

Syllabus

IN THE MATTER OF
COLUMBIA APPLIANCE CORPORATION¹

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

Docket 4669. Complaint, Jan. 13, 1942—Decision, Dec. 30, 1948

As respects the question as to whether or not a particular synthetic solvent, one of a number used in synthetic solvent dry-cleaning machines, may be properly characterized as more toxic, poisonous or dangerous than the others, it appearing that all are poisonous and toxic to same extent and, if allowed to come in contact with the skin or if the vapors thereof are inhaled, are dangerous to life and health, and, furthermore, that all, if not properly handled or used in such machines will cause illness to the operators—dangers which are increased by repeated contacts therewith: it is deceptive and disparaging for the seller of a competitive solvent to refer to it as more toxic, poisonous, and dangerous than the others.

In such a connection the nature of the impairment to health which results from contact with such a solvent is immaterial and reference thereto is deceptive and disparaging; and while in scientific circles distinctions as to the safety or dangerous character of such a solvent may be justified, in the commercial world broad distinctions as to the relative safety or dangerous character thereof are not justified and, if made in connection with the sale thereof, constitute false and deceptive acts and practices and an unfair, false, and misleading method of competition.

Where a manufacturer of synthetic solvent dry-cleaning machines, engaged in interstate sale and distribution, for use therein, of synthetic dry-cleaning solvents, which then included (1) carbon tetrachloride and ethylene dichloride—about 50 percent of which was made by Dow, of Michigan, and mixtures of which were used for most of the dry cleaning done by some 4,000 to 5,000 dry cleaners in the United States who used synthetic solvent machines, and accounted for 15 percent of the dry cleaning done with such machines as compared with that done with "naphtha plants" and "naphtha systems"; (2) trichlorethylene of which, as "Tri-Clene," du Pont made from 94 percent to 97 percent; (3) perchlorethylene or "Per-clene," production of which was about equally divided between said two companies and which, together with said Tri-Clene made up about one-third of the synthetic dry cleaning solvents then used; and, (4) since 1938, "Kolene C," which, composed of carbon tetrachloride, trichlorethylene, and benzol was produced by the Kolene Corporation, and by it sold to some 500 dry cleaners;

In promoting the sale and distribution of its synthetic dry-cleaning solvents through salesmen and technical servicemen who called upon jobbers, distribu-

¹The instant case, and the three which follow, namely Detroit Rex Products Co., D. 4674, page 396, G. S. Blakeslee & Co., D. 4678, page 418, and E. I. du Pont de Nemours & Co., Inc., D. 4685, page 437, all have to do with deceptive and disparaging representations with respect to certain competitive synthetic cleaning and degreasing solvents, of the Kolene Corporation, of Detroit, Mich. An earlier case which also involved such disparagement is that of the Dow Chemical Co., D. 3991, November 22, 1944, 39 F. T. C. 444.

Syllabus

45 F. T. C.

tors, and users of dry cleaning equipment, often in the company of salesmen of the jobbers and distributors, and who sometimes carried with them equipment for testing dry cleaning solvents, and were given instructions by the main office on competitive products and the manner in which to deal with the problems met in the field—

- (a) Represented through letters and otherwise to owners, users, and manufacturers of such machines, and to distributors and others interested in the sale and use of synthetic solvents, that only "Tri-Clene" and not "Kolene C" should be used in said machines, and that "Kolene C" was without merit as a dry-cleaning agent for such use since it consisted of carbon tetrachloride or trichlorethylene plus about 20 percent adulterants, which were of no value for said purpose and were changed from time to time; was not a suitable substitute for "Tri-Clene," being only an experimental low-priced substitute, without "Tri-Clene's" proven merits; was a combination of carbon tetrachloride and benzol, which upon distillation in its own and other machines would separate and cause trouble; and would corrode its machines, necessitating expensive repairs and loss of time to operators and owners by reason of its 80 percent carbon tetrachloride content;

The facts being that while du Pont had had samples of said "Kolene C" analyzed in its laboratories, the true composition thereof had not been determined, and neither du Pont nor said manufacturer was in a position to represent to the trade just what the components or properties thereof were; it had, in fact, been used successfully for dry cleaning in such machines with satisfactory results; said "Tri-Clene" was subject to the same type of faults as carbon tetrachloride, needed to be handled in the same way as "Kolene C", and had had damaging effects when used for dry cleaning in contact with some fabrics and dyes; carbon tetrachloride and synthetic solvents based thereon had been used successfully as dry cleaning agents and had had much wider use in synthetic solvent dry-cleaning machines than said "Tri-Clene"; said "Kolene C" had been used in synthetic solvent dry-cleaning machines without undue or unusual corrosive effects upon the machines and without injury to the materials being cleaned; and there was neither scientific nor practical basis for representing it as without value or unsuitable for such purposes;

