

IN THE MATTER OF

THE R. L. WATKINS COMPANY

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

Docket \$596. Complaint, Sept. 19, 1938—Decision, Sept. 28, 1942

Where a corporation, engaged in the manufacture, among other things, of its "Dr. Lyon's Tooth Powder," and in the competitive interstate sale and distribution thereof; by advertisements in numerous newspapers and periodicals of wide interstate, and in some cases nation-wide circulation, and through radio broadcasts, advertising posters and billboards, and streetcar and subway cards—

- (a) Implied that its said "Dr. Lyon's Tooth Powder" was substantially similar to that used by dentists through featuring the statement "Do as Your Dentist Does—Use Powder," or "Do as your Dentist Does When He Cleans Your Teeth—Use Powder," and aforesaid name and product as therein depicted and set forth;

The facts being that while the majority of dentists probably do use powder in cleaning their patients' teeth, such powder is almost invariably pumice or silic which are both highly abrasive and, if used regularly, would result in serious damage to the teeth; calcium carbonate, active ingredient of its said powder—used only in exceptional instances by dentists to polish the teeth after cleaning with pumice or silic—is much less abrasive and effective for cleaning the teeth; and product therefore is not comparable to powder used by dentists, either as to composition or effectiveness;

- (b) Falsely represented that its said powder was an effective antacid and would correct acid mouth; and

- (c) Represented that its product was free from all grit and could not possibly injure or scratch the tooth enamel;

The facts being that said representations were exaggerated and misleading, its said product, occasionally at least, containing particles of quartz or grit which might scratch the enamel;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said powder possessed properties which it did not, and of thereby causing its purchase because of such belief; whereby trade was diverted unfairly to it from competitors:

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

As respects a contention that the testimony of certain consumer witnesses, namely, 13 club women and housewives living in or near Washington, D. C., of whom 7 testified that seller's advertising, and particularly the slogan "Do As Your Dentist Does—Use Powder," implied that the powder used by dentists in cleaning their patients' teeth was substantially the same as seller's tooth powder, and in the case of some that they would understand from the advertising that the powder used by the dentist was in fact said powder, the others testifying to a contrary understanding—could not be accepted as indicative of the impression gathered from advertising in question by the public generally, in view of testimony of four professors of advertising

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and marketing in certain prominent universities in the East and Midwest who expressed the opinion that the consumer witnesses were not truly representative of the general public and did not constitute an accurate cross section of the purchasing public throughout the country: Testimony in question, irrespective of whether or not such witnesses represented an accurate cross section of the entire purchasing public, did indicate that in a substantial portion of such public, seller's advertisements implied that its product was substantially similar to the powder used by dentists.

As respects contention—with regard to advertiser's claim that its tooth powder was free from all grit and could not possibly injure, or scratch the tooth enamel, and the opinion of experts that it would, based on Bureau of Standards' and other tests which disclosed that some of the samples contained quartz particles or grit—that presence of such grit was accidental and that while it might be found in one sample it might be entirely absent from a number of others; that siliceous material commonly found in chalk in its natural form sometimes is not removed in the precipitation of chemical calcium carbonate and that the United States Pharmacopoeia allows a tolerance for the presence of siliceous material therein: Assuming the correctness of said contentions, it seemed clear that the powder in question, occasionally at least, contained particles of quartz or grit which might scratch the enamel, so that representations that it was "free from all grit" and could not "possibly injure or scratch the tooth enamel" were exaggeration and misleading.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle B. Lyon and *Mr. Randolph W. Branch* for the Commission.
Rogers, Hoge & Hills, of New York City, for respondent.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

¹ The complaint is published as amended by the following stipulation, approved by the Commission on September 18, 1939, to wit:

It is hereby stipulated and agreed, by and between *W. T. Kelley*, Chief Counsel for the Federal Trade Commission, and *Rogers, Ramsay and Hoge*, attorneys for the respondent in the above-entitled case, that, subject to the approval of the Federal Trade Commission, the complaint heretofore issued in the above-entitled case be amended in the following respects, to wit:

1. By the addition to par. 5 of the following words:

"8. That *Dr. Lyon's Tooth Powder* contains no acid, grit or pumice, and cannot possibly injure or scratch the tooth enamel, and is a safe and harmless dentifrice for home use."

2. By the addition to par. 6 of the following words:

"*Dr. Lyon's Tooth Powder* does contain grit and quartz particles, and a paste made from *Dr. Lyon's Tooth Powder* mixed with water will scratch glass, which is harder than tooth enamel. The grit contained in *Dr. Lyon's Tooth Powder* has the tendency and capacity to injure or scratch the tooth enamel, and *Dr. Lyon's Tooth Powder* is therefore not a safe or harmless dentifrice for home use."

It is further stipulated and agreed, That the answer of the respondent heretofore filed shall be deemed to be addressed to pars. 5 and 6 of the complaint as hereby amended with the same force and effect as if those same paragraphs were originally constituted as amended by this stipulation.

