

## IN THE MATTER OF

## HOME DIATHERMY COMPANY, INC. ET AL.

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

*Docket 4901. Complaint, Feb. 6, 1943—Decision, Jan. 13, 1944*

Where two corporations and the two individuals who were president and secretary-treasurer, respectively, of both and formulated, controlled and directed their policies and practices; engaged in interstate sale, distribution and servicing of an electrical device designated as "Home Diathermy," recommended by them for the treatment of various ailments and diseases; for the purpose of inducing owners of their diathermy machines to send said machines to their factory for calibration—  
Represented in letters and by oral statements to owners of said machines that in order to comply with the Federal Communications Commission's Order No. 96 requiring registration of diathermy apparatus, it was necessary that all diathermy machines be given a thorough calibration, and that machines purchased from them must be sent to their factory in New York City for such purpose, and they be paid the sum of \$7.50 per machine plus delivery charges, and that unless this was done it was impossible properly and legally to complete the required forms and register the instrument as required by said order, and comply therewith, failing which the owner of a machine was subject to a penalty of \$10,000 or confiscation of his machine;

Facts being it was not necessary that diathermy machines be calibrated or any servicing or adjustment made to permit full compliance with the requirements of said order, or that machines be sent to the factory, or to pay or compensate anyone, as a prerequisite for compliance therewith;

With tendency and capacity to mislead and deceive a substantial portion of the owners of diathermy machines, and particularly of those sold by them, into the mistaken belief that such representations were true, thereby inducing many of such persons to enter into agreements with them for the calibration of their machines and the payment of money to them by reason thereof:

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

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Zeitz & Harris*, of New York City, for respondents.

## 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 the Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation; Arnold Steindler and Isadore Teitelbaum, individually, and as officials of Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania 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, Home Diathermy Company, Inc., is a New York corporation having its office and principal place of business located at 1780 Broadway, New York, N. Y.

The respondent, Home Diathermy Company, Inc., is a Pennsylvania corporation having its office and principal place of business located at 15 Public Square in the city of Wilkes-Barre, Pa., and is a totally owned subsidiary of respondent, Home Diathermy Company, Inc., a New York corporation. Both corporate respondents operate a factory located at 1780 Broadway in the city of New York, State of New York.

The respondents, Arnold Steindler and Isadore Teitelbaum, are individuals, and are president and secretary-treasurer, respectively, of both corporate respondents. These individual respondents formulate, control and direct the policies, practices and methods of the corporate respondents.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in selling, distributing and servicing an electrical device designated as "Home Diathermy" recommended by respondents for the treatment of various ailments and diseases of the human body.

Respondents cause and have caused their device, when sold or serviced, to be transported from their places of business in the States of New York and Pennsylvania to purchasers and owners thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Federal Communications Commission is a duly constituted and acting independent agency of the United States government, duly and regularly created by Act of Congress. Pursuant to the powers vested in it, said Federal Communications Commission issued on May 18, 1942, order #96 as follows:

Federal Communications Commission 60074  
Washington, D. C.

May 18, 1942

Order No. 96

#### Registration of Diathermy Apparatus

Pursuant to the authority conferred on it by Order No. 4, dated April 16, 1942, of the Defense Communications Board, the Federal Communications Commission hereby orders every person or organization in possession of apparatus designed, constructed, or used for generating radio frequency energy for therapeutic purposes (hereinafter referred to as "diathermy apparatus") to apply for registration of such apparatus with the Federal Communications Commission within 20 days from the date of this order in accordance with the following provisions:

- (1) Application for registration shall be made on forms furnished by the Federal Communications Commission.
- (2) Such application forms shall be obtainable from the Federal Communications Commission, Washington, D. C., or from any of the field offices of the Commission, as set out in Appendix A attached to this Order.
- (3) Individual applications must be made for each set of diathermy apparatus to be registered; therefore, all requests for application forms should state the number of sets to be registered.

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(4) All application forms should be returned to the Secretary, Federal Communications Commission, Washington, D. C. (*not to the field offices.*)

(5) If, upon receipt of an application for registration, the Commission finds that sufficient and reliable information has been furnished, it will issue a non-transferable certificate of registration to the applicant.

(6) The applicant shall be responsible for having the certificate of registration conspicuously affixed to the diathermy apparatus for which it is issued.

(7) Any person or organization in any manner coming into possession of apparatus required to be registered under the terms of this Order shall apply to the Commission for a certificate of registration within 15 days after obtaining such possession.

(8) If diathermy apparatus for which a certificate of registration has been issued should be transferred, sold, assigned, leased, loaned, stolen, destroyed, or otherwise removed from the possession of the registrant (holder of a certificate of registration) he shall notify the Commission within five days thereafter of such loss, disposal, or disappearance, furnishing the name of the recipient of the diathermy apparatus if such person is known to the registrant.

(9) (a) Whenever the registrant of diathermy apparatus shall be the manufacturer thereof, he shall stamp on each set of such apparatus in his possession the name of the manufacturer and a serial number.

(b) Whenever any set of diathermy apparatus has impressed upon it, or it is in any way marked with the name of the manufacturer and a serial number, the registrant in possession shall be responsible for preserving such marking from obliteration, removal, or alteration.

(10) Any apparatus required to be registered for which there is no valid registration certificate outstanding, and any apparatus from which the name of the manufacturer and serial number shall have been obliterated, removed, or altered after the date of this order, shall be subject to closure and removal in such manner as shall be prescribed at the time by the Commission.

(11) The following apparatus shall not be subject to the registration provisions of the order:

Apparatus which is in the possession of the United States Government, its officers or agents; or apparatus which is under contract for delivery to the United States Government.

(12) Any person or organization having in his possession diathermy apparatus which is exempt from registration under paragraph 11 of this order, shall immediately apply for registration of such apparatus if for any reason such exemption shall cease to apply to such apparatus.

## FEDERAL COMMUNICATIONS COMMISSION

/s/ T. J. Slowie,

T. J. Slowie,  
Secretary

PAR. 4. In the course and conduct of their business and for the purpose of inducing owners of their diathermy machines to send said machines to respondent's factory for calibration, respondents have disseminated false, deceptive and misleading statements and representations with respect to the requirements provided by said order No. 96 issued by the Federal Communications Commission under date of May 18, 1942, said statements and representations being made and disseminated by means of letters sent to purchasers of their machines and by oral statements and representations made to owners of said machines by the respondents. Typical of such

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statements and representations are those made in letters sent to owners of respondents' machines, a copy of which is as follows:

Dear Sir:

We are at this time notifying you about an order that was issued by the Federal Communications Commission in Washington due to the fact that enemy aliens in the United States are using Short Wave Diathermy to transmit illegal messages to the enemies of our country. Since it would be a very costly and lengthy procedure to track down each and every person of the thousands who own diathermy units, the government has ordered that anyone owning a diathermy in the United States must fill out forms FCC #410 and FCC #410D. This calls for:

Exact frequency  
Trade name  
Range of serial No.  
Medical or Surgical

Exact kilocycles  
Type of model No.  
Power input & output  
Type & serial No. of tubes

In other words, a thorough calibration. To do this, your unit must be brought to our factory. We, of course, will try to give you the quickest service possible. We say this, because the many instruments that are coming in from all parts of the United States must all be given the same service as yours. This new Federal Communications Commission ruling is very costly to us since we must take our mechanics from their usual work to spend a few hours on each unit. To calibrate properly these many units for the public, in an institution such as ours the cost of operation is very high since we use radio to bring our message to the public. We therefore feel that by us being willing to cooperate with you that you in appreciation would willingly defray part of the expense.

Your part of the cost to do this work properly is \$7.50 for complete calibration as described above. If you wish to have your apparatus picked up at your home and then redelivered, there is an additional charge of \$2.50.

Since you are the owner of an apparatus and have been informed as to what the order calls for — that if said apparatus is not registered, it may be confiscated or you may be penalized \$10,000. We have reported this to you and therefore the burden of responsibility is with you. You have received this notice and cannot say that we did not bring this very important matter to your attention, since we have a duplicate on our files which the government can check at any time.

Please attend to this vital matter immediately so that you may avoid unnecessary complications. Kindly sign the attached form below so that we can take immediate steps in the calibration of your unit. Please sign your name where "X" is indicated.

Yours very truly,

/s/ E. Scherber

HOME DIATHERMY CO., INC.

as/ab

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I authorize you to perform the following services:

|                                                  |         |
|--------------------------------------------------|---------|
| Exact frequency.....                             |         |
| Trade name.....                                  |         |
| Type & serial No. of tubes.....                  |         |
| Power input and output.....                      |         |
| Medical or surgical.....                         |         |
| Exact kilocycles.....                            |         |
| Range of serial No.....                          |         |
| Type or model No.....                            |         |
|                                                  | \$7.50  |
| Pick up and delivery charge.....                 | 2.50    |
| (charge for shipping unit to New York and back.) |         |
| Total .....                                      | \$10.00 |

X ACCEPTED BY:.....

ADDRESS:.....

DATE: .....

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and nature not set forth herein, respondents represent that in order to comply with order No. 96 issued by the Federal Communications Commission, above set out, it is necessary that all diathermy machines be given a thorough calibration; that machines purchased from respondents, or any of them, must be sent to respondents' factory in New York City for the purpose of calibration; that unless this work is done it is impossible to properly and legally complete the required forms and register the instruments as required by said order; that it is necessary to pay respondents the sum of \$7.50 for calibrating each machine, together with delivery charges, in order to comply with said order and that unless this work is done and the forms properly completed the owner of a machine is subject to a penalty of \$10,000 or confiscation of the machine.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, it was not and is not necessary that diathermy machines be calibrated or any servicing or adjustments made to permit full compliance with the requirements of order No. 96 of the Federal Communications Commission. It is not necessary and has never been necessary that machines purchased from respondents be sent to respondents' factory in New York City or to any other factory for the purpose of calibration or for any other purpose in order to comply with the terms of said order. It was not and has never been necessary for owners of respondents' machines or any other diathermy machines to pay any money or compensation of any nature to respondents or any other person or pay the transportation charges to factory or any other place as a prerequisite for compliance with said order and no shipping, calibration or other services were or have been necessary in order to properly register any and all diathermy machines and to avoid confiscation of such machines or the assessment of a penalty of \$10,000 or any other amount under the terms of said order.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, with respect to the requirements of order No. 96 issued by the Federal Communications Commission has had the tendency and capacity to, and did mislead and deceive a substantial portion of the owners of diathermy machines, and particularly owners of machines sold by respondents, into the erroneous and mistaken belief that such statements and representations were true and induced many of such persons to enter into agreements with the respondents for the calibration of their said machines and to obligate themselves to pay and to pay sums of money to respondents by reason thereof.

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 February 6, 1943, issued and subsequently served its complaint in this proceeding on the respondents; Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation, and Arnold Steindler and Isadore Teitelbaum, individually, and as officers of such corporate respondents, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by any of the respondents. A hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for respondents, subject to the approval of the Commission, and read into the record. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts (such stipulation having been accepted and approved by the Commission), 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, Home Diathermy Company, Inc., is a New York corporation, having its office and principal place of business located at 1780 Broadway, New York, N. Y.

Respondent, Home Diathermy Company, Inc., is a Pennsylvania corporation, having its office and principal place of business located at 15 Public Square, Wilkes-Barre, Pa., and is a subsidiary of respondent, Home

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Diathermy Company, Inc., a New York corporation. Both corporate respondents operate a factory located at 1780 Broadway, New York, N. Y.

Respondents, Arnold Steindler and Isadore Teitelbaum, are individuals, and are president and secretary-treasurer, respectively, of both corporate respondents. These individual respondents formulate, control, and direct the policies, practices, and methods of the corporate respondents, except that Isadore Teitelbaum was inactive in directing the policies of the corporations concerning the subject matter at hand and knew nothing of it. His activities concerned themselves mainly with the financial and labor policies of the corporations.

