

Syllabus

IN THE MATTER OF

MOTOR TIRE RETREAD COMPANY, INC., BENJAMIN DUCHEN, LILLIAN HOLLOWICH AND JOHN M. WEINER, AS OFFICERS AND DIRECTORS OF MOTOR TIRE RETREAD COMPANY, INC., ALSO TRADING AS NATION WIDE TIRE COMPANY, CENTRAL TIRE & RETREADING EXCHANGE, ETC.

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

Docket 4325. Complaint, Sept. 30, 1940—Decision, July 12, 1941

Where a corporation and an individual, who was president and director thereof, engaged in interstate sale and distribution of used tires which had been retreaded or recapped for use on automobiles, trucks, and buses; to obtain salesmen for their products—

- (a) Represented, through newspaper advertisements and through their "crew managers," that salesmen employed by them received a commission of 10 percent on all orders obtained by them, which amount salesmen collected from purchaser as a deposit at the time order was taken, that their salesmen were further credited with a bonus of 5 percent on each order accepted and paid for in full by purchaser, and that they would also pay all expenses incurred by the salesman for oil and gasoline used in operation of his automobile, provided his sales totaled a specified minimum varying from \$200 to \$250 per week; and
- (b) Represented, through their said "crew managers," that the \$5 so-called "bond deposits" required of the salesmen for the sample kits which the "crew managers" supplied to them, and which contained cross-section tire specimens represented by said corporation as being samples of and representative of the tires sold by them, would be refunded to the salesmen after they had been in their employ for three weeks;

The facts being that their salesmen did not receive, in all cases, the deposit of 10 percent collected by them on each order, but in the event the remainder of the purchase price of tires ordered was not paid by purchasers, said deposit was deducted from future earnings of the salesman, and in many cases they did not pay their salesmen a bonus on sales paid for by customers; they did not pay salesmen expense incurred for oil and gasoline used in operation of their automobiles, even though said salesmen's aggregate weekly sales might total specified minimum above referred to; did not, in many cases, refund to salesmen so-called "bond deposit" after the salesmen had been in their employ for 3 weeks, or at any other time; and the cross-section tire specimens in aforesaid sample kits were not, in fact, representative of the tires actually sold and delivered to purchasers, which were far inferior to such purported samples; and

Where said corporation and individual, to induce purchase of their said products, by means of letters, order blanks, and other written or printed material

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and through oral representations made by their crew managers and salesmen—

- (c) Represented that the tires purchased from them would be identical with the samples displayed to prospective purchaser by their agents, that the carcasses used in their retreaded or recapped tires were less than 1 year old, that their tires would be free from boots and patches, and that tires ordered by purchaser would be shipped to him from points in the vicinity in which he was located, thereby effecting a substantial saving in freight, and that they were the manufacturers of the tires sold by them;

The facts being they made a practice of shipping to purchasers inferior and, in many cases, worthless tires or tires of different size, kind or make from those ordered; they had no way of knowing the age of said "carcasses," and in many instances the tires were older than represented; their tires frequently contained boots and patches; shipments were not made from points in purchaser's vicinity except near Chicago, and the freight rate was often much higher than represented; and they were not the manufacturers of the tires sold by them; and

- (d) Represented that they would ship tires to purchasers on consignment, and that their said tires were sold under a warranty that they would replace their passenger tires within 6 months or their truck tires within 3 months, at one-half the prevailing prices, should such tires prove defective; that their tires were suitable for the purpose for which purchased; and that they would give many miles of service in the normal course of usage at a fraction of the cost of a like amount of service from new tires;

The facts being they did not ship tires on consignment, but made shipments thereof only on C. O. D. basis or bill of lading with sight draft attached, the tires being fully wrapped when delivered and purchasers therefore being unable to make inspection thereof before payment of the balance due thereon and acceptance of merchandise; they failed and refused, in many cases, to make good their said warranty that they would replace tires that proved defective at half price; in many instances their tires were not suitable for the purpose for which they were purchased, and purchaser did not obtain any service whatsoever therefrom; cost of service, where any was obtained from their tires, was generally in excess of the cost of obtaining a like amount of service from new tires; and, as aforesaid, the purported tire samples furnished their said agents, and used by them in soliciting sales were far superior to the tires actually sold; and

