

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

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sheathing paper, and that its insulating properties were shown as due solely to the fact that it sealed cracks in walls and ceilings, and that in covering cracks therein it prevented the infiltration of air currents and retarded the entrance of moisture, thus providing "insulation against heat and cold" and "sealing out" dampness:

The Commission recognized that the matter quoted was only excerpted from a number of advertisements, in many of which the product was referred to as immediately above set forth and its capacity to prevent infiltration of air currents emphasized; but nevertheless was unable to accept the aforesaid contentions since said quality was not the only one attributed to said "Wallrite," and their references to the product as a building or sheathing paper did not preclude their further representation that it acted as a nonconductor of heat and cold, or rendered a house dampproof.

In said proceeding in which the complaint also charged that respondents further falsely represented (1) that their said product did seal out wind and dust, and (2) that the use thereof would save up to 20 percent in fuel in winter; the allegations of the complaint were not sustained, it appearing that, properly applied, it would, for all practical purposes, prevent the infiltration of wind and dust, and that, when used in flimsily constructed houses with cracks and holes in walls and ceiling, it was impossible to say that it would not result in a saving of as much as 20 percent in fuel required to heat the house in winter.

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph Callaway for the Commission.

Hamilton, Lipscomb, Wood & Swift, of Dallas, Tex., for respondents.

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 Fleming & Sons, Inc., a corporation, and Albert Couchman, an individual doing business under the name of Couchman Advertising Agency, 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. Respondent, Fleming & Sons, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 1120 East Twelfth Street, in the city of Dallas, and State of Texas.

PAR. 2. Respondent, Fleming & Sons, Inc., is now, and for more than three years last past, has been engaged in the sale and distribution of a building paper called by it "Wallrite" in commerce among and be-

tween the various States of the United States and in the District of Columbia.

The corporate respondent causes its said building paper when sold, to be transported from its place of business in the State of Texas to the purchasers thereof located in various other States of the United States and in the District of Columbia.

The corporate respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforesaid building paper in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent Albert Couchman is an individual conducting an advertising agency, with its office at 86½ Highland Park Shopping Village, in the city of Dallas, and State of Texas, and as such is engaged in formulating, editing, testing, selling advertising matter, and advising his clients with regard thereto.

Respondent Albert Couchman prepared and placed for the respondent Fleming & Sons, Inc., the advertising representations hereinafter mentioned.

PAR. 4. The respondents acts in conjunction and cooperation with one another in performance of the acts and practices hereinafter alleged.

PAR. 5. In the course and conduct of corporate respondent's said business, in connection with the sale of its building paper in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, the respondents have caused and now cause advertisements to be made and printed in magazines, newspapers, booklets, pamphlets, circulars, and through the medium of radio broadcasts, and in other publications and advertising literature distributed generally to the purchasing public through the various States and to dealers for distribution to the purchasing public, which contain many false and misleading statements and representations respecting said building paper. Among the typical of the statements and representations so made and used with regard to the building paper are the following:

Make your rooms beautiful with Wallrite decorated paper * * *. Beautifies your rooms and insulates against coldness, dampness, dust, and heat.
* * *

Here's why Wallrite clicks with users; Because it combines the insulating qualities of heavy-duty sheathing paper, (seals out wind, dust, heat, dampness, and cold) with the decorating qualities of ordinary wall paper.

Are you contemplating a little repapering of your home? * * * Use Wallrite wall paper. Fleming's Wallrite is strong, durable and guards and insulates against heat, cold, dampness, wind and dirt.

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Wallrite decorated building paper * * * a product which * * * insulates against cold and dampness, heat and dust.

No more cold drafts! No more shivery corners—when you cover your walls with Fleming's Wallrite. It is a heavy insulating paper. It seals those walls. Seals out cold, dust and damp. Makes every room warm and comfortable. Clear to the cold.

Wallrite is a heavy insulated paper—fully as heavy as best quality building paper. It is warm as a wool overcoat. Makes every room warm, snug and comfortable. Clear to the walls.

Fleming's Wallrite. It is a heavy, insulating paper—that seals those walls. Seals out cold, dust and damp—seals in that precious warmth.

Wallrite * * * It is an insulating paper—to seal those walls. Next winter watch the way it seals out those bitter cold winds. And next summer you'll be just as happy about the way it shuts out the blistering heat of that blazing summer sun. Makes every room several degrees cooler.

Wallrite seals those walls. In winter, it is warm as a wool overcoat. But in summer you'll be glad a thousand times for the way Wallrite shuts out the blistering heat of that blazing summer sun.