It is further stipulated and agreed, That all testimony adduced and all evidence admitted at hearings heretofore held in the above-entitled proceeding be received and considered insofar as same are material and competent in any findings of fact hereafter made herein, in like manner and to the same effect as though said testimony and evidence had been received at hearings held upon the charges contained in the complaint as amended by this stipulation, saving, however, to the respondent its right to rebut such testimony or evidence by any proper means at such subsequent hearings as may be held herein.

Trade Commission, having reason to believe that The R. L. Watkins Co., 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 I. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal business office at 170 Varick Street, New York, N. Y., and with its principal factory at Newark, N. J. Respondent is now, and for many years last past has been engaged in the manufacture, sale, and distribution of various cosmetic and proprietary products, including, among others, a dentifrice known as "Dr. Lyon's Tooth Powder."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product "Dr. Lyon's Tooth Powder," when sold, to be transported from its factory at Newark, N. J., to purchasers located in States of the United States other than the State of origin of such shipments, and also in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned product sold by the respondent 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 its business, respondent is now and has been in substantial competition with other corporations, and with persons, firms and partnerships engaged in the sale and distribution of tooth powders, tooth pastes, and other products intended and used for cleansing teeth, 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 said business, and for the purpose of inducing the purchase of its tooth powder, respondent has caused false advertisements containing representations and claims with respect to the properties of said tooth powder and the results that may be expected to be obtained upon the use thereof, to be disseminated in commerce as defined in the Federal Trade Commission Act, through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States; through continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereto located in the various States of the United States; and through other means. Among and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid, are the following:

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DO AS YOUR DENTIST DOES—USE POWDER.

ALL CLEANSING PROPERTIES. NO ACID, NO GRIT OR PUMICE. Cannot possibly injure or scratch.

COSTS LESS TO USE.

Nothing else cleans and polishes teeth more quickly and leaves them more naturally white—than **POWDER**.

That is why your dentist, when cleaning your teeth, as you know—almost always uses powder.

As it is only the powder part of most dentifrices that cleans, a dentifrice that is all powder just naturally cleans effectively. Dr. Lyon's Tooth Powder is **ALL POWDER**—all cleansing properties.

For over seventy years many dentists everywhere have prescribed Dr. Lyon's Tooth Powder because normal teeth simply cannot remain dull and dingy looking when it is used. Dr. Lyon's cleans and polishes the teeth in a harmless and practical way that leaves them sparkling with natural brightness. It leaves your teeth feeling so much cleaner, your mouth so refreshed and your breath so sweet and pure.

Free from all acids, grit or pumice, it cannot possibly injure or scratch the tooth enamel as years of constant use have shown. Even as a neutralizer in acid mouth conditions, Dr. Lyon's is an effective antacid.

Dr. Lyon's Tooth Powder, is more economical to use. In the same size and price class Dr. Lyon's outlasts tooth pastes two to one. Even a small package will last you for months.

To have gleaming, naturally white teeth, a smile that reveals personality and charm, try cleaning your teeth the way your dentist does when you go to him—that is, with powder. Use the way virtually every dentist you have ever gone to uses to make teeth naturally, sparkling clear. Nothing else, we believe, will give you gleaming and lustrous teeth more quickly and easily than powder—your dentist's way of cleaning and beautifying teeth.

Dr. Lyon's Tooth Powder is all powder—100% cleansing properties. This is more than twice the cleansing properties of tooth pastes.

Dentists everywhere recommend Dr. Lyon's Tooth Powder, because—teeth simply cannot remain dull and film coated when it is used. Dr. Lyon's cleans off all stains and polishes the teeth in a harmless and practical way that leaves them sparkling—many shades whiter.

Dr. Lyon's Tooth Powder keeps your teeth really clean, and clean teeth mean firm, healthy gums and the least possible tooth decay.

Dr. Lyon's Tooth Powder is not only doubly efficient, but it costs only half as much to use. Even a small package lasts twice as long as a tube of tooth paste.

Nothing else cleans and polishes teeth so remarkably as powder.

And the proof is in the fact that powder is the way dentists clean teeth.

To have gleaming white teeth, a smile that charms and attracts, try cleaning your teeth at home the way your dentist does when you go to him—with powder.

You will find that powder whitens your teeth like no other way you have ever tried.

People by the thousands are quitting less effective ways of tooth cleaning for their dentists' way. People by the thousands are discarding ordinary ways of tooth cleaning and adopting a quick new way that makes teeth white and sparkling, removes film almost instantly.

You will find a whiteness you have probably despaired of ever finding in your teeth—a brilliance that you have envied in others but never managed to gain yourself.

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Get a can of Dr. Lyon's Tooth Powder—brush your teeth with it and look in your mirror. Nine out of ten who do this never go back to less effective, less scientific ways of tooth cleansing.

It is commonly agreed that nothing else cleans teeth, lightens them, brightens them like powder.

Powder is the way practically every dentist in the world cleans teeth.

When you go to your dentist to have your teeth really transformed in appearance almost invariably he uses powder to do it.