- (b) Represented, as aforesaid, that "Kolene C" was dangerous to life and health, and would call illness to the operators of such machines and loss of time and money by reason of its tetrachloride and benzol content, whereas its "Tri-Clene" was comparatively harmless to life and health and not a hazard thereto;

When in fact all of the aforesaid dry-cleaning solvents were poisonous and toxic to some extent and were dangerous if allowed to come in contact with the skin or if their vapors were inhaled; all, if not properly handled or used in such machines, would cause illness; and dangers thereof would be increased by continued and repeated contact;

- (c) Represented, as aforesaid, that said "Kolene C" would catch on fire and explode if used in such machines, by reason of the 20-percent benzol content thereof, and was inflammable and explosive by reason of its eighteen percent content of benzene or "naphtha"; that its use in such machines would constitute a fire hazard and risk to the owners and affect their fire ratings, insurance, and licenses and permits to operate; and that it was more inflammable and explosive than trichlorethylene, or "Tri-Clene";

The facts being that when used in such machines under standard or usual conditions, it was not inflammable, nor more so, or more explosive, than trichlorethylene, or the solvents made therefrom; it was never made with benzene or petroleum naphtha, and its component benzol was not a petroleum derivative; and the fire hazard thereof had been consistently regarded by competent investigators as "very small"; and

- (d) Falsely represented that proof of the aforesaid statement could easily be obtained by users of such machines by submitting samples of "Kolene C" for analysis to any competent laboratory, and, without charge, at the laboratories of du Pont at Niagara Falls, and at those of the National Association of Dyers & Dry Cleaners at Silver Spring, Md.; and that owners and users of such machines, by securing the facts on "Kolene C" as above specified, could save themselves substantial sums of money in repair bills, and difficulties and loss of time due to illness which would result from use thereof;

With result of placing in the hands of distributors and others the means of passing on to purchasers the representations thus provided; and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public and induce its purchase of said manufacturer's products in preference to purchase of said "Kolene C"; and thereby unfairly to divert trade from the sellers thereof to said manufacturer and sellers of its product:

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

In the aforesaid proceeding there was no basis for the inference or representation that the use of said solvent "Kolene-C" constituted a fire hazard when it was used for dry cleaning, by reason of the fact that in tests made thereof in the laboratories it might have been found to be "slightly inflammable" at the higher temperatures under which said tests were made, it appearing that the Underwriters Laboratories stated in part that it was "chemically stable and not flammable at ordinary temperatures," and that while it was "possible to produce moderately combustible mixtures with air under laboratory test conditions at higher temperatures (167° F. and upwards)," "under practical conditions the formation of combustible mixtures at temperatures as low as 167° F. is extremely unlikely"—substantially the same language used by said concern in reporting on the inflammability of the competitive trichlorethylene.

Mr. D. E. Hoopingarner and Mr. John R. Phillips, Jr. for the Commission.

Walton, Bannister & Stitt, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Columbia Appliance Corporation, a corporation, hereinafter referred to as respondent, has

Complaint

45 F. T. C.

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

PARAGRAPH 1. Respondent, Columbia Appliance Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 225 West Fifty-seventh Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of synthetic solvent dry-cleaning machines used in the cleaning of clothing, and in the sale and distribution of synthetic dry-cleaning solvents, including trichlorethylene, sometimes sold by respondent under the name of "Triclene," for use in such machines. Respondent is now causing, and has caused, said synthetic dry-cleaning solvents, when sold, to be transported from places located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in synthetic dry-cleaning solvents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the sale and distribution of synthetic dry-cleaning solvents for use in synthetic solvent dry-cleaning machines is in competition with a number of corporations, partnerships, and individuals that are now, and for more than 2 years last past have been, engaged in the sale and distribution of synthetic dry-cleaning solvents for use in such machines in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors is Kolene, Inc., a corporation created under the laws of the State of Michigan, having its principal office and place of business located in Detroit, Michigan, which is now, and for more than 2 years last past has been, engaged in the sale and distribution of the synthetic dry-cleaning solvent called "Kolene C," also sometimes called "Kolene."

