

IN THE MATTER OF

A. & M. KARAGHEUSIAN, INC.

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

Docket 4305. Complaint, Sept. 6, 1940—Decision, Mar. 29, 1943

Where a corporation, with foreign offices in Tientsin, China, and throughout Persia, engaged in the domestic manufacture, importation, and competitive interstate distribution and sale of various rugs and carpets, which resembled in design, color, and general appearance genuine Orientals, and included as its leading and most expensive domestic line its "Gulistan" rugs, in the more recent labeling of which it more or less prominently displayed their American manufacture, and in the advertising of which it discussed its patented process and method employed therein—

- (a) Made use of words "Iranian" and "Hindustan" to designate certain rugs, the faces of which had many points of resemblance in design, color, and general appearance to the long esteemed, distinctive hand-built genuine Orientals, commonly designated by geographical or tribal names indicative of their Oriental origin, and thereby—withstanding labels which almost indiscernibly displayed the words "Made in U. S. A." or "An American product," and "Made by the makers of Gulistan,"—represented that its said products were true Orientals in every respect, made by hand in Persia (or Iran) or in India (or Hindustan);

When in fact said domestic products were woven by it on power looms; and, while "washed" to impart the desirable luster or sheen of the genuine Oriental, similarly acquired, they were not so woven that colors and patterns, as in the genuine, showed through, but had the hard or white back common to Wilton and Axminster manufacturing methods;

- (b) With capacity and tendency to cause purchasing public to believe that certain of its aforesaid "washed" domestic machine-made rugs, colors, and patterns of which showed through, and which, labeled as above described, had, as aforesaid, many other points similar to true Orientals, were such, made use, as designation thereof, of coined word "Mirastan," distinctive suffix of which it shared with names of such genuine Orientals as "Beluchistan," "Kurdistan," "Laristan," "Cabistan," and "Daghestan"; and
- (c) Made use of word "Reproduction" or "Reproductions" in advertising copy furnished by it to dealers in which were contained such statements as "Gulistan—the world famous Oriental reproductions that most people cannot tell from a hand woven Oriental rug"; "Superb Persian reproductions * * * Hindustan rugs"; "Persian reproductions * * * the Iranian rug"; "Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity";

The facts being that while some of such rugs followed as closely as possible in power-loom weaving the colors and patterns of original Orientals, they did not do so exactly, while others were adaptations and combinations of colors, motifs, and patterns found in genuine Orientals; the manufacture thereof did not involve the copying of the color and design of any particular single

genuine Oriental, but the designs as a whole were entirely new; and said products were not reproductions of Orientals in structure or method of manufacture but merely simulated the appearance thereof;

Tendency and capacity of which acts and practices were to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations were true, and thus to induce them to purchase said rugs on account thereof, with effect of placing in the hands of retail dealers means to mislead and deceive the purchasing public in the particulars aforesaid, and of diverting trade unfairly to it from its competitors who truthfully represent their genuine Oriental and domestic products:

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

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

Mr. Randolph W. Branch for the Commission.

White & Case, of New York City, 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 A. & M. Karagheusian, 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, A. & M. Karagheusian, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, having an office and principal place of business at 295 Fifth Avenue, in the city and State of New York, and having manufacturing plants at Freehold and Roselle, in the State of New Jersey. Respondent also has foreign offices in Tientsin, China, and throughout Persia.

PAR. 2. Respondent, is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, importing, and selling various rugs and carpets. In the course and conduct of its business respondent sells said rugs and carpets to various wholesale and retail dealers, and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and New Jersey to purchasers thereof located in various 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 said rugs and carpets in commerce among

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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 at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products or the place or method of manufacture thereof, and who do not furnish their dealer-customers with means or instrumentalities for misleading or deceiving the purchasing public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or, more particularly, in certain parts of Southwestern Asia, by hand, of pleasing texture and original and beautiful design, and having a pile of wool or silk and wool the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin of manufacture. Oriental rugs have been for many years and still are held in great public esteem because of their texture, beauty, durability and other desirable qualities, and by reason thereof there is a decided preference on the part of many of the purchasing public for such rugs. When names of Oriental implication are applied to carpets, as well as rugs, the purchasing public understands and believes that said carpets are manufactured in the Orient.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs and carpets, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble genuine Oriental rugs in appearance, by the names of "Gulistan," "Hindustan," "Mirastan," and "Iranian," and certain of its carpets by the name "Gulistan." The name "Iranian" connotes and indicates a place in the Orient, i. e., Iran or Persia, which is a place of origin of genuine Oriental rugs; the names "Gulistan" and "Mirastan" are distinctly Oriental in sound and suggest and connote places in the Orient, and "Hindustan" is a country of the Orient. The said names have the tendency and capacity to create the mistaken and erroneous belief that the rugs so designated as "Iranian" are made in Persia, that the other rugs are made in the Orient, that all of them are made by hand and are in all respects genuine Oriental rugs, and that "Gulistan" carpets are made in the Orient.

