

IN THE MATTER OF
**THOMSEN-KING & COMPANY, INC., WINSHIP CORPORATION,
JAMES M. WOODMAN, JESSE L. STEWART,
ET AL.**

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

Docket 3998. Complaint, Jan. 24, 1940—Decision, June 12, 1941

Where two corporations, which were created to continue the business of engaging in prize contests as a means of merchandising cosmetics, and which were the most recent of 16 companies organized, discontinued, or dissolved, and reorganized under the plan below set forth, over a period of some 10 years; and numerous individuals cooperating with one another, directly or indirectly, in conducting prize contests through such contest companies, which they organized, and including among their number (1) 10 partners operating "The Committee for General Investments," who, together with other investors, financed and aided the financing of one or more "prize contests" as hereinafter described, (2) a number of partners or associates, who conducted "prize contests" under various trade names such as "Woodman-Stewart Advertising Agency," and prepared advertisements used in connection therewith, and (3) some 20 others engaged, at some time during period concerned, directly or indirectly, in financing, operating or managing one or more of the aforesaid contests;

Acting in furtherance of a common plan, pursuant to which they—

I. Organized and operated some 16 corporations, or companies operating under trade names, to disseminate advertisements concerning numerous "prize contests" and induce the sale of certain cosmetics, and under which, when cited to appear before the Commission, they would, (1) in some cases, stipulate therewith to cease and desist the objectionable acts and practices, following which they would make little, if any, effort to comply, but would either discontinue or dissolve the particular company, organize a new one, and proceed with acts and practices substantially similar to, and in some instances identical with those which they had agreed to discontinue; and (2) in other instances, following issuance of complaints by Commission against one or more of their companies, they would, during the pendency of the proceedings, complete the particular contest involved and then dissolve or discontinue the particular company respondent in the proceeding concerned, filing either an admmissive answer or entering a dilatory contest for purposes of delay, and then organize new companies to continue practices substantially similar to and, in some instances, identical with those involved in complaints and orders referred to;

II. Frequently changed the corporate or trade names used in promoting sale of their cosmetics, dissolving the existing company, distributing its principal and profits, and transferring its physical properties to a new concern; and

III. Employed or designated new "prize managers" for newly organized prize contests, and new officers and so-called owners of new companies, to continue such contests, the new managers, officers and owners being

such, however, in name only, in most instances with no financial interest involved and in some instances financially irresponsible;

By means of advertisements disseminated through the mails, newspapers, and periodicals of general circulation, and circulars and other printed or written matter—

- (a) Represented that they were conducting a contest confined to the solution of a picture puzzle or similar device, involving only skill in submitting solutions, without expenditure of either money or work on the part of contestants, in order to win a prize; that the simple act of sending in a correct solution to a puzzle or contest would entitle contestant to one of the grand prize awards given free; and that they were giving free substantial sums of money or other awards, as a means of advertising their products; and
- (b) Represented that the recipient of a so-called Grand Prize Promptness Certificate had gained an advantage by virtue of skill in solving a puzzle and that an award was guaranteed or assured by simply mailing in such certificate to them; that purchasers of small quantities of their cosmetics stood in as favorable a position as large quantity purchasers, with a favorable or reasonable chance of winning the grand prize or other cash prizes; that by simply replying to their advertising literature and requests therein made, contestant would receive specified or other prizes; that hundreds had already won big prizes in similar friendship campaigns conducted by the same prize company; and that the giving of a certain order and the payment of a specified amount therefor, would assure the contestants addressed of securing a money prize;

Facts being said puzzle or picture contest and offer of awards or prizes was used solely as a means to obtain names of people who would later be encouraged to enter a competitive selling contest, said puzzle contest constituting merely the initial step in a system of effecting sales; picture puzzle advertised by them was so simple as to remove it from the category of a competitive contest or one of skill, being such that a substantial majority, if not all, of those replying would submit correct solutions; said advertised contest and offer of awards or prizes in connection therewith was but a deceptive form of bait or decoy for unsuspecting members of the buying public; said various contests were buying contests, requiring quantity purchases of their products by contestants, and the winning of any contest required the purchase of quantities of their cosmetics equal to or in excess of the awards or prizes granted, which in fact constituted bonuses for sales made by individual contestants;

- (c) Failed to reveal to prospective contestants that participation in the awards depended in whole or in part upon purchase or sale of cosmetics, and obscured the fact that requirements for winning a prize were neither easy nor simple, so that, mostly, such fact was not ascertained by contestant until after making purchases of cosmetics; and
- (d) Falsely represented that the preparations sold to persons entering the contest were sold at reduced and introductory prices and at less than an established retail price and value, and that they had been in business under various trade names for a long period of years, had an established reputation with respect to their products and for business success, and that their products, which they represented directly or impliedly as originating with them, were of national reputation and of such quality that resale to the general public was not difficult, and that their cosmetics

Syllabus

33 F. T. C.

would restore a youthful condition to the skin, removing wrinkles, etc., and their dental preparations help to make the gums healthy;

Facts being products offered were not of established reputation, in use among usual retail outlets, were not offered at reduced, introductory, or advertising prices and would not accomplish results claimed therefor;

- (e) Represented that telegrams, requests for photographs and other forms of encouragement received by contestants indicated that the particular contestant was about to, or certain or likely to, win a cash prize in the contest, that a money prize or reward was guaranteed to persons who became members of so-called prize clubs and that such members were among the leading contestants, that the recipient of points or votes in the form of a certificate of award was the subject of a special favor or advantage which substantially enhanced his chance of winning; that so-called advice and suggestions given in letters to contestants were due to a personal interest in the person addressed and given exclusively to him, and that his position was equal or superior to that of other contestants; that the certificate of award, diploma, or other form supplied to the participant was good for an emolument or advantage not held by other contestants, that in the preliminary stages contestant had already made such progress that his choice of prize was requested, that his score was so high that a request for his photograph was warranted, and that receipt of a facsimile check indicated that the recipient was in a favorable position to win the amount indicated thereon;

The facts being that they granted no special favor to any particular contestant, and aforesaid representations were only stimuli for the purchase of additional cosmetics; and were integral parts of their system to lead on the prospect, step by step, and induce his purchases, award of points or votes, following initial award, being conditioned solely upon and made incident to purchase orders for their products; and such awards or points or votes in the early stages of the contest and incident to the first purchase order having no material or substantial value; and the majority of persons addressed by said corporation and individuals at no time stood in a position affording them a favorable chance of winning the grand prize or any other of the money prizes offered;

With the result that through said means they sold, by means of each contest, to between 10,000 and 234,000 individual contestants, each of whom was induced to spend from a few dollars up to \$11,000, in one instance, and sold as much, in single contest, as \$1,643,000 in cosmetics; and

Where said corporations and individuals, at various stages of progress of the contest—

- (f) Furnished to contestants and urged use by them of punch or pull cards or other devices involving a lottery or game of chance in the resale of their products in which the cosmetics or article to be purchased and price to be paid therefor were determined entirely by chance, thereby supplying to and placing in the hands of others the means of conducting lotteries in the sale of their said products, contrary to the established public policy of the United States Government and in violation of the criminal laws of many of the States, and in competition with many who, unwilling to use any such method, refrain therefrom;

With the result that many persons were attracted by their said sales plans and the element of chance involved therein, and were thereby induced to

buy and sell their cosmetics in preference to those sold by their competitors who do not use such methods, whereby trade was unfairly diverted to them from their competitors, to the substantial injury of competition in commerce:

Capacity, tendency, and effect of which acts, practices, and methods were to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said false and deceptive representations were true; to induce it to purchase quantities of their said products; and unfairly to divert trade from competitors to them:

Held, That said acts and practices, performed and carried out as part of wrongful and unlawful understandings and agreements entered into by individuals concerned, for more than 10 years last past in order to continue same directly and indirectly, in interstate commerce and to avoid and render ineffectual the orders and processes of the Commission, were all to the prejudice and injury of the public and said individuals' competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Curtis Shears and *Mr. Donovan R. Divet* for the Commission.

Schaetzle & Williams, of Des Moines, Iowa, for Winship Corporation, Don W. Parmelee, George Schaffer, Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning.

Mr. Lewis F. Mason, of Chicago, Ill., for James M. Woodman, Jesse L. Stewart, Merrold Johnson, Joseph Furth, Albert L. Bisson, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, Joseph Kane and John E. Woodman.

Parrish, Guthrie, Colflesh & O'Brien, of Des Moines, Iowa, for G. Fred Stayton and Leta M. Clanton.

Mr. Paul H. Williams, of Mt. Rainier, Md., for Sibley F. Everitt.

Nash & Donnelly, of Chicago, Ill., for Walter C. Phillips.

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 Thomsen-King & Co., Inc., a corporation, Winship Corporation, a corporation, F. W. Fitch Co., a corporation, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Walter Rubens, Albert L. Bisson, Leta M. Clanton, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter C. Phillips, Paul H. Williams, Don W. Parmelee, George Schaffer,

Complaint

33 F. T. C.

Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, Joseph Kane, John E. Woodman, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred. W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, hereinafter designated and referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent, Thomsen-King & Co., Inc., is an Illinois corporation with its principal office and place of business at 710 South Plymouth Court, city of Chicago, State of Illinois. It is the immediate successor of Van Dear Products, Ltd., at the same address.

Respondent, Winship Corporation, is an Iowa corporation with its principal office and place of business at 112-114 West Eleventh Street, city of Des Moines, State of Iowa. It is the immediate successor of the Lorna Gay Co., at the same address.

Said corporate respondents are engaged in the business of selling and distributing certain various cosmetics such as beauty preparations and toiletries, perfumery, face powder, cleansing cream, astringent lotion, foundation cream, pore cream, lipstick, tooth powder and tooth paste under their respective corporate names by means of a series of prize contests for the purpose of inducing the purchase of said cosmetics.

