

IN THE MATTER OF

HARRY FROMAN, TRADING AS SUPREME SALES
COMPANY AND RELIABLE PREMIUM HOUSECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3559. Complaint, Aug. 29, 1938—Decision, June 23, 1942*

Where an individual, engaged in competitive interstate sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and numerous other articles of merchandise—

- (a) Sold them through use of sales circular and a pull card device, under a plan by which the particular article received and the price paid therefor were dependent upon the legend disclosed under tab of card selected by chance by purchaser, and operator of card, after sale of all chances thereon and remission of money, was compensated by choice of a premium or cash; and thereby

Supplied to and placed in the hands of others a means of conducting lotteries in the sale of his merchandise, notwithstanding subterfuge "Notice to Purchasers" offering right to refuse purchase of article; contrary to an established public policy of the Government and in violation of the criminal laws, and in competition with many who are unwilling to use such, or any method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his said competitors, from whom trade was thereby unfairly diverted to him; and

Where said individual, engaged as aforesaid—

- (b) Made such statements and representations in his advertising circulars as "Gifts for all," "How to get your Gifts without any cost to you," "Special Offer: 2 Extra Valuable Surprise Gifts Free"; when none of his articles designated as premiums or gifts were free but were in fact delivered as compensation for services, and price thereof was included in price of other articles which representative had to sell or procure sale of, and, in case of at least one, having to pay money in addition to service;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it to purchase substantial quantities of said products because of such mistaken belief, and unfairly diverting trade to him from his competitors:

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

Before *Mr. Randolph Preston* and *Mr. Andrew B. Duval*, trial examiners.

Mr. D. C. Daniel, and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur D. Herrick, 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 Harry Froman, individually, and trading as Supreme Sales Co. and Reliable Premium House, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Froman, is an individual, trading as Supreme Sales Co. and Reliable Premium House. Respondent first operated under the name of Reliable Premium House at 171 Broome Street, New York, N. Y., but discontinued business at that address and now has his principal office and place of business located at 34 East Twelfth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, electric lamps, carving sets and pie servers, bedding, cameras, dresser sets, salt and pepper sets with trays, cosmetics, tooth brushes, jewelry, rain-coats, cigarette cases and lighters, kitchenware, tableware, suitcases, dinner sets, pipes, comb and brush sets, beauty sets, carpet sweepers, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States other than New York and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to rep-

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representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive, or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named articles of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery

scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards, use and have used the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance, or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business as herein-above related, respondent causes, and has caused, various false, deceptive, and misleading statements or representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all inclusive:

Gifts For All.

How To Get Your Gifts Without Any Cost To You.

Beautiful Gifts Or Cash To Be Had At Absolutely No Cost.

Special Offer: Extra Valuable Surprise Gifts Free.

We Pay All Shipping Charges.

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The effect of the foregoing false, deceptive, and misleading statements or representations of respondent in selling and offering for sale such articles of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several states of the United States and in the District of Columbia by inducing them to mistakenly believe that respondent gives away certain of his said articles of merchandise without cost to his representatives, and that said respondent pays all shipping charges on all of his said articles of merchandise.

PAR. 6. In truth and in fact none of respondent's so-called premiums or gifts are given away "free" or without cost, but said so-called premiums or gifts, which are represented as being "free" or without cost to said representatives, are either purchased with labor by said representatives, or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondent does not pay the shipping charges on all of his said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondent's said articles of merchandise.

PAR. 7. The use by respondent of the false, deceptive and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements or representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in com-

merce within the intent and meaning of the Federal Trade Commission Act.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Froman, individually, and trading as Supreme Sales Co., and Reliable Premium House, charging him with the use of unfair methods of competition in commerce in violation of and provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Randolph Preston and Andrew B. Duvall, trial examiners, of the Commission, theretofore designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Harry Froman, is an individual, trading as Reliable Premium House, with his principal place of business located at 34 East Twelfth Street, in the city and State of New York. During the year 1936 respondent traded also under the name Supreme Sales Co., but has not used that name since said date. Respondent is now, and since the year 1935 has been, engaged in the sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and numerous other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of his said business the respondent is engaged in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In promoting the sale of his products, the respondent, distributes advertising or sales circulars by the United States mails to prospective customers or representatives located in various States of the United States. These circulars contain pictorial representations and descriptive matter with reference to merchandise offered as compensation for the sale of certain of respondent's merchandise, and pictorial representations and descriptive matter of certain of the articles of merchandise offered for sale. Each of said circulars contains also what is commonly known as a pull card device.