Millions are finding a quicker, better way to clean and brighten teeth, a way that makes dull, off-color teeth a folly.

You can do wonders with your teeth, if you'll only try cleaning your teeth the way practically every dentist you have gone to does—with powder. Try it. Get a can of Dr. Lyon's Tooth Powder.

A way that would actually do something for teeth that, regardless of brushing, remain grey, dull and lustreless.

Always remember, when your dentist cleans your teeth, he uses powder.

Your dentist will tell you that nothing else cleans, whitens and brightens so quickly as powder.

No other way is so quick and effective as powder.

Nothing else beautifies and polishes teeth so effectively as powder.

An interesting new discovery has recently been made. All you do is clean your teeth at home the way the dentist almost invariably cleans them.

A new scientific way to make their teeth gleaming and white.

You will find it gives dull teeth a sparkle and brilliance like nothing else does.

Your dentist knows that powder cleans more effectively and scientifically than anything else.

There is now a way for every woman to win sparkling teeth and a smile that will make her charming and sought after. It is the way your dentist almost invariably cleans your teeth—with powder.

A way millions of users say gives teeth really clear, sparkling brightness such as can be obtained in no other way.

The primary representation used by the respondent in its advertising disseminated as aforesaid, is the picturization of a can of Dr. Lyon's Tooth Powder accompanied by the slogan, "Do as Your Dentist Does—Use Powder." In the majority of instances, this slogan and picturization are accompanied by other representations, but in some cases they are used alone.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's tooth powder and its effectiveness in cleansing the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things (1) that Dr. Lyon's Tooth Powder possesses properties and effectiveness identical with and comparable to the preparations used by dentists, and that said tooth powder is essentially the same as the preparations used by dentists in cleansing teeth; (2) that tooth powders, including Dr. Lyon's Tooth Powder, are more

effective for brushing, polishing, and cleansing teeth than tooth pastes; (3) that Dr. Lyon's Tooth Powder neutralizes acid mouth conditions, is an antacid, and has substantial value for other purposes than cleansing the teeth; (4) that the use of Dr. Lyon's Tooth Powder will make all normal sets of teeth white and brilliant; (5) that Dr. Lyon's Tooth Powder is a deodorant; (6) that Dr. Lyon's Tooth Powder is more economical to purchase and use than competitive tooth pastes; (7) that the use of tooth powder in cleansing teeth is a new and scientific discovery; (8) and that the use of Dr. Lyon's Tooth Powder gives results equivalent to professional dental prophylaxis; (9) that Dr. Lyon's Tooth Powder contains no acid, grit, or pumice, and cannot possibly injure or scratch the tooth enamel, and is a safe and harmless dentifrice for home use.

Further, through the use of the statements and representations hereinabove set forth, the respondent has unfairly disparaged various competitive preparations used in cleansing the teeth, and has falsely represented (1) that competitive dentifrices, including paste, contain acid, grit, pumice; (2) that acid ingredients in competitive dentifrices are harmful; (3) that competitive dentifrices, including paste, injure, scratch, and destroy tooth enamel, tooth structure, and mouth tissues; (4) that the use of competitive dentifrices is unsafe and dangerous.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The true facts are that Dr. Lyon's Tooth Powder does not have any of the qualities or achieves any of the results claimed and represented as hereinabove described. Dr. Lyon's Tooth Powder does not possess properties or effectiveness identical with or comparable to the preparations generally used by dentists in cleansing teeth and is neither essentially nor basically the same as such preparations. Dr. Lyon's Tooth Powder is a chalk powder. In cleansing teeth dentists generally use a pumice, silica, or some similar substance in a powdered form, to which is added glycerine, water, or some similar vehicle and the whole worked into a paste which is then applied through various abrasive processes. Such substances are essentially different from chalk powders and are more effective in cleansing the teeth than chalk powders or pastes, but should be used only infrequently since they are abrasive and may be harmful to the enamel unless carefully used by an experienced dentist or technician. Tooth powders, including Dr. Lyon's Tooth Powder, are no more effective for brushing, polishing or cleansing the teeth than tooth pastes. In practice dry powder is not used in cleansing teeth but is made into a paste or semipaste when

applied to the teeth. Tooth powders having a chalk base are very similar in properties to tooth pastes. Dr. Lyon's Tooth Powder is not antiacid and is not effective so as to neutralize acid mouth conditions. It does not have substantial value for oral hygiene purposes other than cleansing the teeth. The normal acid-alkali balance of the blood or other bodily fluids cannot be easily changed and neither Dr. Lyon's Tooth Powder nor any other dentifrice will have any beneficial effect toward changing this balance. Neither Dr. Lyon's Tooth Powder nor any other dentifrice will materially alter the chemical reaction of the saliva in the mouth. The use of Dr. Lyon's Tooth Powder will not make all normal sets of teeth white and brilliant. Many normal sets of teeth vary in all shades of color and translucency ranging from brilliant to dull and these shades cannot be altered or changed by the use of any tooth powder or paste. Dr. Lyon's Tooth Powder is not a competent and effective deodorant. It does maintain sufficient oil of wintergreen to temporarily mask the breath or other unpleasant odors in some cases, but it is in no sense a competent or effective deodorant. Dr. Lyon's Tooth Powder is no more economical to purchase and use than tooth paste. The use of tooth powder, including Dr. Lyon's Tooth Powder, in cleansing teeth is not a new or scientific discovery. In fact, tooth powders were generally known and used prior to the development of tooth pastes. The use of Dr. Lyon's Tooth Powder does not give results equivalent to professional dental prophylaxis. The powder contained in Dr. Lyon's Tooth Powder is in no sense comparable in properties or effect to the various preparations used by dental hygienists in cleansing teeth. While both respondent's tooth powder and the substances used by dentists are in powder form they are otherwise dissimilar.

