

Syllabus

IN THE MATTER OF

E. I. DU PONT DE NEMOURS & COMPANY, INC.

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

Docket 4685. Complaint, Jan. 28, 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, 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 hot 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 certain of the other solvents competitive therewith to refer to said particular solvents as more toxic, poisonous, and dangerous than the others.

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 engaged in the manufacture of synthetic dry-cleaning and degreasing solvents which consisted of chloronated hydrocarbon solvents, trichlorethylene and perchlorethylene; and in the interstate sale and distribution of the two last referred to, under the names "Tri-Clene," and "Perclene," respectively, for use in synthetic solvent dry-cleaning machines, through a number of authorized distributors and jobbers of chemicals, and through the Columbia Appliance Corp., maker also of such machines; and of its synthetic degreasing solvents for use in synthetic solvent degreasing machines through two companies, manufacturers of most of such machines (namely, the Detroit Rex Products Co., and the G. S. Blakesley Co. of Cicero, Ill.), who sold and distributed its said trichlorethylene solvents under the names of "Tri-Ad" and "Permachlor" in the case of the former, and "Blacosolv" in the case of the latter;

In promoting the sale and distribution of its said synthetic solvents through salesmen and technical servicemen who called upon jobbers, distributors, dry cleaners and users of degreasing equipment—often in the company of salesmen employed by the jobbers and distributors, were instructed by the main office on competitive products and the manner in which to deal with problems met in the field, and sometimes carried with them equipment for testing synthetic solvents, which included (1) carbon tetrachloride

Syllabus

45 F. T. C.

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 accounted for 15 percent of the dry cleaning done with synthetic solvent machines as compared with that done with “naphtha plants” and “naphtha systems”; (2) trichlorethylene of which said corporation made from 94 to 97 percent, and which, along with the solvents made therefrom, prior to the entrance of the Kolene Corp. into the field as below set out, was used almost exclusively for solvent degreasing; (3) perchlorethylene or “Perclene,” production of which was about equally divided between Dow and du Pont and which, together with said “Tri-clene,” made up about one-third of the synthetic dry-cleaning solvents then used; and (4) since about 1938 two products, namely, “Kolene C,” composed of carbon tetrachloride, trichlorethylene, and benzol, which was produced by the Kolene Corp. and by it sold to some 500 dry cleaners, and “Kolene T,” said concern’s degreasing solvent, similarly composed, until September 1939, and thereafter known as “Kolyte,” and made of trichlorethylene, perchlorethylene and benzol or toluol—

- (a) Represented through letters and otherwise to distributors and others interested in the sale of synthetic solvents that “Kolene C” and “Kolene T” should not be used in dry-cleaning and degreasing machines, through such statements as that they were without merit or value and unsuitable and unsatisfactory for such uses, that they had been found to be unsatisfactory and would give poor results and cause trouble and difficulty;

The facts being that while said corporation had had samples of said solvents analyzed in its laboratories, it had not determined their true composition and was in no position to represent to the trade just what the components or properties thereof were; and said solvents had in fact been used successfully for dry cleaning and for degreasing and had given satisfactory results;

- (b) Represented that said “Kolene T,” upon being heated in the course of degreasing metals in degreasing machines, and that said “Kolene C” and “Kolene T” upon being distilled in dry-cleaning and degreasing machines, would separate, break down, form acid and react unfavorably against and corrode such machines; and, in the case of degreasing, react unfavorably against and corrode the metals being degreased; whereas its own synthetic solvents, trichlorethylene and perchlorethylene, were stable solvents which were comparatively free from such faults;

The facts being that its own said solvents, when in contact with metals and also in the presence of water encountered in dry-cleaning and degreasing operations in the machines, were subject to the same type of faults as carbon tetrachloride and needed to be handled the same as said “Kolene C” and “Kolene T,” to insure satisfactory results; trichlorethylene, when used for dry cleaning some fabrics and dyes, has had damaging effects; carbon tetrachloride and synthetic solvents based thereon have been used successfully as dry-cleaning agents and have had much wider use in synthetic solvent dry-cleaning machines than trichlorethylene and perchlorethylene combined; and said Kolene products have been used in such machines without undue or unusual corrosive effects thereon, and without injury to the materials being cleaned or the metals being degreased;

- (c) Represented that said Kolene products, when used in such machines, were more toxic, poisonous, and dangerous to life and health than its own afore-

said solvents; that toxic and poisonous effects attended their use by owners and users of such machines and that such effects attend the use of carbon tetrachloride and benzol; that a health hazard occurs from breathing benzol vapors; and that said "Kolene" should bear a "poison" label; whereas, in comparison, its own said synthetic solvents were not attended by such effects, and as compared to carbon tetrachloride and benzol were comparatively harmless to life and health and did not need a "poison" label;

The facts being that all of the products mentioned as used for such purposes are to some extent poisonous and toxic and, if allowed to come in contact with the skin or if vapors thereof are inhaled, dangerous to life and health; all, if not properly handled or properly used in such machines, will cause illness to the operators; and such references to "Kolene C" and "Kolene T" as more toxic, etc., than the others were deceptive and disparaging; and it did not appear, as respects certain agreements theretofore entered into voluntarily with the United States Public Health Service, by the manufacturers of carbon tetrachloride and benzol, that said Kolene Corp. was required to label either of its said products as a poison; or as containing more than 24 percent by weight of carbon tetrachloride, or more than 15 percent of benzol;

(d) Represented falsely that said "Kolene C" and "Kolene T" would catch on fire and explode if used in such machines because they contained benzol and carbon tetrachloride and other things which would break down, permitting the carbon tetrachloride to escape and leaving the benzol which would catch on fire and explode; that when thus used said solvents constituted a fire hazard and risk and were inflammable; that said "Kolene" products "would not flash or catch on fire up to the initial boiling point"; whereas, its own aforesaid solvents could be used, heated, and distilled in the dry-cleaning and degreasing machines without risk of fire or explosion;