PAR. 4. (1) Respondent, in the course and conduct of its business and for the purpose of inducing owners and users of Columbia synthetic solvent dry-cleaning machines made and sold by respondent to purchase from respondent the synthetic dry-cleaning solvent, trichlorethylene, sometimes called "Triclene," sold by respondent, in preference to Kolene C, sometimes called "Kolene," represents and has represented to such owners and users that said trichlorethylene, and not

Kolene C, should be used in such machines, giving various reasons therefor, among which the following are typical:

(a) Kolene C has no merit as a dry-cleaning agent for use in Columbia and other synthetic solvent dry-cleaning machines, because it consists of carbon tetrachloride, or trichlorethylene, plus about 20 percent adulterants, which are of no value in dry cleaning, and which, from time to time, are changed;

(b) Kolene C is not a suitable substitute for trichlorethylene, being but an experimental low-priced substitute for it, without its proven merits for dry-cleaning purposes;

(c) Kolene C is a combination of carbon tetrachloride and benzol, which, upon distillation in Columbia and other synthetic solvent dry-cleaning machines, will separate and cause trouble;

(d) Kolene C, if used in Columbia synthetic solvent dry-cleaning machines, will corrode such machines, and the corrosion thus formed will necessitate the making of expensive repairs and result in loss of time to the operators and owners of such machines, because Kolene C contains about 80-percent carbon tetrachloride;

(e) Kolene C is dangerous to life and health, and, if used in synthetic solvent dry-cleaning machines, will cause illness to the operators of such machines and result in loss of time and money to the owners of such machines, because Kolene C contains carbon tetrachloride and, also because it contains benzol; whereas trichlorethylene, as compared to carbon tetrachloride and benzol, is comparatively harmless to life and health, and not a health hazard when used in synthetic solvent dry-cleaning machines;

(f) Kolene C will catch on fire and explode, if used in synthetic solvent dry-cleaning machines, because it contains about 20-percent benzol;

(g) Kolene C is inflammable and an explosive, because it contains about 18-percent benzine, that is, the petroleum product, also commonly called "naphtha";

(h) The use of Kolene C in synthetic solvent dry-cleaning machines will constitute a fire hazard and risk to the owners of such machines and will affect their fire ratings, insurance, and licenses, and permits to operate;

(i) Kolene C is more inflammable and explosive than trichlorethylene or "Triclene," the solvent sold by respondent;

(j) Proof of the aforesaid statements could easily be obtained by users of synthetic solvent dry-cleaning machines by the submission of samples of Kolene C for analysis to any competent laboratory, and without charge at the laboratories of the E. I. du Pont de Nemours

Complaint

45 F. T. C.

& Co., Inc., at Niagara Falls, N. Y., and at the laboratories of the National Association of Dyers & Dry Cleaners, at Silver Spring, Md.; and

(k) Owners and users of synthetic solvent dry-cleaning machines, by securing the facts on Kolene C as above specified, could save themselves substantial sums of money in repair bills, difficulties, and loss of time due to illness, that would result from their use of Kolene C in synthetic solvent dry-cleaning machines.

(2) The aforesaid statements, claims, representations, implications and inferences, and others of similar import and meaning, have been made, published and caused to be made and published by respondent in, and among and between, various States of the United States and the District of Columbia, by means of letters transmitted by United States mails and otherwise.

PAR. 5. (1) The aforesaid statements, claims, representations, implications, and inferences are exaggerated, false, misleading, and deceptive.

(2) Through and by means of said statements, claims, representations, implications, and inferences aforesaid, respondent has unfairly disparaged the product Kolene C.

PAR. 6. (1) There is no basis from either a scientific or a practical standpoint for a representation that Kolene C has no merit as a synthetic dry-cleaning solvent, or that it has been made from adulterants of no value in dry cleaning, or that its components have been changed from time to time, or that it should be regarded as a substitute of questionable value for trichlorethylene as a dry-cleaning agent. The truth is that Kolene C has been used successfully for dry-cleaning purposes in synthetic solvent dry-cleaning machines and that trichlorethylene, when used for dry cleaning, in contact with some fabrics and dyes, has had damaging effects. Also, it is a fact that carbon tetrachloride and synthetic solvents having a carbon tetrachloride base have been used successfully as dry-cleaning agents and have had much wider use in synthetic solvent dry-cleaning machines than trichlorethylene.

(2) There is no basis for a statement that Kolene C, upon distillation in Columbia or other synthetic solvent dry-cleaning machines, would separate or, through a tendency to separate, cause trouble; or that the corrosive action of Kolene C would damage Columbia synthetic solvent dry-cleaning machines, so as to necessitate costly repairs to such machines or result in loss of time to the owners and operators of such machines. The truth is that Columbia synthetic solvent dry-cleaning machines have been made of metals which respondent has represented would withstand the corrosive effects of carbon tetra-

chloride, and that carbon tetrachloride and mixtures containing carbon tetrachloride, as well as Kolene C, have been used in such machines, as well as in machines of other manufacture, without undue or unusual corrosive effects.

