

IN THE MATTER OF

DRAPER CORP.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SECS. 2 (a) AND 3 OF AN ACT APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5436. Complaint, Apr. 22, 1946—Decision, May 5, 1947

Where a corporation which (1) since its organization in 1916 had been the only manufacturer of the preferred single shuttle cotton and rayon and other synthetic fiber automatic looms, and parts therefor, and bobbins and shuttles; (2) manufactured "Draper" looms and owned an interest in the manufacture of looms respectively known as "Stafford" and "Hopedale"; and (3) was engaged in the interstate sale of such products to textile mills, in substantial competition with others similarly engaged in commerce and with a number engaged only in the manufacture and sale of bobbins, shuttles, and repair and replacement parts for looms—

- (a) Discriminated in price between different purchasers of such bobbins and shuttles and repair and replacement parts, of like grade and quality, by selling them to some of its customers at lower prices than to others, including the allowance, on sales and contracts for sale with mill owners, of a 5 percent discount from its regular price for repair and replacement parts for its looms and also for aforesaid Hopedale and Stafford looms;

Effect of which discriminations was substantially to lessen competition with it in the sale in commerce of such bobbins, shuttles, and parts for looms, to tend to create in it a monopoly in such products, and to injure, destroy, and prevent competition with its competitors; and

- (b) Made sales and contracts for the sale of shuttles and bobbins, and repair and replacement parts for looms, and fixed prices charged therefor, or discounts from or rebates upon such prices, on the condition, agreement, and understanding that the purchaser thereof should not use or deal in the shuttles, bobbins, and repair and replacement parts for looms, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor and made such sales and contracts for sales to purchasers of parts for its aforesaid Draper, Hopedale, and Stafford looms, to the exclusion of other sellers;

Effect of which sales and contracts for sale on such condition was substantially to lessen competition and tend to create in it a monopoly in the commerce aforesaid of shuttles, bobbins, and repair and replacement parts for looms;

Held, That the acts and practices set out in paragraphs (a) and (b) above were in violation of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, and of section 3 of said Clayton Act, respectively, and were all to the prejudice of the public and said corporation's competitors and constituted unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward L. Smith for the Commission.

Herrick, Smith, Donald, Farley & Ketchum, of Boston, Mass., for respondent.

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COMPLAINT

COUNT I

The Federal Trade Commission having reason to believe that Draper Corp., hereinafter called respondent, since June 19, 1936, has violated and is now violating the provisions of section 2 (a) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of the act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Draper Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its general office and principal place of business at Hopedale, Mass. It is now, and since its organization on or about July 5, 1916, has been engaged in the manufacture of single-shuttle cotton, silk, rayon, and other synthetic fiber automatic looms, and repair and replacement parts therefor, temples, automatic bobbins, shuttles, and rings for such looms, and in the sale thereof to mills engaged in the manufacture of textiles, chiefly silk, cotton, rayon, and other synthetic fibers, and of textiles made of mixtures of silk, cotton, rayon, and of other synthetic fibers. The respondent on November 20, 1916, or thereabouts, acquired the property and the loom-manufacturing business of a firm known as the Draper Co., which business had been established in 1816 or thereabouts, and had been carried on continuously from its establishment until its acquisition by the respondent, which, since such acquisition, has continued the business originally established by the said Draper Co. The looms manufactured by said Draper Co., and since its acquisition by the respondent, have been and are still known and sold as Draper looms. In April 1927, or thereabouts, respondent acquired and still owns all of the properties, assets, and business of the Hopedale Manufacturing Co. (a loom manufacturer), located at Milford, Mass. The looms manufactured by such Hopedale Manufacturing Co., and since its acquisition by the respondent, have been and are still sold and known as Hopedale looms. On December 3, 1921, or thereabouts, respondent acquired and still owns all of the properties, assets, and business of the Stafford Co. (a loom

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manufacturer), of Reedville, Mass. The looms manufactured by such Stafford Co., and since its acquisition by the respondent, have been and are still sold and known as Stafford looms.

PAR. 2. The respondent is now and since its organization in 1916 has been the only manufacturer of single-shuttle cotton, silk, rayon, and other synthetic fiber automatic looms in the United States, which said single-shuttle looms are preferred by a substantial portion of textile manufacturers for the manufacture of textiles composed of silk, cotton, rayon, and other synthetic fibers, and of textiles composed of mixtures of silk, cotton, rayon, and of other synthetic fibers. The purchasers of its looms are approximately 1,100 in number, many of such purchasers having more than 1 mill. Since its organization the respondent has been and still is engaged in the sale of such looms, replacement and repair parts for such looms, temples, automatic bobbins, shuttles, and rings therefor, to textile mills located throughout the several States of the United States, the Territories thereof, and in the District of Columbia, causing said products, when sold by it, to be transported from the places of manufacture to the purchasers thereof located in the various States of the United States, the Territories thereof, and in the District of Columbia. There is now and, at all times since the organization of said respondent, has been, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

PAR. 3. In the course and conduct of its said business as herein described, respondent has been for more than 3 years last past and still is in substantial competition in the sale of looms, repair and replacement parts therefor, automatic bobbins, temples, shuttles, and rings therefor, in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia with other corporations and with firms and persons, a number of whom are engaged only in the manufacture and sale of temples, bobbins, shuttles, and rings therefor, and repair and replacement parts for looms, in the commerce aforesaid.

PAR. 4. In the course and conduct of its said business described in paragraphs 1, 2, and 3 hereof, respondent is now and for more than 3 years last past has been discriminating in price between different purchasers of such temples, bobbins, shuttles, and rings therefor, and repair and replacement parts for looms, of like grade and quality, by selling its said products to some of its customers at lower prices than it sells and has sold products of like grade and quality to others of its customers. Included among such discriminations have been those arising from and as a part of sales by respondent to mill owners and

contracts for sale by respondent with mill owners by which such mill owners are allowed a 5-percent discount from respondent's regular charging price for loom repair and replacement parts and complete mechanisms for looms of its manufacture, and also for looms made by the aforesaid Hopedale Manufacturing Co. or by the said Stafford Co. The effect of said discriminations may be, has been, and is to substantially lessen competition with respondent in such temples, bobbins, shuttles, and rings, and repair and replacement parts for looms, in the commerce aforesaid, to tend to create in respondent a monopoly in the aforesaid commerce in such temples, bobbins, shuttles, and rings, repair and replacement parts for looms, and to injure, destroy, and prevent competition with its competitors engaged in the sale of temples, bobbins, shuttles, and rings, and repair and replacement parts for looms, in the commerce aforesaid.

PAR. 5. The foregoing acts and practices of respondent constitute a violation of the provisions of section 2 (a) of the above-mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of the act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

COUNT II

The Federal Trade Commission having reason to believe the Draper Corp., hereinafter called the respondent, has violated and is now violating the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to-wit:

PARAGRAPH 1. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint to the same extent and as though the allegations of said paragraph 1 of said count I were set out in full herein, and said paragraph 1 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the

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allegations of said paragraph 2 of said count I were set out in full herein, and said paragraph 2 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set out in full herein, and said paragraph 3 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of its business described in paragraphs 1, 2, and 3 of count I of this complaint, the respondent in the course of such commerce has made sales and contracts for sale and is still making sales and contracts for the sale of temples, shuttles, bobbins, rings, and repair and replacement parts for looms, and has fixed and is still fixing prices charged therefor, or discount from or rebate upon such prices on the conditions, agreements, and understandings that the purchasers thereof shall not use or deal in the temples, shuttles, bobbins, rings, and repair and replacement parts for looms, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by such purchasers to purchase their entire requirements of loom repair and replacement parts for the aforesaid Draper looms, Hopedale looms, and Stafford looms from the respondent to the exclusion of other sellers and of other prospective and potential sellers. The effect of such sales and contracts for sale on such conditions, agreements, and understandings may be, has been, and still is to substantially lessen competition with respondent and tends to create and has created in respondent a monopoly in the commerce aforesaid of temples, shuttles, bobbins, rings, and repair and replacement parts for looms.

PAR. 5. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove-mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

COUNT III

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 Draper Corp., hereinafter

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

PARAGRAPH 1. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint to the same extent and as though the allegations of said paragraph 1 of said count I were set out in full herein, and said paragraph 1 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the allegations of said paragraph 2 of said count I were set out in full herein, and said paragraph 2 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set out in full herein, and said paragraph 3 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. For its charges under this paragraph of this count the Commission relies upon the matters and things set out in paragraph 4 of count I of this complaint to the same extent and as though the allegations of said paragraph 4 of said count I were set out in full herein, and said paragraph 4 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 5. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 4 of count II of this complaint to the same extent and as though the allegations of said paragraph 4 of count II were set out in full herein, and said paragraph 4 of count II is incorporated herein by reference and made a part of the allegations of this count.

PAR. 6. The acts and practices of the respondent as herein alleged are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of temples, bobbins, shuttles, rings, and repair and replacement parts for looms, in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in temples, bobbins, shuttles, rings, and repair and replacement parts for looms, and constitute unfair

methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on April 22, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, Draper Corp., charging it with the violation of those acts. After the filing by respondent of its answer to the complaint, the Commission, by order entered herein, granted the motion of respondent to withdraw its answer and to substitute therefor an amended answer admitting, with certain exceptions, all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint and amended answer, 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. The respondent, Draper Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its general office and principal place of business at Hopedale, Mass. It is now, and since its organization on or about July 5, 1916, has been, engaged in the manufacture of single-shuttle cotton and rayon and other synthetic fiber automatic looms, and repair and replacement parts therefor, and bobbins and shuttles, and in the sale thereof to mills engaged in the manufacture of textiles, chiefly cotton and rayon and other synthetic fibers, and of textiles made of mixtures of cotton and rayon and other synthetic fibers. The respondent on November 20, 1916, or thereabouts, acquired the property and the loom-manufacturing business of a firm known as the Draper Co., which business had been established in 1816 or thereabouts, and

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had been carried on continuously from its establishment until its acquisition by the respondent which, since such acquisition, has continued the business originally established by the said Draper Co. The looms manufactured by said Draper Co., and since its acquisition by the respondent, have been and are still known and sold as Draper looms. In April 1931, or thereabouts, respondent acquired and still owns a part of the properties, assets, and business of the Hopedale Manufacturing Co. (a loom manufacturer) located at Milford, Mass. The looms manufactured by such Hopedale Manufacturing Co. have been sold and known as Hopedale looms. On December 3, 1921, or thereabouts, respondent acquired and still owns a part of the properties, assets, and business of the Stafford Co. (a loom manufacturer), of Reedville, Mass. The looms manufactured by such Stafford Co., and since its acquisition by the respondent, have been and are still sold and known as Stafford looms.

PAR. 2. The respondent is now and since its organization in 1916 has been the only manufacturer of single shuttle cotton and rayon and other synthetic fiber automatic looms in the United States, which said single-shuttle looms are preferred by a substantial portion of textile manufacturers for the manufacture of textiles composed of cotton and rayon and other synthetic fibers, and of textiles composed of mixtures of cotton and rayon and other synthetic fibers. The purchasers of its looms are approximately 1,100 in number, many of such purchasers having more than 1 mill. Since its organization the respondent has been and still is engaged in the sale of such looms, replacement and repair parts for such looms, and bobbins and shuttles to textile mills located throughout the several States of the United States, the Territories thereof and in the District of Columbia, causing said products, when sold by it, to be transported from the places of manufacture to the purchasers thereof located in the various States of the United States, the Territories thereof, and in the District of Columbia. There is now, and at all times since the organization of respondent has been, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof and in the District of Columbia.

PAR. 3. In the course and conduct of its business as herein described, respondent has been for more than 3 years last past and still is in substantial competition in the sale of looms, repair and replacement parts therefor, and bobbins and shuttles, in commerce between and among the various States of the United States, the Territories thereof and in the District of Columbia, with other corporations and with firms and persons, a number of whom are engaged only in the manufacture

and sale of bobbins, shuttles, and repair and replacement parts for looms.

PAR. 4. In the course and conduct of its business respondent is now and for more than 3 years last past has been discriminating in price between different purchasers of such bobbins and shuttles and repair and replacement parts for looms, of like grade and quality, by selling its said products to some of its customers at lower prices than it sells and has sold products of like grade and quality to other customers. Included among such discriminations have been those arising from and as a part of sales by respondent to mill owners and contracts for sale by respondent with mill owners by which such mill owners are allowed a 5-percent discount from respondent's regular charging price for repair and replacement parts for looms of its manufacture, and also for looms made by the Hopedale Manufacturing Co. or by the Stafford Co. The effect of said discriminations may be, has been, and is substantially to lessen competition with respondent in such bobbins and shuttles and repair and replacement parts for looms, in the commerce aforesaid, to tend to create in respondent a monopoly in the aforesaid commerce in such bobbins and shuttles and repair and replacement parts for looms, and to injure, destroy, and prevent competition with its competitors engaged in the sale of bobbins and shuttles and repair and replacement parts for looms, in the commerce aforesaid.

PAR. 5. In the course and conduct of its business the respondent, in the course of such commerce, has also made sales and contracts for sale and is still making sales and contracts for the sale of shuttles and bobbins, and repair and replacement parts for looms, and has fixed and is still fixing prices charged therefor, or discounts from or rebates upon such prices, on the condition, agreement, and understanding that the purchaser thereof shall not use or deal in the shuttles, bobbins, and repair and replacement parts for looms, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by such purchasers to purchase their entire requirements of loom repair and replacement parts for the aforesaid Draper looms, Hopedale looms, and Stafford looms from the respondent to the exclusion of other sellers and of other prospective and potential sellers. The effect of such sales and contracts for sale on such condition, agreement, and understanding may be, has been, and is substantially to lessen competition with respondent and tends to create and has created in respondent a monopoly in the

commerce aforesaid of shuttles, bobbins, and repair and replacement parts for looms.

CONCLUSION

The acts and practices of respondent set forth in paragraph 4 above are in violation of section 2 (a) of said Clayton Act as amended by said Robinson-Patman Act; those set forth in paragraph 5 above are in violation of section 3 of said Clayton Act; and all of said acts and practices are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of the respondent, and the Commission having made its findings as to the facts and conclusions of law: (1) That said respondent has violated the provisions of section 2 (a) of the act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by section 1 of an act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936; (2) that said respondent has violated the provisions of section 3 of said act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and (3) that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Draper Corp., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale, or any contract for the sale, of bobbins, shuttles, or any repair and replacement parts for any looms in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into or continuing in operation or effect any contract for the sale of bobbins, shuttles, or repair and replacement parts for any looms, upon or containing any condition, agreement, or understanding that a purchaser shall not use or deal in bobbins, shuttles,

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or repair and replacement parts for looms of a competitor or competitors of respondent.

2. Discriminating between purchasers of bobbins, shuttles, or repair and replacement parts for looms by the sale thereof at different prices or on different terms or conditions, where such different prices, terms, or conditions are based on any agreement, condition, or understanding that a purchaser shall deal exclusively with or obtain all or substantially all of his requirements of bobbins, shuttles, or repair and replacement parts for any looms from respondent.

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

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IN THE MATTER OF

EDWARD I. FRANKEL, TRADING AS HI-POTE PRODUCTS
AND AS EDWARD I. FRANKEL AND ASSOCIATESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5472. Complaint, Dec. 2, 1946—Decision, May 14, 1947*

Where an individual engaged in the interstate sale and distribution of his "Hi-Pote" drug preparation which contained calcium pantothenate—

- (a) Represented, directly and by implication, through advertisements in newspapers and periodicals, that gray hair is caused by a vitamin deficiency; notwithstanding that such is not known to be the case;
- (b) Falsely represented, as aforesaid, that his said product was effective in restoring the original natural color to gray hair;
- (c) Falsely represented, as aforesaid, that it improved the condition of the fingernails; and
- (d) Represented in circulars and other advertising material and in circular letters that purchasers of the said product received free merchandise, through such statements as, "Just for telling us that you will begin again to give Hi-Pote a fair trial by taking one tablet a day, and sending us an order not later than June 30, 1943, we will include, with the order, absolutely free, a Full Month's Supply (\$1 value) of Hi-Pote and Anti-Gray Hair Tablets. You don't need to order a lot. Just mail your order in the enclosed self-addressed envelope, which don't even need a postage stamp;" etc.;

The fact being that in order to obtain the merchandise in question the recipient was required to purchase a quantity of the product Hi-Pote, and the price of the so-called free merchandise was included in the price charged for the quantity purchased;

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

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

Mr. Berry W. Stanley for the Commission.

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 Edward I. Frankel, an individual trading as Hi-Pote Products and as Edward I. Frankel and Associates, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a pro-