Respondent uses said designations in invoices and in otherwise referring to the same in the sale thereof to dealers, and also causes labels bearing the name "Gulistan" to be securely attached to the said carpets, and labels bearing one or another of said names, to be securely attached to said rugs so as to be plainly discernible to members of the purchasing public when such rugs and carpets are exhibited for sale by retail dealers. Respondent also uses said names in advertising copy furnished to dealers buying said rugs and carpets in the manner and for the purposes hereinafter set forth.

In truth and in fact, respondent's carpets and rugs referred to herein are woven on power looms in its factories in the United States. Said rugs are not made by hand. The individual threads are not knotted in the distinctive manner of the genuine Oriental rug. They do not possess all of the characteristics of the genuine Oriental rug, but do in fact so closely simulate genuine Oriental rugs in appearance, design, and texture that they are practically indistinguishable from them by a large portion of the purchasing public and, consequently, are readily accepted as being genuine Oriental rugs.

PAR. 6. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying certain of its rugs and carpets made as aforesaid, advertising copy which is intended to be, and is, inserted by such dealers in newspapers, magazines, and other publications of general circulation among the purchasing public in the various States of the United States. Such advertisements contain numerous false and misleading statements which represent and imply that said rugs are in all respects reproductions and copies of genuine Oriental rugs. Among and typical of such statements are the following:

Gulistan * * * the world famous Oriental reproductions that most people cannot tell from a hand-woven Oriental rug.

Superb Persian reproductions * * * Hindustan rugs.

Persian reproductions * * * the Iranian rug.

Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity.

In truth and in fact, said rugs are not exact copies or reproductions of genuine Orientals in structure, material, quality, or method of manufacture, but merely simulate Orientals in appearance, texture, and design.

PAR. 7. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its said rugs and carpets has had, and now has, the tendency and capacity to confuse and mislead purchasers and

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prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs and carpets on account thereof.

The aforesaid acts and practices of respondent have the effect of placing in the hands of retail dealers who purchase said rugs and carpets and resell the same to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

PAR. 8. As a result of respondent's said acts and practices trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of carpets and of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of 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 September 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, A. & M. Karagheusian, 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 James A. Purcell, 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, 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, A. & M. Karagheusian, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office and principal place of business at 293 Fifth Avenue in the city and State of New York, and having manufacturing plants at Freehold and Roselle, in the State of New Jersey. Respondent also has foreign offices in Tientsin, China, and throughout Persia.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, distributing, importing, and selling various rugs and carpets. In the course and conduct of its business, respondent sells such rugs and carpets to various wholesale and retail dealers and causes such rugs and carpets, when sold, to be transported from its aforesaid places of business in the States of New York and New Jersey to purchasers thereof located in 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 rugs and carpets 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 at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of rugs and carpets in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their products or the place or method of manufacture thereof and who do not furnish their dealer-customers with means or instrumentalities for misleading or deceiving the purchasing public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient or, more particularly, in certain parts of Asia from Turkey to the Yellow Sea, including India, by hand and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner.

In general, Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and, by reason thereof, there is a demand on the part of many of the purchasing public for such rugs.

Oriental rugs are not woven but are built, tied, or knotted by hand, the knots being tied around the warp threads and the rows of knots held by weft threads. The knots or the thread ends thereof make the pile of the rug. Oriental handmade rugs are designated by names which generally, but not always, are geographic or tribal and, in noun or adjective form, indicative of actual geographic or tribal origin in the Orient. They are never made with hard back or white back.

PAR. 5. During the periods indicated below, respondent used the names "Hindustan," "Iranian," "Mirastan," and "Gulistan" to designate certain lines of rugs in various sizes, patterns, and colors:

Hindustan rugs introduced July 1935; discontinued January 6, 1941.

Mirastan rugs introduced August 1933; discontinued July 5, 1938.

Iranian rugs introduced July 1939; discontinued April 4, 1940.

Gulistan rugs were introduced about 1927 or 1928. The name was registered as a trade-mark on February 26, 1924, but for the first few years was used only on carpeting. Since the introduction of Gulistan rugs they have been continuously sold by the respondent until the present time and have constituted respondent's leading and most expensive line of domestic rugs.

All of said rugs were woven on power looms in respondent's factories in the United States. They were not made by hand, and the individual threads were not knotted in the distinctive manner of the Oriental rug. They did not possess all the characteristics of Oriental rugs. Some were, in pattern and design, copies so far as possible where power looms are used, of specific genuine Oriental rugs, and others had patterns and designs which embodied Oriental designs, motifs, colors, and treatments adapted from genuine Oriental rugs, and, in addition, some of respondent's Gulistan rugs embodied 18th century French designs.

All respondent's rugs are "washed," that is, subjected to a chemical treatment to impart a luster or sheen, which is one of the desirable characteristics of the genuine antique Oriental rug. The very great portion of knotted Oriental rugs have for many years been "washed" for the same reason and in a generally similar manner.

