

Complaint

38 F. T. C.

IN THE MATTER OF

ZONITE PRODUCTS CORPORATION AND H. W. KASTOR & SONS ADVERTISING COMPANY, INC.

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

Docket 4755. Complaint, May 1, 1942—Decision, May 17, 1944

Where a corporation, engaged in the manufacture and interstate sale and distribution of its "Zonite Liquid" and "Zonitors," and its advertising representative; in advertisements of said products—

- (a) Represented, directly and by implication, that they were effective in destroying germs and bacteria in the genital tract and constituted an adequate treatment for infections in the genito-urinary tract; and that when used as a means of feminine hygiene they constituted effective contraceptives, and were reliable and dependable for such use;

The facts being that while they had the power to kill germs and bacteria which they contacted, when used as recommended they would not effectively destroy all germs and bacteria or serve as an adequate treatment for infections for the reason that in use they could not be depended upon to, and did not, always contact all germs, bacteria, and infections as they exist in the genital or genito-urinary tract, and they were not dependable contraceptives in that they could not and did not always contact all spermatozoa therein; and

- (b) Failed to disclose that because of physical conformation, malformation, and for other reasons, it is impossible in many cases for said products, in use, to contact all germs, bacteria, and spermatozoa in the genito-urinary tract, and that in such cases effective results are not possible; and

Where said corporation, in advertisements of its said liquid,—

- (c) Represented that when used as a mouth wash, it would destroy tobacco breath, kill onion breath and eliminate all offending mouth odors; the facts being that it would not destroy tobacco breath or other odors where it could not reach their source and would not kill onion breath when it resulted from chemical substances in the blood stream;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such misrepresentations were true, and to induce it, because of such erroneous belief, to purchase said products:

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

Mr. R. P. Bellinger for the Commission.

Littlefield & Marshall and *Mr. Horace C. Hitchcock*, of New York City, for Zonite Products Corp.

Mr. Harris F. Williams and *Mr. B. B. Harris*, of Chicago, Ill., for H. W. Kastor & Sons Advertising Co., Inc.

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 Zonite Products Corporation, a corporation, and H. W. Kastor & Sons Advertising Company, Inc., a

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

PARAGRAPH 1. Respondent, Zonite Products Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 370 Lexington Avenue, in the city of New York, State of New York, and a factory located at Jersey and Van Dyke Avenues, New Brunswick, N. J.

PAR. 2. The respondent, Zonite Products Corporation, is now, and for several years last past has been, engaged in the manufacture, sale and distribution of certain medicinal preparations designated as "Zonite Liquid" and "Zonitors."

In the course and conduct of its said business respondent, Zonite Products Corporation, causes and has caused its said products, when sold, to be transported from its manufacturing plant in the State of New Jersey, or from its place of business in the State of New York, to purchasers thereof located in various States of the United States other than the States of New Jersey and New York, and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, H. W. Kastor & Sons Advertising Company, Inc., is a corporation, with its principal office and place of business located in London Guarantee Building, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling and disseminating advertising matter. This respondent is the advertising representative of the respondent, Zonite Products Corporation, and as such prepares, and aids in the preparation of, advertising material used by the respondent, Zonite Products Corporation, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparations hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparations sold and distributed by the respondent, Zonite Products Corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said products 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 are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by other advertising literature, are the following:

Can A Married Woman Ever Feel Certain?

Many married women take unnecessary risks with their nerves, health, happiness. Why? Generally, because feminine hygiene is considered too personal to be discussed. And so, many women use over-strong solution of acids for the douche which can actually burn, scar and even desensitize delicate tissues.

Today such risks are needless. Science has given womankind Zonite. So powerful, it kills instantly all germs and bacteria with which it comes in contact. Deodorizes—by actually destroying odors. Protects personal daintiness. Yet! Zonite is non-caustic, non-poisonous, safe for delicate tissues.

Your Daughter Has a Right to Know

It is every mother's duty to tell her daughter physical facts. How much better that she learn them from you, rather than from girls her own age. In feminine hygiene, facts may be distorted, or wholly untrue. Result, many brides use douches of over-strong solutions of acids which can actually burn or scar delicate tissues. Today, there is no need to use such deadly solutions. Science has given us Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Actually destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

2 Mistakes Wives So Often Make.

Because inward shyness or ignorance, many married women make needless mistakes—risk health, happiness. Why? Generally because feminine hygiene is considered too personal to be discussed. Today risks are needless. For science has given womankind Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

Now Amazing Proved Hygiene Protection For Married Women.

Thousands upon thousands of women have now learned to use a sensational, scientific discovery for hygiene purposes. This boon to womankind is not a poison, yet actually kills germs at contact. It is called Zonite, and its action is amazing when used in a douche. It instantly kills germs and bacteria on contact, yet it is one douche proved safe—will not harm delicate tissues. And Zonite deodorizes—assures daintiness. Helps keep one fresh, clean and pure.