Respondent, F. W. Fitch Co., an Iowa corporation, with its principal office and place of business in 304 Fifteenth Street, city of Des Moines, State of Iowa, manufactures hair tonics, beauty preparations, perfumery, and other toiletries, a substantial portion of which are sold and distributed by means of a series of prize contests. Through its officers, directly or indirectly, and by means of a committee for general investments, this respondent has financed or aided in the financing of a number of said prize contests, and acting through certain designated agents, Prentice W. Shaw, R. E. Williams, W. C. Phillips, A. Leonard Anderson, and others unknown to the Commission, has exercised a substantial measure of control over the management and policies of one or more of the prize contest companies hereinafter more particularly described.

The respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, and Richard H. Young, are officers of the F. W.

Fitch Co. and with the respondents, Mrs. Fred W. Fitch, Mrs. Gail W. Fitch, Mrs. Lucius W. Fitch, Mrs. Lester R. Sandahl, and Mrs. Richard H. Young, constitute said committee for general investments.

Respondents, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, and Joseph Furth, were at one time or another during the period involved herein associated as partners or associates under various names including the Woodman-Stewart Advertising Agency and the Jesse L. Stewart Advertising Agency, with their principal office and place of business at 520 North Michigan Avenue, Chicago, Ill., in preparing and otherwise writing advertisements and advertising copy for said prize contest companies. They exercise a substantial measure of control over the policies of certain of the various prize contest companies hereinafter more particularly designated and described by devising and preparing or aiding in devising and preparing the false advertisements hereinafter more particularly described. Respondents, Woodman, Johnson, and Stayton, were actively engaged, at one time or another, in the management of several of said prize contests.

Respondent, Walter Rubens, an individual, under various names including Vanderbie & Rubens, with a principal office and place of business at 540 North Michigan Avenue, Chicago, Ill., has been at one time or another during the period involved herein, active in preparing, revising, and otherwise writing advertisements and advertising copy for, and has exercised a substantial measure of control over, the policies of one or more of said prize contest companies.

Respondents, Sibley F. Everitt, John E. Woodman, Walter C. Phillips, Don W. Parmelee, Albert L. Bisson, Leta M. Clanton, George Schaffer, Evelyn Henderson, Glenn Tate, Paul H. Williams, Richard E. Williams, Prentice W. Shaw, James M. Woodman, Merrold Johnson, George Thomsen, Amber M. McCluskey, James L. Decker, G. Fred Stayton, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning, were at one time or another during the period involved herein actively engaged in the financing or operating of one or more of the prize contest companies hereinafter more particularly described.

Respondents, J. G. Hamer, B. Brown, H. Rosenstein, Claude A. Burnett, Ross J. Miller, and Joseph Kane, are individuals who have incorporated one or more of the recent prize contest companies and actively participated in the control of their policies.

All of the aforesaid individual respondents have acted together and in cooperation with each other and with the corporate respondents in doing the acts and practices hereinafter alleged, and

Complaint

33 F. T. C.

such individuals exercise, individually and collectively, directly, or indirectly, a substantial measure of control over the organization, management, policies, operation, and financing of said prize contest companies.

The residence or business addresses of said individual respondents, so far as are known to the Commission, are as follows:

James M. Woodman, R. F. D. No. 2, Box 40A, Lake Villa, Ill.
Jesse L. Stewart, Room 434, 520 North Michigan Avenue, Chicago, Ill.

Merrold Johnson, 2636 North Seventy-sixth Street, Chicago, Ill.
G. Fred Stayton, c/o Central Insurance Agency, 75 East Wacker Drive, Chicago, Ill.

Joseph Furth, Room 434, 520 North Michigan Avenue, Chicago, Ill.

Sibley F. Everitt, now residing in Hamilton, Bermuda.

Walter C. Phillips, 676 Shatto Place, Los Angeles, Calif.

Don Parmelee, c/o Winship Corporation, 112-114 West Eleventh Street, Des Moines, Iowa.

Albert L. Bisson, 7018 Woodlawn Avenue, Chicago, Ill.

Leta M. Clanton, c/o Central Insurance Agency, 75 East Wacker Drive, Chicago, Ill.

George Schaffer, c/o Winship Corporation, 112-114 West Eleventh Street, Des Moines, Iowa.

Evelyn Henderson, 1821 Grand, Des Moines, Iowa.

Glenn Tate, 75 East Wacker Drive, Chicago, Ill.

Paul H. Williams, c/o State Loan Co., Rosslyn, Va.

Richard E. Williams, 1216 Forty-sixth Street, Des Moines, Iowa.

Prentice W. Shaw, 709 Crocker Building, Des Moines, Iowa.

George Thomsen, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.

Walter Rubens, c/o Vanderbie & Rubens, 540 North Michigan Avenue, Chicago, Ill.

Amber M. McCluskey, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.

James L. Decker, c/o Thomsen-King & Co., Inc., 710 South Plymouth Court, Chicago, Ill.

J. G. Hamer, 11 South LaSalle Street, Chicago, Ill.

B. Brown, 11 South LaSalle Street, Chicago, Ill.

H. Rosenstein, 11 South LaSalle Street, Chicago, Ill.

Claude A. Burnett, 29 South LaSalle Street, Chicago, Ill.

Ross J. Miller, 29 South LaSalle Street, Chicago, Ill.

Joseph Kane, 29 South LaSalle Street, Chicago, Ill.

John E. Woodman, R. F. D. No. 2, Box 40A, Lake Villa, Ill.

Steve W. Phillips, 333 Tonawanda Drive, Des Moines, Iowa.
Warren Lee Eastman, 1131 Thirty-fifth Street, Des Moines, Iowa.
Ernie A. Storesund, 2730 Lyons Street, Des Moines, Iowa.
A. Leonard Anderson, 112-116 West Eleventh Street, Des Moines, Iowa.
Gerald G. Grant, c/o Scovill Brass Works, Chicago, Ill.
W. W. Young, Iowa City, Iowa.
Paul Manning, c/o Manning-McComb Co., Des Moines, Iowa.
Fred W. Fitch, 669 Foster Drive, Des Moines, Iowa.
Mrs. Fred W. Fitch, 669 Foster Drive, Des Moines, Iowa.
Lucius W. Fitch, 5403 Harwood Drive, Des Moines, Iowa.
Mrs. Lucius W. Fitch, 5403 Harwood Drive, Des Moines, Iowa.
Gail W. Fitch, 3802 Maquoketa Drive, Des Moines, Iowa.
Mrs. Gail W. Fitch, 3802 Maquoketa Drive, Des Moines, Iowa.
Lester R. Sandahl, 4835 Algonquin Street, Des Moines, Iowa.
Mrs. Lester R. Sandahl, 4835 Algonquin Street, Des Moines, Iowa.
Richard H. Young, 5010 Woodland Avenue, Des Moines, Iowa.
Mrs. Richard H. Young, 5010 Woodland Avenue, Des Moines, Iowa.

PAR. 2. Each of said respondents, at one time or another, individually and in concert and cooperation with each other, has engaged, directly or indirectly, in the business of conducting prize contests, through various contest companies organized for the purpose of inducing the purchase of cosmetics through advertising matter mailed directly to members of the purchasing public located in the various States of the United States. When sales are made through said contest companies to persons contacted by direct mail or other means and as a part of said sales, said respondents ship said cosmetics from their respective places of business or direct from the place of business of the manufacturer of said cosmetics to such purchaser-contestants located in the various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business hereinbefore described, said respondents from September 1, 1929, to the present time have entered into certain unlawful understandings, agreements and conspiracies with each other and with other persons not specifically named herein to do certain unlawful acts for the purpose of inducing the purchase of various cosmetics and of avoiding and

Complaint

33 F. T. C.

rendering ineffectual the orders and other processes of the Federal Trade Commission through various acts and practices hereinafter more particularly described.

In furtherance of such unlawful understandings, agreements, and conspiracies, and as a part thereof, the respondents would organize and operate a corporation or a company under a trade name for the purpose of engaging in the dissemination of false advertisements with respect to a prize contest in order to induce the sale of certain cosmetics. When the acts and practices of a particular company operated by the respondents would come before the Federal Trade Commission for action as the result of an investigation instituted by the Commission, the particular company then under investigation would in some cases enter into a stipulation with the Federal Trade Commission to cease and desist from the acts and practices then being conducted and substantially similar if not identical to those set out in this complaint. The respondents, after execution of such stipulation, would make no effort to conform their practices to the terms of said stipulation but instead would either discontinue or dissolve the particular operating company and organize a new company and proceed with substantially similar and in many cases the identical acts and practices which they had stipulated to discontinue in the proceeding before the Federal Trade Commission. In other cases in which a complaint had been issued by the Federal Trade Commission, the respondents, during the pendency of such proceedings, would complete the particular prize contest involved and then dissolve or discontinue the particular company made respondent in such complaint and either file an admission answer in the Commission's proceeding or enter a dilatory contest for the purpose of delay. During the pendency of such proceedings or after a cease and desist order had been issued by the Commission, the respondents would organize new corporations or companies to continue with the identical practices involved in such complaints or orders to cease and desist. In furtherance of this plan it was the practice of the respondents to frequently change the corporate or trade name used in promoting the sale of such cosmetics, dissolve the existing company, distribute its principal and profits, and transfer its physical properties to a new company designed to take over the operation of the business conducted by the former company. It was further a part of said plan that respondents would employ or designate a new prize manager for each contest and new officers and so-called owners for each new company to continue said prize contest under said new names and with said new personnel. Such prize managers, officers, and so-called owners were in many cases owners, officers, and managers in name only and had in most

instances no financial interest in said companies and were in some cases financially irresponsible. Among the companies organized, reorganized, and discontinued or dissolved under the operation of this plan were the following: Helen Dawn Co., Co-Ed, Inc., Paramount Products Co., Betty White Corporation, Paradise Company, Van Dear Products, Ltd., Century Co., Sterling Co., Knight Co., Marena Co., Lorna Gay Co., E. M. Davis Co., Nannette Co., Super-Franklin Co., and others, as well as the present operating corporations, Thomsen-King & Co., Inc. and Winship Corporation.

