

Syllabus

IN THE MATTER OF
THE SUPER-COLD CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4904. Complaint, Feb. 9, 1943—Decision, Sept. 26, 1947

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of refrigeration equipment, including refrigerator display cases; in advertising and describing its said cases in catalogs and other advertising literature which, although prepared primarily for the information of its sales and service representatives, were accessible to the public generally and were shown to prospective purchasers by dealers and salesmen—

- (a) Represented, directly or by implication, that its said cases would operate at least 40 percent cheaper than competitive cases, whether refrigerated with ice or by the usual mechanical process, were operated with a motor generating only half the horsepower required to operate competitive products, and entailed a cost for power about 50 percent less than that required for the latter;

The facts being that while its cases, in which the refrigeration was provided by a low-pressure gravity-type coil system and in which the refrigerant most frequently used was methyl chloride, would operate more cheaply and on less horsepower than the old style case using ice or ammonia or carbon-dioxide gas, its said cases would not operate substantially more cheaply or on substantially less horsepower than other modern competitive cases which employed a low-pressure gravity system; and there was nothing in its advertising statements or in the literature from which taken to indicate that the comparisons in operating costs were restricted to the old-style ice and high-pressure systems;

- (b) Represented that all refrigerator display cases other than its own had fronts sealed with ordinary putty, or set in rubber, or mounted in rubber, putty or cement, and that they would sweat or become cloudy within 1 to 3 years' time;

The facts being that while prior to January 1941 the glass fronts of the majority, if not all, of the display cases sold in competition with its own, were sealed with putty, rubber, or cement, as it represented, it was not true that all such fronts sweated or failed to remain clear for more than 3 years, it appearing, on the contrary, that glass fronts of some such other cases had not sweated and had remained clear for at least 10 years;

- (c) Represented that its cases were the only display cases on the market equipped with noninsulated all-metal drain pans that did not sweat;

The facts that while it probably was the first refrigerator-display-case manufacturer to perfect and install in its cases such a drip or drain pan, by 1937 or before, numerous other manufacturers had perfected drain pans which were noninsulated and all metal and did not sweat;

- (d) Represented falsely that its engineers had developed every new and advanced engineering principle in refrigerator display construction and application during the past 15 years, and that, by reason of such fact, it had become

the recognized leader and authority in the field of refrigerator display case manufacture;

The facts being that while it had made a number of contributions to the advancement of the modern low-pressure refrigerator display case, engineering features in display-case construction and operation had been developed by others and neither it nor any other one manufacturer was recognized as the leader and authority;

(e) Represented falsely that its display cases were the only porcelain-enclosed cases on the market with rounded edges on the top, front, and front ends, and so constructed that two or more might be installed in one continuous line; and

(f) Represented that its display cases were the only ones on which the porcelain parts were formed with dies;

The facts being that while it might have been the first manufacturer to use contour dies for the formation of the porcelain parts for its cases, many of its competitors later adopted and, prior to 1940, were using the same or a similar process; and

Where said corporation, for the purpose of emphasizing the superiority claimed for the low-pressure gravity-coil system of refrigeration over what is commonly known as the blow system—

(g) Represented that the latter was inferior to the low-pressure gravity-coil system, such as used by it, for the preservation of perishable foods, and, at least by inference, that it was inadequate and ineffective for any purpose whatsoever, and that there were no display cases on the market refrigerated by the operation of a fan or blower that were adequate for use in the preservation or display of foods;

The facts being that the evidence disclosed that for the preservation of bottled goods and other foods which do not require a rigid humidity control, a case refrigerated by a fan or blower is entirely satisfactory; there are on the market display cases refrigerated by the blower system which are regarded by the manufacturers and by others in the industry as successful and effective even for use in the preservation and display of fresh meats; while there is always present a problem of preventing the dehydration of small cuts of such meat held or stored in rapidly moving air for large storage areas in which wholesale cuts of meat and other items of perishable foods are stored, the refrigeration is usually, if not always, provided by a blower system rather than by the gravity-coil system; and, contrary to its statement that said blower system "does not have a single redeeming feature," some of its more desirable features are that it cuts down on the operation of the compressor machinery, increases relative humidity in the case, and changes the air so that there are no possible unrefrigerated pockets;

With tendency and capacity to mislead a substantial portion of the purchasing public into the purchase of its said display case, whereby substantial trade was diverted unfairly to it from its competitors, and with the result of placing in the hands of uninformed or unscrupulous dealers and salesmen a means and instrumentality whereby they were enabled to mislead and deceive the purchasing public:

