

## Syllabus

## IN THE MATTER OF

THE RUBBER MANUFACTURERS ASSOCIATION,  
INC., ET AL.

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

*Docket 5448. Complaint, June 28, 1946—Decision, Feb. 2, 1948*

Where certain corporations, members of the Heel and Sole Division of the Rubber Manufacturers Association or of the Rubber Heel and Sole Manufacturers Association, and a nonmember corporation, engaged in the manufacture and interstate sale and distribution of rubber heels, rubber soles, and products accessory thereto, and in active substantial competition with each other except insofar as competition had been restricted or forestalled by the understandings, etc., below set out; together with said associations, and the chairman of the former, and the general director of the latter, since deceased, acting as parties to understandings, etc., below set-out, and as participants in acts and practices done pursuant thereto,

- (a) Engaged in organizing, developing and perfecting a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices and otherwise, among themselves and among the jobbers of their products; and

Where said manufacturers and said individuals, as steps in and toward the accomplishment of the objective above set out, and pursuant to the said combination, etc.—

- (b) Endeavored to restrict price competition among themselves and among their jobbers by (1) agreements among themselves on the selling prices and the terms and conditions of sale for their products; (2) agreements among themselves as to the standards of quality to which such agreements and prices should be applied; and (3) agreements between the particular manufacturers and their respective jobber customers on the resale prices to be charged by the latter; continuing the terms and conditions of sale and the standards of quality so agreed upon, or supplementing the same, so as to form the foundation for subsequent agreements; and

Where said manufacturers, acting as aforesaid—

- (c) Sought also to prevent price competition among themselves by systematically interchanging their price lists and current selling prices, and undertaking to make changes therein only after notice to each other; and

Where said associations of manufacturers, and their officers, acting as aforesaid—

- (d) Undertook by a planned common course of action among themselves to fix uniform prices for their product when sold to jobbers, and also to fix uniform prices at which the jobbers would sell said commodities to shoe repairmen; fixing such uniform resale prices for various sections and areas comprising the entire country, with said jobbers' collaboration and cooperation as finally expressed in contracts entered into by some of the manufacturers with their respective jobbers;

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Capacity, tendency and effect of which understandings, etc., and acts and practices done pursuant thereto, were to lessen, restrain and suppress competition in the sale of rubber heels, rubber soles and products accessory thereto, in, among and between the several States; to fix and maintain original and uniform resale prices and terms and conditions of sale and standards of quality for such products; to unduly restrict and restrain interstate trade and commerce therein; and to create in themselves a monopoly in the sale and distribution of such products:

*Held*, That the aforesaid understandings, etc., and the acts and practices done pursuant thereto, under the conditions and circumstances set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

In said proceeding, in which certain corporations, associations, and individuals entered into a stipulation which provided, among other things, that the Commission might proceed upon the statement of facts contained therein to make its report (including inferences which it might draw therefrom) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation or argument and the filing of briefs, and in which the Commission made and entered its findings as to the facts and its conclusion that such respondents had violated the provisions of section 5 of the Federal Trade Commission Act, and entered its cease and desist order; and in which proceeding there had also been joined a certain trade association, its secretary, and certain other parties respondent, including corporations, individuals, and partners, which did not join in said stipulation, and as to which various respondents the record was wholly inadequate to enable the Commission to make a finding of any kind, and as to which, as respects their participation in the understanding, etc., referred to in the complaint, the issues raised thereby had not been determined:

The Commission was of the opinion that, in order that the proceedings might be disposed of as expeditiously as possible as to those respondents who had executed the aforesaid stipulation, it would be in the public interest for the complaint to be dismissed as to the respondents who had not executed the stipulation, and for the Commission's charges against said parties to be stated and determined in a separate proceeding.

*Mr. L. E. Creel, Jr.* and *Mr. Robert R. MacIver* for the Commission.

*Fish, Richardson & Neave*, of New York City, for The Rubber Manufacturers Association, Inc., George Flint, Auburn Rubber Corp., Avon Sole Co., and along with—

*Campbell, Clithero & Fischer*, of Chicago, Ill., for Dryden Rubber Co.;

*Kittelle, Sawyer & Lamb*, of Washington, D. C., for Essex Rubber Co. and Panther-Panco Rubber Co., Inc.;

*White & Case*, of New York City, for The B. F. Goodrich Co. and Hood Rubber Co.;

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*Cahill, Gordon, Zachry & Reindel*, of New York City, for Good-year Tire & Rubber Co.;

*Hale & Dorr*, of Boston, Mass., for Alfred Hale Rubber Co.;

*Mr. Simon E. Sobeloff*, of Baltimore, Md., for The Holtite Manufacturing Co. and Cat's Paw Rubber Co., Inc.;

*Fauver & Fauver*, of Elyria, Ohio, for The I. T. S. Co.;

*Mr. James E. Ingram, Jr.*, of Hagerstown, Md., for The O'Sullivan Rubber Co., Inc.;

*Mr. J. W. Dessecker*, of Akron, Ohio, for Seiberling Rubber Co.;

*Arthur, Dry & Dole*, of New York City, for United States Rubber Co.;