The Mirastan rugs were so woven that the colors and patterns showed through on the back of the rug, a feature which was, until about 1927, found only in certain carpets and in genuine Oriental rugs.

The Hindustan and Iranian rugs had the so-called hard back or white back, which is common in the United States to both the Wilton and Axminster process of manufacturing rugs and carpets, and the patterns and colors of the face did not show through on the back.

Gulistan rugs, until January 6, 1941, were so woven that the colors and patterns showed through on the back of the rugs, a feature of genuine Oriental rugs. Since January 6, 1941, all Gulistan rugs have had the so-called hard back or white back, and the patterns and colors of the face do not show through on the back.

The faces of the Hindustan, Iranian, Mirastan, and Gulistan rugs (other than Gulistan rugs of French design) had many points of resemblance in design, color, and general appearance to genuine Oriental rugs.

PAR. 6. The name "Iranian" is synonymous with "Persian," Iran being the modern name of Persia. Persia has for centuries been identified with Oriental rugs as one of the places of origin thereof, and many Oriental rugs are described and known simply as "Persian." Hindustan is a district of India, a country in which genuine Oriental rugs are produced, and various rugs made in the district are known and described simply as "Indian." The name "Mirastan" is a coined word, the last syllable of which is the Persian word for "place." The name "Gulistan" is made from two Persian words meaning "place of roses" or "garden of roses." There are no genuine Oriental rugs known as "Gulistan." Many genuine Oriental rugs are known by names the final syllable of which is "stan"; for example, "Beluchistan," "Kurdistan," "Laristan," "Cabistan," and "Daghestan."

PAR. 7. In the labeling of its Iranian, Hindustan, and Mirastan rugs, it was customary for the respondent to use two labels—one pasted or attached to the back of the rug, usually on the right-hand corner, and a second label sewed on to the same end of the rug so that the label protruded beyond the rug. On all its labels except the ones attached to the back of the Hindustan and Mirastan rugs appeared the words "Made in U. S. A." and on the labels on the back of the Hindustan and Mirastan rugs appeared the statement "An American Product." However, the terms "Made in U. S. A." appeared either in small letters at the top of the label or in printing closely corresponding to the color of the label so as to be almost indiscernible except by very close examination. The terms "An American Product" appearing on the two rugs as stated are in dark letters closely corresponding to the color of the label and are not readily discernible upon examination. All of said labels contain the statement "Made by the makers of Gulistan."

In the labeling of its Gulistan rugs respondent has on occasion placed a label upon the back of said rug and a label sewed onto the end of the rug, extending beyond the rug, and in some cases has labeled said rugs only by the label placed on the back of the rug.

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In its earlier label, it has used some labels without any statement that the rugs are made in the United States and others which contain the term "Made in U. S. A." or some similar statement, at times rather difficult to discern. In its later labeling, however, the respondent has more or less prominently displayed the terms "Made in U. S. A." and other terms of similar import.

PAR. 8. In connection with the advertising of said rugs, the respondent has featured the name "Gulistan" and in the context of the advertisement usually discussed the method of manufacture of its Gulistan rugs and the patented process developed by the respondent in such manufacture.

PAR. 9. Respondent has also for several years last past designated certain carpets manufactured by it on power looms in its factories in the United States by the name "Gulistan." They are what are generally and commonly known as roll carpets or broadloom carpets. They have the thick, so-called hard back or white back, which is common in the United States to both the Wilton and Axminster processes of manufacture of rugs and carpets, and the patterns and colors of the face do not show through on the back. These carpets are made in a variety of designs and patterns and in plain colors. The patterns and designs are not copied from genuine Oriental rugs nor do they involve Oriental designs, motifs, colors, or treatments adapted from genuine Oriental rugs.

PAR. 10. The use by the respondent of the word "Hindustan" to designate certain of its rugs constitutes a representation that the rugs so designated are true Oriental rugs in all respects, made in India by hand. In like manner the use of the word "Iranian" to designate or describe certain other of its rugs is a representation that the rugs so designated are true Oriental rugs in every respect, made in Persia or Iran by hand.

The use of the word "Mirastan," together with the manner in which said rug was labeled by the respondent, has the capacity and tendency to cause the purchasing public to believe that such rugs are in fact true Oriental rugs in all respects, made in the Orient by hand.

PAR. 11. In the course and conduct of its business, respondent has engaged in the practice of furnishing to dealers buying its rugs, advertising copy which was intended to be, and was, inserted by such dealers in newspapers and magazines and other publications of general circulation among the purchasing public. Contained in certain of such advertising copy were one or all of the following statements:

Gulistan — — the world famous Oriental reproductions that most people cannot tell from a hand woven Oriental rug.

Superb Persian reproductions * * * Hindustan rugs.

Persian reproductions * * * the Iranian rug.

Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity.

The rugs to which the foregoing statements refer were woven on power looms. Some of them in color and pattern followed as closely as is possible when respondent's method of power-loom weaving is used, but not exactly, the colors and patterns of original handmade rugs from the Orient. Such rugs were made in the same size as the original rugs and in sizes smaller or larger than the original. Some of said rugs were, in color and pattern, adaptations, and combinations of colors, motifs, and patterns found in various genuine Oriental rugs. The manufacture of these rugs did not involve the copying of the color and design of any particular single genuine Oriental rug, and the designs of these rugs as a whole were entirely new. Respondent's rugs are not reproductions of Oriental rugs in structure or method of manufacture but merely simulate Oriental rugs in appearance.

PAR. 12. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its said rugs has had, and now has, the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof.

The aforesaid acts and practices of the respondent have the effect of placing in the hands of retail dealers who purchase said rugs and resell them to the purchasing public, means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to the respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products.

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 on 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 a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, 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, A. & M. Karagheusian, Inc., a corporation, and 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 rugs or carpets in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Iranian" or "Hindustan" or any other word indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

2. Using the word "Mirastan" or any other word or combination of words or syllables, coined or otherwise, which are indicative of the Orient, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

3. Using the word "reproduction" or any other word of similar import or meaning to designate or describe rugs which are not in fact reproductions of genuine Oriental rugs in all respects, including structure, method of manufacture, and material.

It is further ordered, That no provision of this order to cease and desist shall be construed as prohibiting the respondent from using the term "Gulistan" to designate or describe its rugs and carpets, provided there is used in immediate connection or conjunction therewith a statement which clearly and conspicuously states in appropriate terms that the rugs and carpets so designated and described are woven on power looms in the United States.

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
ATMORAY, INC., AND ATMOZONECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4630. Complaint, Nov. 13, 1941—Decision, Apr. 2, 1943*

Where two corporations engaged in the manufacture and interstate sale and distribution of their "Atmoray" electric ozone generator, which was intended for the treatment of various ailments and diseases through use by the lay public in the home without medical supervision—

- (a) Represented, through advertisements disseminated by radio and by circulars, leaflets, pamphlets, and other advertising literature, including purported testimonials, that their device constituted a remedy or competent treatment for many specified ailments and diseases, including sinusitis, asthma, hay fever, tuberculosis, respiratory diseases generally, blood diseases, kidney and liver trouble, diabetes, rheumatism, and cancer; and
- (b) Represented, as aforesaid, that their said device was an effective oxidizing, germicidal, and disinfecting agent;

The facts being that ozone is without therapeutic value in the treatment of the diseases and conditions mentioned, or any others; does not constitute, in the concentration supplied, an effective oxidizing, germicidal, and disinfecting agent, and a concentration sufficiently high to be effective for such purpose, would break down and destroy tissues and cause serious injury, and in some cases death; and the concentration ordinarily produced by the machine was capable of causing rather serious irritation of the respiratory organs, particularly if breathed continuously over an extended period; and

- (c) Failed to reveal facts material in the light of the representations contained in their said advertisements and with respect to consequences which might result from the use of said device under prescribed or usual conditions, in that they failed to reveal the several factors which must be considered in determining the safety of the machine, including its output, the size of room in which operated, ventilation, and length of time machine is operated; that concentration respired should not be permitted to exceed one-half part of ozone to a million parts of air; that care should be taken by user to avoid proximity to the machine while in operation; and that inhalation of an excessive amount of ozone may result in irritation of the respiratory organs;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties, value, and safety of the device in question; thereby causing purchase thereof in substantial quantities, because of such mistaken belief:

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

As respects the making, as alleged, of false and misleading representations in advertisements with respect to the therapeutic value of a machine, the function of which was to generate ozone from the oxygen in the air electrically, and which was intended for lay use in the home without medical supervision in the treatment and cure, as asserted, of a large number of ailments, dis-

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eases, and conditions: The testimony of a number of members of the public with respect to beneficial results allegedly obtained by them from use of the machine, including that of a naturopath who used it as an adjunct along with other treatment, and of lay witnesses dealing with alleged cures for many different types of diseases, some of the most serious nature, was in such direct conflict with recognized medical and scientific opinion that its correctness was open to serious question, and, in view of all the evidence, was not sufficient to overcome the expert testimony, including that of three witnesses, i. e., a practicing physician who was a specialist in physical therapy, a professor of pharmacology, and a professor of biochemistry.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Coan & Rosenberg, Mr. William M. Stone and *Mr. Livy Stipp*, of Oregon City, Oreg., for Atmozone.

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 Atmoray, Inc., a corporation, and Atmozone, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Atmoray, Inc., is a corporation, created by and existing under the laws of the State of Oregon, with its principal office and place of business located at 408 Northeast Thompson Street, in the city of Portland, State of Oregon. Atmozone, Inc., is a corporation, created by and existing under the laws of the State of Oregon, with its principal office and place of business located in the Beaver Building, in the city of Oregon City, State of Oregon.