In furtherance of said conspiracy and as a part thereof, the respondents would disseminate or cause to be disseminated to purchasers and prospective purchasers of said cosmetics, in and through the various States of the United States and in the District of Columbia, letters, circulars, telegrams, advertisements, and other forms of printed and written matter in which false, deceptive, and misleading statements and representations were made.

In furtherance of said conspiracy and as a part thereof, the respondent, F. W. Fitch Co., its officers, and employees, in their representative as well as their individual capacities, would counsel and aid in the selection of so-called owners, officers, and prize managers of said prize contest companies and would aid in the financing of some of said prize contest companies and assist said companies to obtain bank and other credit references and other facilities. For the purpose of protecting such financial investment, the F. W. Fitch Co., acting through a committee for general investments, would employ or cause to be employed various individuals to represent the interest of said committee from time to time in the management and operation of said prize contest companies.

The acts and practices and methods in conducting said business described above, and other acts, practices, and methods not described herein, to which each and all of said respondents have at any time or another participated were all in furtherance of said conspiracy.

PAR. 4. In the course and conduct of their various prize contests, under various trade and corporate names, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning the various cosmetic products sold and distributed by them, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means, in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce,

Complaint

33 F. T. C.

directly or indirectly, the purchase of their said cosmetic products, in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

1. That the simple act of sending in a correct solution to a puzzle or contest will entitle the contestant to one of the grand prize awards and that such prize will be given free without the expenditure of either money or work on the part of such contestant.

2. That the respondents are conducting a prize contest and giving free substantial sums of money or other awards as a means of advertising their products.

3. That the recipient of a so-called "Grand Prize Promptness Certificate" has gained an advantage for himself by virtue of skill in solving a puzzle and that an award is guaranteed or assured by simply mailing in such certificate to the respondents.

4. That the purchasers of small quantities of cosmetics stand in as favorable a position as large quantity purchasers of said cosmetics, offering them a favorable or reasonable chance of winning the grand prize or any other of the cash prizes offered.

5. That the telegrams, requests for contestant's photographs, and other forms of encouragement received by contestants indicates that said contestant is about to, or is certain or likely to win a cash prize in said contest.

6. That said cosmetics are of national reputation and are of such quality that resale to the general public is not difficult.

7. That a money prize or reward is guaranteed to that person who becomes a member of one of the so-called "Prize Clubs," and that such members are among the leading contestants.

8. That, by the simple act of responding to the advertising of respondents and to literature received from respondents and to the requests therein made by respondents, such contestants will receive or win a specified grand prize, or various other prizes.

9. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

10. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

11. That the recipient of points or votes in the form of a certificate of award, is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said points or votes substantially enhance the chance of said recipient

toward the winning of one or more of the prizes offered by respondents.

12. That respondents, under each of the trade names used by them, have been in business for a long period of years and have an established reputation with respect to their products and for business success.

13. That the giving of a certain order for goods and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

14. That so-called advice and suggestions given in letters to contestants are due to a personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

15. That each contestant or person addressed stands in a position equal to or superior to that of other contestants and have a favorable or reasonable chance of winning the grand prize or various other of the prizes offered.

16. That the prize company conducting the contest is a manufacturing concern and that such company originates, compounds, and prepares the preparations and products sold by it.

17. That there is no element of lottery in connection with the contest or the sale of the merchandise.

18. That by answering promptly or before a given date the contestant will qualify for his share of the prize money that must be given away for advertising purposes.

19. That the sending of one or more initial payments completely qualifies the participant for the promptness prize or other awards.

20. That the certificate of award, diploma or other forms supplied to the participant are good for an emolument or advantage not held by other contestants.

21. That in the preliminary stages the contestant has already made such progress that his choice of prize is requested and that his score is so high that a request for his photograph is warranted.

22. That the receipt of a facsimile check for various sums of money indicates that the recipient is in a favorable or reasonable position to win the amount indicated on said check.

PAR. 5. The aforesaid representations as well as others similar thereto not specifically set out herein which have been disseminated and are now being disseminated by the respondents in the manner and form above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, respondents do not conduct any contest involving competition among contestants in promptness or skill as a means of advertising their

Complaint

33 F. T. C.

products and of gaining publicity for the aforesaid cosmetics. The picture puzzle advertised by respondents is so simple of solution as to remove it from the category of a competitive contest or contest of skill, and is such that substantial number or majority, if not all, of the persons responding thereto would submit correct solutions. The said advertised puzzle contest and offer of awards or prizes in connection therewith is but a deceptive form of "bait" or "decoy" attractive to the innocent, unwary, and unsuspecting members of the buying public, and has been and is used by respondents as the initial step in a system of effecting sales.

The various contests conducted by respondents are buying contests requiring quantity purchases of respondents' cosmetic products by the contestants or persons entered therein. The winning of a prize is dependent upon the quantities of respondents' products which are purchased by the individual contestants and has no material connection with the promptness or solution of any picture puzzle or other form of contest. In fact, in order to win any such contest, the contestant must necessarily purchase quantities of respondents' cosmetics, equal to, or in excess of the awards or prizes granted. The sums of money or other awards given by the respondents as prizes are not in fact prizes but instead each constitutes a bonus for the sales made by the individual contestant.

The conditions and requirements for winning a prize offered by the respondents are neither easy nor simple. Respondents do not generally disclose these facts but otherwise so obscure them that for the most part they are not ascertained by contestants or persons responding to such sales promotional literature until after said persons have made one or more purchases of assortments of the cosmetics distributed by the respondents.

The aforesaid false and misleading representations are joined together as integral parts of the system employed by respondents in selling their products to persons responding to the puzzle or other form of contest. Having first created the general impression in the minds of persons responding thereto that each has a certain or reasonable chance of winning one or more of the prizes offered, the plan moves to include a system of awarding points or votes to contestants in the form of printed certificates which, by their form and substance, grossly exaggerate the value or significance of said award in relation to the recipient's chance or chances of winning any prize. Such practice also serves to and does in fact create and enliven the impression that the recipient does in fact have a certain or reasonable chance of winning a prize.

By means of such certificates and accompanying circulars and letters, the respondents create the impression in the mind of the recipient that such recipient is the subject of a special favor or advantage as a contestant, and that the award of points or votes is in itself sufficient to entitle the recipient to consideration as a contestant at the time of the final award of prizes. The award of points or votes following the initial award is conditioned solely upon and made incident to purchase orders for products of the respondents.

The interest and zeal of each contestant to acquire additional points or votes through purchases is repeatedly heightened by the respondents by way of false assurances, requests for photographs, statements implying personal interest in the particular contestant, and other means implying that such contestant is guaranteed or is sure or certain to be a winner of the grand prize or to be among the winners of other prizes offered by the respondents. By this means, repeated orders in various amounts are thus induced in the course of which the respondents further allay sales resistance and otherwise induce purchases to be made by the contestants by means of false and misleading statements and representations with reference to the reputed quality, value and prices of the products offered. It is not until the latter stages of the contest that the respondents convert the program into a selling contest requiring quantity purchases and resale of the products of the respondents on the part of the contestants in the course of which the respondents continue to further misrepresent the standing of individual contestants in the contest as a means of stimulating additional purchases by such contestants.

PAR. 6. By the aforesaid means, respondents accomplish the maximum number of sales in the course of the system's operation, and as a result have sold, entirely through and by means of each such contest, to between 104,000 and 234,000 individual contestants, each of whom was induced to spend sums of money ranging from a few dollars up to and including \$11,000 in one instance. By this practice, the respondents have sold between \$736,000 and \$1,643,000 in cosmetics to contestants in various of said contests.

In the course and conduct of their various prize contests, the respondents do not grant any special favor or interest to any particular contestant as represented and implied, and the representations made by the respondents to the effect that any particular contestant has an advantage toward the winning of any prize offered is without basis of fact and serves only as a stimulation for the purchase of additional cosmetics. The awards of points or votes in the early stages of the contest and incident to the first purchase order have no material or substantial value and as among the great majority of recipients, the

Complaint

33 F. T. C.

same do not give rise to, or materially or substantially enhance, the chance or chances of winning any money or prize. The majority of persons addressed by respondents at no time stand in any position affording them a favorable chance of winning the grand prize, or any other of the money prizes offered. The products offered are not of established reputation in use among usual retail outlets, are not offered at a reduction in established retail prices, and are not introductory or for advertising purposes.

At various stages of progress of the contest respondents furnished to contestants and urged the use by them of certain punch or pull cards or other devices involving a lottery or a game of chance in the resale of the products purchased by contestants from respondents. The sale of cosmetics to the purchasing public in this manner involves a game of chance or the sale of a chance to procure said cosmetics through a lottery in which the article to be purchased and the price to be paid for said article are determined entirely by chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their cosmetics. The sale of said cosmetics by and through the use of such sales plans or methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws of many of the States of the United States.

Many persons, firms, and corporations who sell or distribute cosmetics in competition with respondents, as hereinabove alleged, are unwilling to adopt or use said sales plans or methods or any methods involving a game of chance or the sale of a chance to select and pay for said cosmetics by chance, or any other methods that are contrary to public policy or in violation of criminal statutes, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their cosmetics and the element of chance involved therein, and are thereby induced to buy and sell respondents' cosmetics in preference to cosmetics offered for sale and sold by competitors of respondents who are likewise engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia and who do not use the same or equivalent methods. The use of said methods by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof, substantial injury is being done and has been done by respondents to competition in commerce between and among

the various States of the United States and in the District of Columbia.