Said pull card device consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. Neither the name of the article of merchandise nor the price thereof, is disclosed to a purchaser or prospective purchaser until after the tab has been separated or removed from the card. Adjacent to said device there is a list of the articles of merchandise and the prices thereof corresponding to the various articles of merchandise and the prices thereof as concealed under said tabs. When a purchaser has detached a tab and learned what article he is to receive and the price he is to pay for it, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them, but all of the articles are distributed to the purchasers for the prices on the tabs which they pull or remove from said device. The apparent greater values and regular prices of some of such articles of merchandise as compared with the prices the prospective purchaser will be required to pay in the event he secures the privilege of purchasing one of said articles of merchandise induces members of the purchasing or consuming public to select and pull the tabs in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid therefor. The specific article which the purchaser receives, the amount of money he will be required to pay for it, and the obtaining of an article of greater value than the price designated therefor, are thus determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the articles of merchandise listed under said tabs and has collected the amounts charged therefor, the sum of these

amounts is remitted to the respondent. The respondent, upon receipt of such amounts, ships to said representative, the merchandise sold by means of said device, together with a premium for the representative as compensation for operating the device and selling and distributing the merchandise. The premium is selected by said representative from articles of merchandise pictured in the sales or advertising circular. If the representative so desires, he may deduct a cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondent, the representative delivers each article thereof to the purchaser in accordance with the list prepared when the tabs were removed or detached from the device as above-described.

Immediately above the pull tab device on the circular, there appears the following:

NOTICE TO PURCHASERS—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this book the price shown on slip. If you do not want the article you need not buy it.

The Commission finds that regardless of said notice, the said articles of merchandise have been, and are, in fact sold and distributed by means of said pull card device in accordance with the sales plan or method hereinabove described. The successful operation of respondent's sales plan is dependent upon the ability of the operator to sell all the articles listed so as to permit remittance of the required amount to the respondent in order to obtain the merchandise purchased. The purchaser knows the articles listed, and the prices to be paid therefor before he selects and removes the tab from the pull card device. The element of chance is the specific article to be purchased and the amount of money to be paid for it. The operation of the plan strictly in accordance with the so-called "Notice to Purchasers" would not tend to net the operator a return sufficient to warrant completion of the plan and would thereby make the plan inoperative, and to this extent such notice is merely a subterfuge.

It does not appear that any person who pulled a tab from one of respondent's pull card devices ever refused to take and pay for the merchandise designated on the tab. The record shows that at least one representative, by the use of said sales plan, disposed of several assortments of respondent's merchandise without having anyone refuse to take and pay for the merchandise indicated on the tab he pulled. Moreover, from aught that appears in the record all the instructions received by the representative or operator for the operation of said sales plan are contained in the advertising circular forwarded by the respondent. It is significant that in these instructions there is no direction as to what should be done in the event all of the articles of

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merchandise are not sold. The circular likewise fails to contain any information as to the premium or compensation which can be obtained by the representative or operator in the event one or more of the purchasers refuse to accept the article listed on the tab he removes from the pull tab device. It is clearly apparent from the circulars, on the other hand, that all of the articles listed thereon are to be sold. The following is typical of the instructions appearing on each of said circulars:

Ask your friends and neighbors to pull one of the advertising slips **ON THE NEXT PAGE**. On the back of each slip you will find the name of the article and its price plainly marked. You collect from the purchaser the price stated on the slip for which he will receive the article mentioned on it.

The prices start at 9c and **NO ARTICLE COSTS MORE THAN 39c**. When all the articles have been sold you will have collected \$7.65. Then fill out the attached order blank and check the premium you want for your prize. As soon as we receive your order and money order we will mail you the 22 articles, as well as your premium.