PAR. 2. Respondent, Atmozone, Inc., is now and for more than 3 years last past has been engaged in the manufacture of a device known as "Atmoray," an ozone generator which is intended for use in air conditioning, in the elimination of obnoxious odors, and in the treatment and prevention of diseases. The respondent, Atmoray, Inc., has the exclusive sales rights in said device and for more than 3 years last past has engaged in its sale and distribution.

Respondents cause said device, when sold, to be transported from their said places of business in the State of Oregon to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade 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 their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said device, by United States mails, by pamphlets, newspaper advertising, and by radio broadcasts having an interstate reception, and through sales representatives, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said device in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

ATMORAY—THE ONLY PROVEN THERAPEUTIC OZONE MACHINE

ATMORAY—THE SYMBOL OF HEALTH

* * * generator of chemically pure ozone, in quantities sufficiently large to be thoroughly effective in the destruction of odors, toxic gases and disease bacteria.

As a means of relieving illness.—Medical authorities claim that approximately 90% of all illnesses from which humanity suffers are due to an impure blood stream. If it were possible to eliminate these impurities from the blood and to maintain a pure blood stream, better health would result. Atmoray is a very practical means of doing just that.

The ray emanating from the Atmoray Generator, in combination with the ozone is that which makes this astounding little instrument of health so valuable.

Disease germs of any kind are completely eliminated when coming into contact with ozone.

Do you actually want relief from Sinus, Colds, Asthma or any one of the host of diseases that emanate from an impure blood stream? If you do, you will find Atmoray ready to do its job in restoring health.

What is Atmoray? It is a creator of new oxygen in the form of ozone. It is deadly to germs. It is health.

Are there days when you wake up just plain all in? Do you suffer from lowered physical resistance, Constipation, Nervousness or Insomnia? Give us an opportunity to help you with Atmoray. It emanates the essentials of life that have slowly been taken away from people down through the years.

The value of this Atmoray has been recognized as a therapeutic measure for a period of time and now Atmoray brings this vulnerable ray to your home. The healthful qualities of Atmoray are far more valuable than dollars and cents.

Ozone, in itself, is the most effective oxidizing, germicidal, disinfecting, and deodorizing agent known.

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Atmoray not only produces ozone, but with it an invisible ray, that acts directly on the human organism.

The direct action of ozone is its attack on the impurities of the blood stream and while eliminating the impurities it builds and increases the red blood corpuscles. The ray from the Atmoray has an intensive penetrating quality by which it carries the ozone with it directly to the affected part of the anatomy. Back goes vitality to the body. Out goes injurious bacteria. The human system undergoes revitalization, the nerves relax, the blood purifies * * *.

"The conditions that I would mention especially as being most amenable to this (Ozone) treatment are such as Neurasthenia, Melancholia, Insomnia, Hay Fever, Bronchitis, early stages of Pulmonary Tuberculosis, Anemia, Dyspepsia, Constipation, Headache, inactive Liver or Kidneys, and Syphilis in any stage, and I would say that it is a most valuable adjunct to surgical, electrical and other procedures for the relief or cure of organic disease."

A. J. Welch, Jennings Lodge, Oregon, states that he has been relieved of kidney and prostate trouble.

E. E. Limbaugh, Gladstone, Oregon, states that he was completely relieved of sugar diabetes.

Mike Boushley, Oregon City, Oregon, states, "I wish to add my testimony to the value of your machine. I have suffered from rheumatism and arthritis for two years and the treatments have given me immediate relief."

A. H. Bronson of Oregon City, Oregon, states, "I suffered with a large cancer in my jaw which was exceedingly painful. After taking treatments from your machine it was completely absorbed and I experienced no pain or discomfort from it. I recommend this treatment very highly for all cases of cancer."

Mrs. Leslie Smith, 10947 S. E. Harold Street, Portland, Oregon. "This is to state what the Atmoray machine has done for my husband. He had ulcers of the stomach so bad that he couldn't eat hardly anything and was on a strict diet. Also had a serious operation in 1936. After taking 12 or more treatments he is able to eat almost anything and notice a big improvement in his stomach."

PAR. 4. By the use of such advertisements and representations aforesaid, including the reproduction and publication of letters and testimonials concerning said device, and by other and similar advertisements and methods not herein set forth, respondents represent and have represented that the said device, designated as Atmoray, is efficacious in the treatment, cure or alleviation of sinusitis, syphilis, head colds, colitis, neuritis, rheumatism, arthritis, run-down conditions, headaches, asthma, ulcers of the stomach, kidney and prostate gland trouble, liver and bladder infections, infectious diseases, cataracts, heart trouble, pneumonia, tuberculosis, respiratory diseases, blood pressure, hay fever, cancer, weakness, sugar diabetes, deafness, blood diseases, defective eyesight, paralysis, bronchitis, and blood poisoning, and constitutes a competent and effective treatment for such conditions. Said device also has been and is represented as an effective oxidizing, germicidal, disinfecting, and deodorizing agent.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of said

device does not and cannot constitute an effective treatment or cure or remedy for sinusitis, syphilis, head colds, colitis, neuritis, rheumatism, arthritis, run-down conditions, headaches, asthma, ulcers of the stomach, kidney and prostate gland trouble, liver and bladder infections, infectious diseases, cataracts, heart trouble, pneumonia, tuberculosis, respiratory diseases, blood pressure, hay fever, cancer, weakness, sugar diabetes, deafness, blood diseases, defective eyesight, paralysis, bronchitis, and blood poisoning, nor does it have any therapeutic value in the treatment of such diseases or conditions. Furthermore, said device is of no therapeutic value in the treatment of any disease or condition, nor is it an effective oxidizing, germicidal, disinfecting, and deodorizing agent.