The Commission finds that although the respondent Isadore Teitelbaum may not have directly participated in the acts and practices charged in the complaint and admitted in the stipulation as to the facts, he is properly chargeable with such acts and practices since it is further admitted that he, together with Arnold Steindler, formulates, controls, and directs the policies, practices, and methods of the corporate respondents as an officer thereof.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in selling, distributing, and servicing an electrical device designated as "Home Diathermy" and recommended by respondents for the treatment of various ailments and diseases of the human body.

Respondents cause and have caused their device, when sold or serviced, to be transported from their places of business in the States of New York and Pennsylvania to purchasers and owners thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain and at all times herein mentioned have maintained a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Federal Communications Commission is a duly constituted and acting independent agency of the United States Government duly and regularly created by Act of Congress. Pursuant to the powers vested in it, said Federal Communications Commission issued on May 18, 1942, Order No. 96, as follows:

Federal Communications Commission  
60074

Washington, D. C.  
May 18, 1942

Order No. 96

Registration of Diathermy Apparatus

Pursuant to the authority conferred on it by Order No. 4, dated April 16, 1942, of the Defense Communications Board, the Federal Communications Commission hereby orders every person or organization in possession of apparatus designed, constructed, or used for generating radio frequency energy for therapeutic purposes (hereinafter referred to as "diathermy apparatus") to apply for registration of such apparatus with the Federal Communications Commission within 20 days from the date of this order in accordance with the following provisions:

(1) Application for registration shall be made on forms furnished by the Federal Communications Commission.

(2) Such application forms shall be obtainable from the Federal Communications Commission, Washington, D. C., or from any of the field offices of the Commission, as set out in Appendix A attached to this order.

(3) Individual applications must be made for each set of diathermy apparatus to be registered; therefore all requests for application forms should state the number of sets to be registered.

(4) All application forms should be returned to the Secretary, Federal Communications Commission, Washington, D. C. (*not to the field offices.*)

(5) If, upon receipt of an application for registration, the Commission finds that sufficient and reliable information has been furnished, it will issue a nontransferable certificate of registration to the applicant.

(6) The applicant shall be responsible for having the certificate of registration conspicuously affixed to the diathermy apparatus for which it is issued.

(7) Any person or organization in any manner coming into possession of apparatus required to be registered under the terms of this Order shall apply to the Commission for a certificate of registration within 15 days after obtaining such possession.

(8) If diathermy apparatus for which a certificate of registration has been issued should be transferred, sold, assigned, leased, loaned, stolen, destroyed, or otherwise removed from the possession of the registrant (holder of a certificate of registration) he shall notify the Commission within five days thereafter of such loss, disposal, or disappearance, furnishing the name of the recipient of the diathermy apparatus if such person is known to the registrant.

(9) (a) Whenever the registrant of diathermy apparatus shall be the manufacturer thereof, he shall stamp on each set of such apparatus in his possession the name of the manufacturer and a serial number.

(b) Whenever any set of diathermy apparatus has impressed upon it, or it is in any way marked with the name of the manufacturer and a serial number, the registrant in possession shall be responsible for preserving such marking from obliteration, removal, or alteration.

(10) Any apparatus required to be registered for which there is no valid registration certificate outstanding, and any apparatus from which the name of the manufacturer and serial number shall have been obliterated, removed, or altered after the date of this order, shall be subject to closure and removal in such manner as shall be prescribed at the time by the Commission.

(11) The following apparatus shall not be subject to the registration provisions of the order:

Apparatus which is in the possession of the United States Government, its officers or agents; or apparatus which is under contract for delivery to the United States Government.

(12) Any person or organization having in his possession diathermy apparatus which is exempt from registration under paragraph 11 of this order, shall immediately apply for registration of such apparatus if for any reason such exemption shall cease to apply to such apparatus.

FEDERAL COMMUNICATIONS COMMISSION

/s/ T. J. Slowie,

T. J. Slowie,  
Secretary.

PAR. 4. In the course and conduct of their business and for the purpose of inducing owners of their diathermy machines to send said machines to respondents' factory for calibration, respondents have disseminated deceptive and misleading statements and representations with respect to the requirements provided by said Order No. 96 issued by the Federal Communications Commission under date of May 18, 1942, said statements and representations being made and disseminated by means of letters

sent to purchasers of their machines and by oral statements and representations made to owners of said machine by the respondents. Typical of such statements and representations are those made in letters sent to owners of respondents' machines, a copy of which is as follows:

Dear Sir:

We are at this time notifying you about an order that was issued by the Federal Communications Commission in Washington due to the fact that enemy aliens in the United States are using Short Wave Diathermy to transmit illegal messages to the enemies of our country. Since it would be a very costly and lengthy procedure to track down each and every person of the thousands who own diathermy units, the government has ordered that anyone owning a diathermy in the United States must fill out forms FCC #410 and FCC #410D. This calls for:

Exact frequency  
Trade name  
Range of serial No.  
Medical or Surgical

Exact kilocycles  
Type of model No.  
Power input & output  
Type & serial No. of tubes

In other words, a thorough calibration. To do this, your unit must be brought to our factory. We, of course, will try to give you the quickest service possible. We say this, because the many instruments that are coming in from all parts of the United States must all be given the same service as yours. This new Federal Communications Commission ruling is very costly to us since we must take our mechanics from their usual work to spend a few hours on each unit. To calibrate properly these many units for the public, in an institution such as ours the cost of operation is very high since we use radio to bring our message to the public. We therefore feel that by us being willing to cooperate with you that you in appreciation would willingly defray part of the expense.

Your part of the cost to do this work properly is \$7.50 for complete calibration as described above. If you wish to have your apparatus picked up at your home and then redelivered, there is an additional charge of \$2.50.

Since you are the owner of an apparatus and have been informed as to what the order calls for — that if said apparatus is not registered, it may be confiscated or you may be penalized \$10,000. We have reported this to you and therefore the burden of responsibility is with you. You have received this notice and cannot say that we did not bring this very important matter to your attention, since we have a duplicate on our files which the government can check at any time.

Please attend to this vital matter immediately so that you may avoid unnecessary complications. Kindly sign the attached form below so that we can take immediate steps in the calibration of your unit. Please sign your name where "X" is indicated.

Yours very truly,

/s/ E. Scherber  
HOME DIATHERMY CO., INC.

as/ab

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## Findings

I authorize you to perform the following services:

|                                                  |         |
|--------------------------------------------------|---------|
| Exact frequency.....                             |         |
| Trade name.....                                  |         |
| Type & Serial No. of tubes.....                  |         |
| Power input and output.....                      |         |
| Medical or surgical.....                         |         |
| Exact kilocycles.....                            |         |
| Range of serial No.....                          |         |
| Type or model No.....                            |         |
|                                                  | \$7.50  |
| Pick up and delivery charge.....                 | \$2.50  |
| (charge for shipping unit to New York and back.) |         |
| Total .....                                      | \$10.00 |

X ACCEPTED BY: .....

ADDRESS: .....

DATE: .....

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and nature not set forth herein, respondents represented that in order to comply with Order No. 96 issued by the Federal Communications Commission, above set out, it is necessary that all diathermy machines be given a thorough calibration; that machines purchased from respondents, or any of them, must be sent to respondents' factory in New York City for the purpose of calibration; that unless this work is done, it is impossible to properly and legally complete the required forms and register the instruments as required by said order; that it is necessary to pay respondents the sum of \$7.50 for calibrating each machine, together with delivery charges, in order to comply with said order; and that unless this work is done and the forms properly completed, the owner of a machine is subject to a penalty of \$10,000 or confiscation of the machine.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, it is not necessary that diathermy machines be calibrated or any servicing or adjustments made to permit full compliance with the requirements of Order No. 96 of the Federal Communications Commission. It is not necessary and has never been necessary that machines purchased from respondents be sent to respondents' factory in New York City or to any other factory for the purpose of calibration or for any other purpose, in order to comply with the terms of said order. It was not and has never been necessary for owners of respondents' machines or any other diathermy machines to pay any money or compensation of any nature to respondents or any other person, or to pay the transportation charges to factory or any other place, as a prerequisite for compliance with said order; and no shipping, calibration, or other services were or have been necessary in order to properly register any and all diathermy machines and to avoid confiscation of such machines or the assessment of a penalty of \$10,000 or any other amount under the terms of said order.

PAR. 7. The use by the respondents of the foregoing deceptive and misleading statements and representations, disseminated as aforesaid, with respect to the requirements of Order No. 96 issued by the Federal

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Communications Commission, had the tendency and capacity to and did mislead and deceive a substantial portion of the owners of diathermy machines, and particularly owners of machines sold by respondents, into the erroneous and mistaken belief that such statements and representations were true, and induced many of such persons to enter into agreements with the respondents for the calibration of their said machines and to obligate themselves to pay, and to pay, sums of money to respondents by reason thereof.

## CONCLUSION

The foregoing acts and practices of respondents as herein found 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondents) and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation, their officers, and Arnold Steindler and Isadore Teitelbaum, individually and as officers of said corporations and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the servicing of diathermy machines or instruments and the transportation thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That it is necessary that diathermy instruments be calibrated in order to comply with Order No. 96 issued by the Federal Communications Commission on May 18, 1942.

2. That it is impossible to complete the forms required by said Order No. 96 and to register diathermy instruments as provided by said order, unless the instruments are sent to respondents' factory in New York City for calibration.

3. That it is necessary to pay the sum of \$7.50 or any other amount, or to pay delivery charges in any amount to respondents, or any of them, for the calibration of any diathermy instrument in order to comply with said Order No. 96.

4. That the owner of a diathermy instrument is subject to a fine in any amount or confiscation of his instrument unless his instrument is calibrated or otherwise serviced by respondents or any other person.

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

## Syllabus

## IN THE MATTER OF

## L. A. SCHWARZ

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5058. Complaint, Oct. 4, 1943—Decision, Jan. 13, 1944*

Where an individual engaged under the trade name Southern Michigan Collection Service in the collection of delinquent accounts owed to others, both within and without the State of Michigan, upon a commission basis contingent upon collection, and frequently desirous, as so engaged, of ascertaining the current addresses of persons from whom he was endeavoring to collect monies due to his clients, and the names and addresses of the employers of such persons, and of the banks in which they had money on deposit;

Making use of a plan pursuant to which he used printed reply postcard forms which, (1) addressed to "CONTINENTAL FORWARDING SYSTEM, Distribution Department, 1229 Park Row Bldg., New York, N. Y.," and containing such matter, in addition to trade name "Continental Forwarding System, New York, N. Y.," as "FINAL NOTICE," "Bring or Mail This Card To Us Promptly," and blank spaces adjoining such words as "Package Reference," "Date," "Unclaimed Package Department," "Name and Address Shown on Package," and "IMPORTANT: This prepaid package will be delivered ONLY to OWNER named above and identified below," called for, under direction "FILL IN ALL SPACES BELOW" name and address of the person concerned and those of his employer and bank; (2) were addressed to the persons concerned, and mailed thereto, from New York City, by said individual's agent at said point; and, (3) in the case of those filled out by said persons, and mailed back to New York in accordance with the address printed thereon as above set out, were forwarded therefrom by said agent to individual in question at his place of business in Michigan, and made use of by him in collecting and attempting to collect the amounts due from such persons to the creditors for whom said individual was acting;

- (a) Falsely represented through aforesaid cards, directly and by implication, to the persons to whom they were sent, that such persons were owners of packages sent by persons other than said individual and in his hands in New York City in the usual course of his business; that the shipments involved transportation charges which had been prepaid by the consignors, and that delivery could not be made to the addressees of said cards by reason of differences in address and lack of identification; and that, upon the receipt of the reply cards, properly filled out, the packages would be forwarded; and
- (b) Represented, directly and by implication, to the recipients of said card, through use of the name "Continental Forwarding System," that he was in some capacity, connected with the transportation and movement of goods, and their delivery to the proper consignees;

When in fact his business had nothing to do with the movement or transportation of goods or their delivery to the proper consignees; the persons to whom the cards were sent were not consignees of packages in his hands in the usual course of his business; and no package was sent to those who properly filled out and returned the reply cards; the whole scheme being merely attempt to obtain information by subterfuge, and the sole purpose of the cards being to secure information in order to facilitate the collection of accounts;