(3) Any inference that Kolene C is more dangerous to life and health than trichlorethylene is deceptive. The truth is that trichlorethylene and Kolene C are both dangerous to life and health and, if not properly handled or properly used in synthetic solvent dry-cleaning machines, will cause illness to operators of such machines. There is no scientific or practical basis for an assertion or an inference that trichlorethylene, as compared to carbon tetrachloride or benzol, is comparatively harmless to health and not a health hazard, when used in synthetic solvent dry-cleaning machines.

(4) The truth is that Kolene C will not catch on fire or explode if used in synthetic solvent dry-cleaning machines. It has not been made of benzene, that is, the petroleum product commonly called "naphtha." The use of Kolene C in synthetic solvent dry-cleaning machines does not constitute a fire hazard or risk to owners of such machines and has had, and will have, no effect on the fire ratings, insurance, and licenses, and permits to operate, of the dry cleaners who have used Kolene C in their synthetic solvent dry-cleaning machines. Kolene C is not more inflammable nor more explosive than trichlorethylene or "Triclene." In fact "Triclene" has been given a higher numerical fire hazard rating than Kolene C by Underwriters' Laboratories, Inc., a nonprofit organization for the testing of materials as to their relation to life, fire, and casualty hazards.

(5) Inferences and statements on the part of respondent that the comparative statements made by respondent, as above set out, could easily be substantiated and without expense by owners and users of synthetic solvent dry-cleaning machines through their own investigations and submission of samples of Kolene C to any competent laboratory were false and deceptive. There is no basis for a representation that owners and users of synthetic solvent dry-cleaning machines could save themselves substantial sums of money in repair bills, difficulties, or loss of time due to illness, by using trichlorethylene instead of Kolene C in such machines.

PAR. 7. (1) The aforesaid statements, claims, representations, implications, and inferences made and published by respondent as aforesaid, have been made by respondent to distributors of synthetic solvents and others interested in the sale and use of synthetic solvents. The latter have thus been placed in a position by respondent to make and

Findings

45 F. T. C.

publish the aforesaid statements, claims, representations, implications, and inferences.

(2) The use by respondent of the acts and practices hereinabove mentioned in connection with the sale and distribution of synthetic dry-cleaning solvents in commerce has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, claims, representations, implications, and inferences are true, and cause and have caused many members of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's synthetic dry-cleaning solvents, in preference to the product Kolene C.

(3) The use by respondent of the acts and practices, as aforesaid, also has the capacity and tendency to, and does, divert trade unfairly to respondent, and to the sellers of its solvents, from Kolene, Inc., and the sellers of the product Kolene C.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Columbia Appliance Corporation, charging said respondent 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 that act. After the respondent filed its answer to said complaint, a written stipulation was entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, and in this stipulation it was provided that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all evidence, and that the Commission may proceed upon the complaint, the respondent's answer, and said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding. In said stipulation the respondent expressly waived the filing of a trial examiner's report upon the evidence, but it did not waive the filing of briefs or the presentation of oral argument.

Thereafter, this proceeding regularly came on for final hearing upon the complaint, the respondent's answer thereto, and the stipulation as to the facts, said stipulation having been approved, accepted and filed (the respondent having decided not to file a brief or to request oral argument and no brief having been filed or oral argument requested by counsel in support of the complaint); 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, Columbia Appliance Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business formerly located at 225 West Fifty-seventh Street, in the city of New York, State of New York, and now located at 8-16 Forty-third Avenue, Long Island City, New York.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the manufacture and in the sale and distribution of synthetic solvent dry-cleaning machines, used in the cleaning of clothing, and in the sale and distribution of synthetic dry-cleaning solvents, including trichlorethylene, sold under the name of "Tri-Clene," for use in such machines. All of said solvents have been made by E. I. du Pont de Nemours & Co., Inc. (hereinafter referred to as "du Pont"), of Wilmington, Del. The respondent is now causing, and has caused, its synthetic dry-cleaning solvents, when sold, to be transported from places located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce among and between the various States of the United States and in the District of Columbia.

Du Pont also sells trichlorethylene under the name of "Tri-Clene" and perchlorethylene under the name of "Per-Clene," for use in synthetic solvent dry-cleaning machines, and it distributes these synthetic dry-cleaning solvents through a number of authorized distributors located in various States.