PAR. 6. The respondents' advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the device to which the advertisements relate under the conditions described in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, ozone, the gas which the respondents represent as being produced from said device, is a very poisonous and dangerous gas, and if a dilution of such ozone with air equals one part of ozone to two-millionths part of air, the breathing of such air gas mixture is dangerous to health and may cause severe irritation and inflammation of the entire respiratory tract. The density of such an air gas mixture will depend upon the output of ozone from said device, the circulation of the ozone in the air, the size and ventilation of the room in which said device is placed, and other factors. If the production of ozone by said device and the resulting dilution of ozone with air is less than that stated above, such concentration would be of no therapeutic value.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to said device, 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, representations, and advertisements are true, and that respondents' device will accomplish the results indicated, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase units of respondents' said device in substantial numbers.

PAR. 8. The aforesaid acts and practices of the respondents 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 13, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Atmoray, Inc., a corporation, and Atmozone, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answers, 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 respondent Atmozone, 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 final hearing before the Commission on the complaint, the answers thereto, testimony, and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Atmoray, Inc., is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 408 Northeast Thompson Street, Portland, Oreg. Respondent, Atmozone (referred to in the complaint as Atmozone, Inc.), is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business located at 2140 Northeast Union Avenue, Portland, Oreg.

Respondent, Atmozone, is now, and for a number of years last past has been, engaged in the manufacture and in the sale and distribution of a mechanical device known as "Atmoray," an ozone generator intended for use in the treatment of various ailments and diseases of the human body. Respondent, Atmoray, Inc., through an agreement with respondent, Atmozone, held the exclusive sales rights to the device for a period of some 3 years, and during such period was engaged in the sale and distribution of the device.

PAR. 2. Respondents cause or have caused their device, when sold, to be transported from their places of business in the State of Oregon to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain or have maintained a course of trade in their device 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 their business, and for the purpose of inducing the purchase of their device, the respondents have disseminated and have caused the dissemination of advertisements concerning their device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their device by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated as herein set forth, by the United States mails, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

ATMORAY—THE ONLY PROVEN THERAPEUTIC OZONE MACHINE

As a means of relieving illness.—Medical authorities claim that approximately 90% of all illnesses from which humanity suffers are due to an impure blood stream. If it were possible to eliminate these impurities from the blood and to maintain a pure blood stream, better health would result. Atmoray is a very practical means of doing just that. * * * (Com. Ex. No. 4)

ATMORAY—THE SYMBOL OF HEALTH

* * * generator of chemically pure ozone in quantities sufficiently large to be thoroughly effective in the destruction of * * * disease bacteria. * * * (Com. Ex. No. 4)

The ray emanating from the Atmoray Generator, in combination with the ozone, is what makes this astounding little instrument of health so valuable. (Com. Ex. No. 13)

* * * Disease germs of any kind are completely eliminated when coming in contact with Ozone. (Com. Ex. No. 1)

* * * Do you actually want relief from Sinus, Colds, Asthma or any one of the host of diseases that emanate from an impure blood stream? If you do, you will find Atmoray ready to do its job in restoring health. * * * (Com. Ex. No. 11)

What is Atmoray? * * * It is deadly to germs. It is a creator of new oxygen in the form of ozone. * * * It is HEALTH. (Com. Ex. No. 11)

Are there days when you wake up just plain all in? Do you suffer from lowered physical resistance, constipation, nervousness, or insomnia? * * * Give us an opportunity to help you with Atmoray. * * * It emanates the essentials of life that have slowly been taken away from people down through the years * * *. The value of this ray has been recognized as a therapeutic measure for a period of time and now Atmoray brings this valuable ray to your home. The healthful qualities of Atmoray are far more valuable than dollars and cents. * * * (Com. Ex. No. 11)

* * * Ozone, in itself, is the most effective oxidizing, germicidal, disinfecting * * * agent known * * *. (Com. Ex. No. 2)

* * * Atmoray not only produces ozone but with it an invisible ray that acts directly on the human organism. * * * (Com. Ex. No. 1)

* * * the direct action of ozone * * * is its attack on the impurities of the blood stream and while eliminating the impurities it builds and increases the red blood corpuscles. The ray from the Atmoray has an intensive penetrating quality by which it carries the ozone with it directly to the affected part of the anatomy. Back goes vitality to the body. Out goes injurious bacteria. The human system undergoes revitalization, the nerves relax, the blood purifies * * *. (Com. Ex. No. 1)