*Kittelle, Sawyer & Lamb*, of Washington, D. C., for Rubber Heel & Sole Manufacturers Ass'n, The Bearfoot Sole Co., Inc., Bradstone Rubber Co., The Hagerstown Rubber Co., Lynch Heel Co., The Monarch Rubber Co., Inc., Quabaug Rubber Co., Travelite Rubber Co., Inc., and Victor Products Corp. of Pa.;

*Blair, Korner, Doyle & Appel*, of Washington, D. C., for Beebe Bros. Rubber Co.;

*Hale & Dorr*, of Boston, Mass., for Hanover Rubber Co.;

*Ingram & Schenck*, of New York City, for The Norwalk Tire & Rubber Co.;

*Friedman, Atherton, King & Turner*, of Boston, Mass., for Plymouth Rubber Co., Inc.;

*George C. and Donald W. Webber*, of Auburn, Maine, for Webster Rubber Co.;

*Mr. Charles Green*, of Philadelphia, Pa., for Connecticut Leather & Findings Association, Inc., Harry Diamond, Bridgeport Leather Co., Maurice Greenberg, Diamond Leather Co., Louis Geghter, New Haven Leather Co., Inc., Puzzo Brothers Co., Torrington Leather Co. and The Zich Leather Co.

## 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 parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

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public interest, hereby issues its complaint, stating its charges in that respect as follows:

## DESCRIPTION OF RESPONDENTS

## PARAGRAPH 1.

## A

(1) Respondent, The Rubber Manufacturers Association, Inc., a trade association, is a corporation organized and existing under the laws of the State of New York, with its principal office located at 444 Madison Avenue, New York 22, N. Y.

(2) Respondent, George Flint, an individual, is chairman of the Heel and Sole Division of the respondent, The Rubber Manufacturers Association, Inc.

(3) Respondent, Auburn Rubber Corp., is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 725 West Eleventh Street, Auburn, Ind.

(4) Respondent, Avon Sole Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in Avon, Mass.

(5) Respondent, Dryden Rubber Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 1014 South Kildare Avenue, Chicago, Ill.

(6) Respondent, Essex Rubber Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office located at May and Beake Streets, Trenton, N. J.

(7) Respondent, The B. F. Goodrich Co., is a corporation organized and existing under the laws of the State of New York, with its principal office located at 500 Main Street, Akron, Ohio.

(8) Respondent, Goodyear Tire & Rubber Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal office located in Akron, Ohio.

(9) Respondent, Alfred Hale Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 26 Spruce Street, North Quincy 71, Mass.

(10) Respondent, The Holtite Manufacturing Co., is a corporation organized and existing under the laws of the State of Maryland with its principal office located at Warner and Ostend Streets, Baltimore, Md.

(11) Respondent, Hood Rubber Co., a Division of respondent, the B. F. Goodrich Co., is a corporation organized and existing under

the laws of the State of New York, with its principal office located in Watertown 72, Mass.

(12) Respondent, The I. T. S. Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal office located in Elyria, Ohio.

(13) Respondent, The O'Sullivan Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office located in Winchester, Va.

(14) Respondent, Panther-Panco Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 31 Highland Street, Chelsea, Mass.

(15) Respondent, Seiberling Rubber Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office located in Akron, Ohio.

(16) Respondent, United States Rubber Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office located at 1230 Sixth Avenue, New York, N. Y.

## B

(17) Respondent, Rubber Heel & Sole Manufacturers Association, is an unincorporated trade association with its principal office located at 551 Fifth Avenue, New York 17, N. Y. The business and affairs of said respondent association are conducted under the active management and supervision of an officer designated as general director.

(18) Respondent, R. S. Crawford, an individual, is general director of respondent, Rubber Heel & Sole Manufacturers Association.

(19) Respondent, Avon Sole Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in Avon, Mass.

(20) Respondent, The Bearfoot Sole Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 345 Fifteenth Street, Barberton, Ohio.

(21) Respondent, Beebe Bros. Rubber Co., is a corporation organized and existing under the laws of the State of New Hampshire, with its principal office located in Nashua, N. H.

(22) Respondent, Bradstone Rubber Co., is a corporation organized under the laws of the State of New Jersey, with its principal office located in Woodbine, N. J.

(23) Respondent, The Hagerstown Rubber Co., is a corporation organized and existing under the laws of the State of Maryland with its principal office located in Hagerstown, Md.

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(24) Respondent, Alfred Hale Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 26 Spruce Street, North Quincy 71, Mass.

(25) Respondent, Hanover Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at King Street, West Hanover, Mass.

(26) Respondent, The Holtite Manufacturing Co., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located at Warner and Ostend Streets, Baltimore, Md.

(27) Respondent, Lynch Heel Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 224-226 Crescent Avenue, Chelsea, Mass. Said respondent uses the trade name the Ideal Rubber Heel Manufacturing Co. in selling its rubber heels.

(28) Respondent, The Monarch Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located at Philadelphia Road and Conkling Street, Baltimore, Md.

(29) Respondent, The Norwalk Tire & Rubber Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located in Norwalk, Conn.

(30) Respondent, Panther-Panco Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 31 Highland Street, Chelsea, Mass.

(31) Respondent, Plymouth Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at Revere Street, Canton, Mass.

(32) Respondent, Quabaug Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in North Brookfield, Mass.

(33) Respondent, Travelite Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 10 High Street, Boston, Mass.

(34) Respondent, Victor Products Corp. of Pennsylvania, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office located in Gettysburg, Pa.

(35) Respondent, Webster Rubber Co., is a corporation organized and existing under the laws of the State of Maine with its principal office located in Auburn, Maine.

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(36) Respondent, Connecticut Leather & Findings Association, Inc., a trade association, is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 242 Bank Street, Waterbury, Conn.

(37) Respondent, Harry Diamond, an individual, is secretary of respondent Connecticut Leather & Findings Association, Inc.

(38) Respondent, Bridgeport Leather Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located in Bridgeport, Conn.

(39) Respondent, Maurice Greenberg, is an individual trading as Connecticut Leather Co., with his place of business located at 75 Windsor Street, Hartford, Conn.

(40) Respondent, Diamond Leather Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 909 Grand Avenue, New Haven, Conn.

(41) Respondent, Louis Geghter, is an individual trading as Elm City Leather Co., with his place of business located at 112 George Street, New Haven, Conn.

(42) Respondent, New Haven Leather Co., Inc., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 692 Chapel Street, New Haven, Conn.

(43) Respondent, Puzzo Bros. Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 234-238 Bank Street, Waterbury, Conn.

(44) Respondents, Rochina DeCroce and Anthony M. DeCroce, are copartners doing business under the firm name of Torrington Leather Co., with their principal office located at 81 East Main Street, Torrington, Conn.

(45) Respondent, The Zich Leather Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 44-46 Market Street, Hartford, Conn.

(46) Respondent, Cat's Paw Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located at Warner and Ostend Streets, Baltimore, Md. Said respondent is an associate member of respondent Connecticut Leather & Findings Association, Inc. Other associate members of said respondent association are respondents (hereinafter described) Essex Rubber Co., Goodyear Tire & Rubber Co., The

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Holtite Manufacturing Co., the I. T. S. Co., the O'Sullivan Rubber Co., Inc., Panther-Panco Rubber Co., and United States Rubber Co.

Each of the respondents described in this paragraph, subparagraphs (3) to (16), inclusive, sometimes hereinafter referred to as respondent members of the heel and sole division, is a member of the heel and sole division of respondent, the Rubber Manufacturers Association, Inc., described in subparagraph (1) of this paragraph; each of the respondents described in this paragraph, subparagraphs (19) to (35), inclusive, sometimes hereinafter referred to as respondent members of the respondent Rubber Heel & Sole Manufacturers Association, is a member of the respondent, Rubber Heel & Sole Manufacturers Association, described in subparagraph (17) of this paragraph; each of the respondents described in this paragraph, subparagraphs (38) to (45), inclusive, is a member of the respondent, Connecticut Leather & Findings Association, Inc., described in subparagraph (36) of this paragraph; the respondents described or named in subparagraph (46) of this paragraph are associate members of said respondent Connecticut Leather & Findings Association, Inc.; each of said respondent members, including respondent associate members, of said respondent associations has for a number of years, through such membership and otherwise, directly participated in cooperative and collective action of those named herein as respondents in the formation, putting into operation, and making effective some or all of the methods, systems, practices and policies which are alleged herein to be unlawful.

Each of the individual respondents described in this paragraph, subparagraphs (2), (18), and (37), has for many years participated in cooperative and collective action of those named herein as respondents in the formation, putting into operation, and making effective some or all of the methods, systems, practices, and policies which are alleged herein to be unlawful.

## BUSINESS OF RESPONDENTS

PAR. 2. Respondent, members of the heel and sole division of respondent, the Rubber Manufacturers Association, Inc., respondent members of the respondent, Rubber Heel & Sole Manufacturers Association, and respondent associate members of respondent, Connecticut Leather & Findings Association, Inc., are engaged in the business of manufacturing, selling, and distributing rubber heels, rubber soles, and products accessory thereto; the respondent members of respondent, Connecticut Leather & Findings Association, Inc., are engaged in the business of selling and distributing such products. The re-

spondent members of all respondent associations sell such products at various points throughout the United States to wholesalers, dealers, and/or consumers, including the United States Government, and when sales are made respondent members have regularly shipped and do ship such products to the purchasers thereof at points in the several States of the United States and the District of Columbia other than in the States of origin of the shipments. The term "commerce" as hereinafter used means "commerce" as defined in the Federal Trade Commission Act.

The respondent associations and their respondent officers are not, in their official capacities, engaged in commerce, but all aided, abetted, furthered, cooperated with, and were instrumentalities of and parties to, some or all, of the understandings, agreements, combinations, and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

Prior to the adoption of the acts and practices hereinafter described, said respondent members, in the regular course and conduct of their respective businesses, were in active and substantial competition with each other, and with other manufacturers and distributors of rubber heels, rubber soles, and products accessory thereto in the sale thereof in trade and commerce between and among the several States of the United States and in the District of Columbia; and except for the adoption and use of the acts and practices hereinafter described such active and substantial competition would have continued and said respondent members would now be in active and substantial competition with each other and with other manufacturers and distributors of such products.

#### OFFENSES CHARGED

PAR. 3. For more than 12 years last past respondents have been engaged in organizing, developing, and perfecting a combination, conspiracy, and planned common course of action to suppress and eliminate competition as to price and otherwise among themselves and among the jobbers and retail distributors of rubber heels, rubber soles, and products accessory thereto, manufactured by the members of respondent manufacturers' association. As steps in and toward the accomplishment of said purpose and objective, respondents have adopted methods and practices and have taken action as follows:

(1) Respondent members of the heel and sole division of respondent, the Rubber Manufacturers Association, Inc., the respondent chair-

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man of said heel and sole division and respondent manufacturers endeavored for a number of years prior to 1930 to restrict price competition among themselves and among the jobbers of their respective products by agreements on the selling price and terms and conditions of sale for rubber heels, rubber soles, and products accessory thereto, by agreements on the standards of quality and size to which such agreed prices should apply, and by agreements between the respective respondent manufacturers and their respective jobber customers on the resale prices to be charged by such customers. Said terms and conditions of sale and said standards of quality and size have either been continued or have been supplemented to form the foundation for the subsequent agreements as to prices and resale prices hereinafter alleged. Prior to and during the period of the National Industrial Recovery Act, including the period between 1933 and 1935, respondent manufacturers sought to prevent price competition by systematically interchanging their price lists and current selling prices and undertaking to make changes therein only upon and after notice to each other. Said methods were continued by voluntary agreement and cooperative effort subsequent to the expiration of respondent manufacturers' N. R. A. Code. Upon formation of respondent Rubber Heel and Sole Manufacturers Association in 1932, its officers and members, many of which were also members of the heel and sole division of respondent, The Rubber Manufacturers Association, Inc., adopted and pursued lines of action similar to and parallel with those alleged regarding the last-mentioned association, and cooperated with it in the attainment of the common objectives as to price and otherwise that are herein set forth.

(2) Beginning in 1938 or 1939, and continuing for several years thereafter, the two respondent associations of manufacturers, their officers, and members, undertook by combination, conspiracy, and planned common course of action among themselves to fix uniform prices for their rubber heels, rubber soles, and accessory products to jobbers and also to fix uniform prices at which jobbers would sell said commodities to shoe repairmen and at which shoe repairmen would serve the consumer. Said uniform resale prices were fixed for various sections and areas comprising the entire country as the result of collaboration and cooperation with respondent, Connecticut Leather & Findings Association, Inc., its officers, directors, and members and with certain other coconspirator associations of jobbers and shoe repairmen in various parts of the United States, but which coconspirator associations are not joined or named as respondents herein. Such col-

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laboration and cooperation culminated in and was expressed and made effective by means of contracts entered into by the respective manufacturers with their respective jobbers and shoe repairmen handling their products, under color of authority of the so-called Fair Trade Acts of various States of the United States and of the Miller-Tydings Act, but in disregard of the limitations of said acts. Among the respects in which respondents disregarded such limitations was their practice of fixing the price for rubber heels to include charges for their attachment by shoe repairmen.

(3) Respondent Connecticut Leather & Findings Association, Inc., its officers, directors, and members, with the aid of said coconspirator associations of jobbers and shoe repairmen, acted concertedly to induce respondent manufacturers to enter into the so-called fair trade contracts and concertedly to discriminate with their patronage in favor of manufacturers offering and utilizing such contracts and against manufacturers not so doing.

(4) Upon entrance of the United States into World War II and in connection with the efforts of the Office of Price Administration to prevent price inflation through fixation of maximum or ceiling prices, respondent associations of manufacturers, their officers, and members, took steps to insure that the minimum prices and the minimum resale prices for rubber heels, rubber soles, and products accessory thereto, which they had previously fixed by agreement among themselves, and with various associations of jobbers and repairmen as aforesaid, would be accepted and approved by the Office of Price Administration as maximum prices. Said respondents agreed upon the prices which were later promulgated by the Office of Price Administration as maximum prices and upon the resale prices which were likewise so promulgated but all of which were known and understood by respondents to be their minimum prices and which were so treated and applied by them in their quotations and sales.

(5) In the course of the relations with the Office of Price Administration, as aforesaid, respondents conspired among themselves and with others to obtain its approval of the prices and of the resale prices jointly desired and previously agreed upon by respondents. Respondents thus disregarded and eliminated price competition as a means of preventing price inflation on the commodities involved herein. The increased resale price for rubber heels so arrived at included a charge for attachment of the heels by shoe repairmen.

(6) Respondent associations of manufacturers established a so-called heel and sole steering committee which proceeded to fix the

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prices at which sales should be made to various governmental agencies, including the War and Navy Departments, and which also prorated the distribution of Government orders on an agreed percentage basis, among the respective respondent manufacturers in proportion to their percentages on civilian sales, allocating for such proration, however, 92.6 percent of the total of such orders among manufacturers who were members of respondent associations, although they collectively represented only 75 percent of the total volume of civilian business.

PAR. 4. The acts, practices, methods, policies, combinations, agreements, and understandings of the respondents as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have a dangerous tendency to and have actually hindered, frustrated, suppressed, and eliminated competition in the sale of rubber heels, rubber soles, and products accessory thereto in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of such products and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 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 June 28, 1946, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto (by all of said respondents except R. S. Crawford, an individual, named in the complaint as general director of respondent Rubber Heel & Sole Manufacturers Association, who died April 23, 1946, and The O'Sullivan Rubber Co., Inc., a corporation, which was dissolved December 27, 1945), a stipulation as to the facts was entered into between Richard P. Whiteley, chief trial counsel of the Federal Trade Commission, and the following respondents: The Rubber Manufacturers Association, Inc., George Flint, Auburn Rubber Corp., Avon Sole Co., Dryden Rubber Co., Essex Rubber Co., The

B. F. Goodrich Co., Goodyear Tire & Rubber Co., Alfred Hale Rubber Co., The Holtite Manufacturing Co., The I. T. S. Co., Panther-Panco Rubber Co., Inc., Seiberling Rubber Co., United States Rubber Co., Rubber Heel & Sole Manufacturers Association, The Bearfoot Sole Co., Inc., Bradstone Rubber Co., The Hagerstown Rubber Co., Hanover Rubber Co., Lynch Heel Co., The Monarch Rubber Co., Inc., The Norwalk Tire & Rubber Co., Plymouth Rubber Co., Inc., Quabaug Rubber Co., Travelite Rubber Co., Inc., Victor Products Corp., Webster Rubber Co., and Cat's Paw Rubber Co., Inc., whereby it was stipulated and agreed, subject to the approval of the Commission, that, if evidence were to be adduced by the Commission in this proceeding, it would be to the effect of the statement of facts contained in said stipulation, that said respondents waive their rights to adduce evidence in opposition thereto, that they do not contest the proceeding, and that they waive the filing of the trial examiner's report upon the evidence. Said stipulation further provided that it may be taken with the same force and effect as if evidence of such facts as are set forth in the statement of facts contained therein had been duly admitted into the record in regular course, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw therefrom) and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answers thereto, the stipulation as to the facts executed by the respondents named above (such stipulation having been approved and filed), and a memorandum to the Commission dated December 10, 1947, from counsel in support of the complaint transmitting said stipulation: and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Rubber Manufacturers Association, Inc., a trade association, is a corporation organized and existing under the laws of the State of New York, with its principal office located at 444 Madison Avenue, New York 22, N. Y.

PAR. 2. Respondent, George Flint, an individual, is chairman of the heel and sole division of the respondent The Rubber Manufac-

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turers Association, Inc. For several years last past this respondent has participated in the cooperative and collective action of those named herein as respondents in the formation, putting into operation, and making effective some or all of the methods, systems, practices, and policies which are hereinafter described.

PAR. 3. Respondent, Auburn Rubber Corp., is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 725 West Eleventh Street, Auburn, Ind.

Respondent, Avon Sole Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in Avon, Mass.

Respondent, Dryden Rubber Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 1014 South Kildare Avenue, Chicago, Ill.

Respondent, Essex Rubber Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office located at May and Beake Streets, Trenton, N. J.

Respondent, The B. F. Goodrich Co., is a corporation organized and existing under the laws of the State of New York, with its principal office located at 230 Park Avenue, New York, N. Y.

Respondent, Goodyear Tire & Rubber Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal office located in Akron, Ohio.

Respondent, Alfred Hale Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 26 Spruce Street, North Quincy 71, Mass.

Respondent, The Holtite Manufacturing Co., is a corporation organized and existing under the laws of the State of Maryland, with its principal office at Warner and Ostend Streets, Baltimore, Md.

Respondent, Hood Rubber Co., prior to December 1942 was a corporation organized and existing under the laws of the State of New York, with its principal office located in Watertown, Mass. In December 1942 this respondent was dissolved and it is now an unincorporated division of the respondent The B. F. Goodrich Company.

Respondent, The I. T. S. Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal office located in Elyria, Ohio.

Respondent, The O'Sullivan Rubber Co., Inc., prior to December 27, 1945, was a corporation organized and existing under the laws of the State of Delaware, with its principal office located in Winchester, Va. On December 27, 1945, said corporation was dissolved in accordance with the provisions of the laws of the State of Delaware.

Respondent, Panther-Panco Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 31 Highland Street, Chelsea, Mass.

Respondent, Seiberling Rubber Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office located in Akron, Ohio.

Respondent, United States Rubber Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office located at 1230 Sixth Avenue, New York, N. Y.

Each of the respondents described in this paragraph, sometimes hereinafter referred to as respondent members of the heel and sole division (except the respondent The O'Sullivan Rubber Co., Inc., formerly a corporation, now dissolved) is a member of the heel and sole division of respondent the Rubber Manufacturers Association, Inc., described in paragraph 1 hereof. For several years last past each of said respondents, through such membership and otherwise, has directly participated in the cooperative and collective action of those named herein as respondents in the formation, putting into operation and making effective some or all of the methods, systems, practices and policies which are hereinafter described.

PAR. 4. Respondent, Rubber Heel & Sole Manufacturers Association, is an unincorporated trade association with its principal office located at 551 Fifth Avenue, New York 17, N. Y. The business and affairs of said respondent association are conducted under the active management and supervision of an officer designated as general director.

Respondent, R. S. Crawford, now deceased, was general director of respondent Rubber Heel & Sole Manufacturers Association.

PAR. 5. Respondent, The Bearfoot Sole Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 345 Fifteenth Street, Barberton, Ohio.

Respondent, Beebe Bros. Rubber Co., is a corporation organized and existing under the laws of the State of New Hampshire, with its principal office located in Nashua, N. H. This respondent was incorporated in February 1942, and began doing business on or about March 1, 1942. Practically all of the activities alleged in the complaint to be unlawful occurred prior to the time this corporation came into existence.