Where said corporation and individual, to obtain orders from persons who had had previous unsatisfactory experience with them—

- (e) Made use of various trade names and purported addresses, which they placed on samples, order blanks, and advertising material supplied to their agents, and represented, through said agents, that the purported business carried on under such names had no connection with them or with the business carried on by them under other trade names;

When, in truth and in fact, all orders obtained by them under any of said trade names, or under their corporate name, were received at and filled from their said place of business in Chicago;

With the effect of misleading and deceiving a substantial number of prospective salesmen into accepting employment by them, and a substantial portion of the purchasing public into the purchase of substantial quantities of their said products:

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

Mr. J. R. Phillips, Jr. for the Commission.

Mr. David Auerbach, of Chicago, Ill., for respondents.

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 Motor Tire Retread Co., Inc., a corporation, and Benjamin Duchen, Lillian Hollowich, and John M. Weiner, individually and as officers and directors of Motor Tire Retread Co., Inc., said corporate and individual respondents also trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co., and Retread Tire Distributors, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPHS 1. Respondent Motor Tire Retread Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Benjamin Duchen, Lillian Hollowich, and John M. Weiner are president, secretary, and treasurer, respectively, and members of the Board of Directors of the respondent Motor Tire Retread Co., Inc., and formulate and control its business policies and practices. All of said individual respondents have offices and places of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Motor Tire Retread Co., Inc., Benjamin Duchen, Lillian Hollowich, and John M. Weiner, are also trading and doing business under various trade names, including Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co., and Retread Tire Distributors as well as under the name of the corporate respondent. The business conducted under said various trade names is conducted from 2441 South Indiana Avenue, Chicago, Ill.

The respondents Motor Tire Retread Co., Inc., a corporation, Benjamin Duchen, Lillian Hollowich, and John M. Weiner, have acted in concert and in cooperation each with the other in doing the acts and things hereinafter alleged.

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PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in selling and distributing used tires which have been retreaded or recapped. Said retreaded or recapped tires are for use on automobiles, trucks, and buses. Respondents cause said retreaded or recapped tires, when sold by them, to be transported from their said place of business in Chicago, Ill., to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said retreaded and recapped tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of obtaining salesmen for their products and thus to further the sale of such products, the respondents have made many false and misleading representations to prospective agents and salesmen, such representations being made through advertisements in newspapers and through certain representatives of respondents designated as "crew managers."

Among and typical of such false and misleading representations are the following: that salesmen employed by the respondents receive as compensation a commission of 10 percent on all orders obtained by them, which amount the salesman collects from the purchaser as a deposit at the time the order is taken; that respondents' salesmen are also credited with a bonus of 5 percent on each order accepted and paid for in full by the purchaser; that respondents will also pay all expenses incurred by the salesman for oil and gasoline used in the operation of the salesman's automobile, provided the sales of the salesman total a specified minimum varying from \$200 to \$250 per week.

Respondents, through their said crew managers, supply each of their salesmen with a sample kit for which the salesman is required to pay over to the respondents a so-called bond deposit of \$5. Respondents represent to the salesmen that such deposit will be refunded to them after they have been in the employ of the respondents for a period of 3 weeks. Such sample kits contain cross-section tire specimens which are represented by the respondents to be samples of, and representative of, the tires sold by respondents.

PAR. 4. The foregoing representations are false and misleading. In truth and in fact, respondents' salesmen do not receive in all cases the deposit of 10 percent collected by them on each order, but such commission is contingent upon the payment by the purchasers of the remainder of the purchase price of the tires ordered. In the event

such balance is not paid by the purchaser, said deposit of 10 percent is deducted by respondents from the future earnings of the salesman. In many cases respondents do not pay their salesmen a bonus of 5 percent or any other bonus on the sales made by them which are accepted and paid for by customers. Respondents do not pay the expense incurred by their salesmen for oil and gasoline used in the operation of the salesmen's automobiles, even though the aggregate weekly sales of such salesmen may total the specified minimum above referred to.

