

Syllabus

IN THE MATTER OF
CUTTER LABORATORIES

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

Docket 4348. Complaint, Oct. 12, 1940—Decision, Aug. 14, 1942

Where a corporation, engaged in manufacturing and compounding its "Blacklegol" vaccine for blackleg in cattle, and in competitive interstate sale and distribution thereof from its place of business at Berkeley, Calif., or from its depots and branch offices in various cities to distributors, druggists, and veterinarians; by means of advertisements in newspapers and periodicals, and by circulars, pamphlets and other advertising literature—

- (a) Represented that "Blacklegol" was the first preparation which combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, and that by reason thereof it was 100 percent efficient in giving immunity to blackleg;

The facts being blackleg bacterin, which had been compounded and sold by it and its competitors for about 10 years prior to the advent of "Blacklegol" was such a combination, and "Blacklegol," in fact, was blackleg bacterin to which had been added aluminum hydroxide; its immunizing value, if any, over and above bacterin or concentrated bacterin (or bacterin from which the cultural aggressin or broth was removed) was dependent upon the addition of such chemical element; there is no vaccine preparation known to science which can be considered 100 percent effective in immunizing cattle against said infectious disease, it appearing that administration of any vaccine to cattle already infected has no value in preventing death, and the natural resistance of an animal being also a factor which may affect the immunizing value of any vaccine preparation; and

- (b) Made false and deceptive representations which unfairly disparaged its competitors' products through representing, as aforesaid, that until the advent of "Blacklegol" the combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin had never been combined in a vaccine preparation, and that the efficiency of either, both of which were sold and distributed by its competitors, was equal to only 50 percent of its own said product in producing blackleg immunity in cattle;

The facts being that, as above noted, said filtrate and organisms had been combined in the vaccine blackleg bacterin for about 10 years prior to the advent of "Blacklegol"; and there was no scientific foundation for its representation that the efficiency of blackleg concentrated bacterin or blackleg cultural aggressin was equal to only 50 percent of that of its own preparation;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing it, because of such belief, to purchase substantial quantities of said vaccine in preference to that of competitors; whereby trade was unfairly diverted to it from them:

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.

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As respects claim made in behalf of the manufacturer and seller of "Blacklegol"—a vaccine which was recommended by it for use as a means of rendering cattle immune to blackleg and, like blackleg bacterin, was a combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin, with the addition of aluminum hydroxide—that concentrated bacterin and cultural aggressin are only 50 percent efficient in producing immunity to blackleg as compared with "Blacklegol": Conclusions reached from tests upon guinea pigs conducted with "Blacklegol" and with blackleg bacterin and certain blackleg vaccines sold and distributed by competitors, including at least one concentrated bacterin preparation (i. e., from which the cultural aggressin had been removed), did not warrant or substantiate claim of said manufacturer and seller.

Before *Mr. Randolph Preston, Mr. Edward E. Reardon and Mr. John J. Keenan*, trial examiners.

Mr. Floyd O. Collins, Mr. Merle P. Lyon, Mr. Charles S. Cox and Mr. Robt. N. McMillen for the Commission.

Boyken, Mohler & Beckley and Mr. Robert H. Eckhoff, of San Francisco, Calif., 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 Cutter Laboratories, 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:

PARAGRAPH 1. Respondent, Cutter Laboratories, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, and having its principal office and place of business at Fourth and Parker Streets, Berkeley, Calif., and with depots and branch offices at Los Angeles, Calif., Chicago, Ill., San Antonio, Tex., Seattle, Wash., Denver, Colo., Fort Worth, Tex., El Paso, Tex., Boise, Idaho, New Orleans, La., and other places.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, compounding, advertising, and selling a certain vaccine preparation containing drugs, described by it as "Blacklegol," and recommended by it for use as a means of rendering cattle immune to an ailment known as "Blackleg." Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in Berkeley, Calif., or from other points of location of respondent's depots or branch offices, to purchasers thereof located in the various States of the United States other than the

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States in which are located the points of origin of the shipments. Respondent's said "Blacklegol" is sold to distributors, druggists, and veterinarians who in turn resell the same to the retail trade and other members of the purchasing public. Respondent at all times mentioned herein, has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for more than 3 years last past, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of Blackleg Vaccines in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its 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 has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly, or indirectly, the purchase of its 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 the United States mails; by advertisements in newspapers and periodicals, and by circulars, pamphlets, catalogs, and other advertising literature, are the following:

Blacklegol 100% efficient.