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

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In a proceeding in which it was alleged that respondent, engaged in the manufacture and sale of refrigerator display cases which were refrigerated by the modern low-pressure gravity-type coil system—in which the refrigerant most frequently used is methyl chloride—unfairly disparaged competitive cases through representing that its own products operated much more cheaply, and in which (1) it appeared that, while during the period involved there were in operation large numbers of display cases which employed the old-style ice or high-pressure systems, there were also in use and on the market substantial numbers of cases which were refrigerated by the same modern low-gravity system as that used by it; and (2) there was nothing in its advertising statements or literature to indicate that the comparisons in operating costs were restricted to the old-style ice and high-pressure systems, and its representations were readily susceptible to misconstruction, notwithstanding its contention that it had no intention to compare the cost of operation of its cases with that of the modern low-pressure system gravity system cases;

The Commission accordingly found that representations to the effect that its cases would operate substantially cheaper and on substantially less horsepower than competitive cases were misleading and deceptive.

In a proceeding in which the Commission found that many challenged representations made by respondent manufacturer of refrigerated display cases were false and misleading, including relative economy of its own and competitive products, unique advantages in various respects enjoyed by its products, its leadership in development, and the asserted inadequacy and ineffectiveness of the so-called blower system of refrigeration and competitive products which made use thereof:

The Commission was of the opinion that the charge of the complaint with respect to certain other alleged false and misleading representations—including the alleged greater used equipment value and greater profit possibilities of its own products, competitive adoption of features thereof, asserted number of its devices in use, etc., the precise performance of its product with respect to the temperature range, and the effect thereof, and alleged differences in manufacture of competitive products and alleged functional advantages of its own—were not sustained.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Jesse D. Kash for the Commission.

Balter & Balter, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the Super-Cold Corp., a corporation, hereinafter referred to as respondent, has violated the provision of said act, and it appearing to the Commission that a pro-

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ceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, the Super-Cold Corp., is a corporation organized and existing pursuant to, and in accordance with, the laws of the State of California, having its office and principal place of business at 1020 East Fifty-Ninth Street, Los Angeles, Calif.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of refrigerators and refrigerator display cases, principally of the type used by merchants for the display and preservation of meats, meat products, and other perishable foods together with accessories therefor and incidental refrigerating, freezing and cooling devices. Respondent causes its said products, when sold, to be transported from its aforesaid place of business, or place of manufacture, in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent at all times mentioned herein has maintained a course of trade in said refrigerators, refrigerator display cases, and other refrigerating, freezing, and cooling devices, together with accessories therefor, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business in said commerce, as aforesaid, respondent is in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of refrigerators, refrigerating display cases, and other refrigerating, freezing, and cooling devices, together with accessories therefor in commerce between and among the various States of the United States and the District of Columbia.

There are among said competitors many who do not in any way represent their products or make any false or disparaging statements concerning the products of their competitors.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false, misleading and deceptive representations concerning its products, and false, defamatory and disparaging statements concerning similar products manufactured and sold by its competitors in commerce, through the means of circulars, catalogs, newspapers, magazines and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly

or indirectly, the purchase of its 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 relating to its products, and the false, defamatory and disparaging statements made in reference to the products manufactured and sold by its competitors contained in said false advertisements disseminated and caused to be disseminated by respondent, as hereinabove set forth, are the following:

Super-Cold will operate at least 40% cheaper than either ice or the usual mechanical refrigeration.

Where all other systems use a 1-HP machine Super-Cold uses $\frac{1}{2}$ -HP and all other comparisons in proportion.

Due to better insulation, more efficient condensing units, more evaporator surface and better design, the cost for power on this line is approximately 50% less than used by ordinary cases.

This front alone is worth \$200.00 extra to any merchant although no additional charge is made for it.

Used equipment dealers will give from \$100.00 to \$200.00 more for a Super-Cold, spot cash, than they will for any other make because they know they can sell it quickly at prices near the new prices.

Retailers have learned by experience that they can make "more profit" from a used Super-Cold than they can from new cases of other makes.

The Super-Cold sweat proof triple plate glass case front was developed in 1929. During this period approximately 50,000 of these fronts have been in use from Maine to California, and from Alaska to the steaming Tropics. Even today, after ten years of use under all kinds of temperature and humidity conditions, thousands of these fronts are still clear. It is the only front made that has stayed clear for that length of time.

Back in 1928 Super-Cold perfected the only triple plate glass front that has remained clear through the years. * * * Competitive cases have fronts either sealed with ordinary putty or set in rubber. In either case the case sweats within one to three years' time.

No manufacturer with the exception of Super-Cold has succeeded in perfecting a triple glass front that will last indefinitely without deterioration due to action of the air.

This is an exclusive Super-Cold development and no other manufacturer knows how to do this although they have tried to copy it. All other makes of fronts are mounted in rubber, putty or cement which at the best cannot keep clear more than three years.

The average triple glass case front will "cloud up" or become sweaty or dirty within two or three years. Very few manufacturers will guarantee their fronts for over two years and many of them will not guarantee them at all. Over 50,000 triple glass Super-Cold fronts have been in use now for over five years and many of them over ten years and are still clear. It is the only front that has stood the test of time in the Imperial Valley in California, where the temperatures rise to 127 deg. F. in the shade. It is the only front that has stood up in the steaming tropics. No one has ever been able to "copy" the Super-Cold front because the seal that is used is prepared by secret formula.

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Super-Cold perfected the only non-insulated all metal drain pan that will not sweat.

Every new and advanced engineering principle in refrigerator display case construction and application during the past 15 years has been developed by Super-Cold engineers. On account of leading in this field the Super-Cold Corporation has grown by leaps and bounds so that today it is the recognized leader and authority in this particular field.

In the year of 1922 Super-Cold engineers are credited with the discovery and invention of scientific control on natural colors in foods and meat.

Competitors have desperately striven to "catch up" with Super-Cold but have never been able to employ the type of engineering talent that could accomplish this. So failing in this they have been throwing up a "smoke screen" and have outdone themselves in the development of "gadgets" to add to their equipment with the hope that by bringing all of these new gadgets to the merchant's mind that they can get his mind off of the only thing that can possibly make profits for the merchant and that is the "scientific control of the condition of the air".

The only porcelain clad refrigerator case on the market that has rounded edges on top, front and front ends.

This is the only case on the market built so that two or more cases can be installed in continuous line-ups.

This is the ONLY case on the market where the porcelain is formed with dies.

Many competitors have attempted to buy these fronts from the Super-Cold factory but these fronts are only available on genuine Super-Cold cases and are not sold separately.

So when anyone talks about metal framework, it is very easy to prove that metal is not only impractical, but almost impossible.

Since 1928, over 50,000 Super-Cold display cases have found their way into retail food stores which is more cases than any other manufacturer has sold during this period.

During the past twelve years Super-Cold has published in catalogs and literature an outstanding challenge to competition. This challenge reads:

SUPER-COLD CHALLENGES ALL COMPETITION (INCLUDING IMITATORS) TO A TEST BEFORE UNBIASED OBSERVERS TO DETERMINE ITS CLAIMS THAT IT WILL KEEP FRESH MEAT OR OTHER PERISHABLES IN NATURAL COLOR AND FLAVOR LONGER THAN ANY COMPETITIVE CASE.

During this twelve years of continuous challenge NOT ONE SINGLE COMPETITOR has dared to take up this challenge. They know that Super-Cold is superior and will do exactly what it claims and they further know that the test will show up their equipment to disadvantage, therefore they are unwilling to take this chance.

Hundreds of manufacturers have vainly tried to equal Super-Cold performance. Nearly all of them make the same claims as does Super-Cold, because Super-Cold has educated the merchant as to what is or is not correct and to sell their equipment they must at least "claim" to equal Super-Cold performance.

A case operating on a 1-dgr. range will keep meat in natural color 50% longer than a case operating on a two-degree range. * * * Only Super-Cold engineers have been able to accomplish this ideal result.

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In these new de luxe Super-Colds the movement of the air over the foods is so regulated that food can be kept from two to three times longer than in ordinary refrigerator cases as to natural color.

* * * cut meat will keep longer in this Super-Cold than it will in the cooler as no cooler built can maintain such critical control over temperature and humidity as can this Super-Cold.

No carrying back to the cooler of unsold meats, as meat will hold color longer in the Super-Cold than it will in a cooler.

Super-Cold will secure these profits while ordinary equipment will not. The reason is that Super-Cold keeps all perishable foods in saleable condition without loss due to dehydration, discoloration, mould, trimmings, wilting or loss through contamination while ordinary equipment does not offer this protection.

With its perfect control of the natural goodness, flavor and color of all perishable items the grocer was able to convert his grocery store into a complete food department store, * * *.

Super-Cold is the only manufacturer who arranges their coil in such a manner that food odors from one tray do not pass over food in another tray. This is necessary for the building of a satisfied clientele because everyone objects to tasting foreign odors in the food they buy.

The Super-Cold system operates on the basis of "restricted air circulation" with the result that the air in a Super-Cold moves from four to ten times slower than in any other case.

Super-Cold is the only manufacturer of display cases that manufactures its own compressors. This gives the factory control over every item in the finished product, where other makes are assembled from products of various factories. Super-Cold is the only one who can control the quality of every item in the case and does not depend on others.

Super-Cold is the ONLY case manufacturer that actually manufactures its own coils and compressors, but it is interesting to note what some of them will tell you.

Every large manufacturer of refrigeration in the country has attempted at one time or other to perfect a case cooled with a blower, but up to the present time there is not a single one on the market that is proper.

The blower system of refrigeration for fresh meats has been a miserable failure * * *. It is surprising that large national concerns will call this development a "scientific triumph of their engineering laboratories" when it was a distinct copy of the old ice blower system, and not one new idea has been added to the old ice idea, except the application of machinery.

The blower system hasn't one single redeeming feature and a further study of this folio will definitely prove this.

The blower system for perishable foods has been so badly discredited that manufacturers of this system have had to hide its identity under nice sounding names.

PAR. 5. The foregoing representations and advertisements, together with similar statements and representations not herein set out, are grossly exaggerated, deceptive, false, misleading, and untrue, and unfairly defame and disparage the products and business of certain of respondent's competitors. In truth and in fact, Super-Cold refrigera-

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tors will not operate 40 percent or any substantial percent cheaper than ice or mechanical refrigerators generally; they will not operate effectively on one-half the horse power or substantially less power than required for other refrigerators of a comparable size; and the cost for power used in operating Super-Cold refrigerators is not 50 percent less nor any substantial percent less than the power cost of comparable refrigerators. There is no factual basis for representations to the effect that the Super-Cold front is worth \$200 more than the average triple glass front, that used-equipment dealers will give from \$100 to \$200 more or any substantial amount more for a Super-Cold than for any other make of refrigerator, or that retailers can make more profit from a used Super-Cold than from new cases of other makes, the quality or construction of the Super-Cold refrigerator not being such as to warrant these claims.

The "triple glass front" of the Super-Cold refrigerator is not "sweatproof"; and such front cannot be depended upon to remain clear under all kinds of temperature and humidity conditions after long use or to "last indefinitely without deterioration due to action of the air." There is no basis for representations that the triple glass case front of competitive products "sweats within 1 to 3 years' time," "will 'cloud up' or become sweaty or dirty within 2 or 3 years" or "at best cannot keep clear more than 3 years." Not all fronts of refrigerators other than Super-Cold are "sealed with ordinary putty or set in rubber" as represented, and neither is "ordinary putty" used as such sealing compound. Representations that other manufacturers have tried to copy the Super-Cold front or method of sealing are contrary to fact. The assertion that "Super-Cold perfected the only noninsulated all metal drain pan that will not sweat" is not in accord with the facts, as such drain pans are not nonsweating to any greater degree or extent than are metal drain pans installed in certain refrigerators sold in competition with Super-Cold.

Super-Cold engineers have not developed every new and advanced engineering principle in refrigerator display-case constructed and application during the past 15 years or during any other period of time, and have not discovered or invented scientific control of natural colors in foods and meat, Super-Cold Corporation is not the "leader and authority" in the refrigerator field; and there is no factual basis for representations that "competitors have striven to 'catch up' with Super-Cold," have never been able to employ the type of engineering talent necessary for this accomplishment, or that they have developed "gadgets" to add to their equipment as a "smoke screen" to cover up deficiencies in performance. Super-Cold is not the only "porcelain clad"

refrigerator case on the market with rounded edges on top, front and front ends, so built that two or more cases can be installed in continuous line-ups, or the porcelain of which is formed with dies. Representations to the effect that metal framework in refrigerator cases not only is impractical but almost impossible, or that competitors have attempted to buy fronts from the Super-Cold factory, are without factual basis.

Fifty thousand, or any number approximating 50,000, triple-glass Super-Cold refrigerator fronts have not been in use for over 5 years past or during any period of time and 50,000 or any number approximating that number Super-Cold cases were not in use in retail stores during the time period, 1928-June 1940, and Super-Cold Corporation has not sold "more cases than any other manufacturer" during such period of time. Competitors do not "know" that Super-Cold is superior to their products or that Super-Cold refrigerators or refrigerator cases will do exactly what is claimed for them, or that a comparative test will "show up their equipment to disadvantage." "Hundreds of manufacturers," or manufacturers of refrigerating equipment generally, have not, as asserted, "vainly" tried to equal Super-Cold performance; and there is no basis for the representation that competitors, in order "to sell their equipment * * * must at least 'claim' to equal Super-Cold performance."

No refrigerator in use will operate on a 1-degree temperature range and Super-Cold is no exception. Furthermore, if a 1-degree range operation were possible, it would not "keep meat in natural color 50 percent" or any percent approximating 50 percent "longer" than would a 2-degree range. The natural color of food kept in Super-Cold refrigerators is not retained from two to three times longer or any longer than if kept in other refrigerators of comparable quality, nor will meat keep or hold its color longer in a Super-Cold case than in a "cooler." Representations that "Super-Cold keeps all perishable foods in saleable condition without loss due to dehydration, discoloration, mould, trimmings, wilting or loss through contamination," that competitive products do not offer protection comparable to that provided by Super-Cold and that the use of Super-Cold will result in profits not obtainable by using other refrigerators, are contrary to fact. Super-Cold cases do not exercise perfect control over the natural goodness, flavor, and color of all perishable food products contained therein, or any greater control than produced by many competing refrigerators.

There is no material difference in the position or location of the coils in Super-Cold cases as compared with certain other refrigerators; and the representation that, due to the Super-Cold arrangement of coils,

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food odors from one tray do not pass over food in another tray is contrary to the fact, as the air in any refrigerator is subject to horizontal shifting due to various causes other than coil arrangements, for example, air currents due to opening and closing of its doors. The air in the Super-Cold case does not move or circulate "from 4 to 10 times slower" or to any substantial extent slower than in many other cases. Certain other refrigerator makers do manufacture their coils and compressors, and refrigerator manufacturers, generally, can and do exercise control over the quality of the component parts of their products.

Statements to the effect that not a single refrigerator with a blower is proper or adequate, that the blower system of refrigeration for fresh meats has been "a miserable failure," that such system "hasn't one single redeeming feature" and that when used for perishable foods said system has been so "badly discredited" that manufacturers thereof have had to "hide its identity under nice-sounding names," are false, misleading, and deceptive, and constitute unwarranted disparagement of competitors' products.

PAR. 6. The use by the respondent of the foregoing false, deceptive, misleading, exaggerated statements and representations with respect to its said refrigerators, refrigerator display cases, cooling and freezing devices and accessories thereto, and the false, defamatory, and disparaging statements made in reference to the products of some of its competitors, 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 said statements and representations were, or are, true, and into the purchase of substantial number of respondent's said products because of said erroneous and mistaken belief.

As a result trade has been unfairly diverted to respondent from its said competitors to the injury of said competitors and to the injury of the public.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and to respondent's competitors, and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 9, 1943, issued and sub-

sequently served its complaint in this proceeding upon the respondent, the Super-Cold Corp., charging said respondent with the use of unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, the trial examiner's report upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and 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. The respondent, the Super-Cold Corp., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business located at 1020 East Fifty-ninth Street, Los Angeles, Calif. Said respondent is engaged in the manufacture and in the sale and distribution of refrigeration equipment, including refrigerator display cases. In the conduct of its business the respondent is in competition with other corporations and with individuals and partnerships engaged in the manufacture and in the sale and distribution of like or similar merchandise.

PAR. 2. The respondent causes its refrigeration equipment, when sold, to be transported from its place of business in the State of California to purchasers thereof located in various other States of the United States and in a number of foreign countries. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the foreign countries in which its products are sold.

PAR. 3. In promoting the sale of its refrigerator display cases the respondent issues periodically and distributes to its dealers, distributors, salesmen, and service men general catalogs, brochures, and sales manuals. These catalogs and other literature, although prepared

primarily for the information of the respondent's sales and service representatives, are nevertheless accessible to the public generally and are shown to purchasers and prospective purchasers of respondent's products by the dealers and salesmen whenever it seems necessary or desirable. In advertising and describing its display cases in these catalogs and other literature, the respondent has made the following statements with respect to said cases:

Super-Cold will operate at least 40% cheaper than either ice or the usual mechanical refrigeration.

