

IN THE MATTER OF

MAYO BROTHERS VITAMINS, INC., TRADING IN ITS OWN NAME AND IN THE NAME OF MAYO BROS., AND IRBY L. MAYO, ORAN FRANK F. MAYO, AND PAUL T. MURRY, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

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

Docket 5044. Complaint, Sept. 10, 1943—Decision, Feb. 9, 1945

Where a corporation and its three officers, engaged in the interstate sale and distribution of their "Mayo Bros. Vitamin B Complex," "Mayo Bros. Vitamin B₁" and "Mayo Bros. Family Formula"; through advertisements in newspapers and other periodicals, circulars, leaflets, pamphlets and other printed material, and by radio broadcasts, directly and by implication—

- (a) Falsely represented that human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet;
- (b) Represented that sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are usually due to a deficiency of B Complex vitamins, and that the use of their preparations would effectively overcome such conditions, bring about immediate and quick restoration of energy and health, and result in calmer and steadier nerves, better coordination, greater physical capacity, new strength, and higher mental efficiency;

The facts being that conditions above referred to are not ordinarily due to a deficiency of B Complex vitamins; while some may be due to a deficiency of Vitamin B₁, which cases their preparations might have a tendency to overcome, any beneficial results would arise only after continuous and long usage; their preparations contained insufficient quantities of B Complex vitamins other than B₁ to exercise any beneficial effect on conditions involving deficiency of such other vitamins; and any relief afforded in any condition by the use of their preparations would not be immediate or quick;

- (c) Falsely represented that the use of said preparations would eliminate the ill effects of hurried eating, intense work, and hard play, and would insure health and vitality;
- (d) Represented falsely that physicians consider molasses as a potent source of food minerals, and that two tablespoonfuls of the preparation "Mayo Bros. Family Formula" supplied the daily requirements of iron, manganese, and iodine;
- (e) Represented through use of words "Mayo Brothers" in their corporate name and "Mayo Bros." in the trade names of their products, and such statements—notwithstanding disclaimer of being connected with any other organization—as
 " * * * scientific research and careful study was carried on for months before this High Potency B. Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *" "No need to tell you that a line of vitamins bearing this name—means more business and more profits for you . . ." "A Great NAME, A Great PRODUCT, a Great SALES PLAN, Announcing MAYO BROS. FAMILY FORMULA," that they were connected with the well-known and highly regarded Mayo Clinic of Rochester, Minnesota, commonly referred to as Mayo Brothers, or that the aforesaid individual officers were members of the family of brothers who founded the clinic, or that their said preparations were produced or sponsored by the clinic;

When in fact neither they nor their said business was associated or connected with the Mayo Clinic, the said individuals were not members of the family of the two brothers who founded it, and their preparations were not produced or sponsored by the Mayo Clinic;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and by reason of such beliefs to purchase their said preparations:

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.

Mr. Sylvan Y. Allen, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mayo Brothers Vitamins, Inc., a corporation, trading in its own name and in the name of Mayo Bros., and Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mayo Brothers Vitamins, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, trading in its own name and in the name of Mayo Bros., with its principal place of business at Room 526, Los Angeles Stock Exchange Building, 639 South Spring Street in Los Angeles, Calif. Respondents, Irby L. Mayo, Oran Frank F. Mayo and Paul T. Murry, are president, vice president and secretary-treasurer, respectively, of the corporate respondent, with the same post office address as that of said corporate respondent. Said individual respondents have at all times mentioned herein, dominated and controlled the acts and practices of the corporate respondent. For several years last past the respondents have been engaged in the sale and distribution of certain preparations designated as Mayo Bros. Vitamin B. Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula.

PAR. 2. In the course and conduct of their aforesaid business, the respondents have disseminated, and have caused their dissemination of, false advertisements concerning their 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 have caused the dissemination of, false advertisements concerning their said products by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 inserted in newspapers and other peri-

odicals and by means of circulars, leaflets, pamphlets and other printed material and by radio broadcasts, are the following:

No matter what your diet, how rich in food energy, you and the great majority of our people use up food vitamins faster than the body can be supplied by means of the food we eat. Hence concentrated vitamins, pure vitamins that act quickly to restore energy, are necessary to your health and well being. * * * B Complex is truly the miracle worker among vitamins.

Buy a supply today and take them today, so that tomorrow you may feel better and do better * * * Of all the vitamins, B Complex has been found to be of greatest value for immediate energy, calmer nerves, better coordination, a greater physical capacity. * * * it will give most people an immediate physical pickup * * * you discover new strength and higher mental efficiency.

* * * Insure the victory for health * * * B Complex for its immediate health results * * *

If you are sick-lackadaisical, run down, nervous, sluggish mentally and physically, you may have a Vitamin B Complex deficiency * * *

If today's job leaves you easily fatigued, if the strain of events make you unduly nervous, if on the whole, you are not enjoying FULL, buoyant good health, DON'T OVERLOOK the possibility of a B Complex deficiency * * * because you people need steady nerves, robust health, energy to "Keep 'Em Flying" * * * for energy, health, vitality * * *.

* * * we eat hurriedly, we work tensely, we play hard. All this is a severe drain on our nerves * * *.

MAYO BROS. FAMILY FORMULA

AS A BASE, the nutritionally established value of Molasses—Physicians recognize molasses as a potent source of food minerals. * * * Now you can have in two teaspoonfuls of a pleasant tasting tonic the complete known daily vitamin requirements of * * * Iron, Manganese and Iodine.

PAR. 3. Through the use of the statements and representations herein above set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, that human health and well being require vitamins in addition to the supply ordinarily obtained in a well balanced diet; that sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and a lessened physical capacity are usually due to a deficiency of B Complex Vitamins; that the use of respondents' preparations will effectively overcome such conditions, bring about immediate and quick restoration of energy and health, resulting in calmer and steadier nerves, better coordination, greater physical capacity, new strength and higher mental efficiency; that the use of said products will eliminate the ill effects of hurried eating, intense work and hard play and will insure health and vitality; that physicians consider molasses as a potent source of food minerals and that two tablespoonfuls of the preparation Mayo Brothers Family Formula supplies the daily requirements of iron, manganese and iodine.

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, human health and well being do not ordinarily require vitamins in addition to the supply thereof obtained in a well balanced diet. Sickness, lackadaisical, run-down and nervous conditions, mental and physical sluggishness, lack of energy,

fatigue, lack of coordination and lessened physical capacity are not ordinarily or usually associated with or due to a deficiency of B Complex Vitamins. Some of said conditions may be due to a deficiency of Vitamin B₁. In such cases, respondents' products might have a tendency to overcome such conditions, but any beneficial results would arise only after continuous and long usage. In conditions where there is a deficiency of B Complex vitamins, other than Vitamin B₁, there are insufficient quantities of these vitamins in respondents' preparations to exercise any significant beneficial effect. Any relief afforded in any condition by the use of respondents' products will not be immediate or quick. Their use will not eliminate the ill effects of hurried eating, intense work or hard playing and will not insure health and vitality. Physicians do not consider molasses as a potent source of food minerals since the amount of minerals provided in the quantity of molasses ordinarily consumed is insignificant. Two tablespoonfuls of respondents' preparation Family Formula Supportive Vitamin provides only a small fraction of the daily requirements of iron, manganese and iodine.

PAR. 5. The respondents have also disseminated false and misleading advertising in promoting the sale of their products in the manner and by the means aforesaid by and through the use of the corporate name "Mayo Brothers Vitamins, Inc.," their trade name "Mayo Bros." and the name "Mayo Bros." as a trade name for their various products, alone, and in connection with advertising matter of which the following is typical:

We planned for years, while the public waited patiently—now they are here. MAYO BROTHERS VITAMINS * * *

* * * scientific research and careful study was carried on for months before this High Potency B. Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *

* * * Mayo Brothers share with medical authorities and the United States Government the opinion that vitamins are food in concentrated, vital, energy form.

Get started on Mayo Brothers Vitamins Family Formula * * * Mayo Brothers latest scientific achievement, Vitamin Family Formula is now available to the public * * * you will rely on Mayo Brothers name and trade-mark for vitamins * * *.

No need to tell you that a line of vitamins bearing this name . . . means more business and more profits for you . . .

Here is a brand name that has REAL QUALITY APPEAL.

A Great NAME
A Great PRODUCT
A Great SALES PLAN

Announcing
MAYO BROS. FAMILY FORMULA.

PAR. 6. Through the use of such statements and representations as set out in paragraph 5 hereof, and others similar thereto not specifically set out herein, and through and by means of the said use of the name "Mayo Bros." respondents represent, directly and by implication, that they are or their said business is associated with or connected with the well-known and highly regarded Mayo Clinic of Rochester, Minn., Commonly referred to throughout the United States as Mayo Bros., or that the individual respondents are members of the family of the internationally known

brothers who founded the said Clinic or that respondent's said preparations are produced or sponsored by the said Clinic.

PAR. 7. In truth and in fact, neither respondents nor their said business is associated or connected with the Mayo Clinic; the individual respondents are not members of the family of the two brothers who founded the Mayo Clinic and, if related to them at all, such kinship is too remote to be recognized, and respondents' preparations are not produced or sponsored by the Mayo Clinic.

PAR. 8. The use by respondents of the aforesaid false, deceptive and misleading statements and representations disseminated as aforesaid, with respect to their said preparations, together with the use as aforesaid of the name Mayo Bros. in connection with the advertising and sale of said preparations has had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that such false statements and representations were true and that some association or connection existed between respondents and the Mayo Bros. Clinic of Rochester, Minn., and because of such erroneous and mistaken beliefs to purchase substantial quantities of respondents' said preparations.

PAR. 9. The aforesaid acts and practices of 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 September 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents 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 or in opposition to the charges stated in the complaint and that the 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 without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; 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, Mayo Brothers Vitamins, Inc., was issued a corporate charter by the State of California about October 30, 1941. From that date until some time in August 1942 the said corporate respondent-

ent operated its business and traded in its own name and in the name of Mayo Bros., having its principal place of business in Room 526, Los Angeles Stock Exchange Building, 639 South Spring Street, Los Angeles, Calif. Respondents, Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry were, and are, the only officers of the said corporate respondent and have, or had, the same address. The said individual respondents, during all of said period, dominated and controlled the acts and practices of the said corporate respondent and with the corporate respondent were engaged in the sale and distribution of certain preparations designated as Mayo Bros. Vitamin B Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula. The said corporate respondent did not file with the State of California its annual report for the year 1942, and has not paid the required State franchise tax for the year 1943. By virtue thereof, in accordance with the laws of California, its corporate charter has been automatically suspended, but may be reinstated at any time upon submission of a proper report as aforesaid and payment of the said tax, with accrued interest and penalties; and the said corporation has not been technically dissolved.

PAR. 2. In the course and conduct of their aforesaid business, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents disseminated, and caused the dissemination of, false advertisements concerning their said preparations for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce as aforesaid. 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 insertions in newspapers and other periodicals, by means of circulars, leaflets, pamphlets, and other printed material, and by radio broadcasts, are the following:

No matter what your diet, how rich in food energy, you and the great majority of our people use up food vitamins faster than the body can be supplied by means of the food we eat. Hence concentrated vitamins, pure vitamins that act quickly to restore energy, are necessary to your health and well being. * * * B Complex is truly the miracle worker among vitamins.

Buy a supply today and take them today, so that tomorrow you may feel better and do better * * *. Of all the vitamins, B Complex has been found to be of greatest value for immediate energy, calmer nerves, better coordination, a greater physical capacity. * * * it will give most people an immediate physical pickup * * * you discover new strength and higher mental efficiency.

* * * Insure the victory for health * * * B Complex for its immediate health results * * *.

If you are sick—lackadaisical, run down, nervous, sluggish mentally and physically, you may have a Vitamin B Complex deficiency * * *.

If today's job leaves you easily fatigued, if the strain of events make you unduly nervous, if on the whole, you are not enjoying FULL, buoyant good health, DON'T OVERLOOK the possibility of a B Complex deficiency * * * because you people need steady nerves, robust health, energy to "Keep 'Em Flying" * * * for energy, health, vitality * * *.

* * * * *

* * * we eat hurriedly, we work tensely, we play hard. All this is a severe drain on our nerves * * *.