Blacklegol—the first 100% efficient blackleg vaccine ever produced.

Blacklegol gives life immunity with one shot regardless of age.

With the advent of Blacklegol, a double vaccination became unnecessary, even on the worst blackleg infected land.

Cattlemen * * * have found out by experience that they can vaccinate their Spring calves once with this improved vaccine and then forget about blackleg.

BLACKLEGOL regardless of age, one 5 c. c. dose protects for life!

Blacklegol is not an aggressin nor bacterin. It is a blackleg vaccine entirely different from any other blackleg vaccine ever marketed; and is the first vaccine to ever be definitely and unconditionally recommended for the one dose immunization of suckling calves.

Not a single calf has died of blackleg following immunization with Blacklegol * * * A statement which truthfully cannot be made about any other type of blackleg vaccine. ONE DOSE LIFE IMMUNITY IN SUCKLING CALVES.

Blacklegol—a vaccine so potent that not a single calf has died of blackleg following immunization at any age with Blacklegol.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondent has represented that said preparation is 100 percent effective; and that the immunization effect from the use of said preparation is invariably unailing or permanent.

PAR. 6. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact respondent's preparation is not 100 percent effective; said preparation is neither invariably unailing nor permanent; and there have been deaths from blackleg of animals treated with respondent's said preparation.

PAR. 7. In the manner aforesaid the respondent has made numerous unfair and disparaging statements concerning preparations of competitors which are designed, intended and used for the same purposes as respondent's said preparation. Typical of the unfair and disparaging representations so made by the respondent are the following:

The superiority of Blacklegol can best be understood by comparing it with two well-known present day products—Concentrated Bacterin, and Cultural Aggressin (Filtrate). * * * In each case we refer to ours as well as any other good bacterin or aggressin.

Cultural Aggressin 50% efficient.

Concentrated Bacterin 50% efficient.

* * * BLACKLEGOL is more potent than other types of vaccine—. This is because a chemical contained only in Blacklegol holds the vaccine in the animal's tissues until even the last drop has been used to produce immunity. Insist on Blacklegol—guaranteed to produce a greater immunity than any bacterin or aggressin ever marketed.

If you could measure vaccine potency it would look like this * * * Blackleg Pills * would scarcely fill the bottom of the cup; Aggressin * not more than a quarter full; Bacterin * about two-thirds; Blacklegol to overflowing. * In each case we refer to ours as well as any other good bacterin, aggressin or pills. (Appearing underneath are pictures of four glass measuring cups indicating the respective quantities referred to above, with the names "Blackleg Pills", "Aggressin", "Bacterin" and "Blacklegol" respectively appearing under said cups.)

Progressive cattlemen will not be held to the old less potent, less reliable products such as bacterin and aggressin any more than they will put up with the Model T "just as good" in place of the V-8.

* * * Blacklegol is so cultured that both organisms and supernatant are highly antigenic, thus producing a vaccine compared to which concentrated bacterin and cultural aggressin are only 50% efficient.

PAR. 8. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondent has misleadingly and unfairly disparaged "bacterin" and "aggressin" preparations of competitors by publishing the false assertion that immunity obtainable from said competitive preparations is only one-half that of respondent's said preparation; that said preparation assures immunity even to the last drop of said prep-

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aration after the same is injected into the animal's tissues and that competitors' preparations do not produce such immunity.