The facts being that said "Kolene C" and "Kolene T" were not inflammable, nor more so, or more explosive, than trichlorethylene or perchlorethylene, or its solvents made therefrom; and there was no basis for an inference or representation that they constituted a fire hazard, when thus used, by reason of the fact that in laboratory tests they might have been found to be "slightly flammable" at the higher temperatures under which said tests were made; and

(e) Falsely represented that proof of the above-mentioned properties of said "Kolene C" and "Kolene T" had been made by laboratory and other tests made by it and others; the facts being as hereinabove set forth;

With result of placing in the hands of distributors and others the means of passing on to purchasers the information thus provided; and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public into purchase of its products in preference to that of said Kolene products; and thereby unfairly to divert trade from the sellers of the latter to said corporation and the sellers of its products:

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

As respects certain agreements which the manufacturers of carbon tetrachloride and of benzol entered into voluntarily and independently of one another

Complaint

45 F. T. C.

with the United States Public Health Service, with respect to the labeling of carbon tetrachloride and benzol, and under which the manufacturers of the former agreed that mixtures containing 24 percent or more thereof should be labeled "Volatile solvent. Use with adequate ventilation. Avoid prolonged breathing of vapor," and should also include the statement "contains more than 24% by weight of carbon tetrachloride,"; and manufacturers of the latter agreed that mixtures containing 15% or more of benzol should be labeled "volatile solvent—Poison Use with adequate ventilation. Avoid prolonged breathing of vapor," and "The product contains more than 15% benzol": said agreements did not constitute findings by a public body as to the properties of the products covered thereby, or a determination of said Public Health Service of the comparative toxicity of said products and others.

In the aforesaid proceeding there was no basis for the inference or representation that the use of said solvent "Kylene 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 laboratories in reporting on the flammability of the competitive trichlorethylene.

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

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and Mr. Oscar A. Provost and Mr. John W. Eckelberry, of Wilmington, Del., 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 E. I. du Pont de Nemours & Co., Inc., a corporation, hereinafter referred to as respondent, has 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, E. I. du Pont de Nemours & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1007 Market Street, Wilmington, Del.

PAR. 2 (1) Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of synthetic degreasing and dry-cleaning solvents, consisting of trichlorethylene and perchlorethylene, for use in synthetic solvent degreasing and dry-cleaning machines. Respondent is now causing, and has caused, said synthetic 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 said synthetic solvents, in commerce among and between the various States of the United States and in the District of Columbia.

(2) In the United States almost all of the synthetic solvent degreasing machines are sold by one of three companies, namely, respondent, also Detroit Rex Products Co., a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in Detroit, Mich.; and G. S. Blakeslee & Co., a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business in Cicero, Ill. These three companies are parties to agreements and arrangements covering the manufacture of synthetic solvent degreasing machines and the distribution of synthetic degreasing solvents made by respondent. Detroit Rex Products Co. sells and distributes synthetic degreasing solvents, under the names of "Triad" and "Perm-A-Clor," consisting of trichlorethylene, made by respondent. G. S. Blakeslee & Co. sells and distributes synthetic degreasing solvents under the name of "Blacosolv," consisting of trichlorethylene made by respondent. The latter two companies sell degreasing solvents made only by respondent, and under the arrangements aforesaid, handle a large part of the distribution of respondent's degreasing solvents. Respondent also sells trichlorethylene under the name of "Cecolene No. 1" and perchlorethylene under the name of "Cecolene No. 2" for use in synthetic solvent degreasing machines, which it distributes, in part, through a number of authorized distributors located in various States.

(3) Respondent 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 distributes said synthetic dry-cleaning solvents through a number of authorized distributors located in various States, including jobbers handling chemicals, and Columbia Appliance Corp., a corporation organized and existing under and by virtue of the laws of the State of New York,

Complaint

45 F. T. C.

with its principal office and place of business in New York, N. Y. The latter company is also engaged in the manufacture and sale of synthetic solvent dry-cleaning machines.

(4) Respondent, in the course of its business, makes contacts with various persons interested in the sale and use of synthetic solvents through its home office, its several divisions and branch offices, its considerable number of dealers located in principal cities, and a number of salesmen schooled in chemistry, salesmanship, dry cleaning, and degreasing. Data of advantage to respondent in combating competition from competing solvents are secured by respondent through its contacts aforesaid and the companies named aforesaid interested in the sale of its solvents. Statements relating to such data, based thereon, and in opposition thereto, are disseminated and distributed by respondent through its various contacts aforesaid.

PAR. 3. Respondent, in the sale and distribution of its synthetic degreasing and dry-cleaning solvents for use in synthetic solvent degreasing and 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 degreasing and 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 said competitors is Kolene Corp., a corporation organized and existing under and by virtue of the laws of the State of Michigan, having its principal office and place of business located in Detroit, Mich., which is now and for more than 2 years last past has been engaged in the sale and distribution of the synthetic degreasing solvent called "Kolene T" and the synthetic dry-cleaning solvent called "Kolene C," which have been referred to by respondent as "Kolene."

