

Syllabus

IN THE MATTER OF

EMMETT J. SMITH AND SARAH ALMA MAXWELL, TRADING AS EMMETT J. SMITH AND DAUGHTER, SMITH BABY CHIX AND EMMETT J. SMITH AND DAUGHTER POULTRY FARMS

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

Docket 5159. Complaint, May 13, 1944—Decision, May 5, 1947

A United States record of performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the national poultry improvement plan.

The national poultry improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks with respect to quality by describing them in terms uniformly accepted in all parts of the United States.

Where two individuals engaged in the interstate sale and distribution of chickens and baby chicks, and of two medicinal preparations designated "Save'm" and "Va-Po-Spra"; through circulars distributed generally to the purchasing public and through advertisements in newspapers and other publications—

(a) Falsely represented that they were United States record of performance breeders and that they operated a poultry hatchery under the supervision and in accordance with the rules and regulations of the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture;

The facts being they purchased their baby chicks from various hatcheries for resale to their customers; delivery in some instances being made directly from the hatchery, and in others to them for delivery to their customers;

(b) Represented that their chickens and baby chicks were "U. S. Approved" under the national poultry improvement plan, and that said chicks were record-of-performance sired;

The facts being that their said products were not thus approved, and there was no evidence that the chicks were record-of-performance sired, other than the unsupported statement of the seller that they were thus represented by the supplying hatchery; and

(c) Falsely represented that their said "Save'm" medicinal preparation was a competent and effective treatment for diarrhea, coccidiosis, typhoid, cholera, worms, and paralysis in poultry and blackhead in turkeys, and would effectively prevent chickens or turkeys from contracting any of said ailments or being subject thereto;

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- (d) Falsely represented that their "Va-Po-Spra" was a similar treatment and preventive for bronchitis, brooder pneumonia, gapes, cold, tracheitis, roup, canker, pox, and sore head in poultry;
- (e) Falsely represented that use of "Va-Po-Spra" as directed would kill all disease germs in or about the premises used or frequented by poultry;
- (f) Falsely represented that use thereof was effective in preventing and combating respiratory ailments in dogs, particularly distemper and pneumonia in case of puppies; and,
- (g) Falsely represented that said preparation was effective in preventing and combating respiratory ailments in man and that it would cure colds, asthma, and hay fever, and relieve the pain incident to burns, bee stings, insect bites, and sunburn in the case of humans;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true and thereby induce purchase of substantial quantities of 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Hilldrop & Mayfield, of Nashville, Tenn., for respondents.

COMPLAINT¹

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 Emmett J. Smith and Sarah Alma Maxwell, individuals trading as Emmett J. Smith and Daughter, Smith Baby Chix, and Emmett J. Smith and Daughter Poultry Farms, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

¹ The complaint is published as amended by Commission order of April 2, 1946, as follows:

"This matter coming on to be heard upon the motion of Richard P. Whiteley, assistant chief counsel for the Commission, that the complaint herein be amended by striking therefrom paragraphs 7 and 8 and substituting in lieu thereof new paragraphs 7 and 8, in the manner set out in the motion, and that the testimony and other evidence heretofore taken and received in support of and in opposition to the allegations of the complaint, insofar as the same may be competent and material, be made applicable to the complaint as amended, and counsel for the respondents having filed herein their waiver of notice of hearing, and consent that said motion be granted, and the Commission having duly considered the said motion and the record herein and having reason to believe that the said respondents have been or are violating the provisions of the Federal Trade Commission Act in respects other than as alleged in the original complaint and that a proceeding upon said additional charges would be in the public interest:

"It is ordered, That the complaint herein be amended by striking therefrom paragraphs 7 and 8 and inserting in lieu thereof new paragraphs 7 and 8, as follows:

[The paragraphs in question, duly substituted in the complaint, are omitted here in the interest of brevity.]

"It is further ordered, That respondents shall have 20 days from the date of service upon them of this order within which to file their answer to the complaint, as amended."

PARAGRAPH 1. Respondents, Emmett J. Smith and Sarah Alma Maxwell, individuals trading and doing business as Emmett J. Smith and Daughter, Smith Baby Chix, and Emmett J. Smith and Daughter Poultry Farms have their office and principal place of business located at Murfreesboro Hiway, Nashville, Tenn.

PAR. 2. Respondents are now and for more than 2 years last past have engaged in the business of selling chickens and baby chicks and also medicinal preparations designated Save'm and Va-Po-Spra. Respondents caused their chickens, baby chicks, and medicinal preparations, when sold by them, to be transported from their aforesaid place of business in the State of Tennessee to purchasers located in the various States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said chickens, baby chicks, and medicinal preparations in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of the aforesaid business and for the purpose of inducing the purchase of their chickens and baby chicks respondents have circulated and are now circulating among prospective purchasers throughout the United States by United States mails and by advertisements in newspapers, many false statements and representations concerning their products.

Among and typical of such false statements and representations disseminated as aforesaid, respecting chickens and baby chicks, are the following:

EVERYTHING U. S. APPROVED AND BANDED. Blood-Tested, absolutely PULLORUM FREE, GOOD CHICKS as 44 years' BREEDING EXPERIENCE can produce.

Every chick "AAAs." from U. S. APPROVED PULLORUM tested. BANDED parent stock. ALL breeds. Reds and White Leghorns included. Hatched in Mammoth Electrics, operated in MODERN Hatchery buildings, constructed especially for a Hatchery.

U. S. Certified Chicks.

AAA Chicks—"R. O. P. sired" from B. W. D. tested parents U. S. Approved.

Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented that they are United States record-of-performance breeders; that they operate a poultry hatchery under the supervision and in accordance with the rules and regulations of the national poultry improvement plan, administered by the Bureau of Animal Industry of the United States Department of Agriculture; that their chickens and baby chicks are blood tested and absolutely free from pullorum disease; that they have 44 years' experience in breeding

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chickens and baby chicks; that their grade AAA baby chicks are record-of-performance sired from bacillary-white-diarrhea-tested parents and are United States approved; that their chickens and baby chicks are United States-certified chickens or chicks; and that their chickens and baby chicks are hatched in mammoth electric incubators in modern hatchery buildings.

PAR. 4. A United States record-of-performance breeder is understood by members of the poultry industry to be a person operating a poultry-breeding farm or hatchery in accordance with the provisions of the United States record of performance breeding stage of the national poultry improvement plan, administered by the United States Department of Agriculture, and in addition to United States record-of-performance matings, all other mated birds supplying hatching eggs to said person or to any hatchery owned or operated by same shall be under the supervision of the plan in one of the breeding stages.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the respondents are not United States record-of-performance breeders and do not own or operate a poultry breeding plant or hatchery under the supervision and in accordance with the rules and regulations of the national poultry improvement plan administered by the United States Department of Agriculture. Respondents do not own or operate, nor are their baby chicks hatched in, mammoth electric incubators in modern hatchery buildings. Respondents' chickens and baby chicks are not absolutely free from pullorum disease. According to reliable scientific authorities, no flock of chickens can be depended upon to be absolutely free from pullorum disease. Respondents' baby chicks are not AAA grade and they are not record-of-performance sired from bacillary-white-diarrhea-tested parents nor are they United States approved or United States certified. The respondents do not hatch any of the chickens or baby chicks they sell but buy them from other sources and sell them under their own name or names. Some of the hatcheries from which respondents purchase their stock are not operating under the national poultry improvement plan.

PAR. 6. Further, in the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their medicinal preparations designated "Save'm" and "Va-Po-Spra" by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing the dis-

semination of false advertisements concerning their said medicinal preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations 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 United States mails, by advertisements inserted in newspapers and periodicals and by circulars, are the following:

Too, we were convinced years ago that regardless of the numbers of different NAMES that have been given to poultry ailments, the entire lot may safely be grouped into two (2)—**ONLY TWO**—classes, i. e., intestinal and respiratory, for when the intestinal organs and the respiratory organs are kept functioning properly—kept in "**NORMAL**" condition—and of course, mites and lice kept down, the poultry breeder or developer has **LITTLE** in way of disease to contend with.

