

Syllabus

IN THE MATTER OF

BEHO RUBBER CO., INC., AND BERNARD HOLTZMAN, MAE MURRAY AND MILTON M. HOLTZMAN, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF BEHO RUBBER CO., INC., ALSO TRADING AS THE BEST TIRE HOUSE, THE MODERN IMPROVED RETREAD OUTLET, AND THE ASSURED REMODED TIRE DISTRIBUTORS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3973. Complaint, Dec. 14, 1939—Decision, Dec. 23, 1941

Where a corporation and two individuals, general officers thereof, engaged, under corporate and various other trade names, in competitive interstate sale and distribution of retreaded or recapped tires for automobiles, trucks, and buses; in seeking to induce salesmen to accept employment with them through advertisements in newspapers and other publications of general circulation, and through their "crew managers" whom they employed to travel in the various States seeking salesmen and purchasers for their products—

- (a) Represented that they paid their salesmen a salary of \$40.00 a week and commission, and all expenses while being trained; and
- (b) Represented that they manufactured the retreaded or recapped tires which they sold, and used only the best carcasses, i. e., best quality of used tires, in their said products;

Notwithstanding fact they did not pay their salesmen aforesaid salary, or any other sum per week, and a commission, or any of the expenses of beginners employed by them, did not manufacture their said products, and the carcasses used by them were only of average quality and in many instances inferior to the average used in such tires; and

Where said corporation and individuals, engaged as aforesaid; through their salesmen whom they supplied with sales kits, order blanks and literature bearing various trade names made use of by them, and with cross-cut sections of tires to display to customers; as typical of many similar claims—

- (c) Represented that the tires purchased from them would be identical in quality with the samples displayed by salesman taking an order, and of the size ordered by the purchaser, that carcasses used by them were less than 1 year old, that their tires would be free from boots or patches, were suitable for the purpose for which they were purchased, and would give many miles of service in normal course of usage at a fraction of the cost of new tires;

The facts being they did not ship to purchasers tires of the same quality as the sample displayed by their salesman, but made a practice of shipping shoddy and in many cases worthless tires; they had no way of knowing the age of the carcasses they used, which, in some instances, were old and useless; said products in most instances did contain boots and patches, and, furthermore, were not suitable for purposes for which purchased, and in many instances were serviceable for a few days only, if as much;

- (d) Falsely represented that the tires would be shipped to the purchaser from points in his vicinity, and that they would ship tires on consignment, and

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represented the freight rate as lower than was the fact, and, further, contrary to the fact, that they would supply purchasers with free tire racks and metal tire stands and would pay one-half the expenditures incurred by purchasers in advertising their products; and

- (e) Falsely represented that corporation in question and purported concerns represented by some seven or eight trade names they used had no connection or affiliation with one another and were separate and distinct competitive businesses, engaged in sale and distribution of products in question, of which they further represented themselves falsely as the manufacturers, notwithstanding they had never made such products but purchased them from various sources;

With the result that their salesmen, as aforesaid, were enabled to misrepresent the true status of their business and, under another trade name, were enabled to make sales of their products to those who had had previous unsatisfactory dealings with them; and

Where said corporation and individuals—

- (f) Made use of a disclaimer of liability clause under the warranty clause in their order blanks in order to escape liability from the promises and representations of their salesmen, which was not called to the attention of purchasers signing the order blanks and was so inconspicuously placed that in most instances it was not observed by such purchasers, who had the right to assume said warranty clause as intended for their protection;
- (g) Guaranteed, in said warranty clause, to replace unsatisfactory merchandise upon payment of one-half of the list price, notwithstanding fact such undertaking was not guarantee at all, since payment of amount thus called for approximated cost of the tire to them and the purchaser was required to pay shipping charges before any such replacement was made; and
- (h) Made a practice of shipping to purchasers unsatisfactory and worthless tires, in many cases not worth the shipping charges paid by the purchaser, and not in any manner suitable for the purpose for which they were intended and purchased;

With effect of misleading and deceiving salesmen and prospective salesmen, and purchasers and prospective purchasers of their tires into the erroneous belief that aforesaid false, misleading and deceptive representations and implications were true, and of causing a substantial number of purchasing public, because of said belief, to act as salesmen for them and to purchase substantial numbers of their said products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

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 Beho Rubber Co., Inc., a corporation, and Bernard Holtzman, Mae Murray, and Milton M.

Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, 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:

PARAGRAPH 1. Respondent, Beho Rubber 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 Indiana Avenue, Chicago, Ill. Respondents Bernard Holtzman, Mae Murray, and Milton M. Holtzman are individuals and are president, secretary, and vice president, respectively, and members of the board of directors of the respondent Beho Rubber Co., Inc. All of said individual respondents have offices and place of business at 2441 Indiana Avenue, Chicago, Ill. Respondents, Beho Rubber Co., Inc., Bernard Holtzman, Mae Murray, and Milton M. Holtzman, are trading and doing business under various trade names, including The Best Tire House, The Modern Improved Retread Outlet, and The Assured Remolded Tire Distributors, at various addresses in the city of Chicago, as well as under the name of the corporate respondent. The business conducted under said various trade names is conducted from 2441 Indiana Avenue, Chicago, Ill.

The respondents, Beho Rubber Co., Inc., Bernard Holtzman, Mae Murray, and Milton M. Holtzman, have acted in concert and in cooperation each with the other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for more than 18 months 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 aforesaid business, and for the purpose of inducing salesmen to accept employment with respondents and thus to further the sale of their said products, respondents have caused numerous advertisements to be inserted in

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newspapers and other publications circulated generally among prospective agents and purchasers throughout the United States and in the District of Columbia, which contain statements and representations relative to employment with respondents. Similar statements and representations are made to prospective agents and purchasers by "crew managers" employed by the respondents who travel in the various States of the United States and in the District of Columbia, seeking agents and purchasers for respondents' said products. Among and typical of the representations and statements made in newspapers and other publications are the following:

HELP WANTED—MEN

MEN WITH CARS—To travel, selling automotive products; attractive salary and commission. See M. H. Shepard, 8:30 to 2:00. 2441 S. Indiana Avenue.

Through said advertisements, statements, and representations made by said crew managers, respondents represent that salesmen employed by them are paid a salary of \$40 a week and commission, and that all expenses of salesmen will be paid by the respondents while such salesmen are being trained, and that the respondents manufacture the retreaded or recapped tires they sell, and that they use only the best carcasses, that is, the best quality of used tires, in their retreaded or recapped tires. Many other statements and representations of similar import and meaning are made and used by the respondents in securing salesmen to further the sale of their said product.

The aforesaid representations and implications used by the respondents are false, misleading and deceptive, for in truth and in fact respondents do not pay their salesmen a salary of \$40 a week, or any other sum per week, and a commission, nor do they pay any of the expenses of beginners employed by them; they do not manufacture the retreaded or recapped tires sold by them; and the carcasses used in the retreaded or recapped tires sold by the respondents, in most instances, are only of average quality, and are, in many cases, inferior to the average carcass used in retreaded or recapped tires.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said products, respondents have made, or caused to be made through their salesmen traveling throughout the various States of the United States and in the District of Columbia, many statements and representations to the purchasing public concerning their said retreaded or recapped tires, the quality thereof, and the terms and conditions under which

said tires are offered for sale and sold. Among and typical of the representations so made by the respondents are the following:

1. That the tires purchased from the respondents will be identical in quality with the samples displayed to the purchaser by the salesman taking the order.

2. That 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 or patches.

4. That the tires shipped by the respondents will be of the size ordered by the purchaser and will be shipped to the purchaser from points in the vicinity in which the purchaser is located.

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

6. That the freight rate on respondents' tires will be a lower rate than the actual rate applying to such shipments.

7. That large concerns, such as Sears, Roebuck & Company, sell retreaded or recapped tires, and that the respondents supply Sears, Roebuck & Company with retreaded or recapped tires for resale to the purchasing public.

8. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, and that they will pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' products.

9. That Beho Rubber Co., Inc., 2441 Indiana Avenue, Chicago, Ill., The Best Tire House, 2433 Indiana Avenue, Chicago, Ill., The Modern Improved Retread Outlet, 709 South Dearborn Street, Chicago, Ill., and The Assured Remolded Tire Distributors, 2441 Indiana Avenue, Chicago, Ill., have no connection or affiliation with each other and that they are each separate and distinct businesses and in competition with each other in the sale and distribution of retreaded or recapped tires.

10. 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 new tires.

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

Many other statements and representations of similar import or meaning are made and used by the respondents in connection with the sale and distribution of their retreaded or recapped tires.

Respondents supply their sales agents with sales kits, order blanks, and other literature under the different names and addresses under which respondents do business, and with sample tires or cross-cut

sections of tires to be displayed to customers, and in connection with the trade names The Best Tire House, The Modern Improved Retread Outlet, and The Assured Remolded Tire Distributors, the order blanks supplied to such salesmen and upon which the signatures of the purchasers are secured contain under the designation "Warranty," "Our Warranty," or "Agreement" a disclaimer of liability for any promise or representation, express or implied, not set forth on said order blank. This disclaimer of liability for any promise or representation, express or implied, not set forth in said order blank is placed under the designation "Warranty," "Our Warranty," or "Agreement" for the purpose of concealing the disclaimer from purchasers.

Respondents also use various guarantees which lead purchasers to believe that said products are of good quality, and respondents represent that if such tires are not as guaranteed they will be replaced for one-half price.

PAR. 5. The aforesaid acts and practices, representations, and implications used and disseminated by the respondents as aforesaid are misleading and deceptive, for in truth and in fact respondents do not ship tires to purchasers of the same quality as the samples displayed by their salesmen, but make a practice of shipping shoddy and, in many cases, worthless merchandise instead; 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 made of old and useless tires. Respondents' tires are not free from boots and patches, and, in most instances, contain boots and patches. Respondents do not, in all instances, ship purchasers tires of the size ordered, and shipments of respondents' tires 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 applying to purchases from respondents is often much higher than it is represented to be by respondents' salesmen. Sears, Roebuck & Co. does not sell retreaded or recapped tires, and respondents do not sell retreaded or recapped tires to Sears, Roebuck & Co. Respondents do not supply purchasers with free tire racks, nor metal stands, nor do they pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' products.

Respondents, in supplying their salesmen with sales kits, order blanks, and literature for the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, and sample tires or cross-cut sections of tires to display to customers, thus enable the salesmen to misrepresent the true status of respondents' business, and to represent that the businesses conducted under the various trade names used are each in competition with the other, and

thereby they are enabled to procure purchases of respondents' products from persons having previous unsatisfactory dealings with respondents under one or the other of said trade names. In truth and in fact all orders secured by the respondents under any of said trade names, or in the name of the corporate respondent, are received at and filled from 2441 Indiana Avenue, Chicago, Ill., and not at the other listed addresses.

Respondents resort to the disclaimer of liability clause placed in said order blanks under the "Warranty" or other designations in denying liability for the promises and representations made to purchasers by their salesmen. The disclaimer of liability clause in such orders is not called to the attention of purchasers of respondents' products who sign such order blanks nor is it observed in most instances by such purchasers because of the fact that it is placed in an unusual and inconspicuous place in said order blanks. Respondents' guarantee under their warranty to replace unsatisfactory merchandise upon payment of one-half of the list price is in truth and in fact no guarantee at all, for the payment of this amount approximates the cost of the merchandise to the respondents and the purchaser is required to prepay the shipping charge before any such replacement is made.