Respondent, Bradstone Rubber Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office located at Woodbine, N. J.

Respondent, The Hagerstown Rubber Co., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located in Hagerstown, Md.

Respondent, Hanover Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at King Street, West Hanover, Mass.

Respondent, Lynch Heel Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 224-226 Crescent Avenue, Chelsea, Mass. Said respondent uses the trade name The Ideal Rubber Heel Manufacturing Co. in selling its rubber heels.

Respondent, The Monarch Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located at Philadelphia Road and Conkling Street, Baltimore, Md.

Respondent, The Norwalk Tire & Rubber Co., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located in Norwalk, Conn.

Respondent, Plymouth Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at Revere Street, Canton, Mass.

Respondent, Quabaug Rubber Co., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in North Brookfield, Mass.

Respondent, Travelite Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located at 10 High Street, Boston, Mass.

Respondent, Victor Products Corp., is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office located at Gettysburg, Pa.

Respondent, Webster Rubber Co., is a corporation organized and existing under the laws of the State of Maine, with its principal office located in Auburn, Maine.

Each of the respondents described in this paragraph, sometimes hereinafter referred to as respondent members of respondent, Rubber Heel & Sole Manufacturers Association, and also each of the respondents, Avon Sole Co., Alfred Hale Rubber Co., The Holtite Manufacturing Co., and Panther-Panco Rubber Co., Inc., is a member of the respondent, Rubber Heel & Sole Manufacturers Association, described in paragraph 3 hereof. For several years last past each of said respondents, except the respondent Beebe Brothers Rubber Co., through

## Findings

such membership and otherwise, has directly participated in the cooperative and collective action of those named herein as respondents in the formation, putting into operation and making effective some or all of the methods, systems, practices, and policies which are hereinafter described.

PAR. 6. Respondent, Cat's Paw Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office located at Warner and Ostend Streets, Baltimore, Md.

PAR. 7. Respondent, members of the heel and sole division, respondent members of respondent, Rubber Heel & Sole Manufacturers Association, and respondents, Cat's Paw Rubber Co., Inc., are all engaged in the business of manufacturing, selling, and distributing rubber heels, rubber soles, and products accessory thereto. Said respondents sell their products at various points throughout the United States to all classes of purchasers, and when sales are made, the respondents regularly ship their products to the purchasers thereof at points in the several States of the United States and the District of Columbia other than the States of origin of the shipments. Said respondents at all times mentioned herein have maintained a regular course of trade in their rubber heels, rubber soles and products accessory thereto in commerce, as commerce is defined in the Federal Trade Commission Act.

Respondent, The Rubber Manufacturers Association, Inc., respondent, Rubber Heel & Sole Manufacturers Association, and respondent, George Flint, chairman of the heel and sole division of respondent, The Rubber Manufacturers Association, Inc., are not, and respondent, R. S. Crawford, formerly general director of respondent, Rubber Heel & Sole Manufacturers Association, prior to his death was not, in their official capacities, engaged in commerce, but all of these respondents and all of the other respondents named herein have aided, abetted, furthered, cooperated with, and were instrumentalities of and parties to some or all of the understandings, agreements, and combinations hereinafter set out, and said respondents actively cooperated and participated in the performance of some or all of the acts and practices done pursuant to and in furtherance of said understandings, agreements, and combinations.

Except insofar as competition has been hindered, lessened, restricted, or forestalled by the understandings, agreements, combinations, or conspiracies and the acts, things, methods, and practices done and carried out in pursuance thereto and in furtherance thereof as here-

inafter set forth, each of respondent members of the heel and sole division, each of respondent members of respondent Rubber Heel & Sole Manufacturers Association, and respondent Cat's Paw Rubber Co., Inc., in the regular course and conduct of its business has been and is in active and substantial competition with each other in the sale of rubber heels, rubber soles and products accessory thereto, in trade and commerce among and between the several States of the United States and in the District of Columbia.

PAR. 8. For several years last past the aforesaid respondents (with the exception of respondent Beebe Bros. Rubber Co.) have been engaged in organizing, developing, and perfecting a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices, and otherwise, among themselves and among the jobbers of rubber heels, rubber soles, and products accessory thereto manufactured by said respondents. As steps in and toward the accomplishment of this purpose and objective, and pursuant to the combination, agreement, and planned common course of action engaged in by the respondents, each of said respondents has adopted and utilized one or more of the following methods or practices:

(1) All of the respondent manufacturers (except Beebe Bros. Rubber Co.), respondent, George Flint, chairman of the heel and sole division of respondent, The Rubber Manufacturers Association, Inc., and, prior to his death, respondent, R. S. Crawford, general director of respondent, Rubber Heel & Sole Manufacturers Association, endeavored to restrict price competition among themselves and among the jobbers of their respective products by (a) agreements among themselves on the selling prices and the terms and conditions of sale for rubber heels, rubber soles, and products accessory thereto, (b) agreements among themselves on the standards of quality to which such agreements and prices should be applied, and (c) agreements between the respective respondent manufacturers and their respective jobber customers on the resale prices to be charged by such jobber customers. The terms and conditions of sale and the standards or quality so agreed upon by said respondents either have been continued or have been supplemented so as to form the foundation for subsequent agreements of similar natures as to original and resale prices. The respondent manufacturers have also sought to prevent price competition among themselves by systematically interchanging their price lists and current selling prices and undertaking to make changes therein only upon and after notice to each other.