In order to handle the sale and distribution of its synthetic dry-cleaning machines and its synthetic dry-cleaning solvents, the respondent maintains a solvent sales office in Long Island City, New York. It has its salesmen and technical servicemen call upon jobbers, dis-

tributors, and users of dry-cleaning equipment in the interest of the sale and distribution of its products, and these salesmen and technical servicemen often make calls on users of dry-cleaning equipment in the company of salesmen employed by the jobbers and distributors. They sometimes carry with them equipment for testing dry-cleaning solvents and are given instructions by the respondent's main office on competitive products and the manner in which to deal with the problems met in the field.

PAR. 3. For more than 2 years prior to the enactment and adoption, in October 1941, of emergency measures looking to the defense of the United States in the recent World War, approximately 15 to 20 percent of the dry cleaning in the United States was done in machines using synthetic solvents, commonly known as synthetic solvent machines, and the remainder was done in machines using petroleum naphtha, commonly known as naphtha plants and naphtha systems. Most of the dry cleaning which was done in the synthetic solvent machines was done with mixtures containing carbon tetrachloride, including mixtures of carbon tetrachloride and ethylene dichloride. About 5 to 7 percent of the dry cleaning, or about 33 percent of said 15 to 20 percent, was done with trichlorethylene and perchlorethylene. During the time mentioned, The Dow Chemical Co. of Midland, Mich., made approximately 50 percent of the carbon tetrachloride and ethylene dichloride thus used. In addition to The Dow Chemical Co. only a few other concerns made carbon tetrachloride, the chief ones being Westvaco Chlorine Products Corp., The Diamond Alkali Co., and Niagara Smelting Corp. Almost all of the distribution of the latter company was handled by du Pont. Du Pont was then making approximately 94 to 97 percent of the trichlorethylene then being manufactured, and Westvaco Chlorine Products Corp. was making the balance. At such time du Pont was making approximately 50 percent of the perchlorethylene then being manufactured and The Dow Chemical Co. was making the balance. Between 4,000 and 5,000 dry cleaners in the United States were using synthetic solvent machines. Approximately 40 to 50 percent of these dry cleaners were using in their machines the synthetic solvents of The Dow Chemical Co.

In 1938, the Kolene Corp. (also known as Kolene, Inc.) of Detroit, Mich., entered the synthetic slovent dry-cleaning field. At that time it began to produce and sell, and has since continued to produce and sell, a synthetic dry-cleaning solvent called Kolene C. For more than 2 years prior to 1941, Kolene Corp. was regularly selling its product, Kolene C, to approximately 500 dry cleaners. This product has always been made of carbon tetrachloride, trichlorethylene, and

benzol (benzol being a product made by the fractional distillation of coal).

After October 1941, the synthetic dry-cleaning solvents above mentioned were largely diverted to defense and war purposes and deliveries thereof to dry cleaners were curtailed. For the most part, however, the situation in the dry-cleaning industry now is about the same as it was prior to October 1941.

PAR. 4. In promoting the sale and distribution of its synthetic dry-cleaning solvents, the respondent, during the period from 1938 to the date of the complaint in this proceeding (January 13, 1942), by means of letters, transmitted through the United States mails and otherwise, made a number of claims, statements, and representations to owners and users of synthetic solvent dry-cleaning machines, manufacturers of such machines, and distributors and other interested in the sale and use of synthetic solvents to the effect that only the solvents named above made by du Pont, namely trichlorethylene and Tri-Clene, and not Kolene C, should be used for dry cleaning in said synthetic solvent dry-cleaning machines. In support of these statements and representations, the respondent gave various reasons therefor, among which were the following:

(a) That Kolene C has no merit as a dry-cleaning agent for use in synthetic solvent dry-cleaning machines because it consists of carbon tetrachloride or trichlorethylene plus about 20 percent adulterants, which are of no value in dry cleaning, and which from time to time are changed;

(b) That Kolene C is not a suitable substitute for trichlorethylene, being but an experimental low-priced substitute for it, without its proven merits for dry-cleaning purposes;

(c) That Kolene C is a combination of carbon tetrachloride and benzol, which, upon distillation in Columbia and other synthetic solvent dry-cleaning machines, will separate and cause trouble;

(d) That Kolene C, if used in Columbia synthetic solvent dry-cleaning machines, will corrode such machines, and the corrosion thus formed will necessitate the making of expensive repairs and result in loss of time to the operators and owners of such machines, because Kolene C contains about 80-percent carbon tetrachloride;