PAR. 7. In addition to the acts and practices hereinabove set forth, the respondents have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements in the same manner as hereinabove set forth, with reference to the effectiveness of the use of their various cosmetics to the effect that said cosmetics will restore a youthful condition of the skin, produce a youthful appearance, make skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, and help make gums healthy, and also that the retail value or worth of said cosmetics is greatly in excess of the regular, usual, or customary retail value or worth thereof.

In truth and in fact, the aforesaid statements, representations and advertisements hereinabove set forth, and others similar thereto not specifically set out herein, are false, misleading, and deceptive for the reason that none of said preparations will restore a youthful condition of the skin, produce a youthful appearance, make the skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, or help make the gums healthy, nor are the said cosmetics of the regular or customary retail value or worth as represented by the respondents.

PAR. 8. The use by the respondents of the aforesaid acts and practices and methods, and the aforesaid false, misleading, and deceptive representations, statements and advertisements, disseminated as aforesaid, in soliciting and offering for sale and selling various cosmetics by means of so-called prize contests, has had and now has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and statements are true, and induce a substantial portion of the purchasing public to purchase quantities of respondents' cosmetics on account of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 24th day of January 1940,

Findings

33 F. T. C.

issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of answers by all the respondents except Thomsen-King & Co., Inc., evidence was introduced in support of the allegations of the complaint by Curtis Shears and Donovan R. Divet, attorneys for the Commission before Randolph Preston, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding. Said evidence was duly filed in the office of the Commission. No testimony or other evidence was introduced by any of the respondents or their attorneys.

A stipulation as to the facts was entered into between all the respondents herein and W. T. Kelley, chief counsel of the Federal Trade Commission, and approved by the Commission, in which it was provided that the Commission may proceed upon such statement of facts, including the inferences which may be drawn therefrom and any testimony introduced in support of the charges of the complaint and in opposition thereto, to make its findings as to the facts and its conclusion based thereon, and to enter its order disposing of the proceeding.

Thereafter this proceeding regularly came on for final hearing before the Commission upon the said complaint, the answers thereto, the evidence introduced on behalf of the Commission, the said stipulation as to the facts, briefs in support of the complaint and in opposition thereto, and the report of the trial examiner; 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, Thomsen-King & Co., Inc., was incorporated under the laws of the State of Illinois in the fall of 1939; its principal office and place of business was located at 710 South Plymouth Court, in the city of Chicago, State of Illinois; respondent George Thomsen was its president, respondent Amber M. McCluskey was its secretary and treasurer, and respondent James L. Decker was its majority stockholder; respondents, J. G. Hamer, B. Brown, and H. Rosenstein, were its incorporators. This corporation was organized to take over the physical assets of Van Dear Products, Ltd., and to continue the business of engaging in "prize contests."

Respondent, Winship Corporation, which was organized in the fall of 1939 under the laws of the State of Iowa, is a corporation having its principal place of business located in the city of Des Moines, State of Iowa; respondent, Don W. Parmelee, was its president and general manager. Respondent, Evelyn Henderson, from October 23, 1939, to December 20, 1939, was a member of its board of directors; respondent George Schaffer, from October 22 to December 20, 1939, was a member of its board of directors.

Respondent, F. W. Fitch Co. is a corporation organized under the laws of the State of Iowa, with its principal place of business located at 305 Fifteenth Street in the city of Des Moines, State of Iowa. It is engaged in the business of manufacturing beauty preparations, perfumery, and other toiletries which it sells and ships in interstate commerce. Respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, and Richard H. Young, are officers of respondent F. W. Fitch Co.

Respondents, Fred W. Fitch, Gail W. Fitch, Lucius W. Fitch, Lester R. Sandahl, Richard H. Young, Mrs. Fred W. Fitch, Mrs. Gail W. Fitch, Mrs. Lucius W. Fitch, Mrs. Lester R. Sandahl, and Mrs. Richard H. Young, are copartners operating what was styled "The Committee for General Investments," and who, together with other investors, financed and aided in the financing of one or more of the hereinafter described "prize contests."

Respondents, James M. Woodman, John E. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, and Joseph Furth were copartners or associates in business under various trade names, including "Woodman-Stewart Advertising Agency," and "Jesse L. Stewart Advertising Agency," with their principal place of business at 520 North Michigan Avenue, in the city of Chicago, State of Illinois. They conducted "prize contests" and prepared the advertisements used in connection therewith.

Respondent, Walter Rubens, is an officer and director of Vanderbie & Rubens, Inc., an advertising agency with its principal place of business at 540 North Michigan Avenue, in the city of Chicago, State of Illinois.

Respondents, Sibley F. Everitt, Walter C. Phillips, Don W. Parmelee, Albert L. Bisson, Leta M. Clanton (now Leta M. Frazier), George Schaffer, Evelyn Henderson, Glenn Tate, Paul H. Williams, Richard E. Williams, Prentice W. Shaw, George Thomsen, Amber M. McCluskey, James L. Decker, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, and Paul Manning, at some time covered by the complaint herein were engaged, directly or indirectly, in financing,

operating or managing one or more of the hereinafter mentioned prize contests.

Respondents, Claude T. Burnett (designated in the complaint as "Claude A. Burnett"), Ross J. Miller, and Joseph Kane, caused to be incorporated "prize contest" companies and actively participated in the control of their policies.

PAR. 2. Each of the respondents named in paragraph 1 hereof, except the F. W. Fitch Co., J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, and Walter Rubens, at some time prior to the issuance of the complaint herein, individually and in concert and cooperation with each other, have engaged, directly or indirectly in the business of conducting prize contests through various "contest companies" organized by them for the purpose of inducing the purchase of cosmetics through advertising matter mailed to members of the purchasing public located in various States of the United States. When sales are made through said contest companies to persons contacted by mail or other means, said respondents ship and have shipped said cosmetics from their respective places of business, or direct from the manufacturers thereof, to the purchasers located in various States of the United States other than the State of origin of such shipments.

PAR. 3. In the course and conduct of said business, each of said respondents, individually and in cooperation with one or more of the other of said respondents, in the furtherance of a common plan to do and perform the acts and practices hereinafter set out, and as a part thereof, have organized and operated approximately sixteen corporations or companies operating under trade names, for the purpose of engaging in the dissemination of advertisements concerning numerous prize contests, in order to induce the sale of certain cosmetics. When one of these companies was cited to appear before the Federal Trade Commission, the respondents in some cases would enter into a stipulation with the Commission to cease and desist from the acts and practices then being conducted, and after the execution of such stipulation the respondents would make little, if any, effort to comply with the terms of the stipulation, but instead, would either discontinue or dissolve the particular operating company, organize a new company, and proceed with substantially similar, and in some instances identical, acts and practices which they had stipulated to discontinue in the proceedings before the Commission. In some instances complaints have been issued by the Commission against one or more of the companies operated by said respondents, and the respondents, during the pendency of such proceedings, would complete the particular prize contest involved and then dissolve or

discontinue the particular company made respondent in such action, and either file an admissions answer in the Commission's proceeding, or enter a dilatory contest for the purpose of delay. During the pendency of such proceedings, or after a cease and desist order has been issued by the Commission, said respondents would organize new corporations or companies, to continue substantially similar, and in some instances identical, practices involved in said complaints and orders to cease and desist.

In furtherance of this plan it was the practice of said respondents to frequently change the corporate or trade names used in promoting the sale of such cosmetics, dissolve the existing company, distribute its principal and profits, and transfer its physical properties to a new company designed to take over the operation of the business conducted by the former company. It was further a part of said plan that respondents would employ or designate new "prize managers" for some of the newly organized prize contests, and new officers and so-called owners of some of the new companies, to continue such prize contests under new names and with a new personnel. Such prize managers, officers, and so-called owners were such only in name, and in most instances had no financial interest in such companies, and in some instances were financially irresponsible.

Among the companies so organized, discontinued, or dissolved, and reorganized under the operation of said plan were the following: Hazel Dawn Co.; Co-Ed, Inc.; Paramount Products Co.; Betty White Corporation; Paradise Co.; Van Dear Products, Ltd.; Century Co.; Sterling Co.; Knight Co.; Marena Co.; Lorna Gay Co.; E. M. Davis Co.; Nannette Co.; Super-Franklin Co.; Thomsen-King & Co., Inc.; Winship Corporation, and others.

In furtherance of said plan, and as a part thereof, said respondents disseminated, or caused to be disseminated, to purchasers and prospective purchasers of said cosmetics, in and through the various States of the United States and in the District of Columbia, letters, circulars, telegrams, advertisements, and other forms of printed and written matter, in which certain statements and representations were made, as hereinafter set out, in paragraphs 4 and 7.

As a part of said plan and in furtherance thereof, the respondents named in paragraph 1 hereof as composing the "Committee for General Investments," in their individual capacities counseled and aided in the selection of so-called owners, officers, and prize managers of said prize contest companies and aided in financing some of said companies; and in order to protect their financial investments therein, said respondents employed or caused to be employed various individuals, to represent the interests of said committee and other inves-

tors from time to time in the management or operation of said contest companies.