Competing dentifrices, including tooth pastes, do not generally contain grit or pumice and such acid ingredients as are contained in said preparations are not harmful. Competitive dentifrices do not injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues to any greater extent than does respondent's tooth powder. The use of competitive dentifrices, including tooth pastes, is neither unsafe nor dangerous. All tooth powders and pastes are essentially similar in properties and effect.

Dr. Lyon's Tooth Powder is no more concentrated or economical to use than other competing preparations, and its use does not accomplish results that cannot be accomplished by other competing preparations. Any cleansing effect accomplished by brushing the teeth with tooth paste or powder is due primarily to the mechanical action of the brush and not the ingredients contained in the tooth paste or powder.

Dr. Lyon's Tooth Powder does not contain grit and quartz particles, and a paste made from Dr. Lyon's Tooth Powder mixed with water will scratch glass, which is harder than tooth enamel. The grit contained in Dr. Lyon's Tooth Powder has the tendency and capacity to injure or scratch the tooth enamel, and Dr. Lyon's Tooth Powder is therefore not a safe or harmless dentifrice for home use.

PAR. 7. The use of the aforesaid false advertising disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Dr. Lyon's Tooth Powder.

PAR. 8. In addition to the false and misleading representations and claims made by the respondent regarding the efficacy in use of the said product, Dr. Lyon's Powder, as hereinabove set forth, respondent has disseminated other false advertisements in the same manner and to the same extent as hereinabove set out. One such advertisement read as follows:

Accept the Very Latest in Jewelry
Genuine 22-Karat Gold Plated
LOVE CHARM BRACELET
\$1.50 value, Now only 10¢
and one box front from Dr. Lyon's
TOOTH POWDER.

Through the use of the aforesaid advertisement and the representations contained therein, respondent represents to members of the purchasing public that said bracelet has a normal and customary retail value of \$1.50 and that extra initial charms therefor can be secured with one box front per initial at no additional charge. In truth and in fact the bracelet so advertised is a chain bracelet to which are suspended heart-shaped "charms", each bearing an initial or letter. The total cost to the respondent is not more than 10 cents for each bracelet complete with charms. Said bracelet does not have a normal or customary retail value of \$1.50 or any amount approaching that sum and the respondent recovers the full cost of the bracelet and all charms that may be supplied in connection therewith when it obtains the sum of 10 cents from each order.

PAR. 9. There are among respondent's competitors many who manufacture, sell, and distribute tooth powders and tooth pastes and other products designed, intended, and sold for the purpose of cleansing and beautifying the teeth who do not in any way misrepresent the qualities, effectiveness or character of their respective products; and there are also many manufacturers and distributors of jewelry products, premiums, and advertising novelties intended and sold for use as premiums or for personal adornment who do not in any way misrepresent the value of such merchandise.

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PAR. 10. The use of the aforesaid false and misleading statements, representations, and advertisements by the respondent in designating or describing its said product, Dr. Lyon's Tooth Powder and the effectiveness of said product in the cleansing and care of the teeth, in offering for sale and in selling its said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed. Furthermore, the representation that the value of the so-called "Love Charm Bracelet" offered by the respondent as an advertising premium for 10 cents in conjunction with a box front from Dr. Lyon's Tooth Powder is \$1.50, was and is calculated to, and had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representation is true, and that said premium is worth an amount greatly in excess of the price at which it is offered and sold by respondent.

PAR. 11. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Dr. Lyon's Tooth Powder, with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling tooth powders, tooth pastes, and similar products or other products designed, intended and sold for use in the cleansing and care of the teeth, and who truthfully represent the effectiveness and qualities of their respective products.

Furthermore, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, a number of the consuming public has purchased a substantial volume of the so-called "Love Charm Bracelets" offered as premiums by the respondent, with the result that trade has been unfairly diverted to the respondent from competitors engaged in the manufacture and sale of jewelry, advertising novelties and premiums, and who truthfully represent the value of their said merchandise.