Respondents make a practice of shipping unsatisfactory and worthless merchandise to purchasers, which, in many instances, is not worth the freight or shipping charges paid by the purchaser; in many instances respondents' merchandise is not suitable in any manner for the purpose for which it was intended and purchased by the purchaser, and the purchaser thereof will not secure "many miles" of service or any service whatsoever, from said tires, and the cost of the service obtained through the use of respondents' said tires is not but a fraction of the cost of the service secured from new tires, but is, in truth and in fact, generally in excess of the cost for service which would be incurred through the use of new tires. None of the respondents make or manufacture the retreaded or recapped tires offered for sale and sold by them, nor do any of respondents operate or control, a plant or factory where such tires are manufactured. The tires sold by the respondents are purchased from various sources.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of said retreaded and recapped tires have had, and now have, a capacity and tendency to, and do, mislead and deceive salesmen and prospective salesmen and purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true, and cause a substantial number of the purchasing public,

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because of said erroneous and mistaken belief, to purchase a substantial number of respondents' said tires.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice 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 December 14 A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Beho Rubber Co., Inc., a corporation, and Bernard Holtzman, Mae Murray, and Milton M. Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Charles S. Cox, and in opposition thereto by Ednyfed H. Williams and Albert E. Hallett, Jr., attorneys for the respondents, before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. The testimony and other evidence introduced were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, the testimony and other evidence, report of the trial examiner thereon and exceptions thereto, and briefs filed on behalf of the Commission and of the respondents. 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, Beho Rubber Co., Inc., is a corporation organized under the laws of the State of Illinois, and up until October 1939, its principal office and place of business was located at 2441 Indiana Avenue, Chicago, Ill., and since that date, at 2427 South Michigan Avenue, Chicago, Ill. Respondents, Bernard Holtz-

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man and Milton M. Holtzman, are president and vice president, respectively, and members of the board of directors of respondent corporation, and respondent Mae Murray at one time was secretary and a member of the board of directors of respondent corporation, but is no longer such secretary. All of the individual respondents, except Mae Murray have, since October 1939, had their offices and places of business at 2427 South Michigan Avenue, Chicago, Ill.

PAR. 2. The corporate respondent and the individual respondents are trading and doing business under various trade names, including "The Best Tire House," "The Modern Improved Retread Outlet," "The Manufacturers Retread Outlet," "The Assured Remolded Tire Distributors," "The Red Flame Tire Co.," "James Rubber Co.," "Retread Tire Distributors" and "The Honor Tire Exchange." All of the respondents have acted in concert and in cooperation each with the other in doing the things hereinafter set forth.

PAR. 3. Respondents for more than 18 months prior to December 14, 1939, were engaged and now are engaged in selling and distributing used tires which had been retreaded or recapped for use on automobiles, trucks and busses. Respondents cause said tires to be transported from their place of business in Chicago, Ill., to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintained and now maintain a course of trade in said tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents, in the course and conduct of their business, as set forth herein, have been and now are in competition with other corporations, individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondents, in the course and conduct of their business and for the purpose of inducing salesmen to accept employment with respondents and thus to further the sale of their products, have caused numerous advertisements to be inserted in newspapers and other publications circulated generally among prospective salesmen and purchasers throughout the United States, which contain statements and representations relative to employment with respondents. Similar statements and representations are made to prospective salesmen and purchasers by "crew managers" employed by respondents to travel in the various States of the United States, seeking salesmen and purchasers for respondents' products. Among and

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typical of the representations and statements made in newspapers and other publications are the following:

MAN WITH CAR—to travel selling automotive products; attractive salary and commission; must be ready to leave for road immediately. See M. H. Shepard, 8:30 to 2:30, 2441 South Indiana Ave.

SALESMAN WITH CAR TO TRAVEL. Selling tires; tire experience unnecessary. Possible earnings equal to 1928-1929 "boom days." No investment or deposit on kits necessary. See Mr. Hallett, Pennsylvania Hotel, * * *.

A witness testified that one of respondents' advertisements stated a salary of \$40 a week and commissions would be paid by respondents to agents. M. H. Shepard, one of respondents "crew managers," acting on behalf of respondents, advised persons answering respondents' advertisements for salesmen, that if they acted as respondents' salesmen in the sale of their tires, they would receive a salary of \$40 a week and commissions, and that all their expenses would be paid by respondents while they were being trained; that the respondents manufactured the retreaded or recapped tires sold by them and used only the best carcasses; that is, the best quality of used tires, in their retreaded or recapped tires.

The aforesaid representations and implications are false, misleading, and deceptive, in that respondents do not pay their salesmen a salary of \$40 a week, or any other sum per week, and a commission, nor do they pay any of the expenses of beginners employed by them; they do not manufacture the retreaded or recapped tires sold by them, and the carcasses used in the retreaded or recapped tires sold by them, in most instances, are only of average quality and in many instances are inferior to the average carcasses used in retreaded or recapped tires.

PAR. 6. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their products, have made, or caused to be made through their salesmen traveling throughout the various States of the United States many statements and representations to the purchasing public concerning respondents' retreaded or recapped tires, the quality thereof and the terms and conditions under which said tires are offered for sale and sold. Among and typical of the representations so made or caused to be made, are the following:

1. That the tires purchased from the respondents will be identical in quality with the samples displayed to the purchaser by the salesman taking the order.

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

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

4. That the tires shipped by the respondents will be of the size ordered by the purchaser and will be shipped to the purchaser from points in the vicinity in which the purchaser is located.

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

6. That the freight rate on respondents' tires will be a lower rate than the actual rate applying to such shipments.

7. That large concerns, such as Sears, Roebuck & Co., sell retreaded or recapped tires and that the respondents supply Sears, Roebuck & Co. with retreaded or recapped tires for resale to the purchasing public.

8. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, and that they will pay one-half the advertising expenditures incurred by purchasers in advertising respondents' products.

9. That Beho Rubber Co., Inc., 2441 Indiana Avenue; the Best Tire House, 2433 Indiana Avenue; the Modern Improved Retread Outlet, 709 South Dearborn Street; the Assured Remolded Tire Distributors, 2441 Indiana Avenue; Manufacturers Retread Outlet; Red Flame Tire Co., 1829 South State Street; James Rubber Co., Sixteenth Street and South Michigan Avenue; Retail Tire Distributors, 1656 Indiana Avenue, and since December 14, 1939, the Honor Tire Exchange, 2427 South Michigan Avenue—all located in Chicago, Ill.—have no connection or affiliation with each other, and that they are each separate and distinct businesses and are in competition with each other in the sale and distribution of retreaded or recapped tires.

10. 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 new tires.

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

PAR. 7. The representations and implications set forth in paragraph 6 are false, misleading, and deceptive in that:

1. Respondents do not ship tires to purchasers thereof of the same quality as the sample displayed to the purchaser by their salesman taking the order, but, on the contrary, respondents in filling such orders make a practice of shipping shoddy and in many cases, worthless tires.

2. Respondents have no way of knowing the age of the carcasses used in the retreaded or recapped tires sold by them, and in some instances the tires are made of old and useless tires.

3. Respondents' tires are not free from boots and patches, but in most instances contain boots and patches.

4. Respondents do not, in all instances, ship purchasers tires of the size ordered, and shipments of respondents' tires are not made from

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points in the vicinity in which the purchaser is located, except in the vicinity of Chicago, Ill.

5. Respondents do not ship tires to purchasers on consignments.

6. The freight rates applying to purchasers from respondents are often much higher than as represented by respondents.

7. Sears, Roebuck & Co. never bought any tires from respondents. From 1934 to February 1939, said company sold and distributed retreaded tires purchased by them from the Delco Co.; but since February 15, 1939, they have not sold any retreaded tires except in their Chicago retail branch store, to close out their stock.

8. Respondents do not supply purchasers with free tire racks or metal stands, nor do they pay one-half of the advertising expenditures incurred by purchasers in advertising respondents' tires.