* * * * *

MAYO BROS. FAMILY FORMULA

AS A BASE, the nutritionally established value of Molasses—Physicians recognize molasses as a potent source of food minerals. * * * Now you can have in two teaspoonfuls of a pleasant tasting tonic the complete known daily vitamin requirements of * * * Iron, Manganese and Iodine.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein respondents have represented, directly and by implication, that human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet; that sickness, lackadaisical conditions, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and a lessened physical capacity are usually due to a deficiency of B Complex vitamins; that the use of respondents' preparations will effectively overcome such conditions, bring about immediate and quick restoration of energy and health, and result in calmer and steadier nerves, better coordination, greater physical capacity, new strength, and higher mental efficiency; that the use of said preparations will eliminate the ill effects of hurried eating, intense work, and hard play, and will insure health and vitality; that physicians consider molasses as a potent source of food minerals and that two tablespoonfuls of the preparation Mayo Bros. Family Formula supplies the daily requirements of iron, manganese and iodine.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, human health and well-being do not ordinarily require vitamins in addition to the supply thereof obtained in a well-balanced diet. Sickness, lackadaisical conditions, run-down and nervous conditions, mental and physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are not ordinarily or usually associated with or due to a deficiency of B Complex vitamins. Some of said conditions may be due to a deficiency of Vitamin B₁. In such cases, respondents' preparations might have a tendency to overcome such conditions, but any beneficial results would arise only after continuous and long usage. In conditions where there is a deficiency of B Complex vitamins other than Vitamin B₁, there are insufficient quantities of these vitamins in respondents' preparations to exercise any significant beneficial effect. Any relief afforded in any condition by the use of respondents' preparations will not be immediate or quick. Their use will not eliminate the ill effects of hurried eating, intense work, or hard playing, and will not insure health and vitality. Physicians do not consider molasses as a potent source of food minerals, since the amount of minerals provided in the quantity of molasses ordinarily consumed is insignificant. Two tablespoonfuls of respondents' preparation Family Formula Supportive Vitamin provides only a small fraction of the daily requirements of iron, manganese, and iodine.

PAR. 5. The respondents have also disseminated false and misleading advertisements in promoting the sale of their preparations in the manner and by the means aforesaid by and through the use, alone and in connection with advertising matter, of the corporate name "Mayo Brothers Vitamins, Inc.," their trade name "Mayo Bros.," and the name "Mayo Bros." as a trade name for their various preparations. Typical of these advertisements are the following:

We planned for years, while the public waited patiently—now they are here. MAYO BROTHERS VITAMINS * * *

* * * * *

* * * scientific research and careful study was carried on for months before this High Potency B Complex was ready to be offered to the public and worthy of bearing the name and trade-mark of Mayo Bros. * * *

* * * * *

* * * Mayo Brothers share with medical authorities and the United States Government the opinion that vitamins are food in concentrated, vital, energy form.

* * * * *

Get started on Mayo Brothers Vitamins Family Formula * * * Mayo Brothers latest scientific achievement, Vitamin Family Formula is now available to the public * * * you will rely on Mayo Brothers name and trade-mark for vitamins * * *

* * * * *

No need to tell you that a line of vitamins bearing this name . . . means more business and more profits for you . . .

Here is a brand name that has REAL QUALITY APPEAL.

* * * * *

A Great NAME
A Great PRODUCT
A Great SALES PLAN

Announcing

MAYO BROS. FAMILY FORMULA

PAR. 6. In connection with the use of some of the advertising representations quoted in paragraph 5 hereof, the respondents have stated that they were not connected with any other organization; nevertheless, through the use of such statements and representations as set out in paragraph 5 above, and others similar thereto not specifically set out herein, and through and by means of the said use of the name Mayo Bros., respondents represented, directly and by implication, that they were, or their said business was, associated with or connected with the well-known and highly regarded Mayo Clinic of Rochester, Minn., commonly referred to throughout the United States as Mayo Brothers, or that the individual respondents are members of the family of the internationally known brothers who founded the said clinic, or that respondents' said preparations were produced or sponsored by the said clinic.

PAR. 7. In truth and in fact, neither respondents nor their said business is, or was, associated or connected with the Mayo Clinic; the individual respondents are not members of the family of the two brothers who founded the Mayo Clinic, or if related to them at all, such kinship is too remote to be recognized; and respondents' preparations are not, and were not, produced or sponsored by the Mayo Clinic.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparations has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken

belief that such statements and representations are true, and because of such erroneous and mistaken beliefs to purchase respondents' said preparations.

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 answer of respondents, and a stipulation as to the facts entered into between counsel for the respondents herein and Richard P. Whiteley, Assistant 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 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, Mayo Brothers Vitamins, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Irby L. Mayo, Oran Frank F. Mayo, and Paul T. Murry, individually, and as officers of Mayo Brothers Vitamins, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparations designated Mayo Bros. Vitamin B Complex, Mayo Bros. Vitamin B₁, and Mayo Bros. Family Formula, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name sold, 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 implication:

(a) That human health and well-being require vitamins in addition to the supply ordinarily obtained in a well-balanced diet.

(b) That sickness or conditions described as lackadaisical, run-down or nervous, mental or physical sluggishness, lack of energy, fatigue, lack of coordination, and lessened physical capacity are usually or ordinarily associated with or are due to a deficiency of B Complex vitamins.

(c) That respondents' preparations Mayo Bros. Vitamin B Complex and Mayo Bros. Vitamin B₁, or either of them, have any significant therapeutic value in the treatment of the conditions described in paragraph (b) above; *provided, however*, that this shall not prevent a representation that long and continued use of said preparations may tend to overcome the conditions named in (b) above in the unusual instance where such conditions are due to a Vitamin B₁ deficiency.

(d) That said vitamin preparations have any value in eliminating the ill effects of hurried eating, intense work, or hard play, or will insure health or vitality.

(e) That the use of said vitamin preparations will afford immediate or prompt relief for any condition.

(f) That two tablespoonfuls, or any approximately equivalent amount of respondents' preparation Mayo Bros. Family Formula will furnish the known daily requirements of iron, manganese, and iodine, or more than a small fraction of such requirements.

(g) Through the use of the words "Mayo Bros.," or any simulation thereof, in the corporate or trade name of any of respondents or in the name for any of said preparations, or in any other manner, that said preparations were produced or sponsored by the Mayo Clinic of Rochester, Minn., or the founders thereof; provided, however, that this shall not prevent the use of the words "Mayo Bros." if respondents clearly, conspicuously, and unequivocally disclose in immediate conjunction therewith that they are not connected in any manner with said Mayo Clinic.

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 respondents' 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 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

JAMES J. FUNSTEN DOING BUSINESS AS FUNSTEN COMPANY; SAN XAVIER FISH PACKING COMPANY; AND PACIFIC MARINE PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUB-SEC. (c) OF SEC. 2 OF ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5131. Complaint, Feb. 15, 1944—Decision, Feb. 12, 1945

Where an individual who had long been engaged as the exclusive sales agent of two corporations packing and canning sea food, in which he and his wife owned a controlling stock interest, and which sold their products (a) through intermediaries to whom they customarily paid commissions or brokerage fees for their services, and (b) through said individual's organization, to which they paid 10 cents per case for its services;

Paid or granted as sales agent for said corporations, in connection with the interstate sale and distribution to buyers of said sea food products, whether under their own labels, or unlabeled, or under buyers' labels, brokerage fees or other compensation, which amounted customarily to 5 percent of the net price of the sea food products purchased, and which said individual charged to and collected from the corporation whose product he had sold:

Held, That such paying and granting of brokerage or other compensation to buyers on their own purchases, constituted violations of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Pillsbury, Madison & Sutro, of San Francisco, Calif., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, James J. Funsten, is an individual, trading as Funsten Company, with his principal office and place of business located at 260 California Street, San Francisco, Calif. (this respondent is hereinafter designated as Funsten Co.), is engaged, and for many years prior hereto has engaged, as the exclusive sales agent of two packing and canning corporations over which he, together with his wife, Florence Funsten, exercises financial control, namely, the San Xavier Fish Packing Co. of Monterey, Calif., and the Pacific Marine Products Co. of Astoria, Oreg. The respondent sells and distributes exclusively for these two corporations canned salmon, tuna, sardines, fish oil and fish meal and other sea food products. Such commodities are hereinafter designated as sea food products.