PAR. 9. The foregoing false, misleading, and disparaging representations as hereinabove set forth are exaggerated, misleading, and untrue. In truth and in fact there is no scientific basis for respondent's claim that competitive preparations, "aggressin" and "bacterin," are only 50 percent efficient or that respondent's said preparation produces as immunity double that of said competitive preparations; nor is there scientific basis for respondent's claim that its said preparation produces immunity to the last drop when injected into the animal's tissues, and that competitors' preparations do not produce such immunity.

PAR. 10. The use by respondent of the foregoing false, disparaging, deceptive, and misleading statements and representations with respect to this 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 false statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondent's vaccine in preference to that of competitors. As a result thereof injury has been done and is now being done by respondent to competitors and to competition in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and respondent's competitors, and constitute unfair and deceptive acts and practices in commerce, and unfair methods of competition 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 October 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Cutter Laboratories, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, Merle P. Lyon, and Charles S. Cox, attorneys for the Commission, and in opposition to the allegations of the complaint by W. Bruce

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Beckley and Robert H. Eckhoff, attorneys for the respondent, before Randolph Preston, Edward E. Reardon, and J. J. Keenan, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission upon said complaint, the answer thereto, testimony, and other evidence, report of the trial examiners upon the evidence, and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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, Cutter Laboratories, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and having its principal office and place of business at Fourth and Parker Streets, Berkeley, Calif., and with depots and branch offices at Los Angeles, Calif.; Chicago, Ill.; San Antonio, Tex.; Seattle, Wash.; Denver, Colo.; Ft. Worth, Tex.; El Paso, Tex.; Boise, Idaho; New Orleans, La.; and other places.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, compounding, and selling, among other products, a certain vaccine preparation designated "Blacklegol" and recommended by it for use as a means of rendering cattle immune to an ailment known as blackleg. Respondent causes said preparation, when sold, to be transported from its place of business in Berkeley, Calif., or from other points of location of respondent's depots or branch offices, to purchasers thereof located in various States of the United States other than the States in which are located the points of origin of such shipments. Respondent's said Blacklegol is sold to distributors, druggists, and veterinarians, who in turn resell the same to the retail trade and to other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and for several years last past has been, in substantial competition with other corporations and with individuals, firms, and partner-

ships engaged in the sale and distribution of blackleg vaccines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, for the purpose of inducing the purchase of its product Blacklegol, respondent has disseminated false, deceptive, misleading, and disparaging statements and representations with reference to said product, by means of advertisements inserted in newspapers and periodicals and by circulars, pamphlets, and other advertising literature. Among and typical of such false, deceptive, misleading, and disparaging representations are the following:

1. That respondent's preparation Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg.
2. That the efficiency of certain other vaccine preparations known as blackleg concentrated bacterin and blackleg cultural aggressin is equal to only 50 percent of that of Blacklegol in producing immunity from the disease of blackleg.

PAR. 5. Blackleg is an infectious disease caused by a microbe which is found in the soil of certain localities and is one of the most prevalent and widespread of the infectious diseases of cattle. The organisms causing blackleg live in the ground and enter the body with feed, water, and through wounds in the skin. The infection is very acute and runs a very short course, usually with fatal results. The characteristic lesions in blackleg are swelling in one or more quarters and when the skin is removed from the swollen area, the tissue underneath the skin is swollen, contains gas, and is dark in color. The disease is of such short duration that the infection in an animal is usually not discovered until after death has occurred. The procedure followed in those areas where blackleg infection is prevalent is to vaccinate the animals before weaning or before exposure to infection.

There have been a number of vaccine preparations developed in an effort to combat this disease, the first of which was blackleg vaccine, developed around 1890, consisting of powdered muscle tissue from animals which had died from blackleg and which contained the organisms of blackleg in a spore form. This vaccine had the effect of giving the animal a mild case of blackleg, to which it could establish natural immunity, but was rather dangerous to use as it might produce death from blackleg if too great a quantity were given or if the resistance of the animal to blackleg was below normal.

The next form of blackleg vaccine was a product known as blackleg natural aggressin, made from the tissue of animals which had died of blackleg. The juices were pressed out of the muscle tissue and sterilized by filtration and administered hypodermically under the skin.