9. Respondent's representations that the various concerns mentioned in subparagraph 9 of paragraph 6 have no connection or affiliation with each other and that they are each separate and distinct businesses and in competition with each other, are false, in that all of the said businesses are controlled by the respondents and are, in reality, merely trade names used by the respondents. Respondents have but one place of business, which is now located at 2427 South Michigan Avenue, and was formerly located at 2441 Indiana Avenue, Chicago. The various other addresses are of premises occupied by small business concerns with which respondents have arranged for the reception of their mail addressed to one of their several trade names, and the orders contained in the mail so received are filled from the place of business of the respondents.

10. Respondents tires are not suitable for the purposes for which they are purchased and will not give many miles of service in the normal course of usage at a fraction of the cost of new tires, but in fact, in many instances when so used they are only serviceable for a few days. In one instance shown a purchaser, upon receiving one of respondents' tires, sought to inflate it after mounting it on a spare, and the tire blew out at 35 pounds pressure.

11. Respondents have never manufactured the tires sold by them, nor do any of the respondents own or control a plant or factory wherein such tires are manufactured. Respondents purchase their tires from various sources.

PAR. 8. Respondents supply their salesmen with sales kits, order blanks and literature bearing the various trade names used by respondents, as hereinbefore set forth, and furnish them with cross-cut sections of tires to display to customers, thus enabling the salesmen

to misrepresent the true status of respondents' business and to represent that the businesses conducted under the various trade names used are each in competition with the other, and said salesmen are thereby enabled to make sales of respondents' products to persons having had previous unsatisfactory dealings with respondents under one or another of said trade names.

In truth and in fact, all orders secured by respondents under any of the said trade names, or in the name of the corporate respondent, were filled and shipped from respondents' place of business located at 2441 Indiana Avenue, Chicago, Ill., and not from the other listed addresses, until, in October 1939, and since that date, they have been filled from 2427 South Michigan Avenue, Chicago, Ill.

Respondents, in order to escape liability from the promises and representations made to purchasers by their salesmen, resort to a disclaimer, of liability clause placed in its order blanks under the "warranty" clause. The disclaimer of liability clause in such orders is not called to the attention of purchasers of respondents' products who sign such order blanks, nor in most instances is it observed by such purchasers, because it is so inconspicuously placed in the order blanks, and purchasers assume, and have the right to assume, that the "warranty" clause is intended for their protection. Respondents, in their warranty clause, guarantee to replace unsatisfactory merchandise upon payment of one-half of the list price, but this is, in fact, no guarantee at all, as the payment of this amount approximates the cost of the tires to the respondents, and the purchaser is required to pay the shipping charges before any such replacement is made.

Respondents make a practice of shipping unsatisfactory and worthless tires to purchasers, which in many cases, are not worth the freight or shipping charges paid by the purchaser. In many cases the tires are not in any manner suitable for the purpose for which they were intended and purchased.

PAR. 9. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of their retreaded or recapped tires, have had, and now have, the capacity and tendency to, and do, mislead and deceive salesmen and prospective salesmen, and purchasers and prospective purchasers of respondents' tires into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief, to act as salesmen for the respondents and to purchase substantial numbers of said tires.

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CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, 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, the answers of respondents, testimony, and other evidence in support of and in opposition to the allegations of the complaint, the report of the trial examiner thereon and exceptions thereto, and briefs filed in behalf of the Commission and of the respondents; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Beho Rubber Co., Inc., a corporation, also trading as the Best Tire House, the Modern Improved Retread Outlet, and the Assured Remolded Tire Distributors, its officers, directors, agents, representatives, and employees, and respondents Bernard Holtzman, Mae Murray, and Milton M. Holtzman, individually and as officers and directors of Beho Rubber Co., Inc., trading under its corporate name or under any of its said trade names, or any trade name or names, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of retreaded or recapped tires, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. By the use of purported samples or otherwise that the tires sold by respondents are of a quality or value different from that of the actual quality or value of such tires.

2. That the "carcasses" used by respondents in their retreaded or recapped tires are less than 1 year old, when such is not the fact.