The order blank referred to in these instructions reads in part as follows:

After you have sold the 22 articles of merchandise and collected \$7.65, fill out this blank, stating the correct number of premiums you have selected. Also write your name and address plain, and mail it to us in the enclosed envelope.

Gentlemen:

Please ship at once all charges prepaid the 22 articles of merchandise as sold amounting to \$7.65 and one of the valuable premiums.

REWARD PREMIUM NO. ----- COLOR -----

PAR. 4. The Commission finds that the persons or representatives to whom respondent has furnished or distributed said sales or advertising circulars, containing said pull card device, use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the sales plan or method hereinabove described. Respondent has thus supplied to and placed in the hands of others a means of conducting lotteries in the sale and distribution of his said merchandise in accordance with said sales plan or method. Such merchandise has thus been sold or distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondent has reaped the benefits therefrom. The use by the respondent of said sales plan or method in the sales of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and is in violation of the criminal laws.

PAR. 5. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent in commerce among and between the various States of the United States, are

unwilling to adopt and use said method or any method involving a game of chance or a sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above-described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or any equivalent method. The use of said method by respondent, because of said game of chance, has a capacity and tendency to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 6. In addition to the acts and practices hereinabove described, the respondent also causes, and has caused, various statements to appear in his advertising circulars, of which the following are typical examples:

Gifts for All;

How to Get Your Gifts Without Any Cost To You;

Beautiful Gifts Or Cash To Be Had At Absolutely No Cost;

Special Offer: 2 Extra Valuable Surprise Gifts Free.

Each and all of said statements and representations are false, deceptive and misleading. None of respondent's articles of merchandise designated as premiums or gifts are given away "free," but, instead, said articles are in fact delivered as compensation for services rendered, and the price thereof is included in the price of other articles of merchandise which the representatives must sell, or procure the sale of, before they may obtain said premiums or gifts. For at least one of the premiums or gifts described in respondent's circulars a certain sum of money must be paid by the representative in addition to the labor performed or services rendered.

PAR. 7. The use by the respondent of the false, deceptive and misleading statements and representations as set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondent's products as a result of such erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to the respondent from his competitors who are likewise engaged in the sale and distribution of similar or like articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Randolph Preston and Andrew B. Duvall, trial examiners of the Commission theretofore designated by it, in support of the allegations of the complaint and in opposition thereto, and briefs in support of and in opposition to the complaint, 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, Harry Froman, individually, and trading as Supreme Sales Co., and Reliable Premium House, or under any other trade name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to agents or distributors, or to members of the public pull cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

4. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise which are given as compensation for services rendered.

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

Complaint

IN THE MATTER OF

MONTGOMERY WARD & COMPANY, INC.

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

Docket 4447. Complaint, Jan. 15, 1941—Decision, June 23, 1942

Where a corporation, engaged in interstate sale and distribution by mail order of merchandise, including certain devices for feminine use described by it as "Ward's Posture-Aid Health Belts," "Diab Reducers," and "DuPont Velutex Perforated Reducers"—

- (a) Made such statements, in its catalogs, along with illustrations of such devices, as "Reduce Excess Flesh," "Correct Figure Faults," "Reduce your diaphragm and abdomen," "Mold your abdomen gently," "Correct pendulous abdomens," "Take 2 to 3 inches from abdomen and diaphragm," and "Make reducing easy";

The facts being that, while such devices would afford artificial support, lessen the prominence of pendulous abdomens, and change the physical appearance by compressing that portion of the body about which they were placed, they would not cause a reduction of local body tissue, or effectively remove fat; and

- (b) Represented, through use of terms "Health" and "Reducers" as part of the name of said devices, that the use thereof promoted health and reduced wearer's weight; when in fact such results were not thus obtainable;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby inducing it to purchase said devices, because of such mistaken belief:

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.

Before *Mr. William C. Reeves*, *Mr. John W. Addison*, and *Mr. John J. Keenan*, trial examiners.

Mr. Eldon P. Schrup for the Commission.

Mr. Francis D. Roth and *Mr. L. E. Oliphant*, of Chicago, Ill., for respondent.

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 Montgomery Ward & Co., Inc., a corporation 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: