

Syllabus

IN THE MATTER OF
CASIMIRO MUOJO, TRADING AS ALVI CO.
AND AS ALVI, INC.

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

Docket 4484. Complaint, Apr. 5, 1941—Decision, Aug. 7, 1941

Where an individual engaged in interstate sale and distribution of a hair dye cosmetic variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," etc.; by means of advertisements disseminated through the mails and otherwise, including newspaper advertisements offering free samples, and circulars, leaflets, and other advertising literature sent in response to requests for such samples and in reply to inquiries—

- (a) Represented that his said hair dye cosmetic was scientific, safe, and free from harmful, dangerous, and injurious chemicals, that it would end premature gray hair and produce a permanent, natural, uniform shade, that it gave the hair the warmth, color, lustre, and glint of youth and would have no ill effects, its statements accompanying samples including the representations "can be used by all persons having perfect skin and hair," along with advice, when in doubt, to apply a few drops of the product "behind the ear or on the arm," and statement that "If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm," it asserting in various advertising that it was "free from any harmful material," "SAFE FOR SCALP AND HAIR," "perfectly safe," etc.;

Facts being his said cosmetic was a chemical dye which was not capable of producing results claimed, and was not safe or harmless, in that it contained the toxic coal tar derivative paraphenylenediamine in sufficient quantity to cause skin irritation and violent local dermatitis when used as prescribed, and, if absorbed into the body, to result in vertigo, gastritis, exophthalmos, and asthma, among other ailments, while its application to eyebrows or eyelashes might cause blindness; and

- (b) Failed to reveal, in such advertisements, facts material in the light of the representations contained therein, and that use of said hair dye cosmetic under prescribed or usual conditions might result in injury to health, in that they contained no warning against use of product on the eyelashes or eyebrows, nor adequate warnings as to the necessity of a proper skin patch test before each application to the hair, in order to determine user's toxic reaction;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that his said representations were true, and of inducing it, because of said belief, to purchase his preparation:

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.

Mr. James L. Baker for the Commission.

Mr. Alfred C. Ditolla, of New York City, for respondent.

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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 Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, Inc., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Casimiro Muojo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal place of business at 158 Grand Street, New York, N. Y., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetics, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondent has maintained a course of trade in said cosmetic, sold and distributed by him 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by advertisements in newspapers, are the following:

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WHITE HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. It does not discolor upon washing and gives a natural shade. Price \$2.00. Free Sample. State Color.

ALVI, INC.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "VITALE" once a month. Box for 4 applications, \$2.00. Ask for free sample and state the color of your hair.

ALVI CO.
158 Grand St., N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. Does not lose color when washed and gives a natural shade. Price \$2.00. Free sample. State color.

ALVI CO.
158 Grand St., N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent also disseminated in the manner and for the purpose aforesaid, circulars, leaflets, and other advertising literature by the United States mails and by various other means in commerce, containing the following, false, misleading, and deceptive statements and representations:

VITALE gives a clear and natural color. The VITALE can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm. VITALE is a most economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

ALVI CO.
158 Grand St.
New York, N. Y.

VITALE HAIR COLORING

Only 15 minutes required to banish gray hair. One application is required. VITALE is easily applied in your own home with success.

SAFE FOR SCALP AND HAIR. Perfect color. VITALE is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee.

VITALE, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

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ALVI CO.
158 Grand St.
New York, N. Y.

Thousands use the VITALE with great success. It has been endorsed by the leading beautician, in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. VITALE is perfectly safe. Hair coloring are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the large box, and you will be glad to have given the youthful color, and glint to your hair.

ALVI CO.
158 Grand St.
New York, N. Y.
Youthful Hair

END THE TRAGEDY OF PREMATURE GRAYNESS QUICKLY—SAFELY

In order to overcome the handicap of gray hair, "Vitale," a rapid ideal hair coloring, was developed after years of constant research and study.

Vitale, not only duplicates nature's color but penetrate inside the hair, after Nature's own fashion, retaining its natural lustre silkness and beauty.

ALVI DISTRIBUTORS
158 Grand Street
New York, N. Y.

VITALE RAPID to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in VITALE than any other preparation.

ALVI, Inc.
158 Grand Street
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster or glint of youth, or affecting the hair in any

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way other than as a dye. The said preparation is not safe, scientific, or harmless, as its use may result in serious and irreparable injury to health.