The next product developed was known as blackleg cultural aggressin or filtrate, which was made by growing blackleg organisms in a suitable broth, from which the organisms were filtered out, leaving the filtrate, which was injected under the skin.

The next step was the production of blackleg bacterin, in which the blackleg organism was grown in broth and sterilized by the addition of chemicals, and both the broth and the organisms were injected. There have been modifications of the bacterin, such as concentration and improvements in growth methods. Concentrated bacterin is the blackleg bacterin from which the broth has been removed, leaving the blackleg organisms.

Blackleg vaccine, blackleg cultural aggressin, and blackleg bacterin, both whole and concentrated, are sold by the respondent and by many of its competitors.

In 1934 the respondent developed a vaccine which it designated "Blacklegol," which was also known as "Blackleg Antigen," and, more recently, as "Blackleg Bacterin, aluminum hydroxide adsorbed." This product is identical with blackleg bacterin, with the exception that aluminum hydroxide has been added, which has the effect of causing the vaccine to be absorbed by the cells of the tissue in smaller amounts, in a sort of delayed process similar to the effect produced by a succession of small doses over a period of time.

In the use of the vaccines, blackleg cultural aggressin, and blackleg bacterin, it was customary in badly infested areas to give two separate injections of the vaccine, the first before the weaning period and the second after the weaning period, although in cases where injection was given after weaning period, one injection was usually considered to be sufficient to establish immunity, particularly in the case of blackleg bacterin. In the case of Blacklegol, the respondent recommended only one vaccination because of the adsorption effect produced by the aluminum hydroxide.

PAR. 6. In connection with the representation that its preparation Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg, the respondent has issued statements and representations in advertisements and periodicals and in pamphlets, of which the following is a typical example:

Guaranteed to Produce a Greater Immunity than Any Bacterin or Aggressin Ever Developed.*

The superiority of Blacklegol can best be understood by comparing it with two well-known present day products—Concentrated Bacterin, and Cultural Aggressin (Filtrate).*

Cultural Aggressin is made by growing blackleg organisms in a broth-like medium (bacteria food) and then filtering the organisms out, leaving the filtrate, which after further processing is called Cultural Aggressin (or Filtrate) and used as a vaccine.

* In each case we refer to ours as well as any other good bacterin or aggressin.

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Concentrated Bacterin is made by much the same process—up to a certain point! Blackleg organisms are grown in a broth-like medium. Then the organisms are separated from the Cultural Aggressin; but in this case it is the Cultural Aggressin which is thrown out, while the organisms and the small amount of fluid remaining are further processed, called Concentrated Bacterin, and used as a vaccine.

To repeat!—the Cultural Aggressin is thrown away to make Concentrated Bacterin, and the Concentrated Bacterin is thrown away to make Cultural Aggressin! (Note illustrations on the left.)

It seems silly doesn't it? But it isn't, or at least it wasn't until the introduction of Blacklegol! The difficulty lay in the fact that scientists knew how to culture blackleg organisms so that either the organisms or the filtrate would be fairly high in immunizing value, but never both at the same time.

The answer to that problem took years to work out. Hundreds of experiments were made, in which thousands of laboratory animals were used. A small fortune was expended, but the answer was worth it as it brought forth Blacklegol—the first 100% efficient blackleg vaccine ever produced.

Have you ever heard of a case of blackleg following Blacklegol?

It's possible; in fact, our laboratory examination proved it did happen in one case, and it may have in others, although we were able to trace the presence of the blackleg organism in only this one of the dozen odd reports of losses which have come in during the past three years. Accept these dozen odd as actual losses and with the millions of calves successfully vaccinated with Blacklegol, mathematically you still have more chance of winning the Irish Sweepstakes than you have of losing a calf from blackleg if you vaccinate with Blacklegol!