And because Wallrite is so heavy it insulates those walls—shuts out that blistering heat from the mid-summer sun, the same way your icebox walls shut the heat away from your food. You'll cool your home—with Wallrite. And you'll warm it next winter, when the cold winter winds whistle through.

But wait—remember, Wallrite is building paper. It is heavy—far heavier than most paper. It seals those walls. Seals out cold, damp spring winds that bring so much flu, sickness and colds. In winter Wallrite saves up to 20% on fuel—whether you use gas, oil or coal.

But—in summer Wallrite keeps your home cool. It shuts out blistering summer heat and dust, just like it does winter's cold.

Wallrite, the heavy-duty decorated building paper that makes your home like new inside—keeps it cool in summer; warm in winter.

For Wallrite is a heavy decorated building paper. Like the walls of your icebox keeps heat from food, Wallrite shuts out some of that blistering summer sun. Wallrite cools your home in summer. But it also warms those rooms—cuts out those cold drafts in winter.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not set out herein, respondents represent, directly and by implication, that said building paper is a nonconductor of heat or cold and that its use in houses affords an insulation against heat and cold; that it is impervious to moisture or water and that its use will render a house dampproof; that its use will seal out wind and dust; and that its use seals out or protects the home from dampness, cold and summer heat and will save up to 20 percent on fuel in winter.

PAR. 7. The foregoing representations and implications are grossly exaggerated, false, and deceptive. In truth and in fact, corporate respondent's said product does not afford an insulation against heat or cold; it is not a nonconductor of either heat or cold in the sense

that its use will prevent the entry of heat or cold into a house papered with said product; said product is not impervious to water or moisture and its use will not render a house dampproof or prevent the entry of dampness, nor will the use of said product seal out or prevent the entry of wind and dust, except to the extent that it covers cracks or air leaks in the walls or ceiling of the house where used as will any serviceable paper, or result in a savings of as much as 20 percent in fuel. Corporate respondent's said product is nothing more than a decorated building paper and is too thin to be of any appreciable value in preventing the entry of heat, cold, or dampness.

PAR. 8. The use by the respondents of the aforesaid statements, representations, and implications in connection with the offering for sale and sale of said product in said commerce has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said statements, representations, and implications are true, and causes such members of the public to purchase substantial quantities of said paper in said commerce as a result of such belief.

PAR. 9. 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 January 5, 1945, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto filed by counsel supporting the complaint, and briefs of counsel in support of and in opposition to the allegations of the complaint

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(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. The respondent, Fleming & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 1120 East Twelfth Street, in the city of Dallas, State of Texas.

PAR. 2. Respondent Fleming & Sons, Inc., is now and for more than 3 years last past has been engaged in the manufacture and in the sale and distribution of paper and paper products. Among the products it manufactures and sells is a building paper called "Wallrite." This product, when sold, is transported from this respondent's place of business in the State of Texas to the purchasers thereof located in various other States of the United States and in the District of Columbia. The corporate respondent maintains and at all times mentioned herein has maintained a course of trade in the aforesaid building paper in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, Albert Couchman, is an individual conducting an advertising agency with its office at 86½ Highland Park Shopping Village in the city of Dallas, State of Texas.

Respondent Albert Couchman prepared and placed for the respondent Fleming & Sons, Inc., the advertising representations hereinafter mentioned, and the two respondents acted in conjunction and cooperation with one another in the performance of the acts and practices herein found.

PAR. 4. The corporate respondent's building paper is sold for use as an inner sheathing paper to be attached to the inside walls of houses. It differs from other building papers on the market which are sold for the same purpose only in that it is decorated and hence in addition to any protection it affords the interior of a house it also adds attractiveness to the walls to which it is applied.

The advertising media used by the respondents in promoting the sale of the corporate respondent's building paper include magazines, principally farm publications, trade journals, circulars, booklets, pamphlets, newspapers, to a limited extent, all distributed generally to the purchasing public and to dealers in the various States, and radio

broadcasts. Through and by these means the respondents cause and have caused the dissemination of many advertisements containing various statements and representations concerning the product "Wallrite." Among and typical of these statements and representations are the following:

Make your rooms beautiful with Wallrite decorated paper * * *. Beautifies your rooms and insulates against coldness, dampness, dust and heat. * * *

Here's why Wallrite clicks with users: Because it combines the insulating qualities of heavy-duty sheathing paper (seals out wind, dust, heat, dampness, and cold), with the decorating qualities of ordinary wall paper.

Are you contemplating a little repapering of your home? * * * Use Wallrite wall paper. Fleming's Wallrite is strong, durable, and guards and insulates against heat, cold, dampness, wind, and dirt.