"The conditions that I would mention especially as being most amenable to this (Ozone) treatment are such as Neurasthenia, Melancholia, Insomnia, Hay Fever, Bronchitis, early stages of Pulmonary Tuberculosis, Anemia, Dyspepsia, Constipation, Headache, inactive Liver or Kidneys, and Syphilis in any stage, and I would say that it is a most valuable adjunct to surgical, electrical and other procedures for the relief or cure of organic disease." (Com. Ex. No. 1)

"A. J. Welch, Jennings Lodge, Oregon, states that he has been relieved of kidney and prostate trouble." (Com. Ex. No. 2)

"E. E. Limbaugh, Gladstone, Oregon, states that he was completely relieved of sugar diabetes." (Com. Ex. No. 2)

Mike Boushley, Oregon City, Oregon, states "I wish to add my testimony to the value of your machine. I have suffered from rheumatism and arthritis for two years and the treatments have given me immediate relief." (Com. Ex. No. 2)

A. H. Bronson of Oregon City, Oregon, states, "I suffered with a large cancer in my jaw which was exceedingly painful. After taking treatments from your machine it was completely absorbed and I experienced no pain or discomfort from it. I recommend this treatment very highly for all cases of cancer." (Com. Ex. No. 2)

Mrs. Leslie Smith, 10947 S. E. Harold Street, Portland, Oregon. "This is to state what the Atmoray machine has done for my husband. He had ulcers of the stomach so bad that he couldn't eat hardly anything and was on a strict diet. Also had a serious operation in 1936. After taking 12 or more treatments he is able to eat almost anything and notice a big improvement in his stomach." (Com. Ex. No. 2)

PAR. 4. Through the use of these representations, including the publication of letters and testimonials received from persons purchasing their device, and through the use of other and similar representations, respondents have represented, directly or by implication, that their device constitutes a cure or remedy, or a competent and effective treatment, for various ailments, disorders, and diseases of the human

body, including sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney and prostate gland trouble, liver and bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, and deafness; and that respondents' device is an effective oxidizing, germicidal, and disinfecting agent.

PAR. 5. Respondents' machine is an ozone generator, its function being to generate or manufacture ozone from the oxygen in the air. It is operated by electric current. The machine is intended for use by the lay public in the home without medical supervision. Ozone is a very active form of oxygen. Ordinarily, the oxygen in the air is made up of two atoms of oxygen to each molecule, and is known in chemistry as "O₂." Ozone, however, is made up of three atoms of oxygen to each molecule, the atoms being linked in a rather loose combination. It is highly reactive with the tissues of the human body and with organic substances generally.

During the course of the hearings there were introduced, at the instance of the Commission, three expert witnesses, one being a practicing physician who is also a specialist in physical therapy, the second a professor of pharmacology, and the third a professor of biochemistry. The testimony of these witnesses establishes that ozone is without therapeutic value, that it has never been regarded in medical science as a therapeutic agent. It is wholly ineffectual in the treatment of any of the ailments or disorders for which it is recommended by respondents. It is not a cure or remedy for, nor does it possess any therapeutic value in the treatment of, sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney and prostate gland trouble, liver and bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, or deafness. Nor does it possess any therapeutic value in the treatment of any other disease or disorder of the human body.

Nor does ozone, in the concentration supplied by respondents' machine, constitute an effective oxidizing, germicidal, or disinfecting agent. While ozone in sufficiently high concentrations (beginning with

concentrations of 15 parts of ozone per 1,000,000 parts of air) is capable of oxidizing organic substances and destroying bacteria, concentrations sufficiently powerful to effect such results will at the same time break down or destroy human tissue and cause serious injury, and, in some cases, death. In fact, ozone is one of the most powerful of the known gases, including the gases used for war purposes. It is particularly irritating to the mucous membrane of the respiratory organs.

The concentration of ozone ordinarily produced by respondents' machine is from one to two parts of ozone per 1,000,000 parts of air. This concentration is capable of causing rather serious irritation of the respiratory organs, particularly if breathed continuously over an extended period of time. The exact amount of ozone respired by a user of the machine will depend upon a number of factors, including the output of the particular machine used, the size of the room in which the machine is operated, the ventilation, and the length of time the machine is operated. In no event should the concentration respired be permitted to exceed one-half part of ozone per million parts of air. Care should also be taken by the user to avoid proximity to the machine while it is in operation.

In support of their representations, respondents introduced the testimony of a practitioner of naturopathy who had used respondents' machine in his practice, and the testimony of a number of members of the public who testified to beneficial results alleged to have been obtained by them from the use of the machine. The record further shows, however, that the naturopath had used the machine merely as an adjunct along with other treatment, and it is questionable whether the beneficial results obtained in the several cases referred to were due to the machine or to the other treatment. With respect to the lay witnesses, whose testimony dealt with alleged cures for many different types of disease, some of a most serious nature, the Commission is of the opinion that this testimony is in such direct conflict with recognized medical and scientific opinion that its correctness is open to serious question. After consideration of all of the evidence introduced at the instance of respondents, the Commission finds that such evidence is insufficient to overcome the expert testimony in the record.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their device, as set forth in paragraphs 3 and 4 hereof, are erroneous, misleading, and deceptive, and constitute false advertisements.