As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 12. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition

and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 19, 1938, issued and subsequently served its complaint in this proceeding upon the respondent, The R. L. Watkins Co., 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 that act (the complaint being subsequently amended by a stipulation executed by the respondent and the attorney for the Commission and approved by the Commission). After the filing of respondent's answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for hearing before the Commission on the complaint as amended, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument. The Commission, having duly considered the matter, directed on March 19, 1941, that the case be reopened for the taking of certain additional testimony and other evidence, and pursuant thereto additional testimony and other evidence were offered before the trial examiner in support of and in opposition to the allegations of the complaint, and such additional testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding again came on for hearing before the Commission upon the entire record, supplemental report of the trial examiner upon the evidence, and the exceptions to such report, supplemental briefs in support of and in opposition to the complaint, and further oral argument; and the Commission, having duly considered the matter, and being 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, The R. L. Watkins Co., is a corporation organized, existing, and doing business under and by virtue

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of the laws of the State of Ohio, with its principal business office at 170 Varick Street, New York, N. Y., and with its principal factory at Newark, N. J. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of various cosmetics and proprietary products, including, among other things, a dentifrice known as Dr. Lyon's Tooth Powder.

PAR. 2. Respondent causes and has caused its product, Dr. Lyon's Tooth Powder, when sold, to be transported from its factory in the State of New Jersey to purchasers thereof located in the several other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its product in commerce among and between the several States of the United States, and in the District of Columbia.

PAR. 3. In the sale and distribution of its product respondent is, and has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution, in commerce, among and between the several States of the United States, and in the District of Columbia, of tooth powders, tooth pastes, and other products intended and used for cleaning the teeth.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its tooth powder, respondent has disseminated many advertisements throughout the United States. Advertisements have been inserted in numerous newspapers and periodicals published at various points throughout the country, and having wide interstate circulation, some of them having Nation-wide circulation. Respondent has also made extensive use of the radio as an advertising medium, causing programs to be broadcast over radio networks which carry such programs to members of the purchasing public located in many States of the United States. Frequent use has also been made by respondent of advertising posters and billboards, and of advertising cards placed in streetcars and subways operating in various cities throughout the United States.

PAR. 5. The principal statement or slogan featured by respondent in its newspaper and magazine advertisements, and on its advertising posters and cards is, "DO AS YOUR DENTIST DOES—USE POWDER" (Commission's exhibits 2, 4-B, 5, 7, 8, 11, 14, 16, and others), or, "DO AS YOUR DENTIST DOES WHEN HE CLEANS YOUR TEETH—USE POWDER" (Commission's exhibits 9, 10, 12, 13, 15, and others). These statements appear in prominent and conspicuous type, and are usually accompanied by a picturization of a can of respondent's tooth powder. The name "Dr. Lyon's Tooth Powder"

appears on the picturization, and is otherwise prominently displayed in the advertisements.

This same theme is emphasized also in respondent's radio programs. Typical of the statements used in such programs are the following:

There is now a way to reveal the natural brightness and clear color of your teeth. A way so simple and effective that *no* woman need handicap her allure a day longer with teeth improperly cleansed and thus dull and unattractive.

It is the way your dentist almost invariably cleans your teeth when you go to him to have them made gleaming and beautiful. That is *WITH POWDER*. Thousands of people—everywhere—are adopting *POWDER*—their dentist's way of cleaning teeth.

Get a can of *Dr. Lyon's Tooth Powder* tomorrow at any drug or department store. Try it. One look in the mirror will show you what it does. (Commission's Exhibit 19-E.)

To have teeth that are sparkling and naturally white, a smile that charms and attracts, do what people on all sides are doing. Try cleaning your teeth in your own home the way your dentist almost invariably does when you go to him—clean them *WITH POWDER*.

No matter what you have heard about "this" or "that" dentifrice, the fact remains that your dentist knows more about cleaning and beautifying teeth than anyone else. *And he almost invariably uses powder*. He'll probably tell you, if you ask him, that nothing cleans and polishes teeth more effectively than powder. (Commission's Exhibit 20-C.)

You've heard remarks like these. "Jane would be a peach of a girl if it weren't for her teeth!" "Jim has a wonderful personality—but did you notice his teeth?"

Make *sure* that people *cannot* talk like that about you. Clean your teeth *the way virtually every dentist you have ever gone to does*—*WITH POWDER*. See what happens.

Get a can of *Dr. Lyon's Tooth Powder* at any drug store—tomorrow. Brush your teeth with it and then look in your mirror * * * the vast majority who do this never go back to other ways of tooth cleansing. (Commission's Exhibit 27-B.)

PAR. 6. The Commission finds that these advertisements imply that respondent's tooth powder is substantially similar in composition and effectiveness to the powder used by dentists in cleaning their patients' teeth. Not only is this the implication of the language used in the advertisements, but the implication is given added emphasis by the form and arrangement of certain of the advertisements. Illustrative of this is the prominence given by respondent in its streetcar cards and newspaper and magazine advertisements to the slogan "Do as your dentist does—use powder," and the use in connection with this slogan of a picturization of a can of respondent's powder with the name "*Dr. Lyon's Tooth Powder*" prominently displayed thereon.

PAR. 7. This interpretation of the advertisements finds support also in the testimony of certain members of the purchasing public introduced as witnesses at the instance of the Commission. These witnesses, 13 in number, were clubwomen and housewives living in or near Washington, D. C. Some 7 of the witnesses testified that to them respondent's advertising, and particularly the slogan "Do as your dentist does—use powder," implied that the powder used by dentists in cleaning their patients' teeth is substantially the same as Dr. Lyon's Tooth Powder, and some of this group testified further that they would understand from the advertising that the powder used by dentists is Dr. Lyon's Tooth Powder. The other 6 witnesses testified that they would not understand from the advertising that the powder used by dentists is Dr. Lyon's Tooth Powder or that it is substantially similar thereto.

It is insisted by respondent that these consumer witnesses did not represent an accurate cross section of the entire purchasing public and that their testimony, therefore, cannot be accepted as indicative of the impression gathered from respondent's advertising by the public generally. In support of this contention respondent introduced as expert witnesses 4 professors of advertising and marketing in certain prominent universities in the Eastern and Middle Western sections of the United States. These expert witnesses testified, in substance, that in their opinion the consumer witnesses were not truly representative of the general public, that the witnesses did not constitute an adequate cross section of the purchasing public throughout the country. The Commission of the opinion, however, that irrespective of whether the witnesses represented an accurate cross section of the entire purchasing public, their testimony does indicate that to a substantial portion of the public respondent's advertisements imply that its product is substantially similar to the powder used by dentists.

PAR. 8. The evidence indicates that while the practice is by no means universal, probably the majority of dentists do use powder in cleaning their patients' teeth. The powder used, however, is almost invariably pumice or silex, both of which are highly abrasive and could not safely be used by the public as a dentifrice. The regular use of such highly abrasive substances would result in serious damage to the teeth. The active ingredient of respondent's powder, on the other hand, is calcium carbonate, commonly known as chalk, which is much less abrasive than pumice or silex and much less effective than these substances for cleaning the teeth. It is only in isolated and exceptional instances that dentists use calcium carbonate, and even in those cases the calcium carbonate is used some-

what as a supplement to pumice or silex, being used for the finishing or polishing of the teeth after the heavier work of cleaning has been completed. Respondent's product, therefore, is not comparable with the powder used by dentists, either as to composition or effectiveness.

PAR. 9. Respondent has also represented that its tooth powder is an effective antacid and will correct "acid mouth," this representation being made through the use in its advertisements of the statement, "Even as a neutralizer in acid mouth conditions, Dr. Lyon's is an effective antacid" (Commission's Exhibits 5, 7, 8, 9, 10, 13, 14, 15, and 16). Respondent's product is, in fact, wholly without therapeutic properties. It is not an effective antacid and is incapable of correcting any acid condition which might be present in the mouth.

PAR. 10. Another statement used frequently by respondent in its advertisement is, "Free from all * * * grit * * *", it (the powder) cannot possibly injure or scratch the tooth enamel * * *" (Commission's Exhibits 7, 8, 9, and 10). Tests made by the National Bureau of Standards and by other experts disclosed that samples of respondent's powder were capable of scratching glass, and it was the opinion of these experts, based on such tests, that the powder would also scratch tooth enamel. Further examination of samples of the powder disclosed that some of them contained quartz particles, which may properly be characterized as grit.

It is insisted by respondent that the presence of this grit in the samples tested was accidental, that while grit may be found in one sample of the powder it may be entirely absent from a number of other samples. It is further pointed out by respondent that siliceous material is commonly found in chalk in its natural form and sometimes is not removed in the precipitation of chemical calcium carbonate, that the United States Pharmacopoeia allows a tolerance for the presence of siliceous material in calcium carbonate.

Assuming the correctness of respondent's contentions, it nevertheless seems clear that respondent's powder, occasionally at least, contains particles of quartz or grit, and that there is a possibility of such particles scratching the tooth enamel. The Commission therefore finds that respondent's representations that its powder is "free from all grit" and "cannot possibly injure or scratch the tooth enamel" are exaggerations and misleading.

PAR. 11. The Commission therefore finds that the representations made by respondent with respect to its product, as set forth herein, are misleading and deceptive and constitute false advertisements.

PAR. 12. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into

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the erroneous and mistaken belief that respondent's product possesses properties and qualities which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered. In consequence thereof substantial trade has been diverted unfairly to the respondent from its competitors, among whom are those who do not misrepresent their products.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiner upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The R. L. Watkins Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's product designated "Dr. Lyon's Tooth Powder," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement

- (a) contains the statement "Do As Your Dentist Does—Use Powder," or any other statement of similar import; or which advertisement otherwise represents, directly or by implication, that re-

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spondent's product is similar to or comparable with the powder used by dentists.

(b) represents, directly or by implication, that respondent's product is an effective antacid or that it will correct "acid mouth."