Some of said respondents, between 1933 and 1940, employed or designated as owners, officers, or managers of said prize contest companies, persons having no actual financial interest in said company and who served in the nominal capacity of owners, officers, and managers, in name only. Among and typical of said respondents employed to act as officers and managers in name only was respondent George Thomsen, who was employed as a bookkeeper by respondent James L. Decker, owner of Van Dear Products Co., in February, 1939. Shortly thereafter he was named director of said company but had no voice in, or knowledge of, the policies, acts, practices, and methods of business of said company outside of his work as bookkeeper. In the fall of 1939, James L. Decker designated said George Thomsen as president of Thomsen-King & Co., Inc., and gave him a check for \$1,000, payable to Thomsen-King Co., Inc., which said George Thomsen entered as payment for the stock issued by the company to him, but he did not actually invest any money therein, nor did he receive any compensation other than his salary as bookkeeper. At all times while George Thomsen was president of Thomsen-King & Co., Inc., respondent James L. Decker, Merrold Johnson and Amber M. McCluskey directed the policies, acts, and practices of said company.

The acts and practices of each of the said prize contest companies, as well as the advertisements disseminated in interstate commerce by said respondents through said companies, were substantially similar, and in many cases identical, with the acts and practices of the other prize contest companies referred to herein, as were the advertisements disseminated through all said prize contest companies.

Some of the corporations, or the trade names used in promoting the sales of said cosmetics, when dissolved or discontinued, as aforesaid, have distributed their principal and profits and transferred their physical properties to another prize contest company, usually organized for the purpose of taking over the business of its predecessor company.

For one year prior to September 1930, respondent Sibley F. Everitt was employed by the Gates Manufacturing Co., of Chicago, and sold a line of cosmetics under the trade name "Helen Dawn," through the "one-pay, or non-progressive plan" of contest. In September 1930, respondent James M. Woodman became associated with said respondent Everitt, and they purchased a quantity of the Helen Dawn cosmetics from said Gates Manufacturing Co. and offered said cosmetics for sale through the prize contest plan of merchandising devised by

respondents James M. Woodman and Jesse L. Stewart, who organized the Woodman Advertising Co. (unincorporated) for the purpose of devising, writing, and placing advertisements in periodicals, newspapers, and other mediums. The Woodman Advertising Co. financed through the usual trade credits, and placed, advertisements for many of the prize contest companies hereinafter more particularly described, including the Helen Dawn Co. The Helen Dawn Co. (unincorporated) was organized on or about December 27, 1930, in Chicago, Ill., for the purpose of selling cosmetics by means of prize contests. The respondents Sibley F. Everitt, James M. Woodman, and John E. Woodman were associated in the control and management of this business. On or about January 1, 1931, the Helen Dawn Co. was incorporated in the State of Illinois. After numerous complaints, respondent Sibley F. Everitt, on or about November 10, 1931, signed a stipulation, No. 0195, and presented same to the Federal Trade Commission.

On February 10, 1934, respondents James M. Woodman and John E. Woodman sold their stock in Woodman Advertising Agency to Jesse L. Stewart, and in 1937 reorganized the agency as the Jesse L. Stewart Co.

In March 1932, respondent James M. Woodman sold his stock in the Dawn Co. to Sibley F. Everitt. Prior to this time respondent James M. Woodman had purchased the assets of the E. M. Davis Co. (unincorporated) which, prior to September 1931, had been in the business of selling a line of household goods and cosmetics by house-to-house canvassing. Respondent James M. Woodman had been one of the incorporators of E. M. Davis Co., Inc., and was also a director and the secretary and treasurer of said Davis Co. and owned 60 percent of its stock.

In 1936, E. M. Davis Co. conducted two sales promotion contests, all the advertising in connection therewith being written and placed through the Woodman-Stewart Co., later the Jesse L. Stewart Co. E. M. Davis Co. was dissolved May 7, 1937, but in January 1937, Nannette, Inc., had been purchased by respondent James M. Woodman to take over the physical assets of the company to be dissolved and continue the prize contest business. During 1937, Nannette, Inc., of which respondent James M. Woodman was president and majority stockholder, conducted two prize contests, and the advertisements used in connection therewith were written by and placed through the Jesse L. Stewart Co.

On September 4, 1937, a complaint was issued by the Federal Trade Commission against Nannette, Inc., and respondent James M. Wood-

man as president of said company, and shortly thereafter Nannette, Inc., was dissolved.

Respondent Glenn Tate, who had formerly been a postoffice clerk, was employed to act as president of the Super-Franklin Co., which operated prize contests from the fall of 1937 to the spring of 1939, using advertisements prepared and placed by the Jesse L. Stewart Co. Respondent James M. Woodman was the majority stockholder in this company and respondent Glenn Tate was given 199 shares of stock of the said Super-Franklin Co. without his paying any consideration therefor. On the 28th day of September 1938, the Federal Trade Commission issued a complaint against the Super-Franklin Co., which is still pending before the Commission.

In 1931 and 1932, respondent Amber M. McCluskey, as office manager and auditor, and respondent James L. Decker as president, were actively associated in the control and management of Co-Ed, Inc., successor to National Home Magazines, Inc., with which said respondents had formerly been associated. Respondents James L. Decker and G. Fred Stayton had been associated with the W. D. Boyce Co., publishers, who ran magazine subscription contests. Co-Ed, Inc., was dissolved in 1932.

In the fall of 1938, Van Dear Products, Ltd., was organized, with respondent Amber M. McCluskey as president, respondent George Thomsen vice-president, and respondent James L. Decker secretary and treasurer. The Van Dear Products, Ltd., purchased some of the physical assets of the Super-Franklin Co.

In the fall of 1939, respondent Thomsen-King & Co., Inc., was organized, with respondent George Thomsen as president, respondent Amber M. McCluskey, secretary and treasurer, and respondent James L. Decker as majority stockholder. This company was organized to take over the physical assets of Van Dear Products, Ltd., and continued the prize contests formerly conducted by Van Dear Products, Ltd.

In the fall of 1932, respondents Sibley F. Everitt and G. Fred Stayton organized the Paramount Products Co. of Des Moines, Iowa, the entire capital of which was supplied by respondent Sibley F. Everitt. After conducting one prize contest said company was dissolved in the spring of 1933, and in February 1934, respondent G. Fred Stayton organized Paramount Products, Inc., of Des Moines, which continued the prize contests. In April 1934, respondent Albert H. Bisson purchased stock in this company, as did also Leta M. Clanton (now Frazier) in July of that year.

Respondent Sibley F. Everitt, after the dissolution of Paramount Products Co. organized the Century Co. of Des Moines, and employed

respondent Merrold Johnson as president of said company and Paul H. Williams as attorney, in connection with the first prize contest conducted by said company. Respondent Paul H. Williams, acting as counsel, procured the charter for the Century Co. in 1933, and received 10 percent of the net profits of the company for his services.

On February 26, 1934, an informal hearing was held by the Special Board of Investigation of the Federal Trade Commission as the result of an application for complaint against the Century Co., at which hearing respondent Paul H. Williams represented the Century Co. and prepared a stipulation admitting the charges against said company and agreed to cease and desist from continuing the practices complained of. Respondent Merrold Johnson signed the stipulation as general manager of the company and submitted same to the Commission. On July 31, 1934, the company surrendered its corporate charter. A prize contest was being conducted at this time by said company, and from July 31, to August 31, 1934, said contest was conducted as a partnership by respondents Merrold Johnson and Sibley F. Everitt, and the wife of the latter who is not a respondent.

On or about September 17, 1934, a complaint against the Century Co. was issued by the Commission, and respondent Paul H. Williams, on or about October 1, 1934, filed with the Commission proof of publication of the notice of dissolution of the company, whereupon the Commission dismissed its complaint.

About October 6, 1934, respondent Paul H. Williams procured a charter for the Sterling Co. The wife of respondent Sibley F. Everitt transferred the equipment of the Century Co. to the Sterling Co. Respondent Paul H. Williams was the active manager of this company and respondent Sibley F. Everitt was actively associated in its control and management. Respondents Don W. Parmelee, George Schaffer, and Evelyn Henderson were employed by the company but had no financial or stock interest in it. Don W. Parmelee was designated as president; Paul H. Williams, Sibley F. Everitt, and Mrs. Everitt were stockholders and managers. The Sterling Co. used the same methods of selling cosmetics through prize contests as were used by the Century Co., including the names and pictures of some of the alleged prize winners of the latter company, and in its literature stated that the said prizes had been won "in our former prize campaigns." The Sterling Co. ran three prize contests from October 1933 to April 30, 1936, using the name of an employee as prize manager in each of said contests.

On or about November 15, 1935, the Commission issued a complaint against the Sterling Co. and respondents Don W. Parmelee, Sibley F. Everitt and Paul H. Williams, Docket No. 2629, and on August 12,

Findings

33 F. T. C.

1936, the Commission issued a cease and desist order against said respondents.

Three prize contests were conducted by the Sterling Co., the last beginning in the fall of 1935 and ending April 30, 1936. These contests were operated under the name of respondent George Schaffer, who was designated as "prize manager." Said respondent Schaffer had been employed by the Century Co. in charge of the printing department and his duties and work were not changed. The Sterling Co. was dissolved several months prior to August 12, 1936, and on or about April 30, 1936, respondent Paul H. Williams sold the equipment of this company, through respondent Walter C. Phillips, to respondent Richard E. Williams.

In the late summer of 1933, respondent Walter C. Phillips had secured and serviced the advertising account of the Century Co., as a representative of the Archer Advertising Co. of Cincinnati, Ohio, and when, in the spring of 1934, the Archer Co. went into bankruptcy, respondent Walter C. Phillips took the Century account to the Heath-Seehoff Co. of Chicago, Ill., opening offices in Des Moines, Iowa, where he at first handled only the Century account, and later continued, in servicing the advertising account of the Sterling Co., until May 1936.