By means of the statements hereinabove set forth and others similar thereto not specifically mentioned herein, the respondent represents that Blacklegol is the first preparation which has combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, and that, by reason of this combination, Blacklegol is 100 percent efficient in giving immunity to the disease of blackleg. In truth and in fact, Blacklegol is not the first vaccine preparation which has combined the filtrate of cultural aggressin and the organisms of concentrated bacterin, but, instead, this combination is the method by which blackleg bacterin is made. Blackleg bacterin had been compounded and sold by the respondent and by respondent's competitors for approximately ten years prior to the advent of Blacklegol, and Blacklegol is, in fact, blackleg bacterin to which has been added aluminum hydroxide, and its immunizing value, if any, over and above bacterin or concentrated bacterin is dependent upon the addition of the above chemical element. There is no vaccine preparation known to science today which can be considered to be 100 percent efficient or effective in the immunizing of cattle against the infectious disease of blackleg. The administration of any vaccine preparation to cattle already infected with the blackleg organism has no value in preventing death from the disease. Furthermore, the natural re-

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sistance of the animal, or lack of such natural resistance, is a factor which may affect the immunizing value of Blacklegol or any other vaccine preparation.

PAR. 7. In connection with the representation by the respondent that efficiency of certain other vaccine preparations known as blackleg concentrated bacterin and blackleg cultural aggressin is equal to only 50 percent of that of Blacklegol in producing immunity in cattle to the disease of blackleg, the respondent has issued false and deceptive statements and representations in advertisements and periodicals and in pamphlets, which unfairly disparage products sold and distributed by its competitors, of which the following is a typical example:

The reason for the superiority of Blacklegol over the older types of blackleg vaccines is twofold FIRST: It is produced in such a way that both the organisms and their by-products of growth are high in immunizing value. Hitherto scientists knew how to culture the blackleg organism so that the organisms themselves would be high in immunizing value (concentrated bacterin); or so that the supernatant fluid containing the by-products of growth (cultural aggressin) would be high in immunizing value; but were unable to make cultures in which both would have high protective value. This problem was solved by Cutter research bacteriologists. * * * Blacklegol is so cultured that both organisms and supernatant fluid are highly antigenic, thus producing a vaccine compared to which concentrated bacterin and cultural aggressin are only 50% efficient.

By means of the statements hereinabove set forth and others similar thereto not specifically mentioned herein, the respondent represents that until the advent of Blacklegol the combination of the filtrate of cultural aggressin and the organisms of concentrated bacterin had never been combined in a vaccine preparation, and that the efficiency of blackleg concentrated bacterin and blackleg cultural aggressin, both of which are sold and distributed by respondent's competitors, is equal to only 50 percent of that of Blacklegol in producing immunity in cattle to the disease of blackleg. In truth and in fact, the filtrate of cultural aggressin and the organisms of concentrated bacterin had been combined in the making of the vaccine blackleg bacterin for approximately ten years prior to the advent of Blacklegol. There is no scientific foundation for the representation that the efficiency of blackleg concentrated bacterin or blackleg cultural aggressin is equal to only 50 percent of that of respondent's preparation Blacklegol in producing immunity to the disease of blackleg, either because of the combination of the filtrate of cultural aggressin with the organisms of concentrated bacterin or because of the inclusion of the chemical element aluminum hydroxide in respondent's preparation.

Certain tests upon guinea pigs were conducted with respondent's preparations Blacklegol and blackleg bacterin and certain blackleg vaccines sold and distributed by respondent's competitors, including

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at least one concentrated bacterin preparation. While some greater efficiency is claimed for Blacklegol in certain lower level or minimum dosages as a result of these tests, the conclusions reached do not warrant or substantiate respondent's claim that concentrated bacterin or cultural aggressin are only 50 percent efficient in producing immunity to blackleg as compared with Blacklegol. In fact the nature of the tests conducted does not warrant the claim of any definite percentage of immunizing value for Blacklegol over and above competitors' products so far as field dosage is concerned in the actual administration of these products.