(c) represents, directly or by implication, that respondent's product is free from all grit or that it cannot injure or scratch the tooth enamel.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's product, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

IN THE MATTER OF
MEMORIAL GRANITE 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 4214. Complaint, Aug. 2, 1940—Decision, Sept. 28, 1942

Where a corporation, engaged in the manufacture of tombstones and monuments, and in the competitive interstate sale and distribution thereof—

- (a) Represented that the prices at which it offered its said products constituted a saving of from 20 to 50 percent from its competitors' prices for similar products, and that quoted prices included the cost of erection, through such typical statements in newspapers of general circulation and other advertising material as "BIG SALE—Save 20% to 50%—400 Monuments to choose from. * * * Delivered anywhere in New England"; and "No extra cost for trucking and erecting";

The facts being its prices did not constitute such a saving, and did not include cost of erection, but included only such monuments and their setting upon a foundation provided and paid for by the purchaser; and

- (b) Misrepresented the size and appearance of its places of business, in its advertising in various circulars, through displaying, in some instances, composite depictions of its factory and two offices which in fact were several miles apart but, as depicted, appeared to be one place of business; and in other instances, a composite picture consisting of two photographs which represented its factory as twice as large as was the fact;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of thereby inducing its purchase of said products; whereby trade was diverted unfairly to it from competitors, including many who do not in any manner misrepresent the prices at which their products are sold or matters pertaining thereto:

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 and unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell* and *Mr. Miles J. Furnas*, trial examiners.

Mr. B. G. Wilson for the Commission.

Mr. John D. Smith, of Quincy, Mass., 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 Memorial Granite Co., Inc., a corporation, 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, Memorial Granite Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business at 159 Hancock Street, Quincy, Mass. The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of tombstones and monuments and in the sale and distribution thereof in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained a course of trade in said tombstones and monuments 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 its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of its said tombstones and monuments, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to its said products. Such statements and representations are inserted in newspapers having a general circulation and in pamphlets, circulars, and other advertising material distributed among prospective purchasers. Among and typical of the false and misleading statements and representations, so made and disseminated as aforesaid, are the following:

Quincy

Barre, Vt.

Westerly, R. I. Imported Red Granite.

BIG SALE—SAVE 30% to 50%.

400 monuments to choose from.

Price includes lettering delivered anywhere in New England.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not set out herein, the respondent represents in its advertisements that its monuments and tombstones were produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite; that the price at which the respondent offers its tombstones and monuments for sale saves 30

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to 50 percent more to the purchasers thereof than tombstones and monuments made of the same material and sold by its competitors; that respondent's indicated price includes such items or expenses as the cost of lettering, delivery and erection of said products; that said tombstones and monuments are polished on all sides, including the front, back, top, sides, and base; and that its place of business is of the size pictured in said advertisements.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the respondent's said tombstones and monuments are not produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite, but manufactured from Rygate, Vt., granite which is a cheaper grade. The price at which the respondent offers its tombstones and monuments for sale, does not save 30 to 50 percent more to the purchasers of said products than tombstones and monuments made of the same material and sold by respondent's competitors. In fact, said products are not offered for sale for less than the customary and usual price at which said products are sold. Respondent's indicated price as set forth in its advertisements does not include such items or expenses as the cost of lettering, delivery, and erection of said products. The respondent does not finish or polish its tombstones and monuments on all sides before delivery to the purchasers, as represented, and at the indicated price, but additional charges are required from the purchasers thereof. The pictorial representation of respondent's place of business is a composite of two different views of the plant, formed by combining two or more pictures in such a manner as to give or convey a false and untrue impression to purchasers with respect to the size of the business conducted by the said respondent.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for tombstones and monuments produced or quarried in the Barre, Vt., district, the Westerly, R. I., district, or manufactured from imported Red Granite, over the tombstones and monuments manufactured from a cheap or poor grade of granite.

PAR. 7. There are among the competitors of the respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell, and distribute like products who do not in any manner misrepresent the grade or material of which their products are manufactured, the price at which their said products are offered for sale, or matters pertaining thereto.

PAR. 8. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now

has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof, substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 August 2, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Memorial Granite Co., Inc., 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, and in opposition to, the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint (respondent not having filed brief or requested oral argument); 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, Memorial Granite Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal

place of business at 159 Hancock Street, Quincy, Mass. Respondent is now, and for several years last past has been, engaged in the manufacture of tombstones and monuments and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tombstones and monuments in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, the respondent is in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of tombstones and monuments in said commerce.

PAR. 3. To induce the purchase of its said tombstones and monuments, the respondent has disseminated false and misleading statements and representations with respect to its said products. Such statements and representations are inserted in newspapers having a general circulation, and in pamphlets, circulars, and other advertising material distributed among prospective purchasers.

Among and typical of the false and misleading statements and representations so made and disseminated as aforesaid, are the following:

Quincy Barre, Vt. Westerly, R. I. Imported Red Granite

BIG SALE—Save 20% to 50%

400 Monuments to choose from.

Price includes lettering. Delivered anywhere in New England.

Our trucks deliver and erect all monuments at no additional cost anywhere in New England.

No extra cost for trucking and erecting.