(e) That Kolene C is dangerous to life and health, and, if used in synthetic solvent dry-cleaning machines, will cause illness to the operators of such machines and result in loss of time and money to the owners of such machines, because Kolene C contains carbon tetrachloride and also because it contains benzol; whereas trichlor-

ethylene, as compared to carbon tetrachloride and benzol, is comparatively harmless to life and health, and not a health hazard when used in synthetic solvent dry-cleaning machines;

(f) That Kolene C will catch on fire and explode, if used in synthetic solvent dry-cleaning machines, because it contains about 20 percent benzol;

(g) That "Kolene C" is inflammable and an explosive because it contains about 18 percent benzine, that is, the petroleum product also commonly called "naphtha";

(h) That the use of "Kolene C" in synthetic solvent dry-cleaning machines will constitute a fire hazard and risk to the owners of such machines and will affect their fire ratings, insurance, and licenses, and permits to operate;

(i) That "Kolene C" is more inflammable and explosive than trichlorethylene or "Tri-Clene";

(j) That proof of the aforesaid statements could easily be obtained by users of synthetic solvent dry-cleaning machines by the submission of samples of "Kolene C" for analysis to any competent laboratory, and without charge at the laboratories of the E. I. du Pont de Nemours & Co., Inc., at Niagara Falls, N. Y., and at the laboratories of the National Association of Dyers & Dry Cleaners, at Silver Spring, Md.; and

(k) That owners and users of synthetic solvent dry-cleaning machines, by securing the facts on "Kolene C" as above specified, could save themselves substantial sums of money in repair bills, difficulties, and loss of time due to illness, that would result from their use of "Kolene C" in synthetic solvent dry-cleaning machines.

The aforesaid statements, claims, representations, and inferences, and others similar thereto, were made by the respondent to distributors of synthetic solvents and others interested in the sale of such products, and the respondent thus placed in the hands of the distributors and others the means of passing on to purchasers the information so provided.

PAR. 5. (a) There is no basis from either a scientific or practical standpoint for a representation or inference that "Kolene C" has no merit or is without value or that it is not suitable or satisfactory for dry cleaning purposes; or that "Kolene C" has been made of mixed solvents and adulterants which are of no value in dry cleaning, or that its components have been changed from time to time, or that "Kolene C" is not a suitable substitute for trichlorethylene for dry cleaning or that it is without trichlorethylene's proven merits for dry-cleaning purposes.

(b) There is no scientific or practical basis for a statement that "Kolene C," upon distillation in Columbia or other synthetic solvent dry-cleaning machines will separate or, through a tendency to separate, cause trouble or corrode the machines in which it is used any more than "Tri-Clene" or trichlorethylene; and any statement or inference that "Kolene C" is subject to such faults, and that "Tri-Clene" and trichlorethylene, as made by du Pont and sold by the respondent, are stable solvents that are free from such faults is false and deceptive.

(c) Any statement or inference that "Kolene C" is more toxic, poisonous, and dangerous to life and health than "Tri-Clene" or trichlorethylene, as made by du Pont and sold by the respondent, is deceptive. There is no scientific or practical basis for an assertion or inference that either "Tri-Clene" or trichlorethylene, as compared with carbon tetrachloride or benzol, is comparatively harmless to life and is not a health hazard when used in synthetic solvent dry-cleaning machines.

(d) There is no scientific or practical basis for an assertion or inference that "Kolene C" is inflammable and an explosive because it contains 18-percent benzine, or otherwise, or that "Kolene C" will catch on fire and explode when used in synthetic solvent dry-cleaning machines because it contains benzol or that when thus used it constitutes a fire hazard and risk.

(e) Any statement or inference that "Kolene C" is more inflammable or explosive than "Tri-Clene" or trichlorethylene and the solvents made therefrom, as made by du Pont and sold by the respondent, when used for dry cleaning in synthetic solvent dry-cleaning machines, or that the use of "Kolene C" will affect the fire ratings, insurance, or licenses to operate, is false and deceptive.

(f) Proof of the statements and representations made by the respondent could not have been obtained by users of synthetic solvent dry-cleaning machines by the submission of samples of "Kolene C" to any laboratory for analysis and could not have been obtained at the laboratories of du Pont or at the laboratories of the National Association of Dyers & Cleaners, and the respondent's representations to the contrary were false and deceptive. Any statement or inference that the owners and users of synthetic solvent dry-cleaning machines, by securing the facts on "Kolene C" could save themselves substantial sums of money in repair bills, difficulties, and loss of time due to illness that would result from their use of "Kolene C" in synthetic solvent dry-cleaning machines, is false and deceptive.