Respondent's preparation contains paraphenylene-diamine, a toxic coal tar derivative, in sufficient quantity to cause in some cases skin irritation and other harmful effects, if said preparation is used under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The use of said cosmetic may cause, in some cases, violent local dermatitis, and if absorbed into the body, it may result in vertigo, gastritis, exophthalmos, asthma, diplopia, asthenia, or subcutaneous oedema about the face and head. Furthermore, the application of said cosmetic to the eyebrows or eyelashes in any case may cause blindness.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, contain no warning against the use of said preparation on the eyelashes or eyebrows, nor do such advertisements contain adequate warnings as to the necessity of a proper skin patch test before each application of said preparation to the hair, in order to determine the toxic reaction of the user. Consequently, such advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

PAR. 8. The aforesaid acts and practices of the respondent, 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 the 5th day of April 1941, issued,

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and on the 7th day of April 1941, served its complaint in this proceeding upon respondent, Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, Inc., charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Casimiro Muojo, is an individual trading as Alvi Co. and as Alvi, Inc., with his office and principal place of business at 158 Grand Street, New York, N. Y., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain hair dye cosmetic, variously designated as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale.

In the course and conduct of his business the respondent causes said cosmetic, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondent has maintained a course of trade in said cosmetic, sold and distributed by him 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination

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of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by advertisements in newspapers, are the following:

WHITE HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. It does not discolor upon washing and gives a natural shade. Price \$2.00. Free Sample. State Color.

ALVI, INC.
158 Grand Street
New York

GRAY HAIR

Will vanish in 15 minutes by using the rapid dye "VITALE" once a month. Box for 4 applications, \$2.00. Ask for free sample and state the color of your hair.

ALVI CO.
158 Grand St.
N. Y.

GRAY HAIR

Can be eliminated without danger in only 15 minutes by using VITALE RAPID once a month. Does not lose color when washed and gives a natural shade. Price \$2.00. Free sample. State color.

ALVI CO.
158 Grand St.
N. Y.

In answer to requests for free samples offered in the foregoing newspaper advertisements and in reply to inquiries regarding said product, the respondent also disseminated in the manner and for the purpose aforesaid, circulars, leaflets, and other advertising literature by the United States mails and by various other means in commerce, containing the following, false, misleading, and deceptive statements and representations:

VITALE gives a clear and natural color. The VITALE can be used by all persons having perfect skin and hair. When in doubt, we advise you to wash a bit of the skin behind the ear or on the arm. When dry, mix a few drops from vials A and B and apply. If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm. VITALE is a most

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economical modern dye, free from any harmful material. Send the coupon today for the large box, and you will be glad to have given your hair the warmth and luster of youth.

ALVI CO.
158 Grand St.
New York, N. Y.

VITALE HAIR COLORING

Only 15 minutes required to banish gray hair. One application is required. VITALE is easily applied in your own home with success. SAFE FOR SCALP AND HAIR. Perfect color. VITALE is safe. Over 30 years of experience in manufacturing hair preparations are your best guarantee.

VITALE, the scientific rapid hair coloring has brought happiness to thousands of women, security and youthful appearance to thousands of men.

ALVI CO.
158 Grand St.
New York, N. Y.

Thousands use the VITALE with great success. It has been endorsed by the leading beautician, in Europe and America for over 10 years, because it is not a commercialized hair dye, but the result of scientific researches. VITALE is perfectly safe. Hair coloring are safe to use. This modern hair coloring, free from any dangerous materials, is economical and safe. Write today for the large box, and you will be glad to have given the youthful color, and glint to your hair.

ALVI CO.
158 Grand St.
New York, N. Y.

Youthful Hair
END THE TRAGEDY OF
PREMATURE GRAYNESS
QUICKLY—SAFELY

In order to overcome the handicap of gray hair, "Vitale", a rapid ideal hair coloring, was developed after years of constant research and study.

Vitale, not only duplicates nature's color but penetrate inside the hair, after Nature's own fashion, retaining its natural lustre silkness and beauty.

ALVI DISTRIBUTORS
158 Grand Street
New York, N. Y.

VITALE RAPID to restore youthful color to gray hair in nature's way. It produces a natural color that cannot be distinguished even under close scrutiny. It does not contain injurious chemicals. It is permanent. It will give a uniform shade throughout a number of years. There is more quality, supreme quality and effectiveness in VITALE than any other preparation.

ALVI, INC.
158 Grand Street
New York, N. Y.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out

herein, the respondent represents that his hair dye cosmetic, designated as Vitale Instantaneous Hair Dye and by various other names as aforesaid, is scientific, safe, and free from harmful, dangerous, and injurious chemicals; that it will end premature gray hair; that it will produce a permanent, natural, uniform shade; that it gives the hair the warmth, color, luster, and glint of youth and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the cosmetic sold and distributed by the respondent as aforesaid is a chemical dye and will not end premature gray hair, nor will it produce a permanent, natural, uniform shade. It is incapable of giving the hair the warmth, color, luster, or glint of youth, or affecting the hair in any way other than as a dye. The said preparation is not safe, scientific, or harmless, as its use may result in serious and irreparable injury to health.