PAR. 8. The use by the respondent of the foregoing false, deceptive, misleading, and disparaging statements and representations with respect to its preparation, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's vaccine in preference to that of its competitors. As a result, trade has been diverted unfairly to the respondent from its competitors who are engaged in the sale and distribution of various blackleg vaccines in commerce among and between the various States of the United States and in the District of Columbia.

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 on the complaint of the Commission, answer of the respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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, Cutter Laboratories, a corporation, its officers, representatives, agents, and employees, directly or

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through any corporate or other device, in connection with the offering for sale, sale, and distribution of its vaccine preparation now designated "Blacklegol" or "Blackleg Bacterin Aluminum Hydroxide Adsorbed" or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner, either directly or by implication, that respondent's preparation Blacklegol is 100 percent efficient or 100 percent effective in giving immunity to the disease of blackleg.

(2) The use of statements or representations which unfairly disparage vaccines sold and distributed by respondent's competitors or which represent, either directly or by implication, that the efficiency or effectiveness of blackleg concentrated bacterin or blackleg cultural aggrassin is equal to only 50 percent of that of respondent's preparation Blacklegol in providing immunity to the disease of blackleg.

(3) The use of any specific percentage to designate the immunizing value of respondent's preparation Blacklegol or its comparative immunizing value with other preparations unless such percentage is based upon controlled experiments sufficient to definitely establish the percentage value claimed.

(4) The use of the terms "100 percent efficient" or "50 percent efficient," or any other percentage or comparative percentage, in describing manufacturing procedure or production wastes, in such a way as to imply that such percentages apply to immunizing effectiveness.

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

Syllabus

IN THE MATTER OF

LOUIS A. WALTON CO., KLING BROS. & CO., INC., LEOPOLD
KLING AND SAMUEL KLINGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4528. Complaint, June 30, 1941—Decision, Aug. 14, 1942*

- Where a corporation, which was the wholly owned selling subsidiary of a second corporate concern; said parent corporation and 2 brothers, who were officers of the 2 and together owned about 38,000 of the 50,000 shares outstanding of the latter; engaged, directly and through 8 other corporations, which, likewise thus controlled, were carried on, essentially, as one enterprise, in the manufacture and interstate sale and distribution of suits, topcoats, and overcoats, both direct to individual consumers and to retail dealers—
- (a) Made use of such designations and descriptions, on labels attached to samples of materials used in carrying on the business of corporation first referred to, as "Blue-Green Alpaca-Mohair Knit Back," "Camel Hair and Wool Blend," and "Silver Grey Mohair-Camel-Wool Blend" when such materials contained none of the hair of the alpaca or of the camel;
 - (b) Made use, as aforesaid, of descriptions and designations "Mohair and Wool Knit Back Overcoating—Green" and "Oxford Mohair-Wool Blend Topper" for materials which, respectively, had a cotton knit back and contained no mohair;
 - (c) Made use, as aforesaid, of descriptions "Green Shadow Stripe—12½ oz. Pure Worsted. Silk decoration" for materials in which the decoration was rayon or some fiber other than silk, the product of the cocoon of the silk worm;
 - (d) Falsely represented a domestic product as imported through attaching to samples of a material made in this country label reading "Imported Corona Brown Wool—Crisp Spun Homespun";
 - (e) Made use of term "The House of Wool Fabrics" on letterheads and in advertising, together with such statements as "Every Fabric is Guaranteed All Wool—Qualities you can only find in lines selling at \$35.00 and \$40.00. This we can prove. * * * A guarantee goes with every garment"; when in fact certain of said garments were not composed entirely of wool, and in some instances contained substantial percentages of cotton, rayon, or other fibers; and
 - (f) Failed to disclose the fact that substantial percentages of cotton and some rayon were contained in materials sold, through use, as typical, of such terms as "Oxford-Mohair Wool Blend Topper," to describe materials of wool, rayon, and cotton fibers, whereby as a result of failure to disclose such content of cotton or rayon (which, when manufactured to simulate silk or wool, is practically indistinguishable by the purchasing public from the one or the other), a substantial portion of the purchasing public was led to believe that the materials in question were composed entirely of wool;