

IN THE MATTER OF
PRACTICAL NURSES' GUILD, 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 5323. Complaint, May 22, 1945—Decision, Sept. 23, 1948

The use of the word "guild" in a corporate or trade name conveys the meaning of an association or group of persons belonging to the same class or engaged in kindred pursuits, with certain common interests or aims, formed for mutual aid and protection.

Where a corporation engaged in the interstate sale and distribution of a correspondence course of study and instruction in practical nursing; in advertising the same in newspapers, circulars, letters and other advertising materials; and its president, who controlled and directed its activities—

- (a) Falsely represented and implied through use of the word "guild" in the corporate name of said company and through statements in advertising, that their business was a group or association of practical nurses formed for mutual aid or the protection of their common interests;
- (b) Represented further that said business was such an association or guild, located throughout the United States, formed on a Nation-wide basis;
- (c) Represented further that upon enrollment in said course of study, the purchaser became a member of the guild with all the rights and privileges pertaining thereto, that upon successful completion of the course, the Board of Managers would issue its certificate of award to students, and that possession thereof assured employment because of the preference shown for such persons;

The facts being said company was not such an association or guild, but a corporation conducted for private profit, the business of which consisted in the sale of courses of study and the maintenance of a register of students to aid and assist purchasers of its courses in securing employment; the business was principally in Iowa and a few surrounding states; a purchaser secured only the course of study and such assistance in obtaining employment as might be afforded through said register and by the corporation and the aforesaid individual; the so-called "Board of Managers" was fictitious, the business being conducted principally by said individual with the occasional assistance of his daughter; and the certificates or awards were not recognized by hospitals and institutions which might employ practical nurses for limited duties, and did not secure their holders preferential employment;

- (d) Misleadingly represented that the cost of said course of study was \$67.50, and that after an initial payment of \$10 for the first five lessons, the remaining thirty-five might be procured and paid for as desired, one or more lessons at a time at the convenience of the student; the facts being there was a minimum requirement that students purchase and pay for at least one lesson a month and that in the event of a default for a period of four months, the unpaid balance of the \$67.50 became due and payable;

- (e) Falsely represented that the course thoroughly covered every phase of practical nursing; the facts being that it did not provide a satisfactory manual for training, it provided no practical training, and would not qualify an otherwise inexperienced person to do practical nursing;
- (f) Represented and implied falsely that they provided individual training and personal attention; when in fact the training and attention supplied was limited to the grading by said individual—who had no medical or nursing training experience—of the answers to the accompanying printed questions; and
- (g) Falsely represented that in the light of the training and instruction and personal attention received the cost of the course was insignificant; the facts being that purchasers received no more in the way of training than would be available from an ordinary text on home nursing which might be purchased for a few dollars, or sometimes secured without charge from state or federal agencies;

With tendency and capacity to mislead members of the purchasing public into the erroneous belief that said representations were true, and thereby induce a substantial number to subscribe to and purchase their said course of study;

Held, That said 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 said proceeding, charges in the complaint concerning the availability of employment to purchasers of the course, the amount of compensation received, and the number of purchasers, were not adequately sustained by the evidence; and the Commission was of the view, as respects certain remaining charges, including the number of women working for the Guild and success attained by so-called graduates and the amount of salaries paid, that, under the circumstances of the case, the issues were not sufficiently raised by the allegations in the complaint.

As respects respondent H, who was a sales representative of the corporate respondent without any financial interest in or control of its business, left its employ more than two years prior to the issuance of the complaint, and did not assist or participate in any way in the formulation of the advertising representations made by said respondent, the complaint was dismissed without prejudice, there being insufficient public interest to warrant issuance of an order to cease and desist directed to her.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. William L. Pencke for the Commission.

Shull & Marshall, of Sioux City, Ia., and *Baylor, Bloss & Evnen*, of Lincoln, Nebr., for Practical Nurses' Guild, Inc. and *J. R. McLain*.

Mr. George M. Gibson, of Colorado Springs, Colo., for *Elsie Hess*.