In June 1936, respondents Richard E. Williams and Walter C. Phillips formed a partnership in which the latter had a one-third interest, and traded under the name Knight Co. Walter C. Phillips managed the affairs of the Knight Co., which started a new prize contest in the fall of 1936. Respondent Richard E. Williams obtained the funds with which to operate this company from respondents Lester R. Sandahl, Lucius W. Fitch, Gail W. Fitch, and Richard H. Young. The Knight Co. operated under this arrangement from the fall of 1936 to the spring of 1937. During the summer of 1937 the partnership between respondents Richard E. Williams and Walter C. Phillips was dissolved, and from the fall of 1937 till the spring of 1938, a similar prize contest was operated under the trade name Marena Co., which said trade name was filed of record in the name of respondent Richard E. Williams. During this period, Walter C. Phillips was employed by Richard E. Williams as general manager of said Marena Company and received a salary and a percentage of the profits.

Respondent Richard E. Williams obtained the money for the operation of the Marena Co. during this period by loans from the following respondents: Gail W. Fitch, Lucius W. Fitch, Fred W. Fitch and Richard H. Young; and from Lawrence DeGraff, Grace DeGraff, George Shaw, C. E. Sandahl, Gertrude W. Fitch, and Letitia Fitch (it not appearing that the six last named are respondents), and also

received loans from the "Committee for General Investments," a partnership, as set out in paragraph 1 hereof.

About August 1938, respondent Richard E. Williams sold and conveyed the principal physical assets of the Knight Co. to respondent A. Leonard Anderson, who thereafter employed Warren Lee Eastman as general manager of the Lorna Gay Co., a trade name recorded in the company records of Polk County, Iowa, in the name of said A. Leonard Anderson. In addition to his own investment, the money used for the Lorna Gay Co. in conducting prize contests was obtained by respondent Anderson from respondents Paul Manning, Gerald G. Grant, and Warren Lee Eastman, and from W. W. Young, Amy Williams, R. M. Phillips, Kenneth May, Catherine McComb, C. E. Sandahl, C. L. Sandahl, Fred Gordon, Letitia Fitch and James Child (it not appearing that the 10 last named are respondents), and also from the "Committee for General Investments," the membership of which has been hereinbefore set out. The persons named who loaned money to respondents Richard E. Williams or A. Leonard Anderson received, in addition to 6 percent interest on the amounts so loaned, a percentage of the net profits resulting from the operation of the Knight, Marena, and Lorna Gay companies.

A large number of persons who had been employed by the Century, Sterling, Knight, and Marena companies were employed by the Lorna Gay Co. Respondent Don W. Parmelee was employed by the Lorna Gay Co. to write advertising copy; respondent Ernie A. Storesund, whose name was used as the prize manager for the Lorna Gay Co. was actually shipping and receiving clerk, and worked in that capacity, for the Century, Sterling, Knight, Marena and Lorna Gay companies. Respondent George Schaffer, whose name was used as prize manager of the Sterling Co. prize contests, was head of the printing department of that company, and was also employed in the same capacity by the Knight, Marena, and Lorna Gay companies. Respondent Evelyn Henderson was employed by the Sterling Co. as its secretary, and thereafter was also employed by the Knight and Lorna Gay companies.

The contest conducted under the trade name Lorna Gay Co. ended on May 30, 1939. On June 25, 1939, the Federal Trade Commission issued its complaint (Docket 3833) and named as respondents some of the operators and some of the other individuals who had loaned money to the operators of the Knight, Marena and Lorna Gay companies. This complaint is still pending before the Commission.

Respondent Winship Corporation was organized in the fall of 1939, after complaint had been issued in Docket 3833, and listed as

Findings

33 F. T. C.

its officers respondent Don W. Parmelee, president; respondent George Schaffer, vice-president; respondent Evelyn Henderson, secretary and treasurer.

After the dissolution of Paramount Products Co. of Des Moines, Iowa, respondent G. Fred Stayton organized Paramount Products, Inc., in which his sister, Leta M. Clanton (now Frazier) and respondent Albert L. Bisson were financially interested, as were also other persons resident in Des Moines.

A hearing on an application for complaint against Paramount Products, Inc., was held on July 25, 1935, after a stipulation (No. 0844) was signed by G. Fred Stayton as president of said company on the 7th day of March 1935, and had been accepted by the Commission on March 25, 1935. On counsel's statement that this company was being dissolved, no action was taken, and on or about October 26, 1935, the company was dissolved. In the meantime, on August 30, 1935, G. Fred Stayton, as the sole incorporator, organized the Betty White Corporation, of Des Moines, Iowa. Respondents Albert L. Bisson and Leta M. Clanton (now Frazier) owned stock in this corporation, which continued to operate said prize contests.

On the 29th day of June 1936, a complaint was issued by the Federal Trade Commission, and on October 20, 1936, an order was issued, against the Betty White Corporation and G. Fred Stayton, Leta M. Clanton (Frazier) was the cashier and owner of \$1,000 worth of stock of Paramount Products, Inc., and the cashier, and owner of $7\frac{1}{2}$ shares of stock, in the Betty White Corporation. After the entry of the order against the Betty White Corporation and respondent G. Fred Stayton, on October 20, 1936, respondent Albert L. Bisson organized the Paradise Co. and caused same to be incorporated under the laws of the State of Illinois on or about August 25, 1936. Respondent Leta M. Clanton (Frazier) was cashier of this corporation and owner of \$5,000 of its stock; respondent Albert L. Bisson was president of said corporation, and respondent Gerald G. Grant was one of its stockholders. Beginning about August 25, 1936, respondents Bisson, Clanton (Frazier), and others continued the same scheme of prize contests under the name Paradise Co., operating from Chicago, Ill.

On August 25, 1937, a complaint was issued by the Federal Trade Commission naming the Paradise Co., and respondents Albert L. Bisson, Leta M. Clanton (Frazier), Gerald G. Grant, and also Sylvan B. Heininger, and Bertha E. Boeing. This case (Docket 3213) is still pending before the Commission, as are the cases against Nannette Co., Inc. (Docket 3223), Super-Franklin Co. (Docket 3613) and Richard E. Williams, et al. (Docket 3833).

Respondent Jesse L. Stewart became a partner in the firm of Woodman-Stewart on January 1, 1931, which company was incorporated August 6, 1931, under the laws of the State of Illinois, with respondent James M. Woodman as president. On February 10, 1934, respondent Jesse L. Stewart purchased all of the stock of the two respondents James M. Woodman and John E. Woodman, and became president of said corporation. On November 19, 1937, the name of the corporation was changed to J. L. Stewart & Co.

Respondent Jesse L. Stewart owned 20 shares of stock in Helen Dawn Co., which he sold to respondent Sibley F. Everitt in March 1932, and aided in writing and causing the writing of advertising for Helen Dawn Co., Paramount Products, Inc., Betty White Corporation, E. M. Davis Co., Nannette, Inc., Paradise Co. and Super-Franklin Co.

Respondent Jesse L. Stewart, as president of the J. L. Stewart Co., employed G. Fred Stayton from September 11, 1937, to March 31, 1939; respondent Merrold Johnson from December 6, 1937, to July 17, 1939, and respondent Joseph Furth from May 19, 1935, to May 3, 1940.

Respondent John E. Woodman was associated with his father, respondent James M. Woodman, and with respondent Sibley F. Everitt and others, in the control and management of the Helen Dawn Co. On March 3, 1932, respondent John E. Woodman sold his stock interest in the Helen Dawn Co. to respondent Sibley F. Everitt, and became a minority stockholder in the Woodman-Stewart Co., an advertising agency, which stock he sold to respondent Jesse L. Stewart on February 10, 1934.

Vanderbie & Rubens, Inc., advertising agency of which corporation respondent Walter Rubens is an officer and director, placed the advertising of respondent Thomsen-King & Co., Inc., and financed through ordinary credit firms the advertising placed for said company.

Respondent Warren Lee Eastman was employed by the Knight Co. as manager of their prize contests from August 1936, to August 1937, and by Lorna Gay Co. as general manager from August 1938-39; he was also employed as office manager and buyer by the Marena Co. Respondent Steve W. Phillips was employed by the Marena Co. as manager of prize contests from August 1937 to August 1938.

Respondent Prentice W. Shaw acted as counsel for the Lorna Gay Co. and respondent Winship Corporation, and on the 20th day of December 1939, was appointed attorney in fact for the Winship Corporation, for the purpose of dissolving and winding up its affairs. Respondent Prentice W. Shaw also acted as attorney in the incorporation of the Winship Corporation in the fall of 1939, and opened on behalf of the corporation its "prize account" in a Des Moines bank.

Findings

33 F. T. C.

Respondent George Schaffer was employed by the Sterling Co. as the manager of its prize contests from June 1935 to May 1936, and was employed by the Knight Co., Marena Co., and Lorna Gay Co. and the Winship Corporation as head of their printing departments, and was, from October 22, 1939, to December 20, 1939, a member of the board of directors of the Winship Corporation.

Some time subsequent to June 1936, respondents Richard E. Williams and Walter C. Phillips entered into a limited partnership to engage in operating and conducting a prize contest under the trade name Knight Co. Richard E. Williams received two-thirds of the profits of the Knight Co., all of which except about 5 percent he distributed to the investors under his contract with them during the first prize contest, and he so distributed the remainder of the profit from the second prize contest with the exception of 10 percent, which he retained. The first of these contests was run under the trade name Knight Co., and the second under the trade name Marena Co.

During October 1938, after the physical assets of the Knight Co. had been transferred by respondent Richard E. Williams to respondent A. Leonard Anderson, respondents A. Leonard Anderson, Lester R. Sandahl, Lucius W. Fitch, R. H. Young and Warren Lee Eastman opened up a checking account for the Lorna Gay Co. at the Valley Savings Bank of Des Moines, Iowa. Respondent Lucius W. Fitch was an officer of the respondent F. W. Fitch Co. and a director in said bank. Shortly thereafter the said bank, without investigating the credit standing of either the Lorna Gay Co. or its officers, loaned this company the sum of \$10,000. The loan was secured by a chattel mortgage on the equipment of said company, and was not guaranteed by any of the respondents herein.