PAR. 7. The Commission finds, also, that respondents' advertisements are false for the further reason that they fail to reveal facts material in the light of the representations contained therein, and material with

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respect to consequences which may result from the use of respondents' device under the conditions prescribed in such advertisements or under such conditions as are customary or usual. The advertisements fail to reveal the several factors which must be considered in determining the safety of the machine, that the concentration of ozone should not be permitted to exceed one-half part of ozone per 1,000,000 parts of air, that proximity to the machine should be avoided, and that the inhalation of an excessive amount of ozone may result in irritation of the respiratory organs.

PAR. 8. The use by respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondents' device and with respect to the safety of such device, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' device as a result of the erroneous and mistaken belief so engendered.

PAR. 9. Respondents have also represented their device to be an effective deodorizing agent, and the complaint charged that such representations were false and misleading. The evidence adduced on this issue is not sufficiently clear to enable the Commission to make a definite finding thereon, and the Commission is therefore of the opinion and finds that the complaint should be dismissed as to this point without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding or to institute a new proceeding on such point.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondents, Atmoray, Inc., a corporation, and Atmozone, (referred to in the complaint as Atmozone, Inc.), a corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' device designated "Atmoray," or any other device of substantially similar character, 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 represents, directly or by implication,

(a) That respondents' device constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, sinusitis, head colds, asthma, hay fever, bronchitis, tuberculosis, pneumonia, respiratory diseases generally, dyspepsia, constipation, colitis, nervousness, melancholia, insomnia, neurasthenia, weakness, run-down conditions, anemia, blood poisoning, blood diseases, headache, inactive liver or kidneys, kidney or prostate gland trouble, liver or bladder infections, infectious diseases generally, syphilis, sugar diabetes, rheumatism, arthritis, neuritis, paralysis, cancer, ulcers of the stomach, heart trouble, cataracts, defective eyesight, deafness, or any other disease or disorder of the human body; or

(b) That respondents' device, or the product thereof in the quantities produced, is an effective oxidizing, germicidal, or disinfecting agent.

2. 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 fails to reveal that the safety of respondents' device depends upon the output of the particular machine used, the size of the room in which the machine is operated, the ventilation, and the length of time the machine is operated; that the concentration of ozone should not in any case be permitted to exceed one-half part of ozone per million parts of air; that proximity to the machine should be avoided; and that the inhalation of an excessive amount of ozone may result in irritation of the respiratory organs.

3. 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 respondents' device, which advertisement contains any representation prohibited in para-

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graph 1 hereof or which fails to contain the warning set forth in paragraph 2 hereof.

It is further ordered, That the respondents shall, with 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, the respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the point with respect to the effectiveness of respondents' device as a deodorizing agent without prejudice to the right of the Commission, should the facts so warrant, to reopen the proceeding or to institute a new proceeding on such point.

Complaint

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IN THE MATTER OF

ISAAC S. BRILL, HERMAN A. GALLANT, AND SIMON D. BRILL, TRADING AS GALLANT TRADING COMPANY

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

Docket 4780. Complaint, July 6, 1942—Decision, Apr. 2, 1943

Where three individuals, engaged as partners in interstate sale and distribution of various articles of merchandise, including clothing, shoes, blankets, mattresses, and tarpaulins; by means of pamphlets, circulars, letters, other printed material, and newspaper advertisements, directly or by implication—

- (a) Represented that some of their Army Ill-Top shoes were absolutely perfect; that their mattresses were new and perfect Army mattresses which had been manufactured to Government specifications but, for some unknown reason, had been rejected by the Government; that their tarpaulins were all perfect; and that their blankets were Army blankets;

The facts being that said shoes showed signs of wear; mattresses in question had been renovated and repaired after having been gnawed by mice, and were not Army mattresses or manufactured to Government specifications, or rejected by the Government; not all of their tarpaulins were perfect; and some of their blankets were not Army blankets; and

- (b) Represented falsely that they dealt in Army goods exclusively, that all of their merchandise was purchased from the Government, and that no other dealers had such goods to offer to the public;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the nature, quality, and value of said merchandise, thereby inducing its purchase thereof:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. David I. Lippert, of Los Angeles, Calif., for Isaac S. Brill and Simon D. Brill.

Mr. Charles Watkins, of Los Angeles, Calif., for Herman A. Gallant.

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 Isaac S. Brill, Herman A. Gallant, and Simon D. Brill, copartners, trading as Gallant Trading Co., hereinafter referred to as the respondents, have violated the provisions of said act, and it appearing to the Commission