Complaint

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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 Practical Nurses' Guild, Inc., a corporation, J. R. McLain, individually and as president of said corporation, and Elsie Hess, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Practical Nurses' Guild, Inc., is a corporation, organized, existing and doing business under the laws of the State of Iowa. J. R. McLain is president of said corporation and as such formulates, determines, and controls all of the business policies and activities of said corporation. The principal office and place of business of said corporate and individual respondent is located at rooms 241 to 244, Insurance Exchange Building, in the city of Sioux City, State of Iowa. Respondent Elsie Hess is an individual who was a traveling sales representative of said corporate respondent, with her office and place of business at the New Hotel Jackson in the city of Sioux City and State of Iowa.

PAR. 2. Said corporate respondent is now and has been for more than 3 years last past, engaged in the sale and distribution in commerce between and among the various States of the United States, of a course of study and instruction in practical nursing which said course of study is pursued by correspondence through the medium of the United States mails. In the course and conduct of said business during the time aforesaid, it caused and does now cause its said course of study and instruction to be transported from its said place of business of the State of Iowa to, into and through States of the United States other than the State of Iowa, to the purchasers thereof located in such other States. There has been at all times mentioned herein a course of commerce in said course of study between and among the various States of the United States.

PAR. 3. In the course and conduct of said business, said corporate respondent makes use of advertisements in newspapers published in the State of Iowa and other States, and circulars, letters, and other advertising material disseminated by mail to prospective purchasers of said course of study in and by which many false, misleading, and deceptive statements and representations are made in regard to said

course of study and instruction and matters and things connected therewith. Typical of such statements and representations are the following:

PRACTICAL NURSES—Prepare yourself by taking our course of study and avail yourself of our free placement bureau. If interested, call Mrs. Hess, Widman Hotel July 15 or 16, or write Practical Nurses' Guild, Sioux City, Iowa.

The tuition fee is very easy to handle. The first unit, as shown by the enclosed circular, consists of five lessons, at \$2.00 per lesson, a total of \$10.00 for the first unit. After that, the students may procure these lessons as desired, one or more lessons, or a unit at a time. . . . These sums are an insignificant amount in comparison with the type of training and personal attention that you as a student will receive. The total tuition you will have paid when you complete the course and have received your diploma is \$67.50. Low as it is, we make it easier by allowing you to purchase the lessons of the course from time to time as you need them.

It is this kind of personalized training that has enabled so many of our graduates to step right out into the nursing world and make good. . . .

As a student or graduate of our course of study you are a member of the Guild. . . . Our placement bureau is furnishing nurses every week to all parts of the middle west to hospitals, rest homes, public institutions and private cases. . . .

Practical Nurses Guild

A National Institution

In the six units that make up this course you have a thoroughly practical exposition of every phase of nursing. When completely assembled the material of the course will form a valuable symposium of knowledge that can be used either in the home or as part of your professional equipment. . . .

The doctor, lawyer, druggist, school teacher, etc., all have specialized, have their diploma showing that they are making their vocation their life's work and the practical nurse who has her diploma is the one who gets the calls.

Certificate of Award

This Certifies that _____ has completed in a manner satisfactory to the Board of Managers of the Practical Nurses' Guild, the Manual for Home Study for Practical Nurses as published by the Guild and

This Certificate

shall entitle the holder thereof to all the rights and privileges pertaining to the Guild . . .

By means of oral statements and letters written to prospective purchasers of said course of study, respondent Elsie Hess represented that if said prospective students enrolled for said course, they would be placed in positions immediately, or they would be placed in well-paying positions in hospitals or in doctors' offices as receptionists within a short time after enrollment; that said Practical Nurses' Guild had over 1,000 girls working for it; and that 2,000 women were on its registry.