In many cases respondents do not refund to their salesmen the so-called bond deposit of \$5 after the salesmen have been in respondents' employ for a period of three weeks, nor do respondents make such refund at any other time. The cross-section tire specimens in said sample kits are not, in fact, samples of nor representative of the tires sold by respondents. The tires actually sold and delivered to purchasers are far inferior to such purported samples.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have also made many false and misleading representations to prospective purchasers concerning their said tires, such representations being made by means of letters, order blanks, and other written or printed material, and by means of oral representations made by respondents' crew managers and salesmen. Among and typical of such false and misleading representations are the following:

1. That the tires purchased from the respondents will be identical in kind, size, make, and quality with the samples displayed to the prospective purchaser by respondents' agents.

2. That the carcasses used by the respondents in their retreaded or recapped tires are less than 1 year old.

3. That respondents' tires will be free from boots and patches.

4. That the tires ordered by the purchaser will be shipped to the purchaser from points in the vicinity in which the purchaser is located, and that thereby a substantial saving in freight will be effected.

5. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

6. That respondents will ship tires to purchasers on consignment.

7. That the respondents' retreaded or recapped tires are sold under a warranty that respondents will replace their passenger tires within 6 months or their truck tires within 3 months, should such tires prove defective, at one-half of the prevailing prices of such tires.

8. That respondents' tires are suitable for the purpose for which they are purchased, and that they will give many miles of service in

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the normal course of usage at a fraction of the cost of a like amount of service from new tires.

PAR. 6. The aforesaid representations made by the respondents, as aforesaid, are false and misleading. In truth and in fact, respondents do not ship to purchasers tires of the same quality or size or kind or make as the samples displayed by their agents and ordered by the purchaser, but make a practice of shipping inferior and, in many cases, worthless tires or tires of different size, kind, or make than those ordered. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in many instances the tires are older than represented.

Respondents' tires are not free from boots and patches, but in many instances contain boots and patches. Shipments are not made from points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill., and the freight rate is often much higher than it is represented to be by respondents' agents. Respondents are not the manufacturers of the tires they sell.

Respondents do not ship tires on consignment. They make shipments of their tires only on the basis of C. O. D. or bill of lading with sight draft attached, and when said tires are delivered they are fully wrapped and the purchasers are unable to make an inspection of such tires before payment of the balance due thereon and acceptance of the merchandise. In many cases respondents fail and refuse to make good their said warranty that they will replace, at half price, tires that prove defective.

In many instances respondents' tires are not suitable in any manner for the purpose for which they are purchased, and the purchaser thereof does not obtain any service whatsoever from said tires. In those cases where any service is obtained from respondents' tires the cost of such service is generally in excess of the cost of obtaining a like amount of service from the use of new tires.

PAR. 7. All samples, order blanks, and other advertising and sales material and supplies used by respondents' agents in soliciting sales are supplied to such agents by the respondents. Included in such material and supplies are the purported tire samples, hereinbefore referred to, which are represented to prospective purchasers by respondents' agents as being representative of the tires sold by the respondents. In truth and in fact, such purported samples are in no way representative of the tires actually sold by the respondents, but are far superior thereto.

PAR. 8. A further misleading and deceptive practice on the part of respondents is the use of various trade names and purported addresses, in order that respondents may be able to obtain, under

certain of such names, orders from persons who have had previous unsatisfactory experience with respondents under other of such names. Respondents supply to their agents samples, order blanks, and advertising material carrying certain of such trade names and addresses, and respondents represent, through their said agents, that the purported business carried on under such names has no connection with respondents or with the business carried on by respondents under other of respondents' trade names. In truth and in fact, all orders obtained by the respondents under any of said trade names, or under the name of the corporate respondent, are received at and filed from respondents' said place of business at 2441 South Indiana Avenue, Chicago, Ill.