In the course and conduct of said business the individual respondents herein, individually and in cooperation with one or more of said respondents named herein, have engaged in the aforesaid acts and practices in furtherance of a common plan to disseminate the advertisements set out in paragraph 4 hereof, and in order to continue said business in interstate commerce.

PAR. 4. In the conduct and operation of the various prize contests hereinbefore mentioned, said respondents, to the extent and in the manner set out in paragraph 3 hereof, and through the Helen Dawn Co., Co-Ed Co., Inc., Paramount Products Co., Betty White Corporation, Paradise Co., Century Co., Sterling Co., Knight Co., Marena Co., Lorna Gay Co., Van Dear Products, Ltd., E. M. Davis Co., Nannette, Inc., Super-Franklin Co., Winship Corporation and Thomsen-King & Co., Inc., have disseminated and have caused the dissemination of false advertisements by means of the United States Mails,

by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which were distributed in commerce among and between the various States of the United States, and by other means, in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said cosmetic products in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

1. That the simple act of sending in a correct solution to a puzzle or contest will entitle the contestant to one of the grand prize awards, and that such prize will be given free without the expenditure of either money or work on the part of such contestant.

2. That said respondents are conducting a prize contest and giving free substantial sums of money or other awards as a means of advertising their products.

3. That the recipient of a so-called "Grand Prize Promptness Certificate" has gained an advantage for himself by virtue of skill in solving a puzzle and that an award is guaranteed or assured by simply mailing in such certificate to said respondents.

4. That the purchasers of small quantities of cosmetics stand in as favorable a position as large quantity purchasers of said cosmetics, offering them a favorable or reasonable chance of winning the grand prize or any other of the cash prizes offered.

5. That the telegrams, requests for contestants' photographs and other forms of encouragement received by contestants indicates that said contestant is about to, or is certain or likely to, win a cash prize in said contest.

6. That said cosmetics are of national reputation and are of such quality that resale to the general public is not difficult.

7. That a money prize or reward is guaranteed to that person who becomes a member of one of the so-called "Prize Clubs," and that such members are among the leading contestants.

8. That by the simple act of responding to the advertising of respondents and to literature received from respondents, and to the requests therein made by respondents, such contestants will receive or win a specified grand prize, or various other prizes.

9. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

10. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

11. That the recipient of points or votes in the form of a certificate of award is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said points or votes substantially enhance the chance of said recipient toward the winning of one or more of the prizes offered by respondents.

12. That respondents under each of the trade names used by them have been in business for a long period of years and have an established reputation with respect to their products and for business success.

13. That the giving of a certain order for goods and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

14. That so-called advice and suggestions given in letters to contestants are due to a personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

15. That such contestant or person addressed stands in a position equal to or superior to that of other contestants, and has a favorable or reasonable chance of winning the grand prize or various other of the prizes offered.

16. That the prize company conducting the contest is a manufacturing concern and that such company originates, compounds, and prepares the preparations and products sold by it.

17. That there is no element of lottery in connection with the content or sale of the merchandise.

18. That by answering promptly, or before a given date, the contestant will qualify for his share of the prize money that must be given away for advertising purposes.

19. That the sending of one or more initial payments completely qualifies the participant for the promptness prize, or other awards.

20. That the certificate of award, diploma, or other forms supplied to the participant are good for an emolument or advantage not held by other contestants.

21. That in the preliminary stages the contestant has already made such progress that his choice of prize is requested, and that his score is so high that a request for his photograph is warranted.

22. That the receipt of a facsimile check for various sums of money indicates that the recipient is in a favorable or reasonable position to win the amount indicated on said check.

PAR. 5. Said advertisements are false and misleading in the following material respects:

The puzzle or picture contest and offer of awards or prizes in connection therewith, is used solely as a means of obtaining the names of people who will later be encouraged to enter a competitive selling contest, and this puzzle contest is but the initial step in a system of effecting sales.

In truth and in fact, respondents do not conduct any contest involving competition among contestants in promptness or skill as a means of advertising their products and of gaining publicity for the aforesaid cosmetics. The picture puzzle advertised by respondents is so simple of solution as to remove it from the category of a competitive contest or contest of skill, and is such that a substantial number, or the majority if not all, of the persons responding thereto would submit correct solutions. The said advertised puzzle contest and offer of awards or prizes in connection therewith, is but a deceptive form of "bait" or "decoy," attractive to the innocent, unwary, and unsuspecting members of the buying public, and has been and is used by respondents as the initial step in a system of effecting sales.

The various contests conducted by respondents are buying contests requiring quantity purchases of respondents' cosmetic products by the contestants or persons entered therein. The winning of a prize is dependent upon the quantities of respondents' products which are purchased by the individual contestants and has no material connection with the promptness or solution of any picture puzzle or other form of contest. In fact, in order to win any such contest the contestant must necessarily purchase quantities of respondents' cosmetics equal to, or in excess of, the awards or prizes granted. The sums of money or other awards given by said respondents as prizes are not, in fact, prizes, but instead, each constitutes a bonus for the sales made by the individual contestant.

The conditions and requirements for winning a prize offered by said respondents are neither easy nor simple. Respondents do not generally disclose these facts, but otherwise so obscure them that for the most part they are not ascertained by contestants or persons responding to such sales promotional literature until after said persons have made one or more purchases of assortments of the cosmetics distributed by said respondents.

The aforesaid false and misleading representations are joined together as integral parts of the system employed by respondents in selling their products to persons responding to the puzzle or other form of contest. Having first created the general impression in the

Findings

33 F. T. C.

minds of persons responding thereto that each has a certain or reasonable chance of winning one or more of the prizes offered, the plan moves to a system of awarding points or votes to contestants in the form of printed certificates which, by their form and substance, grossly exaggerate the value or significance of said award in relation to the recipient's chance or chances of winning any prize. Such practice also serves to, and does in fact, create and enliven the impression that the recipient does, in fact, have a certain or reasonable chance of winning a prize.

By means of such certificates and accompanying circulars and letters, said respondents create the impression in the mind of the recipient that such recipient is the subject of a special favor or advantage as a contestant, and that the award of points or votes is, in itself, sufficient to entitle the recipient to consideration as a contestant at the time of the final award of prizes. The award of points or votes following the initial award is conditioned solely upon, and made incident to, purchase orders for products of said respondents.

The interest and zeal of each respondent to acquire additional points, or votes, through purchases, are repeatedly heightened by way of false and materially misleading assurances, requests for photographs, statements implying personal interest in the particular contestant, and other means implying that such contestant is sure or certain to be a winner of one of the prizes offered by these companies. By these means repeated orders are thus induced, in the course of which, sales resistance is further decreased by means of false and misleading statements and representations with reference to the reputed quality and value, and the prices of the products offered. It is not made clear to each contestant that these contests are selling contests until after one or more purchases have been made, and these companies also misrepresent the standing of individual contestants, as a means of stimulating additional purchases.

In the course and conduct of their various prize contests, said respondents do not grant any special favor or interest to any particular contestant, as represented and implied, and the representations made by the respondents to the effect that any particular contestant has an advantage toward the winning of any prize offered is without basis of fact, and serves only as a stimulation for the purchase of additional cosmetics. The awards of points or votes in the early stages of the contest, and incident to the first purchase order, have no material or substantial value, and, as among the great majority of recipients, the same do not give rise to, or materially or substantially enhance, the chance or chances of winning any money or prize. The majority of persons addressed by respondents at no time stand

in any position affording them a favorable chance of winning the grand prize, or any other of the money prizes offered. The products offered are not of established reputation, in use among usual retail outlets, are not offered at a reduction in established retail prices, and are not introductory, or for advertising purposes.

PAR. 6. By the aforesaid means, respondents accomplish the maximum number of sales in the course of the system's operation, and as a result, have sold, entirely through and by means of each contest, to between 10,000 and 234,000 individual contestants, each of whom was induced to spend sums of money ranging from a few dollars up to and including, in one instance, \$11,000. By this practice respondents have sold as much as \$1,643,000 in cosmetics to contestants in one of said contests.

At various stages of progress of the contest, respondents furnished to contestants, and urged the use by them of certain punch or pull cards, or other devices involving a lottery or game of chance in the resale of the products purchased by contestants from respondents. The sale of cosmetics to the purchasing public in this manner involves a game of chance, or the sale of a chance to procure said cosmetics through a lottery in which the article to be purchased and the price to be paid for such article are determined entirely by chance. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their cosmetics. The sale of said cosmetics by and through the use of such sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States of America, and in violation of the criminal laws of many of the States of the United States.

Many persons, firms, and corporations who sell or distribute cosmetics in competition with respondents, as hereinabove alleged, are unwilling to adopt or use said plans or methods, or any method involving a lottery, game of chance or the sale of a chance to select and pay for said cosmetics by chance, or any other methods that are contrary to public policy or in violation of criminal statutes, and such competitors refrain therefrom. Many persons have been attracted by said sales plans or methods employed by respondents in the sale and distribution of their cosmetics and the element of chance involved therein, and have been thereby induced to buy and sell respondents' cosmetics in preference to cosmetics offered for sale and sold by competitors of respondents who are likewise engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia, and who do not use the same or equivalent methods. The

Conclusion

33 F. T. C.

use of said methods by respondents, because of such lottery or game of chance, has the tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof, substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. In addition to the acts and practices hereinabove set forth, said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements, in the same manner as hereinabove set forth, with reference to the effectiveness of the use of their various cosmetics, to the effect that said cosmetics will restore a youthful condition of the skin, produce a youthful appearance, make skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, help make gums healthy, and also that the retail value or worth of said cosmetics is greatly in excess of the prices at which they are offered.