Feminine Hygiene Now Lasts Hours

Wherever you go you hear women willing to rave about a wonderfully advanced method of feminine hygiene. A dainty method that is safe—gives continuous action for hours without the use of poison, yet kills germs at contact.

Called Zonitors—these dainty, snow white suppositories spread a greaseless protective coating. To kill germs, bacteria on contact. To cleanse antiseptically. To deodorize—not by temporarily masking—but by destroying odor.

Zonitors are most powerful continuous-action suppositories, yet entirely gentle to delicate tissues. Non-caustic, contain no poison. Don't burn. Even help promote healing.

ONION BREATH—Tobacco Breath and Other Mouth Odors—Halitosis Sensational "Breath Tests" show that Zonite kills even onion odor! Thousands are embarrassed daily by mouth washes that fail—that merely mask local mouth odors. There is now a new scientifically proven way to destroy offending mouth odors. Zonite is a real deodorant which destroys odoriferous chemicals and putrid substances with which it comes in contact in the mouth.

Bad Breath stops you at the first kiss. . . . But Zonite kills even onion odor. Destroys tobacco breath. Kills other mouth odors.

PAR. 6. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly and by implication, that the use of said preparations "Zonite Liquid" and "Zonitors" constitutes a system of care and treatment which will result in preserving the health of women; that they are effective in destroying germs and bacteria in the genital tract, and in treating infections in the genital tract; that said preparations are safe and harmless for use in feminine hygiene; that the use thereof will not injure delicate tissues; that their use will eliminate the problem of feminine hygiene; that said preparations contain no caustics and are non-caustic; that they are effective, reliable and dependable contraceptives and will afford protection against conception and pregnancy; that the use of "Zonite Liquid" will destroy tobacco breath, kill onion breath permanently and destroy all offending mouth odors.

PAR. 7. The aforesaid representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact, no preparation or substance is known that, in use, will result in preserving the health of women. Said preparations are not effective in destroying germs and bacteria as they exist in the genital tract or in treating infections in the genital tract. Said preparations are not safe and harmless for use in feminine hygiene and they are capable of injuring delicate tissues. Their use will not eliminate the problem of feminine hygiene. Said preparations do contain caustic ingredients and they are not non-caustic. Said preparations are not effective and reliable contraceptives and will not afford dependable protection against conception and pregnancy. The use of "Zonite Liquid" will not destroy tobacco breath, kill onion breath permanently or destroy all offending mouth odors.

PAR. 8. The advertisements disseminated, as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material with respect to the consequence which may result from the use of said preparations to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. In truth and in fact, said preparations liberate chlorine, in use, and contain other caustic ingredients which are definitely capable of bleaching, irritating and otherwise injuriously affecting sensitive membranes and delicate tissues with which they come in contact. Furthermore, said advertisements constitute false advertisements in that they fail to disclose that because of physical conformation, malformation, and other reasons, it is impossible in a majority of cases for the preparations; in use, to contact all germs and bacteria and effective results are therefore not possible.

PAR. 9. The use by respondents of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to its said products, 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 to induce such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

PAR. 10. 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 May 1, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Zonite Products Corporation and H. W. Kastor & Sons Advertising Company, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent, Zonite Products Corporation, and its counsel, Littlefield & Marshall, respondent, H. W. Kastor & Sons Advertising Company, Inc., and its counsel, Harris F. Williams and B. B. Harris, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding, the rights to file briefs and to make application for oral argument being reserved in said stipulation but thereafter waived by respondents. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same 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, Zonite Products Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 370 Lexington Avenue, New York, N. Y., and its factory located at Jersey and Van Dyke Avenues, New Brunswick, N. J.

PAR. 2. Respondent, Zonite Products Corporation, is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of certain medicinal preparations designated as "Zonite Liquid" and "Zonitors." In the course and conduct of its said business, respondent, Zonite Products Corporation, causes, and has caused, its said products, when sold, to be transported from its manufacturing plant in the State of New Jersey or from its place of business in the State of New York to purchasers thereof located in various States of the United States other than the States of New Jersey and New York, and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, H. W. Kastor & Sons Advertising Company, Inc., is a corporation, with its principal office and place of business located in London Guarantee Building, Chicago, Ill. This respondent is an advertising agency and as such is engaged in the preparation of advertising

matter and the placing of same through proper and desirable media for its customers. In that way this respondent is the advertising representative of the respondent, Zonite Products Corporation, and as such prepares, or aids in the preparation of, advertising material used by respondent, Zonite Products Corporation, including the advertising matter hereinafter set forth, except that as to mouth odors.

Respondent, H. W. Kastor & Sons Advertising Company, Inc., prepares the advertising matter from data furnished to it by the Zonite Products Corporation. After the advertising matter, whether for printed publications or the radio, is prepared, it is submitted to the Zonite Products Corporation for approval. After approval by the Zonite Products Corporation, H. W. Kastor & Sons Advertising Company, Inc., in collaboration with the Zonite Products Corporation, selects the media through which such advertising is to be placed. H. W. Kastor & Sons Advertising Company, Inc., receives no compensation from the Zonite Products Corporation, but the entire compensation of H. W. Kastor & Sons Advertising Company, Inc., is paid to it by way of commission from the publishers, and not otherwise. H. W. Kastor & Sons Advertising Company, Inc., has no interest in and no control over the business of the Zonite Products Corporation and receives no part of the profits and bears no part of the expense of the Zonite Products Corporation.

PAR. 4. The respondents have cooperated with each other in the promotion and dissemination of the advertising material hereinafter set forth.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparations sold and distributed by the respondent, Zonite Products Corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said products, 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 are now disseminating, and have caused and are now causing the dissemination of advertisements concerning said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by other advertising literature, are the following:

Can a Married Woman Ever Feel Certain?

Many married women take unnecessary risks with their nerves, health, happiness. Why? Generally, because feminine hygiene is considered too personal to be discussed. And so, many women use over-strong solution of acids for the douche which can actually burn, scar and even desensitize delicate tissues.

Today such risks are needless. Science has given womankind Zonite. So powerful, it kills instantly all germs and bacteria with which it comes in contact. Deodorizes—by actually destroying odors. Protects personal daintiness. Yet! Zonite is non-caustic, non-poisonous, safe for delicate tissues.

Your Daughter Has a Right to Know

It is every mother's duty to tell her daughter physical facts. How much better that she learn them from you, rather than from girls her own age. In feminine hygiene, facts may be distorted, or wholly untrue. Result, many brides use douches of over-strong solutions of acids which can actually burn or scar delicate tissues. Today, there is no need to use such deadly solutions. Science has given us Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Actually destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

* * * * *

2 Mistakes Wives So Often Make

Because of inward shyness or ignorance, many married women make needless mistakes—risk health, happiness. Why? Generally because feminine hygiene is considered too personal to be discussed, and so many women use douches of over-strong solutions of acids which can burn or scar delicate tissues. Today risks are needless. For science has given womankind Zonite. Non-poisonous, non-caustic, yet kills germs, bacteria on contact. Destroys undesirable odors. Protects personal daintiness. Most important, safe for delicate tissues.

* * * * *

New Amazing Proved Hygienic Protection for Married Women

Thousands upon thousands of women have now learned to use a sensational scientific discovery for hygiene purposes. This boon to womankind is not a poison, yet actually kills germs at contact. It is called Zonite, and its action is amazing when used in a douche. It instantly kills germs and bacteria on contact, yet it is one douche proved safe—will not harm delicate tissues. And Zonite deodorizes—assures daintiness. Helps keep one fresh, clean and pure.

* * * * *

Feminine Hygiene Now Lasts Hours

Wherever you go you hear women willing to rave about a wonderfully advanced method of feminine hygiene. A dainty method that is safe—gives continuous action for hours without the use of poison, yet kills germs at contact.

Called Zonitors—these dainty, snow white suppositories spread a greaseless protective coating. To kill germs, bacteria on contact. To cleanse antiseptically. To deodorize—not by temporarily masking—but by destroying odor.

Zonitors are most powerful continuous-action suppositories, yet entirely gentle to delicate tissues. Non-caustic, contain no poison. Don't burn. Even help promote healing.

* * * * *

ONION BREATH—Tobacco Breath and Other Mouth Odors—Halitosis Sensational "Breath Tests" show that Zonite kills even onion odor! Thousands are embarrassed daily by mouth washes that fail—that merely mask local mouth odors. There is now a new scientifically proven way to destroy offending mouth odors. Zonite is a real deodorant which destroys odoriferous chemicals and putriferous substances with which it comes in contact in the mouth.

Bad Breath stops you at the first kiss . . . But Zonite kills even onion odor. Destroys tobacco breath. Kills other mouth odors.

PAR. 6. Through the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents

represent, directly and by implication, that Zonite Liquid and Zonitors are effective in destroying germs and bacteria in the genital tract and constitute an adequate treatment for infections in the genito-urinary tract; and that when used as a means of feminine hygiene said preparations constitute effective contraceptives, are reliable and dependable for such use, and will afford protection against conception and pregnancy. Through said advertisements Zonite Products Corporation also represents that Zonite Liquid, when used as a mouth wash, will destroy tobacco breath, kill onion breath, and eliminate all offending mouth odors.

PAR. 7. The aforesaid representations and advertisements are grossly exaggerated, false, and misleading. While Zonite Liquid and Zonitors have the power to kill germs and bacteria which they contact, in truth and in fact said preparations, when used as recommended, will not effectively destroy all germs and bacteria in the genital tract or serve as an adequate treatment for infections of the genito-urinary tract for the reason that in use they cannot be depended upon to, and do not, always contact all such germs, bacteria, and infections as they exist in the genital or genito-urinary tract. Said preparations, when used as a means of feminine hygiene or otherwise, are not effective, reliable, or dependable contraceptives in that they cannot and do not always contact all spermatozoa in the genito-urinary tract. Zonite Liquid, when used as a mouth wash, will not destroy tobacco breath or other odors where the source of such odors can not be reached by said product and will not kill onion breath when it results from chemical substances in the blood stream. Furthermore, said advertisements constitute false advertisements in that they fail to disclose that because of physical conformation, malformation, and other reasons it is impossible in many cases for Zonite Liquid or Zonitors, in use, to contact all germs, bacteria, and spermatozoa in the genito-urinary tract, and in such cases effective results are therefore not possible.

PAR. 8. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the said products disseminated as aforesaid has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to induce such portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

CONCLUSION

The aforesaid 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, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, which provides, among other things, that without

further evidence or other intervening procedure except the rights to file briefs and be heard by oral argument, which rights have been waived by respondents, 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Zonite Products Corporation, a corporation, and respondent, H. W. Kastor & Sons Advertising Company, Inc., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the medicinal preparations "Zonite Liquid" and "Zonitors," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That said preparation will destroy all germs or bacteria in the genital tract, or destroy germs or bacteria which they contact in the genital tract, or that they constitute a treatment for infections of the genito-urinary tract, unless it is clearly and conspicuously revealed in immediate connection therewith that it is not always possible for said preparations to contact all germs and bacteria in the genito-urinary tract.

(b) That said preparations, as a means of feminine hygiene or otherwise, constitute contraceptives, unless it is clearly and conspicuously revealed in immediate connection therewith that it is not always possible for said preparations to contact all spermatozoa in the genital tract.

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

It is further ordered, That respondent, Zonite Products Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation "Zonite Liquid," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

3. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by inference, that said preparation, when used as a mouth wash or gargle, will eliminate or destroy tobacco breath, onion breath, or other mouth odors in excess of the extent to which said preparation can reach and oxidize odoriferous substances which may be the source of such odors.

4. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in

470

Order

the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 3 hereof.

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.

IN THE MATTER OF

WILLIAM PARRISH BENNETT, TRADING AS FORT WORTH
PEANUT COMPANY AND BILL'S PEANUT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4544. Complaint, July 21, 1941—Decision, May 18, 1944*

Where an individual engaged in the roasting of peanuts in the interstate sale and distribution thereof in shipping cases of 20 thirty-package cartons under a sales plan pursuant to which he included in one of each 15 five-cent packages a five-cent piece, and in about one out of each 600, a twenty-five-cent piece, and occasionally placed in one package as much as a dollar, and under which plan the individual packages were labeled "MONY-BAK PEANUTS You May Find 5¢ 25¢ 50¢ \$1.00 AS AN ADVERTISEMENT" or "MYSTERY PEANUTS THERE HAS BEEN FOUND 5¢—25¢—50¢—\$1.00 AS AN ADVERTISEMENT";

Sold such assortments of peanuts to dealers, and thereby supplied to and placed in their hands means of conducting lotteries in the sale thereof to the purchasing public, involving sale of a chance to procure a sum of money of greater value than the amount paid therefor, contrary to an established public policy of the United States government and in competition with some who do not use such or other method contrary to public policy;

With capacity and tendency to induce dealers to buy and sell his products in preference to those of said competitors and thereby to unfairly divert trade in commerce to him from them:

Held, That such acts and practices, as 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 acts and practices therein.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.
Mr. Edw. W. Thomerson, *Mr. J. W. Brookfield, Jr.* and *Mr. Jesse D. Kash* for the Commission.

Mr. Frank Holaday, of Dallas, Tex., 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 William Parrish Bennett, individually, and trading under the names of Fort Worth Peanut Company and Bill's Peanut Company, 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, William Parrish Bennett, is an individual, doing business under the trade names of Fort Worth Peanut Company and Bill's Peanut Company, with his principal office and place of business located at 1001 Bryan Street, Fort Worth, Tex. Respondent is now, and for more than one year last past, has been engaged in processing, roasting and packing peanuts and in the sale and distribution thereof to dealers. Respondent causes and has caused its said peanuts, when sold,