3. That tires which are not free from boots or patches are free from boots or patches.

4. That the tires shipped by respondents will be of sizes ordered by the purchaser, unless said sizes are furnished.

5. That tires ordered by purchasers will be shipped from any point other than the actual point of shipment.

6. That respondents will ship tires to purchasers on consignment unless such tires are shipped on consignment.

7. That the freight rate on respondents' tires will be lower than the actual rate applying to such shipments.

8. That, except for sale over the counter at its retail store in Chicago, Sears, Roebuck & Co. sell retreaded or recapped tires.

9. That respondents supply Sears, Roebuck & Co. with retreaded or recapped tires for resale to the public.

10. That respondents will supply purchasers of their tires with free tire racks and metal tire stands, when such is not the fact.

11. That respondents will pay one-half or any other portion of the advertising expenditures incurred by purchasers in advertising respondents' products unless respondents pay such amounts to such purchasers as represented.

12. That the business conducted by respondents under their several trade names has no connection with and is not a part of the business of respondents.

13. That tires which contain boots or patches, rotten rubber or other defects which render them not suitable for ordinary usage are suitable for ordinary usage and from representing that such tires will give many miles of service in the normal course of usage at a fraction of the cost of new tires.

14. That respondents manufacture the retreaded or recapped tires sold by them.

15. That any specified salary or commission is paid salesmen for the sale of respondents' products in excess of that actually paid.

16. That persons learning to become salesmen will be reimbursed for the expenses incurred by them in this connection, when such is not the fact.

17. That tires are sold under a warranty against defects, unless all the terms and conditions of such warranty are conspicuously set forth and strictly complied with.

And do further cease and desist from—

Inserting in the warranty clause of their order blanks a disclaimer of liability for promises and representations made purchasers by their salesmen.

It is further ordered, That the respondent 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
LIFE SAVERS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT.
15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4571. Complaint, Aug. 18, 1941—Decision, Dec. 23, 1941

Where a corporation engaged in the manufacture of its "Life Savers" confection, and in the competitive interstate sale and distribution thereof to corporate and cooperative chain stores, individual retail stores, and department stores, who were in substantial competition in the resale of said products, it selling its merchandise of like grade and quality at a uniform price per box, less 20 percent—

- (a) Granted and paid, generally at the end of each quarter of a year, to some corporate retail food, drug, and variety chains, to whom, in some instances, delivery was made at each individual store, and in others to said chains' central warehouses, a sum equal to 10 percent of the net dollar volume of purchases made at its aforesaid invoice price, while refusing such 10 percent payment to other chain stores, department stores, single unit retail stores, and jobbers competitively engaged with such favored purchasers;

With result of lessening competition in the line of commerce concerned, of inducing purchasers receiving such payment, in many instances, to discontinue dealing in competitors' products and, in other instances, of substantially decreasing their purchases thereof, and of injuring competition with such customers of said corporation who knowingly received aforesaid discount:

Held, That in granting and paying discount, as aforesaid, corporation violated the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said corporation, engaged as aforesaid—

- (b) Paid and contracted to pay sums of money equal to 10 percent of the net invoice amount of purchases to numerous corporate chain store customers in consideration of their entering into and fulfilling an agreement whereby some of them collected orders from their individual retail stores and transmitted the same to it, while other retail units sent in such orders direct, and shipped its said products to the central warehouse or the individual stores of said chain-store customers, who, additionally and pursuant to agreement in question, provided displays of said confection by each retail store in a manner acceptable to it; while failing to make such payments as compensation for like services and facilities available to other customers, competitively engaged in the distribution of said "Life Savers," including any customer who had received from it any other 10 percent allowance:

Held, That in practice aforesaid, corporation in question violated the provisions of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. James A. Purcell*, trial examiner.

Mr. A. W. DeBirny for the Commission.

Mr. Jerome L. Isaacs of Rogers, Hoge & Hills, of New York City, for respondent.