In truth and in fact, the aforesaid statements, representations, and advertisements hereinabove set forth, and others similar thereto not specifically set-out herein, are false, misleading and deceptive, for the reason that none of said preparations will restore a youthful condition of the skin, produce a youthful appearance, make the skin younger, remove wrinkles and worry lines, tone and strengthen the muscles, or help make the gums healthy, nor are the said cosmetics of the regular or customary retail value or worth as represented by the respondents.

PAR. 8. The use by said respondents of the aforesaid acts and practices, and methods, and the aforesaid false, misleading and deceptive representations, statements and advertisements, disseminated as aforesaid, in soliciting and offering for sale and selling various cosmetics by means of so-called prize contests, has had and now has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and statements are true, and induce a substantial portion of the purchasing public to purchase quantities of respondents' cosmetics on account of such erroneous and mistaken belief, and as a result thereof, trade has been unfairly diverted to respondents from their said competitors.

CONCLUSION

The acts and practices of the respondents—except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph

126

Order

Kane, and F. W. Fitch Co.—and Walter Rubens—as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

For more than 10 years last past, respondents—except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, Walter Rubens, and the F. W. Fitch Co.—have entered into and engaged in wrongful and unlawful understandings and agreements with each other, and with others, to do and continue to do, directly or indirectly, the unlawful acts and practices as herein set forth, in furtherance of a common plan, in order to continue said business in interstate commerce and to avoid and render ineffectual the orders and other processes of the Federal Trade Commission; and such acts and practices are all to the prejudice and injury of the public and of their 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 answers of all the respondents except Thomsen-King & Co., Inc., evidence introduced before Randolph Preston, a duly appointed trial examiner of the Commission theretofore designated by it, in support of the allegations of the complaint, the report of the trial examiner thereon, a stipulation as to the facts, and briefs filed on behalf of the Commission and of respondents; and the Commission having made its findings as to the facts and its conclusion that all of the respondents except J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, Walter Rubens, and the F. W. Fitch Co., a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Thomsen-King & Co., Inc., The Winship Corporation (corporations), and their respective officers, directors, agents, representatives, and employees, and respondents James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Albert L. Bisson, Leta M. Frazier (formerly Leta M. Clanton), Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter G. Phillips, Paul H. Williams, Don M. Parmelee (named in complaint as Don W. Parmelee), George Schaffer, Evelyn Henderson, Richard E. Wil-

Order

33 F. T. C.

liams, Prentice W. Shaw, John E. Woodman, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, individuals, and their respective representatives, agents, and employees, either individually or by any concerted or cooperative action, agreement, or understanding between any two or more of the respondents, or between any one or more of said respondents and others, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of cosmetics, toilet preparations or other items of merchandise, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United-States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, in connection with a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any awards given, which advertisement—

(a) Represents directly or by implication that the respondents are conducting a contest confined to the solution of a picture puzzle or any similar device which involves only competition in skill in submitting solutions thereof, without the expenditure of either money or work on the part of contestants in order to win a prize, or that the respondents are conducting a contest of any character other than one wherein the purchase or sale by the contestants of cosmetics or other articles of merchandise is essential to participation in any grand prize, cash prize or other award to be given.

(b) Represents directly or by implication that the respondents are giving away a substantial sum of money or merchandise in the form of prizes to a certain limited number of persons as an introductory or advertising offer through a contest, when the conduct of such so-called contest in fact constitutes the ordinary and usual course of business followed by the respondents.

(c) Represents, directly or by implication, that the awards or prizes offered will be determined or augmented by promptness in answering the advertisement of respondents or in complying with similar conditions named therein.

(d) Represents, directly or by implication, that the winning of the grand prize or any other prize offered by the respondents depends in whole or in part upon lot or chance.

(e) Represents, directly or by implication, that the preparations and products sold to persons who enter said contest are sold at whole-sale prices, or at special prices not available to the general public.

(f) Represents, directly or by implication, that respondents' various products are of national reputation, or that said products are of such quality that resale to the general public is not difficult.

(g) Represents, directly or by implication, that any of the respondents are manufacturing concerns, or that they originate, prepare or compound the preparations and products sold by them.

(h) Represents, directly or by implication, that respondents' cosmetic preparations, or any of them, will restore a youthful condition to the skin, produce a youthful appearance, make the skin younger, remove wrinkles or worry lines, tone or strengthen the muscles, or that respondents' dental preparations help to make gums healthy; or

(i) Fails to reveal to prospective contestants that participation in the awards given depends in whole or in part, as the case may be, upon the purchase or sale of cosmetics or other articles of merchandise.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of any of their said preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

3. Representing, directly or indirectly, in connection with the offering for sale, sale, and distribution of cosmetics, toilet preparations, and other items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, by means of a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any of the awards given.

(a) That offers made to individual contestants are exclusive to the individual addressed, and that such individual has been selected for special individual favor, or has been granted an exclusive advantage in a contest, or that credits given or offered give the recipient thereof substantial, advanced standing in a contest over that of others entered therein, or that such credits are given or offered to the individual addressed, exclusively.

(b) That letters written to contestants and prospective contestants are personal to the one addressed, or that the person addressed is about to be the recipient of the grand prize or other prize offered, or that there is nothing to buy or sell in order to participate in the grand prize contest.

Order

33 F. T. C.

(c) That the giving of a certain order for goods and the payment of a specified amount therefor will assure the contestant addressed of securing a money prize or other award.

(d) That the respondents, or any one connected with them has a personal interest in any particular contestant, by means of letters giving so-called advice or suggestions to such contestant, or that such letters of advice are given exclusively to the contestant addressed.

4. The use, in connection with the offering for sale, sale, and distribution of cosmetics, toilet preparations, or other items of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of a contest wherein the purchase or sale of cosmetics or other articles of merchandise is essential to participation in any awards given, of—

(a) Congratulatory letters, requests for photographs, purported membership certificates in so-called prize clubs, certificates of award, diplomas, facsimile checks, or other similar means, during the course of any so-called contest, which imply that the recipient is about to win a cash prize, grand prize, or other award in such contest, or that said contestant is within a class which is certain to win some award to be given during the course of the contest.

(b) Advertising matter in any contest in which are set-out a portion of the terms and conditions the contestant will be required to meet, without stating that said terms and conditions so specified and set-out are, in fact, only a portion of the requirements which must be met by contestants in order to enter into or win the contest advertised by the respondents.

(c) Advertising matter in any contest which does not disclose all of the terms and conditions which must be performed by the contestant in order to be successful in winning any prize in said contest.

5. Selling or distributing in commerce as "commerce" is defined in the Federal Trade Commission Act, cosmetics or any merchandise so packed and assembled that sales of such merchandise to the public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

Supplying to or placing in the hands of others, push or pull cards, pull tabs, punchboards, or other lottery devices, with either assortments of cosmetics or any other merchandise, or separately, which said push cards, pull cards, pull tabs, punchboards, or other lottery devices are to be used, or may be used in selling or distributing said merchandise to the public.

Selling or otherwise disposing of cosmetics or any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents J. G. Hamer, B. Brown, H. Rosenstein, Claude T. Burnett, Ross J. Miller, Joseph Kane, and Walter Rubens, individuals, and F. W. Fitch Co., a corporation.

It is further ordered, That Thomsen-King & Co., Inc., and The Winship Corporation, corporations, James M. Woodman, Jesse L. Stewart, Merrold Johnson, G. Fred Stayton, Joseph Furth, Albert L. Bisson, Leta M. Frazier, Glenn Tate, George Thomsen, Amber M. McCluskey, James L. Decker, Sibley F. Everitt, Walter C. Phillips, Paul H. Williams, Don M. Parmelee, George Schaffer, Evelyn Henderson, Richard E. Williams, Prentice W. Shaw, John E. Woodman, Steve W. Phillips, Warren Lee Eastman, Ernie A. Storesund, A. Leonard Anderson, Gerald G. Grant, W. W. Young, Paul Manning, Fred W. Fitch, Mrs. Fred W. Fitch, Lucius W. Fitch, Mrs. Lucius W. Fitch, Gail W. Fitch, Mrs. Gail W. Fitch, Lester R. Sandahl, Mrs. Lester R. Sandahl, Richard H. Young, and Mrs. Richard H. Young, shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

OMEGA MANUFACTURING COMPANY, INC., TRADING AS
OMEGA ELECTROLYSIS INSTITUTE, AND MILTON L.
BROWNSHIELD, INDIVIDUALLY AND AS AN OFFICER
THEREOFCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4146. Complaint, May 31, 1940—Decision, June 12, 1941*

Where a corporation, and an individual who was an officer thereof and formulated, controlled, and directed its policies, acts and practices, engaged in interstate sale and distribution of a device or apparatus designated as the "Omega Home Use Portable Machine" and as "Omega Method," for removal of unwanted hair; by advertisements disseminated through the mails, in magazines, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented that said device was an effective, efficient, safe and scientific apparatus for the electrolytic removal of superfluous hair by individual self-application at home, that such removal of hair was permanent, and that said device was foolproof, painless, pleasant, quick, simple, and easy to use, and would have no ill effects upon the body;

Facts being its operation required the services of a skilled operator acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as with the properties of the machine used; proper use by lay person was extremely difficult, while improper use might cause scarring, pitting, or infection, with particular danger where used on pigmented or cancerous moles or syphilitic lesions and possibility of infection leading to abscess of the brain; use thereof was not painless or pleasant, since insertion of the needle and the electric current might be very painful, depending upon the toleration of the individual skin; and it would not remove superfluous hair quickly, but process required a long time, since hairs must be removed individually and care taken not to remove those adjacent because of danger to the tissue; and

- (b) Failed to reveal facts material in the light of aforesaid representations and that use of said device under prescribed or usual conditions might result in permanent disfigurement or cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing pathological conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it, because of such belief, to purchase their said device or apparatus:

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.