PAR. 9. The aforesaid acts and practices of the respondents have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial number of prospective salesmen into accepting employment by the respondents, and a substantial portion of the purchasing public into the purchase of substantial quantities of respondents' products.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute 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 September 30, 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint respondents filed answer thereto. Subsequently respondent Benjamin Duchon, in his individual capacity and as an officer and director of respondent Motor Tire Retread Co. Inc., and said corporate respondent Motor Tire Retread Co., Inc., were granted permission to withdraw their answers and to substitute therefor an answer admitting all the material allegations set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. In connection with said substitute answer respondent Benjamin Duchon filed an affidavit with respect to respondents John M. Weiner and Lillian Hollowich as individuals and as officers and directors of the said corporate respondent. Thereafter this proceeding regularly came on for final hearing before the Commission upon the said

complaint, substitute answer and affidavit; 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, Motor Tire Retread Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 2441 South Indiana Avenue, Chicago, Ill. Respondents Benjamin Duchen, Lillian Hollowich, and John M. Weiner are president, secretary, and treasurer, respectively, and members of the board of directors of the respondent Motor Tire Retread Co., Inc. However, the individual respondents Lillian Hollowich and John M. Weiner, although officers and members of the board of directors of said corporate respondent, have taken no part in the operation of said business, the formulation of the policies of the corporate respondent, nor have they engaged in any of the acts and practices of said corporate respondent as hereinafter found and set forth. At the time of the incorporation of said company they permitted their names to be used to comply with the legal requirements with respect thereto, but have never participated to any greater extent in the affairs of the corporation. The respondents Motor Tire Retread Co., Inc., and Benjamin Duchen are also trading and doing business under various trade names, including Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., and Zephyr Tire Co., as well as under the name of the corporate respondent. The business under said various trade names is conducted from 2441 South Indiana Avenue, Chicago, Ill. The respondent Benjamin Duchen also maintains an office and place of business at the same address. Hereafter when the word "respondents" is used in these findings the same shall refer to Motor Tire Retread Co., Inc., a corporation, Benjamin Duchen and Motor Tire Retread Co., Inc., trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co. and Zephyr Tire Co.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in selling and distributing used tires which have been retreaded or recapped. Said retreaded or recapped tires are for use on automobiles, trucks, and busses. Respondents cause said retreaded or recapped tires, when sold by them, to be transported from their said place of business in Chicago, Ill., to the purchasers

thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said retreaded and recapped tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of obtaining salesmen for their products and thus to further the sale of such products, the respondents have made many false and misleading representations to prospective agents and salesmen, such representations being made through advertisements in newspapers and through certain representatives of respondents designated as "crew managers."

Among and typical of such false and misleading representations are the following: that salesmen employed by the respondents receive as compensation a commission of 10 percent on all orders obtained by them, which amount the salesman collects from the purchaser as a deposit at the time the order is taken; that respondents' salesmen are also credited with a bonus of 5 percent on each order accepted and paid for in full by the purchaser; that respondents will also pay all expenses incurred by the salesman for oil and gasoline used in the operation of the salesman's automobile, provided the sales of the salesman total a specified minimum varying from \$200 to \$250 per week.

Respondents, through their said crew managers, supply each of their salesmen with a sample kit for which the salesman is required to pay over to the respondents a so-called bond deposit of \$5. Respondents represent to the salesmen that such deposit will be refunded to them after they have been in the employ of the respondents for a period of 3 weeks. Such sample kits contain cross-section tire specimens which are represented by the respondents to be samples of, and representative of, the tires sold by respondents.

PAR. 4. The foregoing representations are false and misleading. In truth and in fact, respondents' salesmen do not receive in all cases the deposit of 10 percent collected by them on each order, but such commission is contingent upon the payment by the purchasers of the remainder of the purchase price of the tires ordered. In the event such balance is not paid by the purchaser, said deposit of 10 percent is deducted by respondents from the future earnings of the salesman. In many cases respondents do not pay their salesmen a bonus of 5 percent or any other bonus on the sales made by them which are accepted and paid for by customers. Respondents do not pay the expense incurred by their salesmen for oil and gasoline used

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in the operation of the salesmen's automobiles, even though the aggregate weekly sales of such salesmen may total the specified minimum above referred to.