(2) Respondent associations of manufacturers, and their officers, undertook by combination, agreement, and planned common course of action among themselves to fix uniform prices for the rubber heels, rubber soles and accessory products of their member manufacturers when sold to jobbers of these products and also to fix uniform prices at which the jobbers would sell said commodities to shoe repair men. Said uniform resale prices were fixed for various sections and areas comprising the entire country as the result of collaboration and cooperation with said jobbers, and such collaboration and cooperation culminated in and was expressed and made effective by means of contracts entered into by some of the respondent manufacturers with their respective jobbers.

PAR. 9. The complaint in this proceeding includes as parties respondent, in addition to those named in paragraphs 1 to 6, inclusive, hereof, the Connecticut Leather & Findings Association, Inc., a trade association, Harry Diamond, an individual, secretary of said Connecticut Leather & Findings Association, Inc., Bridgeport Leather Co., a corporation, Maurice Greenberg, an individual trading as Connecticut Leather Co., Diamond Leather Co., a corporation, Louis Geghter, an individual trading as Elm City Leather Co., New Haven Leather Co., Inc., a corporation, Puzzo Bros. Co., a corporation, Rochina DeCroce and Anthony M. DeCroce, copartners doing business under the firm name of Torrington Leather Co., and The Zich Leather Co., a corporation. As it relates to these respondents the record herein is wholly inadequate to enable the Commission to make a finding of any kind, and the issues raised by the complaint concerning the participation of these parties in the understandings, agreements, combinations, conspiracies, and acts and practices referred to in said complaint have not been determined. In order that this proceeding may be disposed of as expeditiously as possible as to the respondents who have executed the stipulation as to the facts referred to herein, the Commission is of the opinion that it will be in the public interest for the complaint herein to be dismissed as to the above-named respondents who have not executed the stipulation and for the Commission's charges against these parties to be stated and determined in a separate proceeding.

PAR. 10. The understandings, agreements, combinations, and conspiracies, and the acts and practices of the respondents done thereunder and pursuant thereto and in furtherance thereof, as hereinabove found, have had and do have the capacity, tendency, and effect of lessening, restraining, and suppressing competition in the sale of rubber heels, rubber soles, and products accessory thereto in, among and between the several States of the United States; of fixing and maintaining

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original and uniform resale prices and terms and conditions of sale and standards of quality for such products; of unduly restricting and restraining interstate trade and commerce in rubber heels, rubber soles, and products accessory thereto; and of creating in the respondents a monopoly in the sale and distribution of such products.

## CONCLUSION

The aforesaid understandings, agreements, combinations, and conspiracies, and the acts and practices of the respondents done thereunder and pursuant thereto and in furtherance thereof, under the conditions and circumstances set forth, constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of section (5) 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 answers thereto filed by respondents, a memorandum to the Commission dated December 10, 1947, from counsel in support of the complaint, and stipulation as to the facts entered into between Richard P. Whiteley, chief trial counsel of the Federal Trade Commission and the following respondents: The Rubber Manufacturers Association, Inc., Auburn Rubber Corp., Avon Sole Co., Dryden Rubber Co., Essex Rubber Co., The B. F. Goodrich Co., Goodyear Tire & Rubber Co., Alfred Hale Rubber Co., The Holtite Manufacturing Co., The I. T. S. Co., Panther-Panco Rubber Co., Inc., Seiberling Rubber Co., United States Rubber Co., The Bearfoot Sole Co., Inc., Bradstone Rubber Co., The Hagerstown Rubber Co., Hanover Rubber Co., Lynch Heel Co., The Monarch Rubber Co., Inc., The Norwalk Tire & Rubber Co., Plymouth Rubber Co., Quabaug Rubber Co., Travelite Rubber Co., Inc., Victor Products Corp., Webster Rubber Co., and Cat's Paw Rubber Co., Inc., all corporations, George Flint, an individual, and Rubber Heel & Sole Manufacturers Association, an unincorporated trade association, which stipulation provides, among other things, that the Commission may proceed upon the statement of facts contained therein to make its report (including inferences which it may draw therefrom) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission, having made and entered its findings as to the facts and its conclusion that said respondents have violated the provisions of section (5) of the Federal Trade Commission Act:

## Order

*It is ordered*, That respondents, The Rubber Manufacturers Association, Inc., Auburn Rubber Corp., Avon Sole Co., Dryden Rubber Co., Essex Rubber Co., The B. F. Goodrich Co., Goodyear Tire & Rubber Co., Alfred Hale Rubber Co., The Holtite Manufacturing Co., The I. T. S. Co., Panther-Panco Rubber Co., Inc., Seiberling Rubber Co., United States Rubber Co., Rubber Heel & Sole Manufacturers Association, The Bearfoot Sole Co., Inc., Bradstone Rubber Co., The Hagerstown Rubber Co., Hanover Rubber Co., Lynch Heel Co., The Monarch Rubber Co., Inc., The Norwalk Tire & Rubber Co., Plymouth Rubber Co., Inc., Quabaug Rubber Co., Travelite Rubber Co., Inc., Victor Products Corp., Webster Rubber Co., and Cat's Paw Rubber Co., Inc., corporations, Rubber Heel & Sole Manufacturers Association, an unincorporated trade association, and their respective officers, agents, and employees, and George Flint, individually and as chairman of the heel and sole division of The Rubber Manufacturers Association, Inc., and his agents, representatives and employees, in or in connection with, the offering for sale, sale, and distribution of rubber heels, rubber soles, and products accessory thereto in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out, any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

(1) Establishing, fixing, or maintaining prices, terms, or conditions of sale, or adhering to any prices, terms, or conditions of sale so fixed or maintained.