Wallrite decorated building paper * * * a product which * * * insulates against cold and dampness, heat and dust.

No more cold drafts! No more shivery corners—when you cover your walls with Fleming's Wallrite. It is a heavy, insulating paper. It seals those walls. Seals out cold, dust and damp. Makes every room warm and comfortable. Clear to the walls.

Wallrite is a heavy insulated paper—fully as heavy as best quality building paper. It is warm as a wool overcoat. Makes every room warm, snug and comfortable. Clear to the walls.

Fleming's Wallrite. It is a heavy, insulating paper—that sales those walls. Seals out cold, dust and damp—seals in that precious warmth.

Wallrite * * * It is an insulating paper—to seal those walls. Next winter watch the way it seals out those bitter cold winds. And next summer you'll be just as happy about the way it shuts out the blistering heat of that blazing summer sun. Makes every room several degrees cooler.

Wallrite seals those walls. In winter, it is warm as a wool overcoat. But in summer you'll be glad a thousand times for the way Wallrite shuts out the blistering heat of that blazing summer sun.

And because Wallrite is so heavy it insulates those walls—shuts out that blistering heat from the midsummer sun, the same way your icebox walls shut the heat away from your food. You'll cool your home—with Wallrite. And you'll warm it next winter, when the cold winter winds whistle through.

But wait—remember, Wallrite is building paper. It is heavy—far heavier than most paper. It seals those walls. Seals out cold, damp spring winds that bring so much flu, sickness and colds. In winter Wallrite saves up to 20% on fuel—whether you use gas, oil, or coal. But—in summer Wallrite keeps your home cool. It shuts out blistering summer heat and dust, just like it does winter's cold.

Wallrite, the heavy-duty decorated building paper that makes your home like new inside—keeps it cool in summer, warm in winter.

For Wallrite is a heavy, decorated building paper. Like the walls of your icebox keep heat from food, Wallrite shuts out some of that blistering summer sun. Wallrite cools your home in summer. But it also warms those rooms—cuts out those cold drafts in winter.

PAR. 5. The complaint alleged, among other things, that through the use of the foregoing statements and representations, and others similar thereto, the respondents have represented, directly and by implication, that said building paper is a nonconductor of heat and cold and that its use in houses affords insulation against heat and cold; that said paper is impervious to moisture and water and that its use will render a house dampproof; and that use of said paper will seal out and protect the home in which it is used from dampness.

The respondents freely admit the use in their advertisements of the foregoing statements and representations and further admit that such statements and representations are in general typical of those customarily used in the promotion of the sale of the corporate respondent's product. The respondents deny, however, that these statements and representations are subject to the interpretation given them in the complaint, and contend (1) that the quoted statements and representations are only excerpts from various advertisements; (2) that in each of the advertisements the product "Wallrite" is described as decorated building or sheathing paper, and that its insulating properties are therein shown to be due solely to the fact that it seals cracks in walls and ceilings; and (3) that in covering cracks in walls and ceilings the paper prevents the infiltration of air currents and retards the entrance of moisture, thus providing "insulation" against heat and cold and "sealing out" dampness.

The Commission is unable to accept these contentions. It is true, as the respondents argue, that the statements quoted in the complaint are only excerpts from a number of the respondents' advertisements. It is also true that in many of the advertisements "Wallrite" was referred to as a decorated building or sheathing paper, and that its capacity to cover cracks and prevent the infiltration of air currents was emphasized. This, however, is not the only quality attributed to "Wallrite" in these advertisements; and it does not follow that by referring to the product as a building or sheathing paper the respondents thereby precluded the further representation that it acts as a nonconductor of heat and cold or that it renders a house damp-proof. The full text of one of the respondents' advertisements, broadcast over Radio Stations WSM, Nashville, Tenn., and WBT, Charlotte, N. C., on April 24 and April 29, 1943, is as follows:

MUSIC: A few bars of "Home Sweet Home": fade to:

LADY: Oh, dear! It's certainly not "home sweet home." Look at these walls!

ANNCR: But it CAN be LIKE NEW, INSIDE—when you cover those walls with WALLRITE! Fleming's WALLRITE—the heavy decorated BUILDING PAPER THAT COSTS LESS THAN PAINT—but freshens up your home more

than all your spring improvements put together. Just look at these beautiful flowery patterns! Look at the rich colors!

LADY: Oh! Aren't they BEAUTIFUL! This trumpet-vine pattern—just the thing for our living room. And this Poppy design would be perfect in a bedroom.

ANNCR: And WALLRITE IS HEAVY—heavier than ordinary papers. WALLRITE is BUILDING paper—made to do what other papers can't. It covers cracks and holes and breaks in the walls. Leaves broken surfaces smooth, KEEPS a beautiful, smooth wall where lightweight papers crack and sag and tear. No felt, or canvas, or other backing required. WALLRITE hangs perfectly by itself. WALLRITE shuts out blistering summer heat the same way your icebox walls keep heat away from food. And likewise shuts out cold winds, and dust, and damp, in winter. That saves fuel, saves transportation—and best of all, saves your family's health. BUT those blistering days are just around the corner—WALLRITE NOW! (Com. Ex. No. 4-g.)

The full text of another, broadcast over the same radio station during the same month, is as follows:

SOUND: Bird call. Appropriate music.

LADY: Oh, dear! Isn't it BEAUTIFUL outside? The bright green leaves, the colors in the flowers, and all—and doesn't it make the INSIDE of this house look awful!

ANNCR: You can make it just as pretty INSIDE—cover those walls with WALLRITE!

LADY: WALLRITE?

ANNCR: Yes, ma'am! Fleming's WALLRITE! The heavy, decorated BUILDING paper—make it NUMBER ONE in your spring clean-up campaign! Cover those walls with WALLRITE—and bring SPRING INSIDE! Just look at these new spring patterns!

LADY: Oh, yes! See the RICH colors! And the flowers are so BRIGHT, and NATURAL! This Red-Rose pattern—wouldn't that be lovely in my dining room! And this Bluevine—my it would go anywhere in the house.

ANNCR: And WALLRITE goes ANYwhere—on walls that are broken—over holes and cracks. It covers those broken surfaces, gives you a smooth, beautiful wall with the breath of spring in every room. Remember, WALLRITE is BUILDING PAPER. Heavy. Tough. Durable. It covers walls where ordinary light-weight papers crack, sag, bag and break. You don't need felt or canvas, or any other backing, with WALLRITE—it's plenty strong all by itself. Strong enough to TACK UP—some dealers can still supply you with colored tacks to match. Or use paste—it sure makes a smooth, beautiful wall. And because WALLRITE is so heavy it INSULATES those walls—shuts out that blistering heat from the mid-summer sun, the same way your icebox walls shut the heat away from your food. You'll COOL your home—with WALLRITE. And you'll warm it next winter, when the cold winter winds whistle through. (Comm. Ex. No. 4-i.)

Thus, while the advertisements stated that "Wallrite" is building paper, and that it covers cracks and holes, they stated further that it "insulates." Its action in this respect was compared with the action of icebox walls in keeping heat away from food. The evidence is

clear that the way icebox walls keep heat away from food is by thermal insulation. The advertisements said that "Wallrite" does this because it is so heavy. The proof is that thickness is one of the most important characteristics of thermal insulating material.

In addition to attributing to "Wallrite" the capacity to insulate, the advertisements also said that it "shuts out," "seals out" and "guards against" damp and dampness. In order to "shut out" dampness, a material must "preclude from entering; deny admission; exclude; as, to shut out rain." In order to "seal out," the material must "close by a seal, coating or other fastening that prevents access." (Both definitions taken from Webster's New International Dictionary, second edition.) Thus, it seems clear that according to the advertisements "Wallrite" will exclude dampness from the inside of a house. It is difficult to perceive how a claim of imperviousness to penetration by dampness could be more plainly made.

The Commission is of the opinion, therefore, and finds that the respondents, through the use of the statements and representations referred to, and others similar thereto, have represented (1) that the product "Wallrite" is a nonconductor of heat and cold and that its use in houses affords thermal protection against heat and cold, and (2) that said product is impervious to water, and that its use will seal out dampness and render a house dampproof.

PAR. 6. The product "Wallrite" is a good grade of building or sheathing paper and when attached to the inner walls and ceilings of houses having cracks or holes in them it will retard the infiltration of wind and air currents, and to that extent will help to prevent rapid changes in temperature in the houses in which it is used. It will also to some extent, although much less effectively than some other building papers, resist the penetration of water and dampness. It will not, however, and the respondent admits that it will not, act as a nonconductor of heat or cold, nor is it a waterproof or dampproof material.

According to Webster's New International Dictionary, second edition, the word "insulate" means "to separate from conducting bodies by means of nonconductors, as to prevent the transfer of electricity, heat, or sound." The evidence is that for any material of the density of Wallrite" to provide insulation within this meaning of the word it must be applied to a thickness of at least one-half inch. The record further shows that the respondents' product as ordinarily used and as recommended would be no more effective as a nonconductor of heat or cold than newspaper. As thermal insulation, its effect is negligible. The Commission therefore finds that the respondents' repre-

sentations that the product "Wallrite" is a nonconductor of heat and cold and that it will afford thermal protection against heat and cold are false and misleading.