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PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represent and imply and have represented and implied that said Practical Nurses' Guild is an association or guild of practical nurses located throughout the United States having common interests and aims, formed for mutual aid and protection on a Nation-wide scope and that its activities include the teaching of practical nursing through correspondence by qualified and experienced instructors; that students upon enrolling for said course of study become members of said guild and receive personal attention and instruction from said teachers; that students having completed said course of study will be succesful in the nursing world, are assured of employment because of the possession of the diploma or certificate of award issued by said guild and are preferred by doctors, hospitals and other institutions for the care of sick and physically handicapped persons; that the set of lessons furnished to said students covers the entire course of study and thoroughly covers every phase of practical nursing and, when assembled, forms a valuable collection or compilation of information on nursing, suitable for professional and home use; that the total cost of said course is \$67.50 and that after the first payment of \$10, the balance may be paid for in installments as desired or from time to time at the convenience of the students; that in the light of the character of training and instruction received by the student, said total cost of said course of study is insignificant; that the employment or placement bureau is incidental to the guild's activities; that students can be placed in well-paying positions immediately upon enrollment or within a short time thereafter; that there are thousands of women working for the guild or available upon the register of said placement bureau; that there exists a board of managers of said guild which issues certificates of award to students having completed said course of study to the satisfaction of said board and that the holders of such certificate are entitled to the benefits and privileges pertaining to said guild.

PAR. 5. In truth and in fact, said statements and representations hereinabove set forth are false, exaggerated, deceptive and misleading. Said Practical Nurses' Guild is not a national assembly or guild of experienced and trained practical nurses, formed for the purpose of mutual aid, protection and interests. In truth and in fact, respondent J. R. McLain uses the corporate trade name, Practical Nurses' Guild, for the purpose of operating the business of an employment agency. There are no qualified and experienced practical nurses or instructors

teaching said course of study and subscribers to said course do not receive any personal or individual instruction.

Said course of study was prepared by a teacher of physiology residing in the State of California and sold to respondent Practical Nurses' Guild. Said course consists of 40 short lessons divided into 6 units, and attached to each unit are brief examination questions which are answered by said students and graded by respondent J. R. McLain. Neither the writer of said course of study nor respondent McLain has any knowledge of or experience and training in the profession of nursing, and the certificate of award issued by said corporate respondent to persons having completed said course of study is not recognized by the nursing and medical profession. The so-called graduates of said corporate respondent do not attain success, nor are they preferred for employment by reason of having studied said course or secured said certificate of award. In fact, women recommended by respondents are employed in hospitals and similar institutions as nurses' aids or helpers without regard to or consideration of their training, and in many instances, women without any training in practical nursing are preferred by such employers for the reason that women who have not taken a course of study have generally been found more cooperative than those who have studied or are studying said course of training.

The representations that the entire set of lessons constitutes a valuable symposium of practical nursing, is suitable for professional and home use, and that the total purchase price is an insignificant amount in comparison with the type of training and personal attention received by respondents' students, are grossly exaggerated and misleading. Said lessons comprise the fundamental outlines of practical nursing, students do not receive training and attention of any "type" or in fact, any teaching or instruction; enrollees for said so-called course of study merely purchase a set of 40 lessons containing no more information or study material than is contained in any standard textbook on nursing, which may be purchased by anyone for approximately \$3.

The representations made by respondents in advertising circulars, follow-up letters and oral statements that students may pay for said lessons as desired or from time to time as needed after having made the first payment of \$10, is false and misleading for the reason that students are in fact required to purchase a minimum of one lesson a month which requirement is not stated in any of said advertising material, nor by respondent Elsie Hess.

The representation that respondent Practical Nurses' Guild operates an employment or placement bureau in connection with its teaching activities, is misleading. As has been hereinabove set forth, there are no teaching or other activities engaged in by said Practical Nurses' Guild, and the same is operated primarily as an employment agency. In fact, numerous persons having no nursing experience or training are placed in positions immediately after having agreed to purchase said course of study.

Representations made by respondent Elsie Hess to the effect that well-paying positions are available to enrollees and that the guild has thousands of women working for it and on its register, are exaggerated and misleading. In many instances, the amount of the salaries stated by said respondent to prospective enrollees was substantially less than represented; and in other instances, positions were not immediately available when enrollees applied therefor. The number of persons available on said corporate respondent's register does not run into thousands, but is substantially less.

In truth and in fact, there exists no board of managers of said corporate respondent, and the representations that such board has considered or reviewed the work of students, and that holders of said respondent's certificate of award are entitled to the rights and privileges pertaining to said guild are false and misleading for the reason that there is no board of managers and no guild, and that the business is merely an employment agency operated by respondent J. R. McLain, as aforesaid.

PAR. 6. The statements and representations by respondents as aforesaid have had and now have the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce a substantial number thereof to subscribe to and purchase respondents' said course of study and to pursue the same on account thereof.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 22, 1945, issued and subsequently served its complaint in this proceeding upon the respondents

named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Respondent Elsie Hess filed her answer admitting all material allegations of fact in the complaint and waiving all intervening procedure and further hearing as to the facts. After the filing of answer by the other respondents herein, testimony and other evidence were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, recommended decision of the trial examiner, and brief of counsel supporting the complaint (respondents not having filed brief and oral argument not having been requested); 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 Practical Nurses' Guild (referred to in the complaint as Practical Nurses Guild, Inc.) is a corporation organized and existing under the laws of the State of Iowa, with its office and principal place of business in Sioux City, Iowa. Respondent J. R. McLain, an individual, is president of the corporate respondent and in substance controls, conducts, and directs the activities of the corporate respondent, with his office at the principal place of business of the corporate respondent in Sioux City, Iowa. Respondent Elsie Hess, an individual, was for several years a traveling sales representative of the corporate respondent, with her address at New Hotel Jackson, Sioux City, Iowa.

PAR. 2. Respondent Practical Nurses' Guild is now, and for more than 3 years last past has been, engaged in the sale and distribution in commerce between and among various States of the United States of a course of study and instruction in practical nursing, which course of study is pursued by correspondence through the medium of the United States mails. In the course and conduct of this business respondent caused, and does now cause, said course of study and instruction to be transported from its place of business in the State of Iowa into and through States of the United States other than the State of Iowa to purchasers thereof at their various locations in such other

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States, and at all times mentioned herein has maintained such a course of trade in commerce between and among various States of the United States.

PAR. 3. In carrying on the aforesaid business, the corporate respondent makes use of advertisements in newspapers and circulars, letters, and other advertising material disseminated by mail to prospective purchasers of said course of study through and by which certain false, misleading, and deceptive statements and representations are made in regard to said course of study and matters and things connected therewith. Typical of such statements and representations are the following:

PRACTICAL NURSES—Prepare yourself by taking our course of study and avail yourself of our Free Placement Bureau. If interested call Mrs. Hess, Widman Hotel, July 15 or 16, or write Practical Nurses Guild, Sioux City, Iowa.

* * * * *

The tuition fee is very easy to handle. The first unit, as shown by the enclosed circular, consists of five lessons at \$2.00 per lesson, a total of \$10.00 for the first unit. After that the student may procure these lessons as desired, one or more lessons or a unit at a time. These sums are an insignificant amount in comparison with the type of training and personal attention that you as a student will receive. . . . The total tuition you will have paid when you complete the course and have received your diploma is \$67.50. Low as it is, we make it easier by allowing you to purchase the lessons of the course from time to time as you need them.

* * * * *

It is this kind of personalized training that has enabled so many of our graduates to step right out into the nursing world and make good. . . .

* * * * *

As a student or graduate of our course of study you are a member of the Guild, . . . Our Placement Bureau is furnishing nurses every week to all parts of the middle west to Hospitals, Rest Rooms, Public Institutions, and Private Cases.

* * * * *

A National Institution Practical Nurses' Guild

In the six units that make up this course you have a thoroughly practical exposition of every phase of nursing. When completely assembled, the material of the course will form a valuable symposium of knowledge that can be used either in the home or as part of your professional equipment. . . .

* * * * *

The doctor, lawyer, druggist, school teacher, etc. all have specialized, have their diploma showing that they are making their vocation their life's work and the practical nurse who has her diploma is the one who gets the calls.

* * * * *

CERTIFICATE OF AWARD

This Certifies That

 has completed in a manner satisfactory to the Board of Managers of THE PRACTICAL NURSES' GUILD, the manual for Home Study for Practical Nurses, as published by the Guild, and

THIS CERTIFICATE

shall entitle the holder thereof to all of the rights and privileges pertaining to the Guild, as provided for in its Articles of Incorporation and By-Laws.

PAR. 4. By means of the foregoing statements and representations, and others similar thereto not specifically set out herein, respondents Practical Nurses' Guild and J. R. McLain have represented and implied that Practical Nurses' Guild is an association or guild of practical nurses located throughout the United States having common interests and aims and formed for mutual aid and protection on a Nation-wide basis; that upon enrollment a purchaser of said course of study becomes a member of the guild with all the rights and privileges pertaining thereto; that upon successful completion of the course of study the board of managers will issue its certificate of award to students and that the possession of this certificate assures employment because of the preference shown for such persons; that the cost of said course of study is \$67.50, and after an initial payment of \$10 the balance may be paid in installments from time to time at the convenience of the student; that students enrolling for said course of study will receive personal training and attention; that the course of study thoroughly covers every phase of practical nursing; and that in the light of the training and instruction received the cost of the course is insignificant.

PAR. 5. As a matter of fact, Practical Nurses' Guild is not an association or guild of practical nurses but is a corporation conducted for private profit, the business of which consists of the sale of courses of study and the maintenance of a register of students for the purpose of aiding and assisting purchasers of its courses of study in securing employment. It is not national in scope, but has carried on its business principally in Iowa and a few surrounding States. A purchaser of respondents' course of study does not become a member of Practical Nurses' Guild or acquire any rights or privileges in any group or organization, but secures only the course of study and such assistance in obtaining employment as may be afforded through the register maintained and such efforts as may be made by the corporate respondent and J. R. McLain to find positions for purchasers of the course of study. The use of the word "guild" to describe such a business is

misleading in that it conveys the meaning of an association or group of persons belonging to the same class or engaged in kindred pursuits, with certain common interests or aims, formed for mutual aid and protection. The board of managers represented as issuing its certificate of award to students successfully completing the course of study is a fiction. J. R. McLain is president and general manager of the Practical Nurses' Guild, his wife is vice president, and his daughter is secretary. His wife has taken no active part in the affairs of the corporation; occasionally his daughter has assisted him; but in general McLain himself carries on the correspondence, grades papers of persons taking the course, passes upon the qualifications of those completing the course, and conducts the affairs of the corporation, with occasional assistance from his daughter or from a clerk in the office. In his capacity as president of the corporation McLain signs and issues the certificates of award or diplomas. These certificates are not recognized by hospitals and institutions which may employ practical nurses for limited duties and do not result in the holders being preferred for such employment. In some instances hospitals and institutions prefer to employ otherwise suitable persons without training because they are easier to train in the first instance.

The representation that after the initial payment of \$10 for the first 5 lessons in the course of study the remaining 35 lessons may be procured and paid for as desired, one or more lessons at a time at the convenience of the student, is misleading and deceptive. There is a minimum requirement that students purchase and pay for at least one lesson a month, and in the event of default for a period of 4 months such balance of the \$67.50 as is unpaid becomes due and payable. It is apparent from the testimony of qualified experts, and the Commission finds, that the course of study does not thoroughly cover every phase of practical nursing and is not representative of what is required to provide a satisfactory manual for training. The mere following of the course of study provides no practical training and will not qualify an otherwise inexperienced person to do practical nursing.

Respondents do not provide personal training and attention by qualified or experienced instructors, or otherwise, to those purchasing the course of study. Personal training and attention amounts to more than simply grading the answers to printed questions accompanying the course, which grading is done by respondent McLain, who has no medical or nursing training or experience. In substance, purchasers of the course receive no more in the way of training than would be available from an ordinary text on home nursing which might be purchased for a few dollars, or, in some instance, secured

without charge from State or Federal agencies. This is not a type of training and personal attention that makes the cost of the course insignificant.