In many cases respondents do not refund to their salesmen the so-called bond deposit of \$5 after the salesmen have been in respondents' employ for a period of three weeks, nor do respondents make such refund at any other time. The cross-section tire specimens in said sample kits are not, in fact, samples of nor representative of the tires sold by respondents. The tires actually sold and delivered to purchasers are far inferior to such purported samples.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have also made many false and misleading representations to prospective purchasers concerning their said tires, such representations being made by means of letters, order blanks, and other written or printed material, and by means of oral representations made by respondents' crew managers and salesmen. Among and typical of such false and misleading representations are the following:

1. That the tires purchased from the respondents will be identical in kind, size, make, and quality with the samples displayed to the prospective purchaser by respondents' agents.

2. That the carcasses used by the respondents in their retreaded or recapped tires are less than 1 year old.

3. That respondents' tires will be free from boots and patches.

4. That the tires ordered by the purchaser will be shipped to the purchaser from points in the vicinity in which the purchaser is located, and that thereby a substantial saving in freight will be effected.

5. That respondents are the manufacturers of the retreaded or recapped tires sold by them.

6. That respondents will ship tires to purchasers on consignment.

7. That the respondents' retreaded or recapped tires are sold under a warranty that respondents will replace their passenger tires within 6 months or their truck tires within 3 months, should such tires prove defective, at one-half of the prevailing prices of such tires.

8. That respondents' tires are suitable for the purpose for which they are purchased, and that they will give many miles of service in the normal course of usage at a fraction of the cost of a like amount of service from new tires.

PAR. 6. The aforesaid representations made by the respondents, as aforesaid, are false and misleading. In truth and in fact, respondents do not ship to purchasers tires of the same quality or size

or kind or make as the samples displayed by their agents and ordered by the purchaser, but make a practice of shipping inferior and, in many cases, worthless tires or tires of different size, kind, or make than those ordered. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in many instances the tires are older than represented.

Respondents' tires are not free from boots and patches, but in many instances contain boots and patches. Shipments are not made from points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill., and the freight rate is often much higher than it is represented to be by respondents' agents. Respondents are not the manufacturers of the tires they sell.

Respondents do not ship tires on consignment. They make shipments of their tires only on the basis of C. O. D. or bill of lading with sight draft attached, and when said tires are delivered they are fully wrapped and the purchasers are unable to make an inspection of such tires before payment of the balance due thereon and acceptance of the merchandise. In many cases respondents fail and refuse to make good their said warranty that they will replace, at half price, tires that prove defective.

In many instances respondents' tires are not suitable in any manner for the purpose for which they are purchased, and the purchaser thereof does not obtain any service whatsoever from said tires. In those cases where any service is obtained from respondents' tires the cost of such service is generally in excess of the cost of obtaining a like amount of service from the use of new tires.

PAR. 7. All samples, order blanks, and other advertising and sales material and supplies used by respondents' agents in soliciting sales are supplied to such agents by the respondents. Included in such material and supplies are the purported tire samples, hereinbefore referred to, which are represented to prospective purchasers by respondents' agents as being representative of the tires sold by the respondents. In truth and in fact, such purported samples are in no way representative of the tires actually sold by the respondents, but are far superior thereto.

PAR. 8. A further misleading and deceptive practice on the part of respondents is the use of various trade names and purported addresses, in order that respondents may be able to obtain, under certain of such names, orders from persons who have had previous unsatisfactory experience with respondents under other of such names. Respondents supply to their agents samples, order blanks, and advertising material carrying certain of such trade names and addresses, and respondents represent, through their said agents, that the purported

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business carried on under such names has no connection with respondents or with the business carried on by respondents under other of respondents' trade names. In truth and in fact, all orders obtained by the respondents under any of said trade names, or under the name of the corporate respondent, are received at and are filled from respondents' said place of business at 2441 South Indiana Avenue, Chicago, Ill.