In an effort to determine the truth or falsity of the respondents' representations that the product "Wallrite" will "seal out," "shut out" and "insulate against" damp and dampness, the Commission submitted a sample of the paper to the United States Bureau of Standards with the request that it be tested for water penetration. As a result of a test made in accordance with this request it was found that the time required for water to penetrate this paper was about 80 seconds. According to the test, the water resistance of "Wallrite" is comparable to that of ordinary writing paper. Not being waterproof, "Wallrite" cannot be dampproof, for dampness is water vapor and vapor is more penetrating than water in liquid form. The evidence is undisputed that in comparison with some other building papers the resistance of "Wallrite" to dampness penetration is negligible. The respondents' representations that the product is impervious to water, and that its use will render a house dampproof are therefore false and misleading.

PAR. 7. In addition to the matters set forth above, the complaint charged also that the respondents, through the use of the representations referred to in paragraph 4 hereof, have falsely represented (1) that the product "Wallrite" will seal out wind and dust, and (2) that its use will save up to 20 percent on fuel in winter. These allegations have not been sustained. The evidence is that "Wallrite," when properly applied, will, for all practical purposes, prevent the infiltration of wind and dust, and when used in flimsily constructed houses with cracks and holes in the walls and ceilings it is impossible to say that it will not result in a saving of as much as 20 percent on fuel required to heat the house in winter.

PAR. 8. The use by the respondents of the false and misleading representations as set forth herein has had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such representations were and are true and into the purchase of the corporate respondent's product as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondents as herein found have been and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce with the intent and meaning of the Federal Trade Commission Act.

Order

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto filed by counsel supporting the complaint and briefs of counsel in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered that the respondents, Fleming & Sons, Inc., a corporation, and its officers, and Albert Couchman, an individual, and said respondents' agents, representatives and employees, directly or through any corporate device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the corporate respondent's building paper designated "Wallrite," or any other product of substantially similar composition or possessing substantially similar qualities, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

(1) That said product is a nonconductor of heat or cold, or that it affords any protection against heat or cold in excess of retarding the infiltration of wind and air currents;

(2) That said product is impervious to water or moisture, or that its use will render a house dampproof or prevent the penetration of dampness.

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
RETONGA MEDICINE COMPANY

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

Docket 5519. Complaint, Nov. 21, 1947—Decision, Oct. 6, 1948

Where a corporation engaged in the interstate sale and distribution of their medicinal preparation "Retonga," which contained chemical preservatives, artificial coloring, and significant amounts of glycerin and alcohol; through testimonial and other advertisements in newspapers, and through radio broadcasts; directly and by implication—

- (a) Falsely represented that said preparation was compounded entirely from the extracts of roots, herbs and barks, combined with liberal quantities of vitamin B₁, and could be characterized properly as a vitamin B₁ medicine;
- (b) Represented that if one suffered from loss of weight or sleep, sour stomach, heartburn, indigestion or gas, nervousness, muscular pains, run-down condition, loss of energy, weakness, inability to work and a toxic feeling, such conditions were brought about by an insufficient flow of gastric juices or loss of appetite or vitamin B₁ deficiency or constipation, and that use of their said preparation as directed insured the flow of vital digestive juices, improved the appetite to the extent that strength and weight were regained, and corrected vitamin B₁ deficiency;

The facts being that while "Retonga," taken before meals, would cause a flow of gastric juices into the stomach, under normal conditions food alone will stimulate a sufficient flow thereof; presence of such juices in the stomach, thus induced by said preparation, at the time of the entrance of food, might, through its action on the ptyalin therein contained, interfere with proper digestion; it would have no effect upon the production of such juices, or upon the glands providing them, when impaired for any reason; it would not remedy the cause of loss of appetite; while it might increase appetite slightly, it would not bring about any significant increase in weight, nor, in view of its relatively small vitamin B₁ content, correct any deficiency thereof or symptom or condition resulting therefrom; and it would be of no value to an individual suffering from heartburn, and other aforesaid conditions;

- (c) Represented that said product was not a laxative and would cure constipation, through use of such statements as "I was almost a slave to laxatives" followed by "I am no longer a slave to laxatives";

The facts being that use of "Retonga" over a period of several days would produce a mild laxative effect; so long as taken, it might relieve constipation and its few symptoms, but would not effect a cure thereof; and if use was