

IN THE MATTER OF
EASTMAN KODAK COMPANY

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

Docket 4322. Complaint, Sept. 23, 1940—Decision, Sept. 9, 1944

Amateur photographic film for the taking of still and motion pictures in natural color, which was sold under the trade name of the manufacturer and seller, and was made and developed for prints under secret processes protected by patents, was not sold in free and open competition with commodities of the same general class produced or distributed by others, including black-and-white film, other natural color film, and color processed film, so as to bring the seller's resale price maintenance contract covering said film within the Miller-Tydings amendment to the Sherman Anti-trust Act, where it appeared, (1) that an English natural color motion picture film placed on the American market in 1935, was withdrawn in 1939 for recognized deficiencies, that importation of the English still films became impossible subsequent to 1940, following which the American distributor became bankrupt, and that such film was no longer available on the American market, except, possibly in small quantities remaining on dealers' shelves; (2) that the "Dupac" and "Tripac" photographic films on the market since 1937, were not natural color films but were for use in color processing, and were sold on the market entirely for professional use, and that sales of each during the three-and-a-half year period concerned, amounted to less than \$2,000 at wholesale price; (3) that certain German natural color film, both motion picture and still, which had appeared in the United States, had never been imported for resale and sold in competition with the American product, the amount having been limited to extremely small quantities brought in by purchasers thereof in Europe or in Mexico; (4) that the American product herein concerned was the only natural color film made and distributed in the United States for taking motion pictures, and, except for the English product above noted, for taking still pictures, and (5) that purchaser, therefore, wishing to take still or motion pictures in natural color was required to purchase film for such purpose solely from the seller herein concerned.

An amateur so-called "Magazine Film" for taking motion pictures sold under the seller's trade mark and name, and which (1) consisted of the enclosure of either the seller's black-and-white film, or natural color Kodachrome motion picture film, in a special magazine or container designed to fit seller's "Magazine Cine-Kodak Camera," covered by seller's patents—which also covered said magazine, enclosure of aforesaid film therein, and some of the combination features involved in the use of said magazine with said camera; (2) was designed to facilitate loading and unloading of the camera and permitted the removal of one magazine before it was entirely exposed and replacement with another, thus permitting the operator to change at will to either black-and-white or Kodachrome; and (3) by reason of the patents concerned could alone be used in seller's magazine camera or in the motion picture magazine cameras of two other concerns; was not in the same general class with and sold in free and open competition with amateur motion picture roll film produced or distributed by others and that contained in magazines produced and distributed by others, or in free and open competition with commodities of the same general class produced or distributed by others;

so as to bring seller's resale price maintenance contracts in states in which said contracts were lawful, within the Miller-Tydings amendment to the Sherman Antitrust Act, since, while the film contained in the magazine in question was of the same kind and quality as other film sold by the seller, it alone could be used in the seller's and the other cameras above set forth, and there was no other film on the market which could be used therein.

Where a corporation engaged in the manufacture and interstate sale and distribution of photographic material, apparatus, and equipment, including (1) its patented natural color "Kodachrome" amateur photographic film for the taking of still and motion pictures in natural color, extensively used by amateur photographers, in medicine and agriculture, and also in museums of natural history and art, and the only natural color film made and distributed in the United States for use in taking motion pictures, or, with negligible exceptions, for taking still pictures; and (2) its patented "Magazine Film" for taking motion pictures, which consisted of the enclosure of either black-and-white or the Kodachrome motion-picture film in a patented special magazine or container designed to fit its Magazine Cine-Kodak Cameras, and which also alone fitted magazine motion picture cameras of two other concerns and, by reason of the patents involved, could alone be used in said cameras;

In pursuance of a resale price maintenance policy and system made use of by it since 1938 for the purpose of fixing and controlling the prices at which retailers resold its said Kodachrome and Magazine Film to the public, and making them uniform, and preventing the retail sale of said products at lower prices—

Entered into agreements with retail dealer customers in some 44 states with fair trade acts, under the terms of which said retailers agreed to maintain uniform minimum resale prices for its said Kodachrome and magazine film, and made known to the trade generally, by trade notices, salesmen and letters, that it had established such minimum resale prices, and expected and required its dealers to maintain and adhere thereto;

Notwithstanding its said Kodachrome and Magazine Film were, respectively, neither (1) in the same general class with or sold in free and open competition with black-and-white film, other natural color film and color-processing film, nor (2) sold in free and open competition with amateur motion picture roll film produced and distributed by others and with such film contained in magazines so produced and distributed; or in free and open competition with commodities of the same general class produced or distributed by others, so as to bring such contracts within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937;

With direct effect of suppressing competition in the distribution and sale of its Kodachrome and Magazine Film; constraining dealers to sell said products at the prices fixed by it and preventing them from selling same at such lower prices as they might desire; and depriving ultimate purchasers thereof of such advantages in price as they would otherwise obtain from a natural and unobstructed flow of commerce in said products under conditions of free and open competition:

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

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Goodwin, Nixon, Hargrave, Middleton & Devans and *Mr. William F. Shepard*, of Rochester, N. Y., and *White & Case*, of New York City, for respondent.

Complaint

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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 Eastman Kodak Company, a corporation, hereinafter called the respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eastman Kodak Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 343 State Street, Rochester, N. Y. Said respondent is now, and for more than three years past has been, engaged in the manufacture, distribution and sale of photographic materials, apparatus and equipment including amateur photographic film.

PAR. 2. In the course and conduct of its business the said respondent transports said products, or causes the same to be transported, for distribution and sale, from the places where such products are manufactured or stored, into and through the various States of the United States to its wholesale and retail customers and purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products manufactured, distributed and sold by respondent between the states wherein respondent's factories and warehouses are located and various other states of the United States. Respondent's said products are sold by it for use, consumption or resale within the United States and the District of Columbia.

PAR. 3. The respondent is the largest manufacturer and distributor of photographic materials, apparatus and equipment in the United States, doing a net annual business in excess of \$100,000,000. One of its principal products is amateur photographic film for the taking of colored still and motion pictures sold under the trade name "Kodachrome." Another amateur photographic film manufactured, distributed and sold by the respondent, in substantial quantities, is the Magazine Cine-Kodak Film, or so-called "Magazine" film, both black and white and Kodachrome; said "Magazine" film is sold in a magazine manufactured by the respondent under patent protection and made to fit exclusively respondent's patent protected Cine-Kodak Magazine Loading Camera, and the Bell & Howell Magazine Loading Camera manufactured and sold by a licensee of respondent.

PAR. 4. The respondent's said film for the taking of colored still and motion pictures (Kodachrome) and its said "Magazine" film are not sold in free and open competition with commodities of the same general class produced or distributed by others. The respondent is the only manufacturer and distributor in the United States of film for the taking of colored motion pictures. There is in the United States a single competing distributor of film, manufactured by a foreign corporation, for the taking of colored still pictures, the sales of which are negligible with reference to the sales of respondent's film for the taking of colored still pictures.

PAR. 5. The respondent's products, including its amateur photographic film for the taking of colored still and motion pictures (Kodachrome) and its "Magazine" film, are sold and distributed by the respondent directly to about 16,000 retail dealers, and to a large number of wholesale dealers who, in turn, resell to about 50,000 additional retail outlets, located throughout the United States.

PAR. 6. Since February, 1938, in connection with its sale of Kodachrome and "Magazine" Film, in interstate commerce, as aforesaid, and directly affecting said commerce, respondent has used and is now using a resale price maintenance policy and system for the purpose of fixing and controlling the prices at which retail dealers resold and resell Kodachrome and "Magazine" Film to the public, and of causing such products to sell at prices uniform among said dealers. In order to carry out said resale price maintenance policy and system, respondent has employed and still employs, among others, the following means whereby it and those cooperating with it undertake to prevent and do prevent retail dealers from selling its Kodachrome and "Magazine" Film to the public at prices less than the aforesaid retail prices established by respondent:

(a) Respondent enters into agreements and understandings with its dealer customers in all states wherein Fair Trade Acts have been adopted (some forty-four in number) that they will sell Kodachrome and "Magazine" Film to the public at prices fixed by said agreements and understandings and as fixed from time to time by respondent. The prices so fixed are to be, and are, uniform as among respondent's dealer customers;

(b) Respondent makes it generally known to the trade by its salesmen, general trade notices, letters and other means, that it expects and requires dealers handling its said Kodachrome and said "Magazine" Film to maintain and enforce its said resale prices, and that it will refuse to further sell and supply said products to dealers failing to maintain and enforce said prices;

(c) Respondent seeks and receives from dealers handling its said products reports of the failure of other dealers handling said products to observe and maintain its resale prices.

PAR. 7. The direct effect and result of the system, methods and practices hereinabove set forth have been and now are to suppress competition in the distribution and sale of respondent's Kodachrome and "Magazine" Film; to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchaser of said products of such advantages in price which otherwise they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free and untrammelled competition.

PAR. 8. The aforesaid acts and practices of the respondent, and each of them, are to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 23, 1940, issued and subse-

quently served its complaint in this proceeding on the respondent, Eastman Kodak Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondent thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, 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, Eastman Kodak Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 343 State Street, Rochester, N. Y. Said respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of photographic materials, apparatus, and equipment, including amateur photographic film of various types, both black-and-white and Kodachrome, for taking both still and motion pictures.

PAR. 2. In the course and conduct of its business, the said respondent causes its products, when sold, to be transported from its various manufacturing plants and storage warehouses to the purchasers thereof located in States other than the State in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Respondent's said products are sold by it for use, consumption, or resale within the United States and the District of Columbia. The respondent is the largest manufacturer and distributor of photographic material, apparatus, and equipment in the United States, doing a net annual business in excess of \$100,000,000.

PAR. 3. One of the principal products of the respondent is amateur photographic film for the taking of still and motion pictures in color, which is sold under the trade name "Kodachrome." This film is protected by several patents issued by the United States Patent Office, covering both the method of manufacture and the method of processing such film.

Another amateur photographic film manufactured, distributed, and sold by the respondent in substantial quantities is the Magazine Cine-Kodak Film, or so-called "Magazine Film," for taking motion pictures. This Magazine Film consists of the enclosure of either black-and-white or Kodachrome motion-picture film in a special magazine or container designed to fit a Magazine Cine-Kodak Camera. The magazine and the en-

closure of such film in such magazine are covered by patents issued to the respondent. Respondent also holds patents upon its Magazine Cine-Kodak Camera, in which this Magazine Film, both black-and-white and Kodachrome, is used; and respondent also has patents on some of the combination features involved in the use of this magazine with the Magazine Cine-Kodak Camera. Bell & Howell of Chicago, Illinois, is licensed by the respondent to manufacture and sell an amateur motion-picture camera which will take respondent's Magazine Film. There is another camera, known as the "Perfex," which uses respondent's Magazine Film.

Respondent's Magazine Film is designed to facilitate loading and unloading of the camera and permits the removal of one Magazine Film before it is entirely exposed and replacement with another. This permits the operator of respondent's Magazine Camera to change at will to either black-and-white or Kodachrome because of the nature of the subject being photographed or lighting involved or to obtain continuity of pictures on a particular film.

By reason of the patents held by the respondent on its Magazine Film, purchasers and owners of respondent's Magazine Cine-Kodak Cameras, Bell & Howell Magazine Cameras, and Perfex Magazine Cameras are limited to the exclusive use of respondent's Magazine Film in operating such cameras, as no other film will fit in such cameras.

PAR. 4. The respondent's products, including its amateur photographic film for the taking of color, still, and motion pictures, known as Kodachrome, and its Magazine Film, are sold and distributed by the respondent directly to about 16,000 retail dealers and to a large number of wholesale dealers who in turn resell to about 50,000 retail outlets located throughout the United States.

PAR. 5. Since February 1938, in connection with its sale of Kodachrome and Magazine Film in commerce among and between the various States of the United States, the respondent has used a resale-price-maintenance policy and system for the purpose of fixing and controlling the prices at which retail dealers resell Kodachrome and Magazine Film to the public and of causing such products to sell at prices uniform among said dealers. In order to carry out said resale-price-maintenance policy and system and to prevent retail dealers from selling its Kodachrome and Magazine Film to the public at prices less than the retail prices established by respondent, said respondent has entered into agreements with retail dealer-customers in those States where fair-trade acts have been enacted (in some 44 States) and are valid and existing laws, under the terms of which agreements the said retail dealer-customers agreed to maintain uniform minimum retail resale prices for respondent's Kodachrome and Magazine Film. The respondent has made known to the trade the fact that it has established such minimum retail resale prices and that it expects and requires dealers in said States handling said products not to sell said products at retail below such established minimum prices. The respondent makes known to the trade generally, by trade notices, salesmen, and letters, that it expects and requires its dealers to maintain and adhere to its said minimum resale prices.

PAR. 6. Since respondent's Kodachrome and Magazine Film and the containers in which they are sold contain the trade-mark and name of the respondent and since its resale-price-maintenance contracts covering said products are used only in those States where such contracts are lawful un-

der the laws of said States, the only issue raised in the pleadings and trial of this case is whether respondent's Kodachrome and Magazine Film are in free and open competition with commodities of the same general class produced or distributed by others so as to bring said contracts within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937. It is the respondent's contention that its Kodachrome Film is in the same general class with, and is sold in free and open competition with, black-and-white film, other natural-color film, and film processed to produce color prints which are produced or distributed by others and that its Magazine Film, both Kodachrome and black-and-white, is in the same general class with, and is sold in free and open competition with, amateur motion-picture roll film produced or distributed by others and with amateur motion-picture film contained in magazines produced and distributed by others.

PAR. 7. Photographic film consists of a transparent base, usually cellulose acetate or cellulose nitrate, upon which have been superimposed one or more coatings of an emulsion sensitive to light. Photographic film falls within two distinct groups—black-and-white and color. Black-and-white film has one or two coatings of an emulsion sensitive to light superimposed upon the cellulose base. When two coatings of emulsion are used the sensitivity range of the two emulsions is the same. Black-and-white film, when exposed and developed, produces a negative in black and white, from which in turn can be produced a print in black and white. The development process of black-and-white film is simple and comparatively inexpensive.

Respondent's Kodachrome Film is composed of a cellulose base upon which have been superimposed three emulsion layers which have been sensitized to color by the addition of an optic sensitizer. The first of these layers of emulsion is sensitive to blue; the second, to green; and the third, to red, with filter layers of gelatin in between to keep the primary colors from mixing and also for the purpose of directing certain light rays of different color to the particular emulsion layer made sensitive to that color. The top layer, being sensitive only to blue, does not record the green and red rays falling upon it. The green- and red-sensitive layers are also sensitive to blue light and therefore are protected against the action of blue light by the interposition of a yellow interlayer between the blue- and green-sensitive layers.

The process by which respondent's Kodachrome Film is sensitized to color and the process by which such film is developed and by which prints are made, are secret processes of the respondent protected by patents, and the films, after exposure, must be sent to the respondent for processing. The prices charged by the respondent for its Kodachrome Film are substantially higher than the prices charged by respondent and other manufacturers for black-and-white film.

The Kodachrome process is a process whereby the exposed film, when developed, becomes a positive transparency in natural color, as distinguished from negative process as in the development of an exposed black-and-white film. Respondent's Kodachrome film is a natural-color film, which is capable of reproducing by itself the natural colors of the subject photographed. Respondent's Kodachrome film, by reason of its ability to reproduce photographic images in natural color, has a very great appeal to

the consuming public and is extensively used by the amateur photographer. In addition, Kodachrome film is extensively used in medicine to disclose pathological conditions and in the presentation of surgical conditions and in agriculture for the purpose of showing actual growing conditions and the nature and character of plant diseases, their causes and corrections, particularly in soil deficiency. These conditions would not show in a black-and-white photograph. It has also been used in museums of natural history and in art museums in making pictures in color of objects in which color is indicated as an art feature.

The principal manufacturers of black-and-white film, both motion picture and still, are Eastman Kodak Co., respondent herein; Agfa Ansco Corporation of Binghamton, New York; the Du Pont Film Manufacturing Corporation; and The Gevaert Company of America, Inc. Respondent is the only manufacturer and distributor in the United States of natural-color film for use in the taking of motion pictures. Except for the sale of small quantities of Dufaycolor Film, hereinafter described, respondent is the only manufacturer and distributor in the United States of natural-color film for use in taking still pictures.

PAR. 8. In 1935 Dufay Chromex, Ltd., of England placed on the American market, through its American distributor, Dufaycolor Co., Inc., of New York, a movie and still film in natural color known as Dufaycolor Film. This film had a cellulose acetate or cellulose nitrate base on which was placed a screen of primary colors—red, green, and blue—superimposed by a photographic emulsion. Due to the manner in which the color screen was placed upon the film it did not readily lend itself to enlargement or screening, as the color screen on the film had a tendency to show through. Consequently, in 1939 this company removed its motion-picture film from the American market, and from that time on was engaged only in the sale of Dufaycolor still film, for both amateur and professional use. Due to war conditions it became almost impossible to import this film from England subsequent to 1940, and thereafter the American distributor Dufaycolor Company, Inc., was adjudged bankrupt and its assets sold on February 24, 1942. Based upon the testimony of dealers in photographic supplies and film the sales of Dufaycolor Film for amateur use were negligible as compared with the sales of Kodachrome film.

PAR. 9. Since 1937 there have been on the market certain photographic films known as "Dupac" and "Tripac," distributed solely by the Defender Photo Supply Company, Inc. These were black-and-white films designed for use in making separation negatives which might be processed to obtain prints in color. These films were sold on the market entirely for professional use. Furthermore, during the period from 1937 to 1940 and through the first five months of 1941, only 3,026 square feet of Dupac were sold, at wholesale list price of \$1800, and during the same period only 14,097 square feet of Tripac, at the wholesale price of \$1400. These films are not natural-color films and are not capable of reproducing by themselves the natural colors of the subject photographed but are in fact film for use in color processing.

PAR. 10. The Commission finds that respondent's Kodachrome Film is not in the same general class as black-and-white film and that a purchaser wishing to take photographs or moving pictures in natural color is required to purchase film for this purpose solely from the respondent. The Dufay-

color Film hereinbefore described was not sold in sufficient quantities to cause this film to be in free and open competition with respondent's Kodachrome Film, and this film is not now available on the American market except possibly in small quantities still remaining on the dealers' shelves. While it is recognized that war conditions have had some effect on the sale of Dufaycolor Film within the United States, due to the recognized deficiencies in this film there is no evidence in the record from which it might be reasonably concluded that this film will be sold on the American market after the war in any substantial quantities and in amounts sufficient to constitute free and open competition with respondent's Kodachrome Film. The film sold for use in color processing, such as Dupac and Tripac, are principally professional film and are color-processing film only and, as such, are not in the same general class as respondent's Kodachrome Film. Furthermore, this film does not sell in free and open competition with respondent's Kodachrome film for amateur use. There is some evidence in the record that certain natural-color film, both motion-picture and still, produced by the Agfa Company of Germany has appeared in the United States in extremely small quantities. This film, however, has never been imported into this country for resale and has never been sold in competition with respondent's Kodachrome, as the amount coming into this country has been limited to that brought in by persons who have purchased this film in Europe or in Mexico.

The Commission further finds that respondent's Kodachrome Film is not in free and open competition with commodities of the same general class produced or distributed by others so as to bring its resale-price-maintenance contracts covering its Kodachrome Film within the Miller-Tydings amendment to the Sherman Antitrust Act, approved August 17, 1937.

PAR. 11. The Commission further finds that respondent's Magazine Cine-Kodak Film, both black-and-white and Kodachrome, is not sold in free and open competition with commodities of the same general class. While the film contained in the magazine is of the same kind and quality as other film sold by the respondent, when such film is packed within such magazine it can then only be used in a camera equipped and fitted for using such magazine. Respondent's Magazine Cine-Kodak Cameras and also the Bell & Howell Magazine Cameras and the Perfex Magazine Cameras can be loaded only with respondent's Magazine Film, and there is no other film on the market which can be used in said cameras other than the Magazine Film manufactured and sold by the respondent. Consequently, owners and purchasers of respondent's Magazine Cine-Kodak Cameras, Bell & Howell Magazine Cameras, and Perfex Magazine Cameras can use in such cameras only Magazine Film purchased solely from the respondent.

PAR. 12. The direct effect and result of respondent's resale-price-maintenance policy and system and the methods and practices hereinbefore described have been, and now are, to suppress competition in the distribution and sale of respondent's Kodachrome and Magazine Film; to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire; and to deprive the ultimate purchasers of said products of such advantages in price as they would otherwise obtain from a natural and unobstructed flow of commerce in said products under conditions of free and open competition.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Eastman Kodak Co., 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 its Kodachrome and Magazine Film in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Entering into, either directly or indirectly, any contract, agreement, or understanding with its dealer-customers which provides that respondent's Kodachrome Film or Magazine Film is not to be advertised, offered for sale, or sold by such dealer-customers at prices less than those specified or fixed by the respondent.

2. Enforcing or continuing in operation any contract, agreement, or understanding with its dealer-customers to fix or maintain minimum resale prices at which respondent's Kodachrome Film or Magazine Film is to be offered for sale or sold.

Provided, however, that if conditions later change so that there are other commodities of the same general class produced or distributed by others which are sold in free and open competition with respondent's Kodachrome or Magazine Film, then, and in that event, the Commission will, upon proper showing by the respondent, reconsider the terms of this order in the light of such new conditions.

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

IN THE MATTER OF
BRADLEY BOSTON, INC. ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3461. Order, September 12, 1944

Modified order, in proceeding in question, in which original order issued on December 22, 1936, 27 F.T.C. 1437, requiring respondents, and their officers, etc., in connection with the offer, etc., in commerce, of watches, rings, and other jewelry, to cease and desist from misrepresenting as "railroad" or "engineer," watches not properly equipped for such use as in said order specified, and from falsely representing, designating or describing watches and other articles as "free" "included free," etc., and from using the term "free," etc. as in the order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, 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 duly made and issued its findings as to the facts, conclusion and order to cease and desist dated December 22, 1938, and the Commission having further considered said order to cease and desist heretofore issued, and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause; and the Commission having given due notice to the respondents to show cause on July 24, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist; and the Commission having considered the matter and the record herein, and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondents, Bradley Boston, Inc., a corporation, also trading as Gold Standard Watch Co., and National Watch Co., a corporation, also trading as Gold Standard Watch Co., their officers, agents, representatives and employees, and Peter Turchon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, rings and other jewelry in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, designating or describing watches which are not "lever set," equipped with "micrometers," and do not contain 19 or more jewels properly placed so as to insure accuracy and to eliminate friction, as "railroad" or "engineer" watches.

2. Representing, designating or describing watches and other articles regularly included in a combination offer with a ring or other article as "free," "included free," or "included free of extra charge."