PAR. 9. The aforesaid acts and practices of the respondents have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial number of prospective salesmen into accepting employment by the respondents, and a substantial portion of the purchasing public into the purchase of substantial quantities of respondents' products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public, and constitute 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 and the answer of respondents Motor Tire Retread Co., Inc., a corporation, and Benjamin Duchon, individually and as an officer and director of the said corporate respondent, in which answer said respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Motor Tire Retread Co., Inc., a corporation, trading as Nation Wide Tire Co., Central Tire and Retreading Exchange, Standard Brand Retread Tire Co., Zephyr Tire Co., or trading under any other name or names, its officers, representatives, agents, and employees, and Benjamin Duchon, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of retreaded or recapped automobile, truck, and bus tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any specified commissions or bonuses are paid salesmen for the sale of respondents' products in excess of those actually paid.

2. Representing that repayment will be made to salesmen for expenses arising in soliciting business or that refund of deposit for sample kit will be made unless said repayments and refunds are actually made.

3. Exhibiting to customers or prospective customers as representative of tires sold or offered for sale samples of recapped or retreaded tires which are substantially superior in quality to tires actually delivered.

4. Shipping tires that are not the same quality, size, make, or kind as those ordered.

5. Representing that the carcasses of retreaded or recapped tires are less than any stated age or that tires repaired with boots or patches are not so repaired.

6. Representing that respondents manufacture the retreaded or recapped tires sold or offered for sale by them.

7. Representing that tires will be shipped to purchasers on consignment when such is not the fact.

8. Representing that tires are sold under a warranty against defects unless all the terms and conditions of such warranty are strictly complied with.

9. Representing that tires ordered by purchasers will be shipped from any point other than the actual point of shipment.

10. Representing that tires which are not suitable for the purpose for which they are advertised are suitable for such purpose, or that respondent's tires give service at a lower cost per mile than new tires, when such is not the fact.

11. Representing that the business carried on under trade names has no connection with and is not a part of the business of respondents or with the business of respondents carried on under other trade names.

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

It is further ordered, That this proceeding be, and the same hereby is, closed as to the respondents Lillian Hollowich and John M. Weiner, without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and to proceed thereon in accordance with its regular procedure.

IN THE MATTER OF
HELENA RUBINSTEIN, INC.

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

Docket 4254. Complaint, Aug. 21, 1940—Decision, July 14, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Town and Country Face Powder," "Eye Lash Grower Cream," "Eye Lash Cream and Darkener," and "Egg Complexion Soap" cosmetic preparations; by means of advertisements disseminated through the mails, newspapers, and periodicals and other advertising literature—

- (a) Represented, directly and by implication, that face powder generally tends to draw out and absorb the natural moisture of the skin, making it dry, parched, and susceptible to lines and premature aging, and that ordinary powder particles swell because of absorption of skin moisture and clog the pores, causing enlarged pores, blackheads, and blemishes; that its said powder was moisture-proof and did not absorb natural moisture of the skin or clog the pores, and that use thereof would prevent the skin from becoming dry and parched, prevent lines and premature aging, and prevent or remove enlarged pores, blackheads, and blemishes;

Facts being that the primary purpose of face powder is to absorb excess moisture and cover shiny skin, such absorption resulting from the capillary effect of the minute spaces between adjacent particles of powder without expansion or increase in the bulk thereof; face powder, of itself, will not cause enlarged pores, blackheads, or blemishes as the result of any swelling of particles within the pores; its said representations with respect to the pre-expanded quality of its face powder and its moisture-proof qualities had no scientific basis, and use thereof would not prevent lines or premature aging or prevent or remove enlarged pores, blackheads, or blemishes because of any pre-expanded quality or "balsamizing process," by which said face powder was, purportedly, pre-expanded and saturated with moisture before reaching the consumer;

- (b) Represented, further, that its "Eye Lash Grower Cream" had special properties which would be effective in causing eyelashes to grow, and that its "Eye Lash Cream and Darkener" had special properties which would prevent eyelashes from breaking; when in fact such products had no value in promoting growth of eyelashes or preventing their breaking, respectively; and
- (c) Represented that its "Egg Complexion Soap" would benefit the complexion through the presence of eggs therein and purified the skin;

Facts being the egg content of said soap was of no value to the complexion, and would not purify the skin in excess of cleansing the surface thereof; With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of such representations were true, and to induce it to purchase said cosmetic preparations because of such belief, thus engendered: