

IN THE MATTER OF
DOW CHEMICAL COMPANY

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

Docket 3991. Complaint, Jan. 4, 1940—Decision, Nov. 22, 1944

Where a corporation engaged, among other things, in the manufacture and interstate sale and distribution of chlorinated hydrocarbon solvents used in dry cleaning clothing, the most important of which were carbon tetrachloride and mixtures thereof with other solvents, making about half of the carbon tetrachloride and ethylene dichloride used in dry cleaning, and selling to nearly half of the 4,000 to 5,000 dry cleaners who use synthetic solvent machines, synthetic solvents, the nonflammable nature of which permits their use in locations where the fire hazard of petroleum solvents would constitute a public hazard and most of which, in contrast to the petroleum solvents, can be recovered after dry cleaning use in synthetic plants designed therefor;

In selling its said synthetic solvents to numerous jobbers or distributors in various cities through or with the aid of men who were skilled in salesmanship and in the chemistry and use of synthetic dry cleaning solvents, called on dry cleaners in the company of salesmen employed by jobbers, carrying with them equipment for testing dry cleaning solvents, and who were given instructions by said corporation's offices on comparative products and the manner in which they were to deal with problems met in the field; in competition, among others, with the corporate manufacturer of "Kolene C" dry cleaning solvent, which solicited business from about half of the dry cleaners using synthetic solvent machines and regularly sold its solvent to about 500 of them—

Made false, misleading and disparaging representations concerning said "Kolene C," to numerous distributors, customers, prospective purchasers of dry cleaning solvents and manufacturers of dry cleaning machines located in various states, and thus also placed in the hands of others the means of further disseminating such misrepresentations,—which were vigorously used to persuade dry cleaners not to use "Kolene C," even to the extent of cancelling orders therefor—whereby in substance it was represented in many different ways that the fumes produced by "Kolene C" were more dangerous and toxic than the fumes produced by its solvent, contents of "Kolene C" were misrepresented, and it was falsely represented directly and by implication that it contained "naptha," was a "Petroleum blend," and was inflammable and explosive and therefore dangerous when used under the usual conditions of operation by dry cleaners;

The facts being that "Kolene C" was not more dangerous or toxic than the solvents sold by it; said competitive preparation contained no "naptha" as used and understood in the trade, and was not a carbon tetrachloride—naptha blend as represented, but was a mixture of carbon tetrachloride, benzol and a small proportion of trichlorethylene; had a small fire hazard rating and was not flammable under standard or usual conditions of dry cleaning clothing; and, during the period concerned, a solvent sold, though not made, by corporation in question, was given the same or higher fire hazard rating than that assigned said competitive "Kolene C"; With tendency and capacity, through said false and disparaging representations made by it as aforesaid, to mislead and deceive a substantial portion of the purchasing

public into the false belief that said statements were true and into the purchase of its products in preference to said "Kolene C," and thereby unfairly to divert trade from the sellers of "Kolene C" to sellers of its preparations:

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

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

Mr. D. E. Hoopingarner and *Mr. R. P. Bellinger* for the Commission.
Campbell, Groening, Jr. & Prince, of Midland, Mich., 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 the Dow Chemical Company, a corporation, hereinafter referred to as the 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. The Dow Chemical Co., is a corporation, organized under the laws of the State of Michigan with its principal office and place of business located at Midland, Mich.

PAR. 2. Respondent is now, and for more than two years last past, has been engaged in the manufacture and sale of numerous chemical preparations including chemical preparations used in dry cleaning clothes. Respondent causes said preparations when sold to be transported from its place of business in the State of Michigan to its purchasers located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business the respondent is in competition with other corporations and with partnerships and individuals engaged in the sale of preparations used in the dry cleaning of clothes in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors of respondent engaged in commerce as aforesaid, is Kolene, Inc., a corporation organized and existing under the laws of the State of Michigan.

PAR. 4. The Dow Chemical Co., in the course and conduct of its business, and for the purpose of inducing individuals, firms and corporations to purchase its chemical preparations used in dry cleaning clothes in preference to the chemical preparation sold by Kolene, Inc., has made, directly and by inference, numerous unfairly disparaging statements concerning the preparation Kolene. These statements and representations have been disseminated by the said respondent between and among the various States of the United States and in the District of Columbia. Typical of the unfairly disparaging representations thus made by the respondent are the following:

Kolene is inflammable and explosive and therefore dangerous when used under standard or usual conditions for dry cleaning clothes.

Kolene is a compound composed solely of tetrachloride and benzine.

Kolene is highly corrosive of the metals of the dry cleaning machinery wherein it is used.

The fumes produced by the preparation Kolene are more dangerous and toxic than are the fumes produced by the cleaning preparations sold by respondent.

PAR. 5. The aforesaid representations with respect to the preparation Kolene are untrue, misleading and unfairly disparage the preparation Kolene. In truth and in fact the preparation Kolene is neither explosive nor inflammable and is not dangerous when used under standard or usual working conditions for dry cleaning clothes. Kolene is not a compound of tetrachloride and benzine only. Kolene is not highly corrosive of the metals of the dry cleaning machinery wherein it is used. The fumes produced by the preparation Kolene are not more dangerous or toxic than are the fumes produced by the dry cleaning preparations sold by respondent.

PAR. 6. The respondent has disseminated the aforesaid false, misleading and unfairly disparaging representations to its distributors located in the various States of the United States and in the District of Columbia, thus placing in the hands of said distributors a means of further disseminating said false and unfairly disparaging statements.

The aforesaid false, misleading and unfairly disparaging representations made by respondent, as hereinabove alleged, have had and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said statements are true and into the purchase of respondent's products in preference to the product Kolene because of such erroneous belief brought about as hereinabove set out. Further said false and misleading statements and unfair disparagements have a tendency to and do divert trade unfairly to respondent and the sellers of respondent's preparation from the sellers of the preparation Kolene.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 4, 1940, issued and subsequently served its complaint in this proceeding, upon the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondent filed its answer, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, through its counsel, 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 in lieu of testimony in support of the charges stated in 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, its conclusion based thereon, and its order disposing of the proceeding without intervening procedure save the filing of briefs and presentation of oral argument (the reservation as to oral argument was subsequently waived). Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, stipulation, and briefs in support of and in opposition to the complaint, 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, The Dow Chemical Co., (the corporation referred to in the complaint as Dow Chemical Co.), is a corporation, organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Midland, Mich.

PAR. 2. Respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of numerous chemical products, including chlorinated hydrocarbon solvents used in dry cleaning clothing, the most important of which are carbon tetrachloride and mixtures of carbon tetrachloride and other solvents. Respondent causes said solvents, when sold, to be transported from its place of business in the State of Michigan to purchasers at their various points of location in other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said solvents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia, of solvents used in the dry cleaning of clothing. Among said competitors of respondent is Kolene, Inc., a corporation organized and existing under the laws of the State of Michigan and engaged in the business of selling a solvent known as "Kolene C" for the dry cleaning of clothing.

PAR. 4. Approximately 25 percent of the dry cleaning in the United States is done in machines using synthetic solvents, commonly known as "synthetic solvent machines," and the remainder is done in machines using petroleum naphtha, commonly known as "naphtha plants" and "naphtha systems." Of the dry cleaning done in synthetic solvent machines, most is done with carbon tetrachloride; a part is done with mixtures containing carbon tetrachloride, including blends of carbon tetrachloride and ethylene dichloride, and about 10 percent with trichlorethylene and perchlorethylene. Respondent makes approximately 50 percent of the carbon tetrachloride and ethylene dichloride thus used. In addition to respondent

ent, a few other concerns make carbon tetrachloride. Between four and five thousand dry cleaners in the United States used synthetic solvent machines and approximately 40 to 50 percent of these dry cleaners use synthetic solvents purchased from respondent, the others purchasing their supplies of solvents from competitors of respondent. Kolene, Inc., has solicited business from about half the dry cleaners using synthetic solvent machines and regularly sells its solvent to approximately 500 of the dry cleaners using such machines.

PAR. 5. (a) The numerous dry cleaning plants known as "naphtha plants" and "naphtha systems" use as a cleaning agent petroleum naphtha only. In the fractional distillation of petroleum, also called "naphtha," consisting of a mixture of hydrocarbons, portions thereof also called petroleum distillates, or fractions boiling between 14° C. and 240° C., are called "petroleum naphthas." Lower-boiling portions consisting of several of the lighter and more volatile constituents of petroleum, including gasoline, and boiling between 40° C. and 70° C., are called "petroleum ether" and also "benzine." Gasoline, also called "petroleum ether" and "naphtha," consists of low-boiling petroleum distillates boiling between 14° C. and 90° C. The low-boiling petroleum naphthas, including benzine and gasoline, and also the higher-boiling petroleum naphthas, including Stoddard Solvent which boils between 149° C. and 210° C., and various other similar high-boiling petroleum naphthas sold under various trade names, have been used extensively in dry cleaning. The dry cleaning plants using petroleum naphtha are generally recognized as presenting greater fire hazards than dry cleaning plants using synthetic solvents. Though the term "naphtha" is technically descriptive of benzine and other petroleum naphthas and benzine (benzol), in the dry cleaning trade the term "naphtha," when used without qualification, is usually understood to refer to "petroleum naphtha."

(b) The term "benzene" is the scientific name for C_6H_6 and its commercial name is benzol. Benzol is obtained from the destructive distillation of coal. The "cut" boiling between 74° C. and 110° C. consists principally of the hydrocarbons benzene and toluene and is called "90 percent benzol." The "cut" obtained between 110° C. and 140° C. consists essentially of the same two hydrocarbons plus xylene, and is called "50 percent benzol." The "cut" obtained between 140° C. and 170° C. consists of higher-boiling members of the benzene series of hydrocarbons and is called "solvent naphtha," "burning naphtha," "naphtha," or "160° benzol."

PAR. 6. (a) The solvent "Kolene C" sold by Kolene, Inc., is a mixture of carbon tetrachloride, benzene (benzol), and a relatively small proportion of trichlorethylene. The benzol used in this solvent is that heretofore described as "90 percent benzol," which boils between 74° C. and 110° C. Carbon tetrachloride is a fire extinguisher and is given a "0" rating by Underwriters' Laboratories, Inc. The rating of ether is 100; gasoline is rated 90-100; ethyl alcohol, 60-70; kerosene (100 F. Flash), 30-40; and paraffin oil, 10-20. The fire hazard of benzol is about the same as that of gasoline and that of ethylene dichloride is about the same as ethyl alcohol. In a report of January 12, 1939, Underwriters' Laboratories, Inc., stated that the fire hazard of "Kolene C" is very small and rated it 1 to 2. "Kolene C" is not flammable or explosive and, therefore, is not dangerous

when used under standard or usual conditions of dry cleaning clothing, but is slightly flammable at higher temperatures which are encountered only under laboratory conditions.

(b) Respondent's solvent "Dowlene" is a mixture of carbon tetrachloride and ethylene dichloride. All solvents manufactured by respondent for sale to the dry cleaning trade as of January 12, 1939, were, and at all times since have been, rated "O" by Underwriters' Laboratories, Inc., and thus classed as completely nonflammable. Respondent, however, during the time referred to herein, sold a dry cleaning solvent not manufactured by it, trichlorethylene, which was given the same or a higher rating by Underwriters' Laboratories, Inc., than the rating assigned "Kolene C."

(c) Synthetic Solvent plants can be designed to recover in usable form most of the synthetic solvents used for dry cleaning, whereas the recovery of petroleum solvents, because of their flammable nature, cannot be done as efficiently. The nonflammable nature of the synthetic solvents permits their use in locations where the fire hazard of the petroleum solvents would constitute a public hazard.

PAR. 7. (a) In 1935 the manufacturers of benzol and carbon tetrachloride, respectively and independently of each other, entered into agreements with the United States Public Health Service with respect to the labeling of benzol and carbon tetrachloride. These agreements were voluntary and did not constitute findings by a public body as to the properties of the products covered by the agreements or a determination by the United States Public Health Service of the comparative toxicity of carbon tetrachloride and benzol. The manufacturers of benzol agreed that mixtures containing 15 percent or more of benzol should be labeled as follows:

CAUTION—POISON

This Product Contains More Than 15%

BENZOL Which Is A

VOLATILE SOLVENT

USE WITH ADEQUATE VENTILATION

AVOID PROLONGED BREATHING

OF VAPOR

The manufacturers of carbon tetrachloride agreed that mixtures containing 24 percent or more of carbon tetrachloride should be labeled as follows:

VOLATILE SOLVENT

USE WITH ADEQUATE VENTILATION

AVOID PROLONGED BREATHING

OF VAPOR

and, further, that the labels of such carbon tetrachloride mixtures should include the statement: "Contains more than 24 percent by weight of carbon tetrachloride."

(b) Kolene, Inc., used the "volatile solvent" label but did not use the benzol "poison" label or the statement: "Contains more than 24 percent

by weight of carbon tetrachloride." Respondent did not sell benzol or a dry cleaning solvent containing more than 15 percent benzol, and used the "volatile solvent" labels where applicable but not the statement: "Contains more than 24 percent by weight of carbon tetrachloride."