(2) Filing, exchanging, distributing, or relaying among respondents, or any of them, or any of their representatives, or through any other medium, central agency or publication, price information showing current or future prices or conditions of sale of any particular respondent.

(3) Formulating, adopting, using, or enforcing any resale price agreement relating to the resale of rubber heels, rubber soles, or products accessory thereto.

*It is further ordered*, That nothing contained in this order shall be construed as prohibiting any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act (Pub. No. 314, 75th Cong., approved August 17, 1937).

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*It is further ordered*, That nothing contained in this order shall be construed as prohibiting any seller of rubber heels, rubber soles, and products accessory thereto from offering to enter or entering into agreements with any of its (his) customers to sell to any such customers rubber heels, rubber soles, and products accessory thereto at any price or upon any terms and conditions of sale independently determined and offered by either said seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction when such agreements are not for the purpose and do not have the effect of restraining trade or price competition.

The Commission having made no determination of the issues raised by the pleadings herein with respect to the respondents, Connecticut Leather & Findings Association, Inc., an incorporated trade association, Harry Diamond, secretary of Connecticut Leather & Findings Association, Inc., Bridgeport Leather Co., a corporation, Maurice Greenberg, an individual trading as Connecticut Leather Co., Diamond Leather Co., a corporation, Louis Geghter, an individual trading as Elm City Leather Co., New Haven Leather Co., Inc., a corporation, Puzzo Brothers Co., a corporation, Rochina DeCroce and Anthony DeCroce, co-partners doing business under the Firm name Torrington Leather Co., and the Zich Leather Co., a corporation, and being of the opinion that it will be in the public interest for its charges against these respondents to be settled and determined in a separate proceeding: *It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to these respondents without prejudice to the right of the Commission to issue a new complaint stating its charges against such respondents or to take such further or other action against these respondents at such time and in such manner as to the Commission may seem proper.

It appearing to the Commission that the respondent, R. S. Crawford, and individual, died April 23, 1946; that the respondent Beebe Bros. Rubber Co., a corporation, did not participate in the cooperative and collective acts and practices charged in the complaint; that the respondent Hood Rubber Co., a corporation, was dissolved in December 1942; and that the respondent The O'Sullivan Rubber Co., Inc., a corporation, was dissolved December 27, 1945: *It is further ordered*, That the complaint be, and it hereby is, dismissed as to these respondents.

*It is further ordered*, That the respondents against whom this order is directed shall, within 60 days after service of the same upon them, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

## IN THE MATTER OF

ADA J. ALBERTY ET AL. TRADING AS  
ALBERTY FOOD PRODUCTS, ETC.

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

*Docket 5101. Complaint, Dec. 14, 1943—Decision, Feb. 4, 1948*

A categorical representation by the advertiser-seller of a product that certain designated symptoms or conditions are likely to be due to a cause for which his product is beneficial, when in a majority of cases they are due to causes in the treatment of which it would have no benefit whatever, is clearly false and obviously deceptive, and the Commission is of the opinion that a representation to the same effect, made under the same circumstances, except by suggestion instead of categorically, and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms and conditions, is equally false and deceptive, and by reason of such falsity, is subject to the exercise of the Commission's corrective jurisdiction in the same manner and to the same extent as though the representation had been made by affirmative statement.

As respects the question of vitamins and the well-being of the individual, this is not wholly a matter of vitamins, but depends upon many physiological, psychological, dietary, and other factors. Vitamins are continually being used and replaced, and the extent of the bodily demand therefor varies with the individual. If replacements are adequate in amount, it is not necessary that further amounts be taken in, and persons whose individual vitamin requirements are provided by their usual diet will not be benefited by taking additional vitamins, except that, to the extent to which they are stored, they furnish a reserve against possible future deprivation.

The use of a vitamin or mineral preparation will avert vitamin or mineral deficiencies in those vitamins or minerals of which the preparation gives the user the established minimum daily requirements. Should it give him less than such requirement for a vitamin or mineral, the preparation serves only as a dietary supplement, which may or may not, depending upon the user's diet, result in averting deficiencies therein.

Therapeutic amounts of vitamins and minerals substantially exceed the established daily minimum requirement therefor, and the use of vitamin or mineral preparations which contain vitamins or minerals in less than therapeutic amounts is of no significant value in cases where a deficiency in such vitamin or minerals is of sufficient duration to have become manifested by symptoms or signs thereof.

The common eruptions on the skin, and eruptions and rashes which are manifestations of pathological conditions, are not due to deficiencies in vitamin A and will not be benefited by the use of said vitamin. And while a deficiency in said vitamin of sufficient duration may be manifested by a dry skin or zerosis, and by an eruption of a particular type, which will be benefited by the use of said vitamin in therapeutic quantities but not in lesser amounts,