Where all other systems use a 1-HP machine Super-Cold uses $\frac{1}{2}$ -HP and all other comparisons in proportion.

Due to better insulation, more efficient condensing units, more evaporator surface and better design, the cost for power on this line is approximately 50% less than used by ordinary cases.

* * * Competitive cases have fronts either sealed with ordinary putty or set in rubber. In either case the case sweats within one to three years' time.

* * * All other makes of fronts are mounted in rubber, putty or cement which at the best cannot keep clear more than three years.

Super-Cold perfected the only non-insulated all metal drain pan that will not sweat.

Every new and advanced engineering principle in refrigerator display case construction and application during the past 15 years has been developed by Super-Cold engineers. On account of leading in this field the Super-Cold Corporation has grown by leaps and bounds so that today it is the recognized leader and authority in this particular field.

The only porcelain clad refrigerator case on the market that has rounded edges on top, front and front ends.

This is the only case on the market built so that two or more cases can be installed in continuous line-ups.

This is the ONLY case on the market where the porcelain is formed with dies.

PAR. 4. Through the use of these statements and others of similar import, the respondent represents, directly or by implication, that its refrigerator display cases will operate at least 40 percent cheaper than competitive display cases, whether such cases are refrigerated with ice or by the usual mechanical process; that the respondent's display cases are operated with a motor generating only one-half the horsepower required to operate competitive display cases; that the cost for power required to operate the respondent's cases is approximately 50 percent less than the cost for power required to operate competitive cases; that the glass fronts of all refrigerator display cases other than the respondent's will sweat or become clouded within 1 to 3 years' time; that the respondent's are the only display cases on the market equipped with non-insulated all metal drain pans that will not sweat; that the respondent's engineers have developed every new and advanced engineering principle in refrigerator display case

construction and application during the past 15 years, and that because of this fact the respondent has become the recognized leader and authority in the field of refrigerator display case manufacture; that the respondent's display cases are the only porcelain enclosed cases on the market with rounded edges on the top, front and front ends; that they are the only display cases constructed in such a way that two or more cases may be installed in one continuous line; and that the respondent's display cases are the only ones on which the porcelain parts are formed with dies.

PAR. 5. These representations are erroneous and misleading. The refrigeration in the respondent's cases is provided by a system commonly referred to in the industry as a low-pressure gravity-type coil system in which the refrigerant most frequently used is methyl chloride. For a number of years the same system of refrigeration has been used by all of the other display-case manufacturers, but in the early development of refrigerator display cases the refrigeration was furnished either by ice or by a high-pressure mechanical system in which either ammonia or carbon dioxide gas was used. The fact that a display case equipped with a modern low-pressure gravity coil system will operate cheaper and on less horsepower than an old-style case using either ice or ammonia or carbon dioxide gas as the refrigerating agent is abundantly clear. It has also been established in this record, however, that the respondent's cases will not operate substantially cheaper or on substantially less horsepower than other modern cases sold in competition therewith which employ the same or a similar low-pressure gravity system as that used by the respondent. This the respondent does not seriously dispute, but it contends that it never had any intention of comparing the cost of operation or the horsepower required to operate its cases with the cost of operation or the horsepower required to operate other cases in which the modern low-pressure gravity system of refrigeration is used, that it intended only to make the comparison as between its cases and old-style cases using either ice or the high-pressure ammonia or carbon-dioxide system, and that the terms "usual mechanical refrigeration," "ordinary cases," and "all other systems," as these terms are used in its advertising representations, should be construed as meaning only the old ice or high-pressure ammonia or carbon-dioxide systems. The record discloses, however, that while there have been large numbers of display cases employing the old-style ice or high-pressure mechanical systems in use during the past few years, there have been also at the same time substantial numbers of display cases in use and on the market for sale in competition with the respondent's products that are refrigerated by the same modern low-

gravity system as that used by the respondent. In view of the fact that there is nothing in the respondent's advertising statements or in the literature from which they were taken to indicate that the comparisons in operating costs therein made are restricted to the old-style ice and high-pressure systems of refrigeration, the representations are readily susceptible to misconstruction. The Commission therefore finds that the representations to the effect that the respondent's display cases will operate substantially cheaper and on substantially less horsepower than competitive display cases are misleading and deceptive.

The record discloses that prior to January 1941 the glass fronts of the majority, if not all, of the display cases sold in competition with the respondent's cases were sealed with putty, rubber, or cement, as the respondent represents. It is not true, however, that all display case fronts other than those on respondent's cases sweat or fail to remain clear for more than 3 years. There is evidence from which it appears that the glass fronts of some cases other than respondent's have not sweated and have remained clear for at least 10 years, and the respondent's statement that glass fronts sealed with putty, rubber, or cement cannot last for more than 3 years without sweating or becoming unclear is untrue.

It appears that the respondent probably was the first refrigerator-display-case manufacturer to perfect and install in its display cases a noninsulated all-metal nonsweating drip or drain pan. By 1937 or before, however, numerous other manufacturers of display cases had perfected drain pans that were both noninsulated and all metal, and that did not sweat. The implication in the respondent's statement to the effect that the drain pan in its display case is the only one of its kind on the market is clearly erroneous.

In addition to the single-unit triple-glass front and the noninsulated drain pan, the respondent has made a number of other contributions to the advancement of the modern low-pressure refrigerator-display case. In the fields of engineering and construction it has contributed, among other things, the diffusion type direct-expansion coiling arrangement with the coil located over each deck of the case, and it was the first to use the thermostatic expansion dial. It is not true, however, that the respondent's engineers have developed every new and advanced engineering principle in display-case construction within the past 15 years, nor has the respondent become recognized as the leader and authority in the field of display-case manufacture, as it has represented. There is evidence in the record of the development of a number of engineering features in display-case construction

and operation by individuals other than those connected with the respondent, and it appears that neither the respondent nor any other one manufacturer is recognized as the leader or authority in the field of refrigerator-display-case manufacture.

There are numerous porcelain-covered display cases on the market other than respondent's that have rounded edges on the tops, fronts, and front ends, and the evidence shows that for a number of years last past several of the respondent's competitors have made display cases that could be readily installed in a continuous line.

Although the respondent may have been the first display case manufacturer to use contour dies for the formation of the porcelain parts for its cases, many of its competitors later adopted and prior to 1940 were using the same or a similar process for the formation of their porcelain parts as that used by the respondent. The respondent's statements to the contrary are therefore false.

PAR. 6. For the purpose of emphasizing the superiority claimed for the low-pressure gravity coil system of refrigeration over what is commonly known as the blower system, the respondent has included in its literature the following representations:

Every large manufacturer of refrigeration in the country has attempted at one time or other to perfect a case cooled with a blower, but up to the present time there is not a single one on the market that is proper.

The blower system of refrigeration for fresh meats has been a miserable failure * * *. It is surprising that large national concerns will call this development a "scientific triumph of their engineering laboratories" when it was a distinct copy of the old ice blower system, and not one new idea has been added to the old ice idea, except the application of machinery.

The blower system hasn't one single redeeming feature and a further study of this folio will definitely prove this.

The blower system for perishable foods has been so badly discredited that manufacturers of this system have had to hide its identity under nice sounding names.

The blower system of refrigeration, as its name implies, depends for its success upon the rapid movement of air within the case, and this is brought about by the operation of a fan blowing the air over coils.

The respondent offered considerable evidence in support of its contention that the low-pressure gravity coil system, such as it uses, is superior to the blower system, particularly for the preservation of small cuts of fresh meat, but there is other evidence in the record from which it appears that the respondent's statements disparaging the blower system are not justified. It is the Commission's view, in the first place, that by certain of these statements the respondent represents, at least by inference, that the blower system is inadequate and

ineffective for any purpose whatever, whereas the evidence discloses that for the preservation of bottled goods and other foods not requiring a rigid humidity control a case refrigerated by a fan or blower is entirely satisfactory. It appears, further, that there are on the market display cases refrigerated by the blower system which are regarded by the manufacturers and by others in the industry as successful and effective even for use in the preservation and display of fresh meats, and while there is always present a problem of preventing the dehydration of small cuts of fresh meat held or stored in rapidly moving air, it is not true that the blower system has been completely discredited or that it has been a miserable failure, even for use in the preservation of fresh meats. As a matter of fact, for large storage areas in which wholesale cuts of meat and other items of perishable foods are stored, the refrigeration is usually, if not always, provided by a blower system of one type or another rather than by the gravity coil system employed by the respondent. Contrary to the respondent's statement that the blower system does not have a single redeeming feature, it appears that some of the system's more desirable features are that it cuts down on the operation of the compressor machinery, increases the relative humidity in the case, and changes the air so that there are no possible unrefrigerated pockets.

The Commission therefore finds that the aforesaid representations are grossly exaggerated and erroneous and that they unduly disparage the products of respondent's competitors whose display cases are refrigerated by a fan or blower system of refrigeration.

PAR. 7. The complaint listed a number of other statements and representations in addition to those referred to herein which have been used by the respondent in connection with the sale of its display cases, and charged that such statements and representations are also false, misleading, and deceptive. The Commission is of the opinion, however, that the charge with respect to these additional representations has not been sustained.

PAR. 8. The use by the respondent of the exaggerated, erroneous, and misleading representations set forth in paragraphs 3 and 6 hereof has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of respondent's refrigerator display cases as a result of such false and erroneous belief. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors. The use by the respondent of the exaggerated, erroneous and misleading representations, as aforesaid, also serves to place in the hands of uninformed

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or unscrupulous dealers and salesmen a means and instrumentality whereby they are enabled to mislead and deceive the purchasing public.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce within the 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 the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, the report of the trial examiner upon the evidence and exceptions to such report, briefs in support of the complaint and in opposition thereto, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, the Super-Cold Corp., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of refrigerator display cases in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication—

1. That its refrigerator display cases will operate at substantially less cost or on substantially less horsepower than other modern refrigerator display cases.

2. That the glass fronts on refrigerator display cases other than the respondent's will sweat or become clouded or dirty within 3 years' time.

3. That during the past 15 years or during any other period of time Super-Cold engineers have developed all of the new and advanced engineering principles in refrigerator display case construction and application.

4. That the Super-Cold Corporation is the recognized leader and authority in the field of refrigerator display case manufacture.

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5. That the respondent's display cases are the only refrigerator display cases on the market equipped with noninsulated all metal drain pans that will not sweat.

6. That the respondent's display cases are the only porcelain enclosed display cases on the market with rounded edges on the top, front, and front ends.

7. That the respondent's display cases are the only display cases constructed in such a way that two or more cases may be installed in one continuous line.

8. That the respondent's display cases are the only ones on which the porcelain parts are formed with dies.

9. That the respondent's display cases have any exclusive features which they do not in fact possess.

It is further ordered, That the respondent, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of refrigerator display cases in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the so-called blower system of refrigeration is inadequate or ineffective for the preservation of foods.

2. That the blower system of refrigeration has been discredited for the preservation of perishable foods, or that said system is a failure for use in the refrigeration of fresh meats, or for other purposes, or that said system has no redeeming features.

3. That there are no display cases on the market refrigerated by the operation of a fan or blower that are proper or adequate for use in the preservation or display of foods.

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

Syllabus

IN THE MATTER OF

M. A. CLEMENS, FORMERLY TRADING AND DOING BUSINESS AS CLARK'S DRUGS & SUNDRIES, CLARK'S DRUGS, AND CLARK'S

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4968. Complaint, May 26, 1943—Decision, Oct. 23, 1947

Where an individual engaged in the sale and distribution of drugs and sundries including male and female sex hormone preparations which consisted of testosterone and alpha estrodiol, cholesterol derivatives, synthesized to simulate the properties of natural so-called male and female hormones, and which were very potent and widely used by physicians in the treatment of individuals having hormone deficiencies—

Failed to reveal facts which were material with respect to the consequences which might result from the use of said preparations, under customary or usual conditions, in his advertisements thereof in newspapers circulated both within and without the State in which his business was located, in that said preparations should not be administered unless an actual need for them had been established by a thorough physical examination, a careful history inventory, and laboratory tests designed to explore the individual patient's functional capacity, should be then used only upon a prescription and under constant specialized medical supervision; and indiscriminate and continued use of the drugs might produce an unfavorable influence upon highly sensitized reproductive tissues, a disturbance of the menstrual and other reproductive functions, and temporary or permanent sterility, resulting in serious disturbances to the sex life of an individual, and other serious injuries; and his said advertisements contained no statement of any of the aforesaid hazards to health, and natural implication of such unqualified advertisements was that the preparations might be taken under customary and usual conditions without diagnosis or supervision;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said hormone preparations might be indiscriminately used by the lay public without ill effects and thereby into the purchase thereof:

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. Clyde M. Hadley*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Sturzenacker & Isenberg, of Los Angeles, Calif., for respondent.