INTESTINAL Ailments:

In this class may be included diarrhea (from **ANY** cause), coccidiosis, typhoid, cholera, blackhead (in turkeys), worms, and **PARALYSIS**

While neither of the two latter named is a "disease," worms oftentimes so weaken the constitution, lower the vitality and disease-resisting power that the bird will succumb to disease germs that may be lurking around Too, we've for years been thoroughly convinced that worms are direct cause of some forms of paralysis; but to say the least, worms in poultry (or anything else) are **EXPENSIVE** boarders.

While paralysis may not be a "disease" in true sense of the word, paralysis is often times "result," caused by some intestinal disease, other than by worms.

TREATMENT—

In **SAV'M** we have perfected **THE ONE** remedy that not only **STAMPS OUT** any and all of above-named ailments when used as directed, but **MOST POSITIVELY** will **PREVENT** any chicken or turkey contracting either of above-named ailments, even though allowed to occupy quarters with dead birds that died of these ailments.

RESPIRATORY Ailments:

In this class may be grouped bronchitis (gasping) called by some "brooder pneumonia," gapes (caused by a tiny red worm in trachea), colds, bronchitis, tracheitis and roup.

Canker, while not usually a respiratory ailment, follows neglected roup and is often found in the trachea as well as all inside of mouth. If neglected, death will surely and quickly follow.

Pox and sorehead are neither a respiratory ailment, but often show up along with roup. Neglected, will develop canker, as well as will roup.

TREATMENT—

VA-PO-SPRA is "**THE ONE**" remedy that will not only **POSITIVELY PREVENT** all of above-named ailments, but will quickly bring about complete recovery, even after the case has become seemingly **HOPELESS**. Hundreds of roup,

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or sorehead, affected birds have been brought to us in such condition that bird was totally blind; or entire head, wattles, and comb a solid mass of sores; eyes sealed shut, with canker already developed under eyelids. Owners tell us they had been killing and burning birds in nothing like as bad condition. Yet, within two to four days the VA-PO-SPRA treatment has them absolutely GOOD AS NEW.

Many customers have told us that had we told them in advance all that VA-PO-SPRA will do, they wouldn't as much as given it a trial, wouldn't think such to be possible; so we are going to mention a little more that VA-PO-SPRA is good for, i. e.: No disease germ can exist about premises where VA-PO-SPRA is used as a preventative. No mites, lice, or scaly leg will ever appear in any brood or flock where VA-PO-SPRA is used as a preventative.

Too, VA-PO-SPRA will work wonders preventing or combating respiratory ailments in man or beast. No need for anyone to suffer with a cold, when VA-PO-SPRA is on hand. If suffering with a cold, before retiring simply pour a very small amount on pillow, lie with nose directly over it, cover head and breathe with mouth open and watch how quick that cold will VANISH. For burns, bee stings, insect bites, lightly apply VA-PO-SPRA and forget about the pain. VA-PO-SPRA relieves sunburn pain almost instantly.

If troubled with asthma or hay fever, just try VA-PO-SPRA.

And last, but by no means least, if you own a dog (or cat), and most every family has one or the other, rest assured that VA-PO-SPRA will KILL—Not just “run” for the time being—EVERY flea almost INSTANTLY. No, they'll not jump off, they'll FALL off DEAD, never to again move. Same for fleas on cats.

Use VA-PO-SPRA as a preventative and your puppy will not have distemper or pneumonia. If already affected with either—if treatment is begun in time—permanent relief is sure.

In connection with advertisement setting forth their said medicinal preparations, the respondents have published purported testimonials as to the efficacy thereof.

PAR. 7. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented that their medicinal preparation “Save'm” is a competent and effective treatment for diarrhea, coccidiosis, typhoid, cholera, worms, and paralysis in poultry, and blackhead in turkeys, and that its use will effectively prevent chickens or turkeys from contracting any of said ailments or be subject to such conditions. That the preparation “Va-Po-Spra” is a competent and effective treatment for bronchitis, brooder pneumonia, gapes, colds, tracheitis, roup, canker, pox, and sorehead in poultry and that its use will prevent chickens and turkeys from contracting any of said ailments; that the use of “Va-Po-Spra” as directed will kill all disease germs in or about the premises used or frequented by poultry, and that the use of said product is effective in preventing and combatting respiratory ailments in man or beast, and particularly distemper and pneumonia in the case of puppies; that it will cure

colds, asthma, and hay fever, and will relieve the pain incident to burns, bee stings, insect bites, and sunburn in the case of humans.

PAR. 8. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' preparation "Save'm" has no therapeutic value in the treatment of diarrhea, coccidiosis, typhoid, cholera, worms, or paralysis in poultry or blackhead in turkeys, and its use will not prevent poultry from contracting any or all of said ailments. Respondents' preparation "Va-Po-Spra" is not a competent or effective treatment for bronchitis, brooder pneumonia, gapes, colds, tracheitis, roup, canker, pox, or sorehead in poultry, and its use will not prevent poultry from contracting any or all of said ailments. The use of "Va-Po-Spra," as directed, will not kill all disease germs in or about the premises used or frequented by poultry, nor will it kill sufficient numbers of disease germs to afford any significant protection to poultry. Said product is not effective in preventing or combatting respiratory ailments in man or beast and will not prevent or be of any value in the treatment of distemper or pneumonia in the case of puppies. It will not cure colds, asthma, or hay fever, or be of any value in the treatment thereof, and will not relieve the pains incident to burns, bee stings, insect bites, or sunburn in the case of humans.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to their chickens, baby chicks, and medicinal preparations, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and do induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said products.

PAR. 10. The aforesaid acts and practices of the respondents as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 13, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Emmett J. Smith and Sarah Alma Maxwell, individuals trading as Emmett J. Smith and Daughter, Smith Baby Chix, and Emmett J.

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Smith and Daughter Poultry Farms, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of respondents thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken 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. During the time that hearings were held herein, the Commission, on April 2, 1946, issued its order amending paragraphs 7 and 8 of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint as amended, answer thereto, testimony, and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (the respondents not having filed brief or requested oral argument); 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. Respondents, Emmett J. Smith and Sarah Alma Maxwell, are individuals trading and doing business as Emmett J. Smith and Daughter, Smith Baby Chix, and Emmett J. Smith and Daughter Poultry Farms, and have their office and principal place of business located at Murfreesboro Hiway, Nashville, Tenn.

PAR. 2. Respondents are engaged in the sale and distribution of chickens and baby chicks and also in the sale and distribution of two medicinal preparations, designated "Save'm" and "Va-Po-Spra," in commerce among and between the various States of the United States. Respondents cause their chickens, baby chicks, and medicinal preparations, when sold by them, to be transported from their aforesaid place of business in the State of Tennessee to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said chickens, baby chicks, and medicinal preparations among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their chickens and baby chicks, respondents have made many false, misleading, and deceptive statements and representations with respect to their said chickens and baby chicks by means of circulars distributed generally to the

purchasing public and by insertion of advertisements in newspapers and other publications. Among and typical of such statements and representations are the following:

EVERYTHING U. S. APPROVED AND BANDED. Blood-Tested, absolutely PULLORUM FREE, GOOD CHICKS as 44 years' BREEDING EXPERIENCE can produce.

AAA CHICKS—"R. O. P. sired" from B. W. D. tested parents. U. S. approved. White and Brown Leghorns, White, Barred, and Buff Rocks, Buff Orphingtons, White Giants, Leghorn, Rock. Want quality? Here they are. SMITH'S BABYCHIX (since 1898).

QUALITY broiler-fryer cockerels from B. W. D. tested, U. S. approved breeders. 200—\$7.00 postage paid. Light breeds of course. SMITH'S BABYCHIX, 364 Murfreesboro Road, Nashville.

PAR. 4. Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented that they are United States record of performance breeders; that they operate a poultry hatchery under the supervision and in accordance with the rules and regulations of the national poultry improvement plan, administered by the Bureau of Animal Industry, United States Department of Agriculture; that their chickens and baby chicks are "U. S. Approved" chicks under the national poultry improvement plan; and that said chicks are record-of-performance sired.