PAR. 4. (1) Respondent, in the course and conduct of its business and for the purpose of inducing owners and users of synthetic solvent degreasing and dry-cleaning machines to purchase the synthetic degreasing and dry-cleaning solvents made by respondent, consisting of trichlorethylene and perchlorethylene, in preference to the solvents aforesaid sold by Kolene Corp.; and, for the purpose of lessening, preventing, and destroying competition by Kolene Corp., in the sale of synthetic degreasing and dry-cleaning solvents, and of injuring, hindering, and eliminating it as a competitor in the synthetic solvent degreasing and cleaning field: engages, and has engaged in a number of acts and practices, namely, the making of claims, statements, representations, implications, and inferences to owners and users of syn-

thetic solvent degreasing and dry-cleaning machines, manufacturers of such machines, distributors of synthetic solvents, and others interested in the sale and use of synthetic solvents; among which the following are typical:

(a) "Kolene T" has no merit, is of no value, and is not suitable or satisfactory as a degreasing agent, and "Kolene C" has no merit, and is without value, unsuitable, and unsatisfactory as a dry-cleaning agent, and such solvents have been found to be unsatisfactory solvents for both degreasing and dry-cleaning and if they are used for such purposes will give poor results and cause trouble and difficulty;

(b) "Kolene T," upon being heated in the course of degreasing metals in synthetic solvent degreasing machines; and "Kolene T" and "Kolene C" upon being distilled in synthetic solvent degreasing and dry-cleaning machines, will separate, break down, form acid, react unfavorably against and corrode such machines, and in the case of degreasing, react unfavorably against and corrode the metals being degreased; whereas, respondent's synthetic solvents, trichlorethylene and perchlorethylene, are stable solvents that are free from such faults;

(c) "Kolene T," when used in synthetic solvent degreasing machines, and "Kolene C" when used in synthetic solvent dry-cleaning machines are more toxic, poisonous, and dangerous to life and health than respondent's solvents, trichlorethylene and perchlorethylene;

(d) Toxic and poisonous effects attend the use of "Kolene T" and "Kolene C" by owners and users of synthetic solvent degreasing and dry-cleaning machines; toxic and poisonous effects attend the use of carbon tetrachloride and benzol and a health hazard occurs from breathing benzol vapors; "Kolene T" and "Kolene C" should bear a "poison" label; whereas, in comparison, respondent's synthetic solvents, trichlorethylene and perchlorethylene, are not attended by toxic or poisonous effects when used industrially for degreasing and dry cleaning, and as compared to carbon tetrachloride and benzol, they are comparatively harmless to life and health and not a health hazard, when used in synthetic solvent degreasing and dry-cleaning machines; and respondent's solvents aforesaid need not bear a "poison" label;

(e) "Kolene T" and "Kolene C" will catch on fire and explode if used in synthetic solvent degreasing and dry cleaning machines, because they contain benzol; and when thus used constitute a fire hazard and risk and are inflammable;

Complaint

45 F. T. C.

(f) "Kolene T" and "Kolene C" will not flash or catch on fire up to the initial boiling point; whereas, trichlorethylene and perchlorethylene, the solvents made by respondent, can be used, heated, and distilled in synthetic solvent degreasing and dry-cleaning machines without risk of fire or explosion;

(g) Proof of the properties of "Kolene T" and "Kolene C," as given in the statements aforesaid, has been made by laboratory and other tests made by respondent and others.

(2) Respondent, also in the course of its business, and for the purposes last aforesaid, engages, and has engaged in other acts and practices, among which the following are typical:

The furnishing to its salesmen, branch offices, distributors, manufacturers, and owners and users of synthetic solvent degreasing and dry-cleaning machines, and others interested in the sale and distribution of synthetic degreasing and dry-cleaning solvents, memoranda, reports, information, and data regarding such solvents and also regarding Kolene Corp.'s products, worded in such a way as to convey false, deceptive, and unfairly disparaging impressions regarding said products of Kolene Corp., and so worded that they could be used as the basis for false, deceptive, and unfairly disparaging impressions and statements regarding said products; and the using thereof by respondents in such a way that they were, and are likely to convey and did convey, false, deceptive, and unfairly disparaging impressions and statements regarding said products.

(3) The aforesaid statements, claims, representations, implications, inferences, memoranda, reports, information, and data, and others of similar import and meaning, have been made, published, distributed, and circulated, and caused to be made, published, distributed, and circulated 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, inferences, memoranda, reports, information, and data are exaggerated, false, misleading, and deceptive.

(2) Through and by means of said statements, claims, representations, implications, inferences, memoranda, reports, information, and data aforesaid, respondent has unfairly disparaged the products of Kolene Corp., namely, "Kolene T" and "Kolene C," sometimes referred to by respondent as "Kolene."

PAR. 6. (1) There is no basis from either a scientific or a practical standpoint for a representation or inference that the products of Kolene Corp., namely, "Kolene T" and "Kolene C," which have been re-

ferred to by respondent as "Kolene," have no merit, or are without value or are not suitable or satisfactory for degreasing or dry-cleaning purposes, or that they have been found to be unsatisfactory for degreasing or dry-cleaning purposes, or that, if they are used for such purposes, will give poor results or cause trouble or difficulty. The truth is that "Kolene T" has been used successfully for degreasing purposes and that "Kolene C" has been used successfully for dry-cleaning purposes. Also, it is a fact that the solvents, trichlorethylene and perchlorethylene, made by respondents, when in contact with metals, and also when in the presence of water encountered in degreasing and dry-cleaning operations in synthetic solvent degreasing and dry-cleaning machines, are subject to the same type of faults as carbon tetrachloride, and that during working operations in synthetic solvent degreasing and dry-cleaning machines must be handled the same as the products aforesaid of Kolene Corp. to insure satisfactory operating results, both as to the machines being thus used and the materials being thus degreased or cleaned. Also, it is a fact that trichlorethylene when used for dry cleaning, in contact with some fabrics and dyes, has had damaging effects; and 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 both trichlorethylene and perchlorethylene combined.