PAR. 6. The statements and representations by respondents Practical Nurses' Guild and J. R. McLain, as aforesaid, have had, and have, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce a substantial number thereof to subscribe to and purchase respondents' said course of study.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act. The charges in the complaint concerning the availability of employment to purchasers of the course, the amount of compensation therefor, and the number of purchasers of the course are not adequately sustained by the evidence. As to the remaining charges of the complaint upon which no findings have been made, the Commission is of the view that in the circumstances of this case the issues are not sufficiently raised by the allegations in the complaint. The complaint will be dismissed without prejudice as to respondent Elsie Hess for the reasons that she was a sales representative of the corporate respondent without any financial interest in or control over its business, that she left the employment of that respondent more than two years prior to the issuance of the complaint herein, and that she did not assist or participate in any way in the formulation of the advertising representations made by that respondent. In these circumstances, there is insufficient public interest to warrant issuance of an order to cease and desist directly to this respondent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief in support of the complaint (respondents not having filed briefs and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondents Practical Nurses' Guild and J. R. McLain have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Practical Nurses' Guild, a corporation, its officers, representatives, agents, and employees, and respondent J. R. McLain, individually and as president of the Practical Nurses' Guild, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of courses of study or instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "guild," or any word or term of similar meaning, to designate, describe, or refer to respondents' business; or otherwise representing that said business is a group or association of practical nurses formed for mutual aid or the protection of their common interests.

2. Representing, directly or by implication, that certificates or diplomas issued to those who complete the course of study purchased from respondents are authorized by any board of managers of a "guild" or other group or organization of practical nurses or by representatives of such a group or organization.

3. Representing, directly or by implication, that purchasers of respondents' course of study become members of or acquire any rights or privileges in any group or organization of practical nurses.

4. Representing, directly or by implication, that the certificate or diploma issued by respondents results in the holder being preferred for employment by hospitals or institutions.

5. Representing, directly or by implication, that compared to the type of personal training or attention given, the cost of respondents' course of study is insignificant; or otherwise representing or implying that any personal training or attention in excess of that actually furnished is given purchasers of said course of study.

6. Representing, directly or by implication, that respondents' terms or conditions of sale for the course of study are other than or different from what they are in fact.

7. Representing, directly or by implication, that respondents' course of study thoroughly covers every phase of practical nursing.

It is further ordered, That for the reason stated in the conclusion to the findings as to the facts herein, the complaint be, and the same hereby is, dismissed without prejudice as to respondent Elsie Hess.

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

Syllabus

IN THE MATTER OF

FLEMING & SONS, INC. AND ALBERT COUCHMAN, DOING
BUSINESS AS COUCHMAN ADVERTISING AGENCY

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

Docket 5264. Complaint, Jan. 5, 1945—Decision, Oct. 6, 1948

Where a corporation engaged in the manufacture and in the interstate sale and distribution, among other things, of its "Wallrite" decorated building paper for use as a sheathing paper for the inside walls of a house, and its advertising agent; in advertising in farm publications, trade journals, circulars, booklets, pamphlets and, to a limited extent, newspapers, directly and by implication—

- (a) Represented that said building paper was a nonconductor and insulated houses against heat and cold and through statements emphasizing its heavy nature such as "because WALLRITE is so heavy it insulates those walls—shuts out that blistering heat from the mid summer sun, the same way your ice box walls shut the heat away from your food * * *";

The facts being that while aforesaid product was a good grade of building or sheathing paper and would retard the infiltration of winds and air currents through cracks or holes in houses and so help to prevent rapid changes in temperature, its effect as thermal insulation was negligible, and as ordinarily used and as recommended it would be no more effective as a nonconductor of heat or cold than newspaper;

- (b) Represented that said product was impervious to water and would seal out dampness and render a house damp-proof, through such statements as "shuts out," "seals out," and "guards against" damp and dampness;

The facts being that, as evidenced by tests by the Bureau of Standards, its water resistance was comparable to that of ordinary writing paper; and, compared with some other building papers, its resistance to dampness penetration was negligible;

With tendency and capacity to mislead a substantial portion of the public into the mistaken belief that such representations were true, and thereby into the purchase of said product:

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.

As respects respondent's contention in said proceeding that the statements and representations quoted in the complaint were only excerpts from various statements in which the product was described as a decorative building or