Findings

45 F. T. C.

(g) The actual properties of "Kolene C" and the composition thereof are covered herein by paragraphs 3, 5, and 6.

PAR. 6. At the time the representations referred to in paragraph 4 were made, du Pont had in fact procured samples of "Kolene C" and had had these samples analyzed in its laboratories and had furnished the respondent with a number of reports of such analyses. Du Pont had not, however, by its analyses or otherwise, determined the true composition of said product, and neither it nor the respondent was in a position to represent to the trade just what the components or the characteristics or properties of the product were.

The record shows that "Kolene C" has been used successfully for dry-cleaning purposes in synthetic solvent dry-cleaning machines and that it has given, and does give, satisfactory results when so used for such purposes.

The solvents, "Tri-Clene" and trichlorethylene, as made by du Pont and sold by the respondent, when in the presence of water encountered in dry-cleaning operations in synthetic solvent dry-cleaning machines, are subject to the same type of faults as carbon tetrachloride. During working operations in synthetic solvent dry-cleaning machines these solvents must be handled the same as "Kolene C," the product of the Kolene Corp., to insure satisfactory operating results, both as to the machines being thus used and the materials being thus dry cleaned. Trichlorethylene and "Tri-Clene," as made by du Pont and as sold by the respondent, when used for dry cleaning in contact with some fabrics and dyes have had damaging effects. Carbon tetrachloride and synthetic solvents having a carbon tetrachloride base have been used successfully as dry-cleaning agents and have had such wider use in synthetic solvent dry-cleaning machines than trichlorethylene, including the solvent "Tri-Clene," as made by du Pont from trichlorethylene, and sold by the respondent. "Kolene C" has been used in synthetic solvent dry-cleaning machines without undue or unusual corrosive effects upon such machines and without injury to the materials being cleaned.

All of the products mentioned herein as having been used for dry-cleaning purposes are poisonous and toxic to some extent and, if allowed to come in contact with the skin or if the vapors thereof are inhaled, are dangerous to life and health. If not properly handled or properly used in synthetic solvent dry-cleaning machines, all of said solvents will cause illness to the operators of such machines. Such dangers are increased by continued and repeated contacts with said solvents. Hence, it is deceptive and disparaging for the respondent to refer to "Kolene C" as more toxic, poisonous, or dangerous than the

other named solvents; and in this connection, the nature of the impairment to health resulting from contacts with such solvents is immaterial and reference thereto in the circumstances is deceptive and disparaging. In scientific circles, distinctions as to the safety or dangerous character of said solvents may be justified, but in the commercial world broad distinctions as to the relative safety or dangerous character of said solvents are not justified, and if made in connection with the sale of such solvents constitute unfair, false, and deceptive acts and practices and an unfair, false, and misleading method of competition.

"Kolene C" will not catch on fire or explode when used in synthetic solvent dry-cleaning machines. The use of "Kolene C" in synthetic solvent dry-cleaning machines under standard or usual conditions does not constitute a fire hazard or risk to the owners and users of such machines, and when thus used it is not inflammable. Such solvent is not more inflammable nor more explosive when used for such purposes than "Tri-Clene" or trichlorethylene or the solvents made therefrom, as the latter are made by du Pont and sold by the respondent. There is no basis for an inference or representation that use of said solvent constitutes a fire hazard when such solvent is used for dry cleaning by reason of the fact that in tests made of said solvent in the laboratories it may have been found to be "slightly flammable" at the higher temperatures under which said tests were made. With respect to the flammability of "Kolene C," the Underwriters Laboratories, Inc. (an enterprise sponsored by the National Bureau of Fire Underwriters, operated for service and not for profits), in a report dated June 1939, stated in part:

The product is a colorless, volatile liquid intended for use as a cleaning fluid; it is chemically stable and not flammable at ordinary temperatures; it is possible to produce moderately combustible mixtures with air under laboratory test conditions at higher temperatures (167 F. and upwards) but under practical conditions the formation of combustible mixtures at temperatures as low as 167 F. is extremely unlikely.

This is substantially the same language used by this concern in reporting on the flammability of trichlorethylene. Contrary to the respondent's representations, "Kolene C" was never made with "benzine" or "petroleum naphtha," which would have made it more inflammable than "Tri-Clene" or trichlorethylene. The component benzol, which was actually contained in said product, is not a petroleum derivative, and the fire hazard of the preparation "Kolene C" has been consistently regarded by competent investigators as "very small."

PAR. 6. The false, misleading, and disparaging representations made by the respondent to the effects and in the manner aforesaid have had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of the respondent's products in preference to the product "Kolene C." Because of such erroneous belief, said false and misleading representations and disparagements also have the tendency and capacity unfairly to divert trade from the sellers of the preparation "Kolene C" to the respondent and to the sellers of the respondent's products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure except the filing of briefs and the presentation of oral argument (the filing of briefs and the presentation of oral argument having been subsequently waived), the Commission may issue and serve upon the respondent its findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Columbia Appliance Corp., and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its synthetic dry-cleaning solvents, do forthwith cease and desist from:

(1) Misrepresenting in any manner the constituents, properties, or characteristics of "Kolene C," or of any other dry-cleaning solvent sold in competition with the respondent's product;

(2) Representing, directly or by implication, that "Kolene C" has no merit or value or that it is not suitable or satisfactory as a dry-cleaning agent;

(3) Representing, directly or by implication, that "Kolene C," when used in synthetic solvent dry-cleaning machines, will separate, break down or form acid, or that it will react unfavorably against or corrode the machines in which such solvent is used;

(4) Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene C" are greater than the toxicity of or dangers from the fumes of the respondent's dry-cleaning solvent; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene C" or any other competing dry-cleaning solvent;

(5) Representing, directly or by implication, that the hazards of fire or explosion from the use of "Kolene C" are greater than the hazards of fire or explosion from the use of the respondent's dry-cleaning solvent; or representing, directly or by implication, that "Kolene C" is inflammable or explosive when used for dry-cleaning purposes under standard or usual conditions for such work;

(6) Making or publishing any false or disparaging representations concerning the dry-cleaning solvent of any competitor; or supplying to or placing in the hands of distributors or others any statement, claim, report, or data which may be used by such distributors or others as a means of or basis for any false or disparaging representation concerning the dry-cleaning solvent of any competitor.

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

IN THE MATTER OF
DETROIT REX PRODUCTS COMPANY

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

Docket 4674. Complaint, Jan. 21, 1942—Decision, Dec. 30, 1948

As respects the question as to whether or not two particular solvents used in synthetic solvent dry-cleaning and degreasing machines, may be properly characterized as more toxic, poisonous, or dangerous than certain others thus used, it appearing that all are poisonous and toxic to some extent and are dangerous to life and health if allowed to come in contact with the skin or if the vapors thereof are inhaled, and, furthermore, that all, if not properly handled or used in such machines, will cause illness to the operators—dangers which are increased by repeated contacts: it is deceptive and disparaging for the seller of certain of the other solvents competitive therewith to refer to said particular solvents as more toxic, poisonous, and dangerous than its own.

In such a connection the nature of the impairment to health which results from contacts with such particular solvents is immaterial and reference thereto is deceptive and disparaging; and while in scientific circles distinctions as to the safety or dangerous character of such particular solvents may be justified, in the commercial world broad distinctions as to the relative safety or dangerous character thereof are not justified, and, in connection with the sale thereof, constitute false and deceptive acts and practices and an unfair, false, and misleading method of competition.

Where a corporation which (1) was engaged in the manufacture and the interstate sale and distribution of synthetic solvent degreasing machines, for use in the cleaning of oil and grease from metal products, and in the similar sale of its synthetic dry-cleaning and degreasing solvents consisting of trichlorethylene, made by du Pont prior to January 1, 1947; (2) sold its degreasing solvents as "Triad" and "Perma-A-Clor"; (3) together with G. S. Blakeslee & Co., of Chicago, Ill., made all except a limited number of such degreasing machines, and, along with it, was party to a number of agreements and arrangements with the du Pont Co. covering the manufacture of such machines and the distribution of du Pont's synthetic degreasing solvents, including those sold by Blakeslee as "Blakosolv"; and which (4), along with Blakeslee, under said arrangements, handled a large part of the distribution of the degreasing solvents of du Pont, who also sold trichlorethylene as "Triclene D" (or, formerly, as "Cecolene No. 1"), and perchlorethylene as "Per-Clene (or, formerly, as "Cecolene No. 2"), for use in degreasing machines, and sold and distributed for use in synthetic solvent dry-cleaning machines, through various distributors and jobbers and through the Columbia Appliance Corp. of Long Island City, N. Y., manufacturer of synthetic solvent dry-cleaning machines, said trichlorethylene as "Triclene";

In promoting the sale and distribution of its said synthetic solvents through salesmen and technical servicemen who called upon jobbers and dry cleaners,