(2) There is no basis for a statement that "Kolene T," upon being heated in the course of degreasing metals in synthetic solvent degreasing machines, or that "Kolene T," or "Kolene C," upon being distilled in synthetic solvent degreasing or dry-cleaning machines, will separate, break down, form acid, or react unfavorably against or corrode such machines, or that in the case of degreasing, will react unfavorably against, or corrode the metals being degreased; and, any statement or inference that either "Kolene T" or "Kolene C" is subject to such faults and that trichlorethylene and perchlorethylene as made by respondent, are stable solvents that are free from such faults, is deceptive. The truth is that "Kolene T" has been used in synthetic solvent degreasing machines without undue or unusual corrosive effects on such machines, and without injury to, or unusual effects upon the metals being degreased. The truth is that "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.

(3) Any statement or inference that "Kolene T" or "Kolene C" is more toxic, poisonous, and dangerous to life and health than respond-

Complaint

45 F. T. C.

ent's solvents, trichlorethylene and perchlorethylene, is deceptive. The truth is that trichlorethylene, perchlorethylene, "Kolene T," and "Kolene C" are each toxic, poisonous, and dangerous to life and health, and if not properly handled or properly used in synthetic solvent degreasing or dry-cleaning machines will cause illness to the operators of such machines. There is no scientific or practical basis for an assertion or inference that either trichlorethylene or perchlorethylene, as compared to carbon tetrachloride or benzol, is comparatively harmless to life and health and not a health hazard when used in synthetic solvent degreasing and dry-cleaning machines. Statements that "Kolene T" and "Kolene C" must bear a "poison" label, whereas, the respondent's solvents, trichlorethylene and perchlorethylene, need not bear a "poison" label, as used by respondent, convey the false and deceptive inference and unfair comparison that the products of Kolene Corp. aforesaid when used in synthetic solvent degreasing and dry-cleaning machines are more toxic, poisonous, and dangerous to life and health than trichlorethylene and perchlorethylene.

(4) The truth is that "Kolene T" will not catch on fire or explode when used in synthetic solvent degreasing machines, and that "Kolene C" will not catch on fire or explode when used in synthetic solvent dry-cleaning machines. The use of "Kolene T" in synthetic solvent degreasing machines, and of "Kolene C" in synthetic solvent dry-cleaning machines does not constitute a fire hazard or risk to the owners and users of such machines, and when thus used are not inflammable. Such solvents are not more inflammable nor more explosive, when used for such purposes, than trichlorethylene or perchlorethylene as the latter are made by respondent. Any statement that "Kolene T" or "Kolene C" will not flash or catch on fire up to the initial boiling point is deceptive and may induce the belief that "Kolene T" and "Kolene C" are inflammable when used for degreasing or dry cleaning or when used under operating conditions in synthetic solvent degreasing or dry-cleaning machines; and statements to such effect, as used by respondent, convey the false and deceptive inference that "Kolene T" and "Kolene C" if used for degreasing in synthetic solvent degreasing machines or for dry cleaning in synthetic solvent dry-cleaning machines will catch on fire and explode. The fact is that trichlorethylene as made by respondent, sold under the names of "Tri-Clene," "Cecolene No. 1," "Blacosolv," "Triad," and "Perm-A-Clor," have each been given a numerically higher or greater fire-hazard rating than "Kolene C" by Underwriters' Laboratories, Inc., a nonprofit organization for the testing of materials as to their relative 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 have been substantiated by laboratory or other tests made by respondent and others, are false and deceptive. Such statements and inferences, as made and used by respondent, convey and have placed others in a position to convey the false, deceptive and unfairly disparaging statements aforesaid regarding said products of Kolene Corp.

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

(2) The use by respondent, of the aforesaid acts and practices hereinabove mentioned in connection with the sale and distribution of synthetic degreasing and 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 the synthetic degreasing and dry-cleaning solvents made by respondent, in preference to the products "Kolene T" and "Kolene C," and not to purchase the products "Kolene T" and "Kolene C."

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

PAR. 8. The aforesaid acts and practices of the respondent as hereinabove 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 28, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, E. I. du Pont de Nemours & Co., Inc., a corporation, charging said respondent with the use of unfair methods of competition in commerce

Findings

45 F. T. C.

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, the stipulation as to the facts, said stipulation having been approved, accepted and filed, and briefs of counsel (the respondent having decided not to request oral argument and none having been 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, E. I. du Pont de Nemours & Co., Inc. (hereinafter referred to as "du Pont"), is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1007 Market Street, in the City of Wilmington, State of Delaware.

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 dry-cleaning and degreasing solvents, consisting of chlorinated hydrocarbon solvents, trichlorethylene and perchlorethylene, for use in synthetic solvent dry-cleaning and degreasing machines. The respondent is now causing, and has caused, said synthetic solvents, when sold, to be transported from places located in the 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 main-

tained, a course of trade in said synthetic solvents in commerce among and between the various States of the United States and in the District of Columbia.

The respondent 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, including jobbers handling chemicals, and Columbia Appliance Corp. of Long Island City, New York. Columbia Appliance Corp. is also engaged in the manufacture and in the sale of synthetic solvent dry-cleaning machines.

In the United States, all except a limited number of synthetic solvent degreasing machines have been, and are now, made and sold by two companies, namely, Detroit Rex Products Co. (also known as Detrex Corp.) of Detroit, Mich., and G. S. Blakeslee & Co. of Cicero, Ill. These two companies and the respondent are parties to a number of agreements and arrangements covering the manufacture of synthetic solvent degreasing machines and the distribution of synthetic degreasing solvents made by the respondent. In 1939 there were three other companies making said machines and now there are four additional ones. Detroit Rex Products Co. sells and distributes synthetic degreasing solvents, consisting of trichlorethylene, under the names of "Triad" and "Perm-A-Clor," and, prior to January 1, 1947, all of such solvents sold by this company were made by du Pont. G. S. Blakeslee & Co. sells and distributes synthetic degreasing solvents, consisting of trichlorethylene, under the name of "Blacosolv," and, prior to January 1, 1947, all of these solvents were also made by the respondent. Under the arrangements aforesaid Detroit Rex Products Co. and G. S. Blakeslee & Co. have handled a large part of the distribution of the respondent's degreasing solvents. The respondent also sells trichlorethylene under the name of "Triclene D" (formerly sold under the name of "Cecolene No. 1") and perchlorethylene under the name of "Per-Clene" (formerly sold under the name of "Cecolene No. 2"), for use in synthetic solvent degreasing machines, which it distributes, in part, through a number of authorized distributors located in various States.

In order to handle the sale and distribution of its synthetic dry-cleaning and degreasing solvents, the respondent maintains a solvent sales office at Wilmington, Del., and also maintains branch offices in New York, Chicago, and other cities. It has its salesmen and technical servicemen call upon jobbers, distributors, dry cleaners, and users of degreasing equipment in the interest of the sale and distribution of its

synthetic solvents, and these salesmen and technical servicemen often make calls on dry cleaners and users of degreasing equipment in the company of salesmen employed by the jobbers and distributors. They sometimes carry with them equipment for testing dry-cleaning and degreasing solvents, and are given instructions by the respondent's main office and its branch offices on competitive products and the manner in which to deal with 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 the respondent. The respondent 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 the respondent 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 solvent dry-cleaning and degreasing 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." At that time, this company also began to produce and sell a synthetic degreasing solvent called "Kolene T," and it continued to sell this

product under this name until 1939. Since September 1939, this degreasing solvent has been sold by the Kolene Corp., and is now being sold by said corporation, under the name of "Kolyte." For more than 2 years prior to 1941, Kolene Corp. was regularly selling its product "Kolene C" to approximately 500 dry cleaners.

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.

Prior to the time the Kolene Corp. entered the degreasing field, almost all solvent degreasing was done with trichlorethylene and the solvents made therefrom.

PAR. 4. The solvent made by the Kolene Corp. for dry-cleaning purposes, called "Kolene C," has always been made of carbon tetrachloride, trichlorethylene, and benzol (benzol being a product made by the fractional distillation of coal). The solvent made by it for degreasing purposes, first called "Kolene T" and later "Kolyte," until December 1939, was made of the same ingredients. In December 1939, the ingredients of this degreasing solvent, then sold under the name of "Kolyte," were changed to trichlorethylene, perchlorethylene, and benzol. In August 1940, this latter solvent was further changed for certain customers by replacing the benzol with toluol (toluol being a petroleum products), but Kolene Corp. continued to make said solvent with benzol instead of toluol for certain customers. So far as its use for degreasing is concerned, the properties of "Kolyte" are the same as those described herein for "Kolene T."

PAR. 5. In promoting the sale and distribution of its synthetic dry-cleaning and degreasing solvents, the respondent, during the period from 1938 to the date of the complaint in this proceeding (January 28, 1942), made a number of claims, statements, and representations to owners and users of synthetic solvent dry-cleaning and degreasing machines, manufacturers of such machines, and distributors and others interested in the sale and use of synthetic solvents, concerning the synthetic solvents "Kolene C" and "Kolene T" manufactured and sold by the Kolene Corp. Among such claims, statements, and representations were those to the following effects:

(a) that "Kolene C" has no merit, is without value, and is unsuitable and unsatisfactory as a dry-cleaning agent, and that "Kolene T" has no merit, is of no value, and is not suitable or satisfactory as a degreasing agent, and that such solvents have been found to be unsatisfactory solvents for both dry-cleaning and degreasing and if used for

Findings

45 F. T. C.

such purposes will give poor results and cause trouble and difficulty;

(b) that "Kolene T," upon being heated in the course of degreasing metals in synthetic solvent degreasing machines, and that "Kolene C" and "Kolene T," upon being distilled in synthetic solvent dry-cleaning and degreasing machines, will separate, break-down, form acid and react unfavorably against and corrode such machines, and, in the case of degreasing, react unfavorably against and corrode the metals being degreased; whereas, the respondent's synthetic solvents, trichlorethylene and perchlorethylene, are stable solvents that are comparatively free from such faults;

(c) that "Kolene C," when used in synthetic solvent, dry-cleaning machines, and that "Kolene T," when used in synthetic solvent degreasing machines, are more toxic, poisonous, and dangerous to life and health than the respondent's solvents trichlorethylene and perchlorethylene;

(d) that toxic and poisonous effects attend the use of "Kolene C" and "Kolene T" by owners and users of synthetic solvent dry-cleaning and degreasing machines; that toxic and poisonous effects attend the use of carbon tetrachloride and benzol and a health hazard occurs from breathing benzol vapors; that "Kolene C" and "Kolene T" should bear a "poison" label; whereas, in comparison, the respondent's synthetic solvents, trichlorethylene and perchlorethylene, are not attended by toxic or poisonous effects when used industrially for dry cleaning and degreasing, and, as compared to carbon tetrachloride and benzol, they are comparatively harmless to life and health and are not a health hazard when used in synthetic solvent dry-cleaning and degreasing machines; and that the respondent's solvents need not bear a "poison" label;

(e) that "Kolene C" and "Kolene T" will catch on fire and explode if used in synthetic solvent dry-cleaning and degreasing machines because they contain benzol and carbon tetrachloride and other things which will break-down, permitting the carbon tetrachloride to escape and leaving the benzol, which will catch on fire and explode, and that when thus used, said solvents constitute a fire hazard and risk and are inflammable;

(f) that "Kolene C" and "Kolene T" will not flash or catch on fire up to the initial boiling point; whereas, trichlorethylene and perchlorethylene the solvents made by the respondent, can be used, heated, and distilled in synthetic solvent dry-cleaning and degreasing machines without risk of fire or explosion;

(g) that proof of the above-mentioned properties of "Kolene C" and "Kolene T" has been made by laboratory and other tests made by the respondent and others.

The means employed by the respondent and the manner in which these representations have been made are illustrated and typified by the following statements, made by the respondent or its representatives in correspondence with the respondent's distributors and employees and others interested in the sale and use of synthetic solvents.

In a letter dated March 16, 1939, from one of the respondent's chemists to the manager of the respondent's Chicago district office:

We are informed that the subject company is marketing a product under the name Colene, which preparation is a mixture of carbon tetrachloride 75%, benzol 25%, approximately with a small amount of high boiling naphtha. We understand from Mr. Moore of Eaton-Clark that it is claimed this mixture is non-toxic.

Regardless of the toxicity of carbon tetrachloride, it is generally conceded that benzol is very toxic and in many cases, regulations demand that the product be labeled as containing benzol if any is present.

* * * , we are not disturbed greatly by a possible loss of business. We are disturbed by the possibility of unfavorable publicity if this mixture is handled carelessly and serious health damage results, thereby attracting attention to the possibility of health damage if any other synthetic chlorinated hydrocarbon is used for dry cleaning.

In a letter dated March 21, 1939, from another of the respondent's chemists to G. S. Blakeslee & Co.:

We have a sample of this solvent (referred to by the writer as "Kolene") and are now having it analyzed at Niagara Falls to find out what it contains. We believe that it is a benzol base solvent and do not believe that it would be suitable for metal degreasing. However, as soon as we obtain the analysis, we will pass it on to you with our further opinion.

In a memorandum dated April 13, 1939, from the manager of the respondent's solvents division to all of the respondent's branch offices and to various distributors of the respondent's products and to others interested in the sale of synthetic solvents:

We believe that exposure to mixtures of solvents results in damages characteristic to each solvent, and does not lessen the effects of either.

Customers requesting information as to the toxicity of "Kolene C" should be informed that the data supplied by the manufacturers is misleading and that no accurate data are available. It might also be advisable to call to their attention the possibility of cumulative effects, as a result of the combined effects of Carbon Tetrachloride and Benzol.

In a letter dated April 17, 1939, from the manager of the respondent's New York district office to the manager of the respondent's solvents division:

Findings

45 F. T. C.

It would be interesting to know what type of volatile solvent warning label is attached to drums of "KOLENE." We understood that under an agreement between the Office of the Surgeon General of the U. S. A. and the Manufacturers of Benzol, a poison label is applied not only to commercial containers of Benzol but also to mixtures having more than 15% Benzol in their composition. A specimen is attached, which, you will note, reads "CAUTION-POISON. This product contains more than 15% BENZOL Which is a Volatile Solvent—USE WITH ADEQUATE VENTILATION—AVOID PROLONGED BREATHING OF VAPOR."

If such a label is applied to drums of "KOLENE", in view of its Benzol content of 18% by weight, the warning effect on dry cleaners would certainly be alarming.

We understand that certain State Labor Departments forbid the industrial use of Benzol because of the insidious health hazard. We should, therefore, expect severe restrictions to be placed on the use of "KOLENE".

In a letter dated May 8, 1939, from one of the respondent's chemists to G. S. Blakeslee & Co.:

This is in answer to your letter of May 2, 1939 stating that the Bohn Aluminum Company have had trouble caused by a reddish brown deposit forming on the aluminum which they were cleaning with Kolene in their degreaser.

We believe that this formation of a reddish brown bloom is a typical case of solvent polymerization or break-down. The time interval of two days during which they had good operation was apparently only the time necessary to collect enough finely divided aluminum parts in the degreaser and provide sufficient time for the reaction to become noticeable on the work. We believe that the carbon tetrachloride and aluminum form this reaction and do not believe that the other constituents of Kolene were concerned. However, by a copy of this letter and yours, we are asking Dr. Levine's opinion of this matter or any further suggestions which he cares to make. We trust that their return to the use of "BLACOSOLV" will insure continued good operation.

In a letter dated June 28, 1939, from the manager of the respondent's Chicago district office to the manager of the respondent's solvents division:

While calling at Rex with Mr. Marean on Thursday, June 22nd, this inquiry was made of Mr. Davidson, and he informed me that the Kolene solvent had gone acid several times in their machine and caused them quite a little trouble so they very quickly returned to the use of Permaclor.

(The Mr. Davidson referred to in this communication was an official of the Detroit Rex Products Co., a distributor of the respondent's degreasing solvents and a manufacturer of degreasing machines.)

In a letter dated September 6, 1939, from the manager of the respondent's solvents division to the manager of the respondent's New York district office:

While it may be true that the odor of Carbon Tetrachloride vapors has been substantially decreased by diluting them with Benzol and other hydrocarbon

vapors, never the less these vapors are more toxic than Carbon Tetrachloride, Trichlorethylene, or Perchlorethylene.

You might point out to Chemical Sales that our experience in other areas indicates that although customers may at first be enthusiastic about "Kolene," they usually run into difficulties after a relatively short period of operation, which changes their opinion of this solvent. Therefore, we would appreciate Chemical Sales' cooperation in following closely those operators who are now enthusiastic about "Kolene", to see whether or not the enthusiasm continues.

These 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. The record shows that such information was actually used by such distributors and others in whose hands it was placed as a means of persuading dry cleaners and operators of degreasing machines not to begin or not to continue, as the case might be, the use of "Kolene C" and "Kolene T."

PAR. 6. (a) There is no basis from either a scientific or a practical standpoint for a representation or inference that the products of the Kolene Corp., namely "Kolene C" and "Kolene T," which the respondent referred to as "Kolene," have no merit, or that they are without value or are not suitable or satisfactory for dry-cleaning or degreasing purposes, or that they are or will be found to be unsatisfactory for dry-cleaning or degreasing purposes, or that, if they are used for such purposes, they will give poor results or cause trouble or difficulty.

(b) There is no scientific or practical basis for a statement that "Kolene T," upon being heated in the course of degreasing metals in synthetic solvent degreasing machines, or that "Kolene C" or "Kolene T," upon being distilled in synthetic solvent dry-cleaning or degreasing machines, will separate, break down, form acid, or react unfavorably against or corrode such machines, or, in the case of degreasing, will react unfavorably against, or corrode, the metals being degreased; and any statement or inference that either "Kolene C" or "Kolene T" is subject to such faults and that trichlorethylene and perchlorethylene, as made by the respondent, are stable solvents that are free from such faults, is deceptive.

(c) Any statement or inference that "Kolene C" or "Kolene T" is more toxic, poisonous, and dangerous to life and health than the respondent's solvents, trichlorethylene or perchlorethylene, is deceptive.

(d) There is no scientific or practical basis for an assertion or inference that either trichlorethylene or perchlorethylene, as compared

Findings

45 F. T. C.

with carbon tetrachloride or benzol, is comparatively harmless to life and health and is not a health hazard, when used in synthetic solvent dry-cleaning and degreasing machines. Statements that "Kolene C" and "Kolene T" must bear a "poison" label, whereas the respondent's solvents, trichlorethylene and perchlorethylene, need not bear a "poison" label, as used by the respondent, convey the false and deceptive inference and unfair comparison that the products of Kolene Corp., aforesaid, when used in synthetic solvent dry-cleaning and degreasing machines, are more toxic, poisonous, and dangerous to life and health than trichlorethylene and perchlorethylene.

(e) There is no scientific or practical basis for an assertion or inference that either "Kolene C" or "Kolene T" will catch on fire and explode if used in synthetic solvents dry-cleaning and degreasing machines because they contain benzol, or that when thus used they constitute a fire hazard and risk and are inflammable.

(f) Any statement that "Kolene C" or "Kolene T" will not flash or catch on fire up to the initial boiling point is deceptive and implies and may induce the belief that "Kolene C" and "Kolene T" are inflammable when used for dry cleaning or degreasing or when used under operating conditions in synthetic solvent dry-cleaning or degreasing machines; and statements to such effect, as used by the respondent, convey the false and deceptive impression that "Kolene C" and "Kolene T", when used for dry cleaning or degreasing in synthetic solvent dry-cleaning or degreasing machines, will catch on fire and explode.

(g) Proof of the properties of "Kolene C" and "Kolene T," as they were represented to be by the respondent in the manner above stated, had not been made by laboratory or other tests made by the respondent, or others, prior to the making of the representations referred to, except as indicated herein. The actual properties of said solvents are covered herein by paragraphs 4, 6, and 7.

PAR. 7. At the time the representations referred to in paragraph 5 were made, the respondent had in fact procured samples of the synthetic dry-cleaning and degreasing solvents of the Kolene Corp., and had had these samples analyzed in its laboratories. It had not, however, by its analyses, or otherwise, determined the true compositions of the products, and it was in no position to represent to the trade, as it did, just what the components or the characteristics or properties of said products were.

The record shows that "Kolene C" has been used successfully for dry-cleaning purposes and that "Kolene T" has been used successfully for

degreasing purposes. Said solvents have given, and do give, satisfactory results when used for such purposes.

The solvents, trichlorethylene and perchlorethylene, made by the respondent, when in contact with metals and also when in the presence of water encountered in dry-cleaning and degreasing operations in synthetic solvent dry-cleaning and degreasing machines, are subject to the same type of faults as carbon tetrachloride. During working operations in synthetic solvent dry-cleaning and degreasing machines, these solvents must be handled the same as "Kolene C" and "Kolene T," the products of Kolene Corp., to insure satisfactory operating results, both as to the machines being thus used and the materials and metals being thus cleaned or degreased. Trichlorethylene, when used for dry cleaning, in contact with some fabrics and dyes, has had damaging effects. 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 both trichlorethylene and perchlorethylene combined.

"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. "Kolene T" and "Kolyte" have been used in synthetic solvent degreasing machines without undue or unusual corrosive effects on such machines, and without injury to or unusual effects upon the metals being degreased.

All of the products mentioned herein as having been used for dry-cleaning and degreasing purposes are to some extent poisonous and toxic 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 and degreasing 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" and "Kolene T" as more toxic, poisonous, or more 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

Findings

45 F. T. C.

of such solvents constitute unfair, false, and deceptive acts and practices and an unfair, false, and misleading method of competition.

In 1935 the manufacturers of carbon tetrachloride, respectively and independently of each other, entered into agreements with the United States Public Health Service with respect to the labeling of benzol and carbon tetrachloride. These agreements were voluntary and did not constitute findings by a public body as to the properties of the products covered by the agreements or a determination by the United States Public Health Service of the comparative toxicity of said products and other products. The manufacturers agreed that mixtures containing 24 percent or more of carbon tetrachloride should be labeled as follows:

Volatile Solvent
Use with Adequate Ventilation
Avoid Prolonged Breathing
of Vapor

and further that the labels of such carbon tetrachloride mixtures should include the statement:

Contains more than 24% by weight of carbon tetrachloride.