Respondent's preparation contains paraphenylene diamine, a toxic coal tar derivative, in sufficient quantity to cause in some cases skin irritation and other harmful effects, if said preparation is used under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

The use of said cosmetic may cause, in some cases, violet local dermatitis, and if absorbed into the body, it may result in vertigo, gastritis, exophthalmos, asthma, diplopia, asthenia, or subcutaneous oedema about the face and head. Furthermore, the application of said cosmetic to the eyebrows or eyelashes in any case may cause blindness.

PAR. 6. The advertisements disseminated by the respondent, as aforesaid, contain no warning against the use of said preparation on the eyelashes or eyebrows, nor do such advertisements contain adequate warnings as to the necessity of a proper skin patch test before each application of said preparation to the hair, in order to determine the toxic reaction of the user. Consequently, such advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and

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mistaken belief that such statements, representations, and advertisements are true, and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

CONCLUSION

The aforesaid acts and practices of the respondent 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 the respondent, in which answer the respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Casimiro Muojo, an individual, trading as Alvi Co. and as Alvi, Inc., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his hair dye cosmetic variously advertised as Vitale Instantaneous Hair Dye, Vitale Rapid Hair Coloring, Vitale Rapid, Vitale Hair Coloring, Vitale Hair Dye, and as Vitale, or any other hair dye cosmetic or product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a safe or scientific cosmetic, free from harmful, injurious, or dangerous chemicals; that its use will end premature gray hair or produce a permanent, natural, uniform shade, or give the warmth, color, luster, or glint of youth to the hair; or which advertisement fails to conspicuously reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and preliminary tests according to accompanying

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directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

CAUTION: Use only as directed on label.

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application.

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 said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which advertisement fails to conspicuously reveal therein the following:

CAUTION: This product contains ingredients which may cause skin irritation on certain individuals and preliminary tests according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

CAUTION: Use only as directed on label,

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application.

It is further ordered, That respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order, and if so, the maner and form in which he intends to comply; and that within 60 days after the service upon him of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
STANDARD CONTAINER MANUFACTURERS'
ASSOCIATION, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 3289. Order, Aug. 11, 1941

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on March 5, 1940, made its findings and conclusion and issued cease and desist order in Docket 3289, 30 F. T. C. 577, 598, and (2) Circuit Court of Appeals for the Fifth Circuit on April 23, 1941, in *Standard Container Manufacturers' Association, Inc., et al. v. Federal Trade Commission*, 119 F. (2d) 262, 32 F. T. C. 1879, rendered its decision and, on May 20, 1941, issued its decree modifying said order of the Commission in certain particulars and affirming same in other particulars, and directed the Commission to modify such order in accordance with said decree—

- I. Requiring respondent corporations, partners, and individuals engaged in manufacture, sale, and distribution, or sale and distribution, of wooden fruit and vegetable containers in the southeastern portion of the United States, and more particularly in Georgia and Florida, and their officers, etc., to cease and desist from—

Entering into or carrying out any understanding, agreement, etc., with intent or effect of restricting, etc., competition in sale in interstate commerce of such containers, and, as a part of such understanding, etc.—

- (1) Agreeing to fix and maintain, or fixing and maintaining, (a) uniform or minimum prices, or (b) uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances, and time limitations in contracts;
- (2) Agreeing to curtail, or curtailing, production of such containers or parts, or to check, or checking, production of other parties to agreement *re* agreed curtailment;
- (3) Threatening, etc., members of industry to induce them to become parties to, or to maintain prices fixed by, agreement, or to curtail production in furtherance thereof;
- (4) Filing with their association, its officers, etc., report as to member compliance *re* prices or production; and
- (5) Reporting or conferring with respondent Adkins or any officer, etc., of respondent association *re* prices for sale of product, or production curtailment, or nonconformance to agreement by industry members as to aforesaid matters; and

- II. Requiring respondent association and its officers, etc., including respondents Adkins, Chazal, and Bennett, to cease and desist from—

Aiding, abetting, encouraging, or cooperating with respondent corporations, partners, and individuals, in doing any of the acts and things prohibited by this order; and

- III. Requiring respondent Adkins, former president of association of members of such industry, to cease and desist from—