PAR. 4. Through the use of the foregoing statements and representations, together with other statements and representations similar thereto not specifically set out herein, respondent represents that the price at which respondent offers its tombstones and monuments for sale constitutes a saving of from 30 to 50 per cent from the price which purchasers would have to pay in purchasing tombstones and monuments made of the same material sold by its competitors and that respondent's quoted prices include cost of erection of said products.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. The prices at which respondent offers its tombstones and monuments for sale do not constitute a saving of from 30 to 50 percent from prices charged by its competitors for tombstones and monuments of like quality and design. The prices quoted by the respondent for its various tombstones and monuments do not include the cost of erection but include only the furnishing

and setting of such monuments upon a foundation, which foundation is to be provided and paid for by the purchaser.

PAR. 6. In addition to the above statements and representations made by the respondent, the respondent also places upon its various circulars which it distributes among purchasers and prospective purchasers pictorial representations of its places of business. In some instances the pictorial representations constitute a composite picture of respondent's factory and two offices maintained by the respondent, all of which are several miles distant from each other but in the pictorial representation as placed on respondent's circular appear to be one place of business located at one address. In other instances the respondent places upon its circulars a composite picture consisting of two photographs of respondent's factory, which, when joined in one picture, represent that respondent's factory is twice as large as is actually the fact.

PAR. 7. There are, among competitors of respondent, many who manufacture, sell, and distribute like products who do not in any manner misrepresent the prices at which their said products are offered for sale, or matters pertaining thereto.

PAR. 8. The use by the respondent of the false and misleading statements and representations hereinabove described, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products, and, as a result, trade has been unfairly diverted to the respondent from its competitors who are likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid 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 and 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, answer of the respondent, testimony and other evidence in support of, and in opposition to,

the allegations of the complaint, taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and brief filed by counsel for the Commission; 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, Memorial Granite Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of tombstones and monuments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's products are offered for sale at savings of 30 to 50 percent or at any other savings in excess of the actual savings from prices charged by other manufacturers or dealers for products of like quality and design.

2. Representing, directly or by implication, that the cost of erection is included in the price of a monument or tombstone when the purchaser is required to provide for and pay the cost of the foundation for such tombstone or monument.

3. The use of pictorial representations or composite pictures, in advertising or in any other manner, which inaccurately portray or misrepresent the size or appearance of respondent's place of business.

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.

Complaint

IN THE MATTER OF
SHERMAN HAT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4628. Complaint, Nov. 10, 1941—Decision, Sept. 28, 1942*

Where a corporation engaged in the manufacture and interstate sale and distribution of women's hats, and in purchasing in the course of its said business old, worn, and previously used hats, which it blocked to desired shapes and fitted with new trimmings so that they had the appearance of new hats made from felt or other materials which had never been worn or used—
Sold such hats to retailers, jobbers, and wholesalers with no markings or labels to indicate that they had been made from old, worn, and previously used hat bodies;

With result of causing a substantial portion of the purchasing public to believe that its products were manufactured entirely from new materials, thereby causing its purchase of such hats; and of placing in the hands of uninformed or unscrupulous dealers means whereby said dealers might deceive or mislead members of purchasing public into the mistaken belief that they were purchasing new hats:

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. Edward E. Reardon*, trial examiner.

Mr. L. E. Creel, Jr., for the Commission.

Mr. Martin W. Bell, 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 Sherman Hat Co., a corporation, 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, Sherman Hat Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 159 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of manufacturing women's hats from felt and other materials, obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesale dealers located

in the various States of the United States. Respondent causes said hats, when sold, to be transported from its place of business in the State of Illinois to the aforesaid purchasers located in the various States of the United States other than the State of Illinois.

Respondent maintains and has maintained a course of trade in said hats 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 business, respondent buys second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, shaped, and fitted with new trimmings and sold by respondent to dealers who in turn sell said hats to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats, have the appearance of new hats manufactured from felt and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials but which have the appearance of being manufactured from new materials are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily taken by the members of the purchasing public as having been manufactured entirely from new materials.

PAR. 5. Respondent's failure to mark or label its products in such a manner as will disclose the fact that its products are made from used materials causes and has caused a substantial portion of the purchasing public to believe that its products are manufactured entirely from new materials, and acting upon this erroneous impression, many members of the purchasing public have purchased substantial quantities of respondent's products.

PAR. 6. Through the use of the aforesaid acts and practices, respondent has placed in the hands of uninformed or unscrupulous dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats manufactured entirely from new and unused materials.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 10, 1941, issued and

subsequently served its complaint in this proceeding upon the respondent, Sherman Hat Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial examiner 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and brief in support of the complaint, (no brief having been filed by the respondent or oral argument 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. Respondent, Sherman Hat Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 159 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing women's hats from felt and other materials and of selling same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondent causes said hats, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof 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 hats in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business, respondent buys hat bodies which have been made from secondhand, old, worn, and previously used hats. These bodies are blocked by the respondent to the desired shapes, fitted with new trimmings, and sold by respondent to dealers, who in turn sell said hats to the purchasing public. These hats, when so sold by the respondent, bear no mark-