intended usage thereof and the fulfillment of the claims made therefor in connection with the use of such insignia or representation.

3. Using, or authorizing, or allowing others to use, seals, emblems, shields or other insignia which represent in any manner that any mechanical device, or article of household equipment, other than those included in paragraph 2 hereof, has been tested, or tested and approved, by or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing or authorizing or allowing others to represent, in any manner, that any such product has been tested, or tested and approved, by, or at the instance of, the respondent, or any organization owned or controlled by it, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such a manner as reasonably to assure, at the time such product is sold to the consuming public, the quality, nature and properties of such product in relation to the intended usage thereof and the fulfillment of the material claims made in connection with the use of such insignia or representation.

4. Authorizing, using, or allowing the use of seals, emblems, shields, or other insignia which represent, directly or by implication, that an inquiry or investigation has been made by, or at the instance of, the respondent, or any organization owned or controlled by it, of a service or other commercial offering, (not including any product) in connection with which such seal, emblem, shield or other insignia is used,

unless and until the respondent has in fact made a sufficiently adequate and thorough investigation or inquiry as to assure the fulfillment of the claims made for such service or commercial offering in connection with the use of such insignia or representation.

5. Representing, directly or by implication, that any product, service, or other commercial offering advertised in its magazines, periodicals, or other publications, or for which respondent has authorized the use of any seal, emblem, shield, or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or if limited, unless all limitations upon such guaranty are clearly, conspicuously, and explicitly stated in immediate conjunction with all such representations of guaranty.

6. Authorizing, or allowing others to represent, directly or by implication, that any product, service, or other commercial offering advertised in its magazines, periodicals, or other publications, or for which respondent has authorized the use of any seal, emblem, shield, or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or if limited, unless all limitations upon such guaranty are clearly, conspicuously, and explicitly stated in immediate conjunction with all such representations of guaranty.

The provisions of this order are not to be construed so as to prohibit the use of the word "recommended" on any seal, emblem, shield, or other insignia when the product with respect to which such seal, emblem, shield, or other insignia is used has in fact been adequately and thoroughly tested by the respondent in such a manner as reasonably to assure the quality, nature, and properties of such product in relation to the intended usage thereof and the fulfillment of the material claims made in connection therewith, and when the form of such seal, emblem, shield, or other insignia is readily distinguishable by the consuming public from any seal, emblem, shield, or other insignia bearing any guaranty.

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.

Order

32 F. T. C.

IN THE MATTER OF
CHARLES N. MILLER CO.
MODIFIED CEASE AND DESIST ORDER
Docket 2826. Order, May 14, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on November 14, 1936, 23 F. T. C. 886, issued its modified order prohibiting sale of candy by lottery schemes or devices; and (2) Circuit Court of Appeals for the First Circuit, on June 10, 1938, in *Federal Trade Commission v. Charles N. Miller Co.*, 97 F. (2d) 563, 27 F. T. C. 1678, rendered its opinion modifying aforesaid modified order of the Commission in certain particulars and affirming said modified order in other particulars—

Requiring respondent, its officers, etc., in the offering for sale, sale and distribution in interstate commerce of candy and candy products, to cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made, by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, and (3) packing, etc., in the same package, etc., of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy to be given as prizes to those procuring piece with center of a particular color; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on August 4, 1936, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and on November 14, 1936, issued and served its modified order to cease and desist; and it further appearing that on June 10, 1938, the United States Circuit Court of Appeals for the First Circuit rendered its opinion modifying the aforesaid modified order of the Commission in certain particulars and affirming said modified order in other particulars;

Now, therefore, Pursuant to the provisions of subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court opinion:

It is ordered, That the respondent, Charles N. Miller Co., its officers, agents, representatives, and employees, in the offering for sale, sale,