The manufacturers of benzol agreed that mixtures containing 15 percent or more of benzol should be labeled as follows:

Volatile Solvent—Poison
Use with Adequate Ventilation
Avoid Prolonged Breathing
of Vapor

and "This product contains more than 15% Benzol." While the record does not show the exact percentages of either carbon tetrachloride or benzol in the solvents of the Kolene Corp., it does show that Kolene Corp. did not use on either "Kolene C" or "Kolene T" the "Volatile Solvent—Poison" label or a label designating either product as a poison. It likewise did not use the label "Contains more than 24% by weight of carbon tetrachloride" or the label "This product contains more than 15% Benzol." This company did use on its products "Kolene C" and "Kolene T" the "Volatile Solvent" label for carbon tetrachloride.

"Kolene C" will not catch on fire or explode when used in synthetic solvent dry-cleaning machines, and "Kolene T" will not catch on fire or explode when used in synthetic solvent degreasing machines. The use of "Kolene C" in synthetic solvent dry-cleaning machines and the use of "Kolene T" in synthetic solvent degreasing machines do not

constitute a fire hazard or risk to the owners and users of such machines, and when thus used they are not inflammable. Such solvents are not more inflammable nor more explosive, when used for such purposes, than trichlorethylene or perchlorethylene, or the solvents made therefrom, as the latter are made by the respondent. There is no basis for an inference or representation that use of said solvents constitutes a fire hazard when such solvents are used for dry cleaning and degreasing by reason of the fact that in tests made of said solvents in the laboratory they 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 profit), 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 its report on trichlorethylene.

PAR. 8. 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 products of "Kolene C" and "Kolene T." 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 preparations "Kolene C" and "Kolene T" 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.

Commissioner Davis not participating.

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, and briefs in support of and in opposition to the allegations of the complaint, and said stipulation providing, among other things, that without further evidence or other intervening procedure except the presentation of briefs and oral argument (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, E. I. du Pont de Nemours & Co., Inc., 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 and degreasing solvents, do forthwith cease and desist from:

(1) Misrepresenting in any manner the constituents, properties, or characteristics of "Kolene C" or "Kolene T," or of any other dry-cleaning or degreasing solvent sold in competition with the respondent's products;

(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, or that "Kolene T" has no merit or value or that it is not suitable or satisfactory as a degreasing agent;

(3) Representing, directly or by implication, that either "Kolene C" or "Kolene T," when used in synthetic solvent dry-cleaning or degreasing machines will separate, break down or form acid, or that either of said solvents will react unfavorably against or corrode the materials or metals being dry cleaned or degreased or the machines in which said solvent is used;

(4) Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene C" or "Kolene T" are greater than the toxicity of or dangers from the fumes of the respondent's dry-cleaning or degreasing solvents; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes

of "Kolene C" or "Kolene T" or any other competing dry-cleaning or degreasing solvent;

(5) Representing, directly or by implication, that the hazards of fire or explosion from the use of "Kolene C" or "Kolene T" are greater than the hazards of fire or explosion from the use of the respondent's solvents; or representing, directly or by implication, that "Kolene C" or "Kolene T" is inflammable or explosive when used for dry-cleaning or degreasing purposes under standard or usual conditions for such work;

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

Commissioner Davis not participating.

IN THE MATTER OF

HAROLD WARP DOING BUSINESS AS FLEX-O-GLASS
MANUFACTURING COMPANY AND ALSO AS WARP
BROS.; PRESBA, FELLERS AND PRESBA, INC.: AND
WILLIS B. PRESBA, MARQUIS M. SMITH, BERT S.
PRESBA, AND VESTA N. RINNMANCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5565. Complaint, June 7, 1948—Decision, Jan. 26, 1949*

The only known value of ultraviolet rays in connection with the existence and well-being of birds or animals is in converting certain body elements into vitamin D, which is essential to proper health, growth, nutrition, and function. However, the use of glass substitutes instead of glass, to permit the passage of such rays, will be beneficial only when the diet of bird or animals is deficient in said vitamin. And where such a deficiency exists, the extent of the benefit which may be derived from the use of such products instead of glass will be dependent on many factors, including the severity of the deficiency, the weather, the season of the year, the geographical location, the product used, its condition, and the size of the area in which it is used in relation to the size of the structure.

As respects the use of glass substitutes to permit the passage of ultraviolet rays, in order to benefit poultry, there are many circumstances in which the use of such products will give no benefit over glass. Thus, in the case of two groups of chickens, one raised under such products, and another raised under common glass, with both receiving the same feed and care, superiority in size and health of the former will occur only when the common diet of both groups is deficient in vitamin D and when the chickens kept under the glass substitutes receive enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome the dietary deficiency.

Where a corporation engaged in formulating, editing, testing and selling advertising matter, and advising clients with regard thereto; the three officers who directed and controlled it; and an individual who was engaged in the interstate sale and distribution of various glass substitutes, designed and recommended for use in the cure, treatment, or prevention of disease or to affect the structure or function of the body of animals and fowls, and sold as "Flex-O-Glass," "Wyr-O-Glass," "Glass-O-Net" and "Screen Glass"; acting in conjunction;

In advertisements prepared by said corporation from data supplied and approved by said individual, and disseminated through the mails, radio broadcasts, trade journals, periodicals and other advertising media, by said corporation or individual, as the case might be, directly or by implication—

- (a) Falsely represented that ultraviolet rays are essential to growth and health, that chicks cannot survive without them, and that said glass substitutes, because they permitted the passage of ultraviolet rays of sunlight, were superior to ordinary glass, which would not permit the passage of such rays when used in buildings for poultry and pigs; and