PAR. 5. The Commission finds that the foregoing representations are grossly exaggerated, false, and misleading. Respondents are not United States record of performance breeders and, in fact, do not own, operate, or control a hatchery where their baby chicks are produced but, instead, purchase such baby chicks from various hatcheries for resale to their customers. In some instances delivery of baby chicks to purchasers is made directly to such purchaser from the hatchery from which respondents purchase said chicks and in other instances the baby chicks are delivered to the respondents for delivery to their various customers. The chickens and baby chicks sold by the respondent are not "U. S. Approved" chicks under the national poultry improvement plan and there is no evidence that the chicks sold by the respondents are record-of-performance sired chicks, except the unsupported statement of the respondent that said chicks were so represented by the supplying hatchery.

PAR. 6. A United States record-of-performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as a national poultry improvement plan. The national poultry

improvement plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks with respect to quality by describing them in terms uniformly accepted in all parts of the United States.

PAR. 7. In addition to the above acts and practices, the respondents have disseminated and have caused the dissemination of false advertisements concerning their medicinal preparations designated "Save'm" and "Va-Po-Spra" by 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 medicinal preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparations 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 United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, are the following:

1. That respondents' medicinal preparation Save'm is a competent and effective treatment for diarrhea, coccidiosis, typhoid, cholera, worms, and paralysis in poultry and blackhead in turkeys and that the use of said preparation will effectively prevent chickens or turkeys from contracting any of said ailments or be subject to such conditions.

2. That respondents' preparation Va-Po-Spra is a competent and effective treatment for bronchitis, brooder pneumonia, gapes, colds, tracheitis, roup, canker, pox, and sore head in poultry and that its use will prevent chickens and turkeys from contracting any of said ailments.

3. That the use of respondents' preparation Va-Po-Spra as directed will kill all disease germs in or about the premises used or frequented by poultry.

4. That the use of said preparation Va-Po-Spra is effective in preventing and combating respiratory ailments in dogs, particularly distemper and pneumonia in case of puppies.

5. That respondents' preparation Va-Po-Spra is effective in preventing and combating respiratory ailments in man and that it will cure colds, asthma, and hay fever.

6. That respondents' preparation will relieve the pain incident to burns, bee stings, insect bites, and sunburn in the case of humans.

PAR. 8. The Commission finds that the foregoing statements and representations are false, deceptive, and misleading. Respondents' preparation Save'm has no therapeutic value in the treatment of diarrhea, coccidiosis, typhoid, cholera, worms, or paralysis in poultry or blackhead in turkeys and the use of said preparation will not prevent poultry from contracting any or all of said ailments.

Respondents' preparation Va-Po-Spra is not a competent or effective treatment for bronchitis, brooder pneumonia, gapes, colds, tracheitis, roup, canker, pox, or sore head in poultry and its use will not prevent poultry from contracting any or all of said named conditions. The use of respondents' preparation Va-Po-Spra will not kill all disease germs in or about the premises used or frequented by poultry, nor will it kill a sufficient number of disease germs to afford any significant protection to poultry. Respondents' preparation Va-Po-Spra is not effective in preventing or combating respiratory ailments in dogs and will not prevent or be of any value in the treatment of distemper or pneumonia in the case of puppies or dogs. Respondents' preparation Va-Po-Spra is not effective in preventing or combating respiratory ailments in man and its use will not cure colds, asthma, or hay fever or be of any value in the treatment of such conditions. The use of said preparation will not relieve the pain incident to burns, bee stings, insect bites, or sunburn.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to their chickens, baby chicks, and medicinal 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 false statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' chickens, baby chicks, and medicinal preparations.

CONCLUSION

The acts and practices of the 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 as amended, answer of

the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents or oral argument requested), and the Commission having made its findings as to the facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

I. *It is ordered*, That the respondents, Emmett J. Smith and Sarah Alma Maxwell, individually and trading as Emmett J. Smith and Daughter, Smith Baby Chix, or Emmett J. Smith and Daughter Poultry Farms, or trading under any other trade name, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of chickens and baby chicks or other poultry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are United States record of performance breeders or record of performance poultry breeders or that they operate a poultry plant under the supervision of an official from the agency supervising United States record of performance work.

2. Representing, directly or by implication, that respondents own, operate, or control a hatchery wherein their baby chicks are produced when in fact such chicks are procured from various hatcheries for resale by respondents to their customers.

3. Representing, directly or by implication, that respondents' baby chicks are produced from or sired by United States record of performance males unless the chicks so offered for sale have been actually sired by males which have been officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such.

4. Using the term "U. S. Approved" or any other term of similar import or meaning or any other official terminology of the national poultry improvement plan, to designate or describe chickens or baby chicks sold by the respondents.

II. *It is further ordered*, That the respondents, Emmett J. Smith and Sarah Alma Maxwell, individually and trading as Emmett J. Smith and Daughter, Smith Baby Chix, or Emmett J. Smith and Daughter Poultry Farms, or trading under any other trade name, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their medicinal preparations known as "Save'm" and "Va-Po-Spra," or any other preparations of substan-

tially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That respondents' preparation Save'm has any therapeutic value in the treatment of diarrhea, coccidiosis, typhoid, cholera, worms, or paralysis in poultry or that it has any therapeutic value in the treatment of blackhead in turkeys or that the use of said preparation will prevent poultry or turkeys from contracting any of said ailments or conditions.

(b) That respondents' preparation Va-Po-Spra is a competent or effective treatment for bronchitis, brooder pneumonia, gapes, colds, tracheitis, roup, canker, pox, or sore head in poultry or that its use will prevent chickens and turkeys from contracting any of said ailments or conditions.

(c) That respondents' preparation Va-Po-Spra will kill a sufficient number of disease germs in or about the premises used or frequented by poultry so as to afford any significant protection to poultry.

(d) That the use of respondents' preparation Va-Po-Spra is effective in preventing or combating respiratory ailments in dogs or that it has any value in the treatment of distemper or pneumonia.

(e) That respondents' preparation Va-Po-Spra will be effective in preventing or combating respiratory ailments in man.

(f) That respondents' preparation Va-Po-Spra constitutes a cure or remedy for colds, asthma, or hay fever or that it has any value in the treatment thereof.

(g) That respondents' preparation Va-Po-Spra will be effective in relieving pain incident to burns, bee stings, insect bites, or sunburn.

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

III. *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

ENERGETIC WORSTED CORP., SPINNERIN YARN CO.,
INC., AND JOHN J. HOSEY, JR., EDNA M. McMANUS,
DOROTHY H. CASSEL, AND EDNA J. HOSEY, TRADING
AS NORR-BRIDGE YARN CO.¹

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT AP-
PROVED OCT. 14, 1940

Docket 5280. Complaint, Feb. 13, 1945—Decision, May 5, 1947

The word "Shetland" has long been understood by the purchasing public as denoting a particular type of wool derived from the fleece of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland, and when the word is used in connection with yarns having the general appearance of wool, it is understood by the purchasing public as denoting a product made from the wool of such sheep.

The word "Cashmere" has long been understood by the purchasing public as denoting a particular type of wool derived from the hair of the Cashmere goat, and when the word is used in connection with yarns having the general appearance of wool, it is understood by the purchasing public as denoting a product made from the hair of the Cashmere goat.

Shetland wool and Cashmere wool; i. e., particular types of wool derived respectively from the fleece of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland, and from the hair of the Cashmere goat, have for a long time been favorably known to the purchasing public, and there is a preference on the part of a substantial portion of the public for knitting yarns made from such wools.

Where a corporation engaged in the interstate sale and distribution of hand knitting yarns; in advertising material including pamphlets, leaflets, and price lists, and the labels attached to said yarns—

- (a) Misrepresented the constituent fibers or materials of which its yarns were made through use of the terms "Spinnerin-Shetland" and "Spinnerin-Cashmere" to designate and describe yarns which contained no wool derived, respectively, from the fleece of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, or from the hair of the Cashmere goat; and
- (b) Misrepresented the place of origin of certain of its products through the use of names "Spinnerin-Saxony" and "Astrachan" to designate certain yarns, notwithstanding fact that such yarns were not made from wool imported respectively from the Province of Saxony and from the city of Astrachan on the Volga Basin in Russia;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials in its products and their origin, and thereby induce it to purchase substantial

¹ Complaint dismissed as to all respondents other than Spinnerin Yarn Co., Inc.