(c) The solvent "Kolene C" is not more toxic or dangerous than the cleaning solvents sold by respondent.

PAR. 8. (a) As heretofore stated, respondent manufactures about half of the carbon tetrachloride and ethylene dichloride used in dry cleaning and sells its synthetic solvents to approximately half of the dry cleaners using synthetic solvent machines. Respondent thus occupies the most important, if not a dominant position, in the production and distribution of synthetic solvents for the dry cleaning industry. Respondent maintains a solvent sales office at Midland, Mich., to handle the sale and distribution of its synthetic dry cleaning solvents and also maintains branch offices in New York, Chicago, and St. Louis. It sells such solvents to numerous jobbers or distributors located in various cities of the United States and employs a number of men skilled in salesmanship and in the chemistry and use of synthetic dry cleaning solvents who call upon said distributors and dry cleaners in the interest of the sale and distribution of respondent's synthetic dry cleaning solvents. These men often make calls on dry cleaners in the company of salesmen employed by jobbers. They often carry with them equipment for testing in the field dry cleaning solvents and are given instructions by respondent's main office and branch offices on comparative products and the manner in which they are to deal with problems met in the field.

(b) Respondent and its representatives and agents have made false, misleading, and disparaging representations concerning "Kolene C" to numerous distributors, customers, prospective purchasers of dry cleaning solvents, and manufacturers of dry cleaning machines located in various States, including Michigan, Illinois, Iowa, Wisconsin, Minnesota, Pennsylvania, New York, and in the District of Columbia, and have also thus placed in the hands of others the means of further disseminating such false, misleading, and disparaging representations. The substance of the false, misleading, and disparaging representations is to represent that the fumes produced by "Kolene C" are more dangerous and toxic than the fumes produced by the solvents sold by respondent; to misrepresent the contents of the preparation "Kolene C"; and to represent, directly and by implication, that "Kolene C" contains "naphtha," is a "petroleum blend," is inflammable and explosive, and therefore dangerous when used under the usual conditions of operation by dry cleaners.

(c) The aforesaid false, misleading, and disparaging representations, were made in many different ways, typical instances of which appear below. In the course of correspondence with a manufacturer of synthetic solvent machines concerning "Kolene C," respondent suggested the "possibility of a solvent consisting of Carbon Tetrachloride and naphtha acting differently than Carbon Tetrachloride alone"; approved the machine manufacturer's attitude in recommending that his "machine owners stay away from using any mixture of a naphtha-Carbon Tetrachloride nature"; stated, "We, of course, do not believe that any mixture of Carbon Tetrachloride and naphtha can be safe when used in a synthetic solvent machine"; suggested that in such a mixture carbon tetrachloride would evap-

orate first and leave behind the naphtha, and thus produce a solvent having a "lower flash point than the solvent as it was originally blended"; and stated, "In the stills as designed for synthetic units, this is likely to result in a rather hazardous operation." In a letter written to its Chicago office concerning "Kolene C" respondent referred to the alleged lower boiling point of carbon tetrachloride and stated, "Because of this, the naphtha or petroleum base which is left behind is gradually increasing in concentration"; and suggested a personal call on a particular purchaser of "Kolene C" "to point out to him some of the reasons why this particular dry cleaning fluid should not be used." In writing to one of its distributors, respondent suggested that "Kolene C" "is a blend of Carbon Tetrachloride and Benzol which, of course, takes it out of the classification of a completely nonflammable dry cleaning solvent"; and in a subsequent letter to this distributor stated in part, "from information we have received, the Kolene solvent does tend to flash after 95% has been distilled." In reporting a call on a dry cleaner using synthetic solvents, one of respondent's salesmen referred to the change by this dry cleaner from the use of respondent's solvents to "Kolene C" and advised that he pointed out to this dry cleaner that "there might be some fire hazard with C. T. (carbon tetrachloride)-Petroleum Blend." In writing to another manufacturer of synthetic solvent machines, respondent referred to "Kolene C" and stated that in its experience such blends are worse with respect to toxic vapors than a straight chlorinated solvent and that "In regard to toxicity, we would like to call your attention to the statement made by the Manufacturing Chemists' Association; namely, that a blended solvent carrying a volume percentage of over 15% of Benzol in Carbon Tetrachloride is 'more hazardous than straight Carbon Tetrachloride.'" In writing to one of its distributors concerning "Kolene C," respondent stated, "however, as you know, Benzol is much more hazardous from the standpoint of toxicity than is Carbon Tetrachloride and, consequently, this fact might deter a great many dry cleaners from using any Benzol mixtures." In reporting a call upon a dry cleaner using synthetic solvents, one of respondent's salesmen wrote, "We had a long talk going over again the comparison of Dowcene and Kolene. I stressed toxicity of Benzol, etc. * * *, Of course, I brought up the point that he was actually giving his operator a more dangerous material to use."

(d) The record shows that the hazards respondent asserted existed in the use of "Kolene C" were vigorously used by respondent and by others in whose hands such assertions were placed as a means of persuading dry cleaners not to begin or to continue, as the case might be, the use of "Kolene C," even to the extent of inducing cancelation of orders for such product. At the time respondent was referring to "Kolene C" as a carbon tetrachloride-naphtha blend and to the evaporation and distillation problems arising from the naphtha petroleum base said to be left behind in increasing concentration, respondent had the results of routine analyses made by its laboratory indicating that "Kolene C" was a carbon tetrachloride and benzol blend. These analyses were of a type which would not disclose the presence of a relatively small proportion of trichlorethylene in "Kolene C." There are, however, more elaborate, more costly, and more accurate methods of analyzing cleaning solvents.

PAR. 9. The false, misleading, and disparaging representations, made by respondent to the effect and in the manner, above found, have had, and have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said statements are true and into the purchase of respondent's products in preference to the product "Kolene C." Because of such erroneous belief, said false and misleading statements and disparagements also have the tendency and capacity unfairly to divert trade from the sellers of the preparation "Kolene C" to respondents and to the sellers of respondent's preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, and briefs in support of and in opposition to said complaint, and said stipulation providing, among other things, that without further evidence or other intervening procedure save the presentation of briefs and oral argument (oral argument having subsequently been waived) the Commission may issue and serve upon respondent 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, The Dow Chemical Co., 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 dry cleaning solvents in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the constituents of "Kolene C" or of any other competing dry cleaning solvent.
2. Representing, directly or by implication, that "Kolene C" is inflammable or explosive when used for dry cleaning under standard or usual conditions for such work.
3. Representing, directly or by implication, that the hazard of fire or explosion from the use of "Kolene C," or any other competing dry cleaning solvent, either absolutely or in comparison with respondent's solvents, is greater than any such hazard is in fact.
4. Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene C" are greater than the toxicity of or

dangers from the fumes of respondent's dry cleaning solvents; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene C," or of any other competing dry cleaning solvent.

5. Making or publishing any false and disparaging representations concerning the dry cleaning solvents of competitors.

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

Complaint

39 F. T. C.

IN THE MATTER OF
SUPERBILT MANUFACTURING 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 4944. Complaint, Apr. 16, 1943—Decision, Nov. 23, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of furniture, mattresses, box springs and like products to retailers and others—

- (a) Represented that its "Super Rest Mattresses and Matching Box Springs" were customarily sold by retail dealers for \$39.50 each in the usual course of business through such advertisements in newspapers and otherwise as "We Join Superbilt in This Special Introductory Offer A Challenge Value! \$39.50 Super Rest Mattress \$39.50 Matching Box Springs Both for \$39.50 Featuring the New Super Rest Quilted-Top Tuftless Inner Spring Mattress," which were also placed in newspapers by retail store purchasers of said products, and in the payment for which it participated;

Notwithstanding the fact that its "Special Introductory Offer" of said merchandise was the first time said Super Rest mattress and matching box springs had been placed on the market and there was no established retail market price of \$39.50 each for said articles at that time; the sum of \$39.50 had been the usual and customary retail selling price for both of said articles combined as one sale at all times subsequent to their introduction in the year 1940; and stated price of \$39.50 each, as set out in the advertisement, was in fact a fictitious price and was greatly in excess of the actual retail price, as stated above; and

- (b) Through use of such practices, placed in the hands of dealers a means and instrumentality whereby they were enabled to mislead and deceive the purchasing public as to the regular retail price and value of its said products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of its said products as a result of such erroneous belief:

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

Mr. Clark Nichols for the Commission.

Mr. Arthur A. Tarlow and *Bischoff & Bischoff*, of Portland, Ore., 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 Superbilt Manufacturing Co., Inc., a corporation, hereinafter referred to as the 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: