

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

- (b) Falsely represented that, regardless of other factors, poultry which was raised or kept in buildings where said products were used, would be healthier, grow to a given size more rapidly, start laying earlier, and lay more and better eggs than those raised and kept in buildings where common glass or other glass substitutes are used; that in the case of chickens from the same hatching, receiving the same care and the same diet, those raised under said products would be larger, heavier, and healthier in a given time than those raised under common glass; and similarly that pigs raised under said products are healthier and grow faster than those raised under common glass;

The facts being that only when the diet of birds or animals is deficient in vitamin D will the use of said products instead of glass be beneficial in any respect, in which event the extent of the benefit will depend on many factors; in many circumstances use of said products will give no benefit over ordinary glass; and aforesaid superiority of one group of chickens raised under said products as compared to another raised under ordinary glass, will occur only when the common diet of both is deficient in said vitamin and when the various factors mentioned are such that the former receive enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome the dietary deficiency;

- (c) Represented that chickens raised under said products will not have weak legs, crooked breast bones, or other manifestations of rickets, roup, canker, and other diseases, and will have stronger bones, regardless of other factors;

The facts being that said products are beneficial in averting such ailments only where the various factors mentioned above are such that chickens receive enough ultraviolet rays to overcome said deficiency;

- (d) Represented that rheumatism in chickens will be benefited by exposing them to sunlight under said products; that ultraviolet rays help cure diseases of man, bird and beast; and are beneficial to weak lungs and failing health; and that said results will accrue from exposure to sunlight under said products;

The facts being that exposure to ultraviolet rays of the intensity transmitted by said products in poultry houses, is of no value in averting or preventing diseases due to causes other than a vitamin D deficiency, nor in the treatment of any condition such as "weak lungs" or "failing health" not caused thereby;

- (e) Falsely represented that said products keep heat in, and hold cold out better than glass;

- (f) Falsely represented that common glass kills chickens kept under it, and that the likelihood that baby chicks will live, grow, and be healthy is lessened if they are raised in brooder houses with ordinary glass windows, regardless of other factors;

The facts being that the likelihood that baby chicks will live and thrive when kept under common glass, is reduced only when they receive a diet deficient in vitamin D; and

- (g) Represented that the passage of sunlight through said products resulted in giving to whatever was below them "a mysterious spectronic supplement" or "mysterious spectronic supplement D", which is beneficial, and that such mysterious phenomenon will not occur when sunlight passes through other window materials;

Complaint

45 F. T. C.

The facts being that except for permitting the passage of ultraviolet rays, which do not pass through ordinary glass, the passage of sunlight through said products does not result in giving to what is below them any such "supplement" or any other ray of the sun known to prevent rickets or other diseases, or to aid health or growth in poultry or animals to a greater extent than ordinary glass or other glass substitutes; and

(h) Falsely represented that the product "Flex-O-Glass" lets through more ultraviolet rays than other glass substitutes;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and thereby to induce purchase of said products:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. Joseph E. Callaway for the Commission.

Mr. Henry Junge, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harold Warp, an individual doing business under the name of Flex-O-Glass Manufacturing Co., and also Warp Bros., Presba, Fellers and Presba, Inc., a corporation, Will B. Presba, individually and as president of Presba, Fellers and Presba, Inc., Marquis M. Smith, individually and as vice president of Presba, Fellers and Presba, Inc., Bert S. Presba, individually and as treasurer of Presba, Fellers and Presba, Inc., and Vesta N. Rinnman, individually and as secretary of Presba, Fellers and Presba, Inc., have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harold Warp is an individual doing business under both the firm names of Flex-O-Glass Manufacturing Co. and Warp Bros., with his office and place of business at 1104 North Cicero Avenue, Chicago, Ill.

PAR. 2. Respondent Harold Warp is now and for more than 10 years last past has been engaged in the sale and distribution of various glass substitutes called by him Flex-O-Glass, Wyr-O-Glass, Glass-O-Net, and Screen Glass, in commerce among and between the various States of the United States and in the District of Columbia, said substitutes being "devices" as that term is defined in the Federal Trade Commission Act.

The said respondent causes his said glass substitutes, when sold, to be transported from his place of business in the State of Illinois to the

Complaint

purchasers thereof located in various other States of the United States and in the District of Columbia. He maintains, and at all times mentioned herein has maintained, a course of trade in the aforesaid glass substitutes in commerce among and between various States of the United States and in the District of Columbia. His volume of business in said glass substitutes in such commerce is substantial.

PAR. 3. The respondent Presba, Fellers and Presba, Inc., is a corporation, organized under the laws of the State of Illinois, and conducting an advertising agency with its offices at 360 North Michigan Avenue, Chicago, Ill. Said respondent is engaged in formulating, editing, testing, and selling advertising matter and advising clients with regard thereto.

Respondents Will B. Presba, Marquis M. Smith, Bert S. Presba, and Vesta N. Rinnman are president, vice president, treasurer, and secretary, respectively, of the corporate respondent. Their address is the same as that of the corporate respondent. These individual respondents formulate, direct, and control the acts, policies, and business affairs of the corporate respondent, which prepared and placed for the individual respondent Harold Warp the advertising representations hereinafter mentioned.

PAR. 4. All of the respondents act and have acted in conjunction and cooperation with one another in performance of the acts and practices hereinafter alleged.

PAR. 5. In the course and conduct of their said business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of advertisements concerning the said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce directly or indirectly their purchase, including, but not limited to certain catalogs entitled "Warp's Window Materials," radio continuities broadcast from station WLS on or about March 30, 1946, March 23, 1946, January 1, 1947, February 8, 1947, February 15, 1947, and station KGA on or about October 20, 1945, advertisements in "Hardware World," issue of November 1945, "American Poultry Journal," issue of October 1946, "Poultry Tribune," issue of October 1946, and November 1945, and circulars entitled "How to Make More Profit with Glass Substitutes" and "25 Years Development Work"; and respondents have disseminated and caused the dissemination of advertisements concerning said devices by various means, including but not limited to the catalogs, radio continuities, advertisements, and circulars referred to above for the purpose of inducing, and which were likely to induce, directly or indirectly, their purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Complaint

45 F. T. C.

PAR. 6. Among the statements, representations, and depictions contained in said advertisements disseminated as aforesaid are the following:

—the value of Ultra-Violet Rays of the sun. These rays had been discovered many years before, but twenty years ago their value as life-giving essential elements in growth and health was just becoming understood.—The rays couldn't get through window glass at all.—So we knew the need for something that would help bring life-giving Ultra-Violet Rays to growing things.

Chicks can't thrive without ultra-violet rays.

The name "Warp's" on a window material means—a material—that will let in lots of the sun's ultra-violet rays that help your poultry and live stock grow stronger and faster.

Warp's Window Materials let through ultra-violet light, the Sunshine Vitamin "D" rays.

You get better health, quicker growth, greater production and larger profits with Warp's Window Materials. (Accompanied by depictions of chickens and poultry houses.)

Warp's Window Materials mature chicks quicker with no extra cost for feed. Healthy chicks in one-third less time.

Raise healthier birds that mature quicker.

Depictions of two chickens represented as "same hatch—same feed—same care," one, raised under respondent's product, large and robust, the other, raised under common glass, small and sickly, at the same age.

More eggs with no extra cost for feed.

Proof that eggs laid by hens kept under Warp's Spectronic Window Materials—produce more healthful "Spectonic" eggs.

4 times as many eggs—Under Warp's Window Material chicks grew twice as fast as those under glass—with same feed and care. Hens started laying earlier, were healthier, grew bigger and laid more eggs.

—you are guaranteed—greater egg production faster growing chicks.

Pigs are healthier and grow faster under Warp's Window Materials.

—prevent weak legs, crooked breast bone, other diseases and build strong bones.

Avoid roup and canker by having a Flex-O-Glass scratch shed.

Let Flex-O-Glass help you raise your baby chicks—free from rickets.

Rickets (Leg Weakness)—caused by lack of Ultra-Violet Rays of the sun. Treatment: Turn these into the Flex-O-Glass scratch shed. Change straw often and keep coop clean.

Rheumatism—Best cure is needed exercise with plenty of soft sunlight—which means a Flex-O-Glass scratch shed.

—Ultra-Violet Rays—They help cure diseases.

Warp's Window Materials keep in heat, hold out cold better than glass.

Harold Warp discovered that common glass killed chicks.

Friends, baby chicks raised in brooder houses with common glass windows don't have a fair chance to live, grow and be healthy.

Warp's materials are all—better because they supply spectronic supplement D from the sunshine free.

—only a window material made by Warp Brothers furnishes poultry and live stock that mysterious spectronic supplement that helps baby chicks grow faster, prevents rickets, helps hens lay more eggs.

Complaint

—every one furnishes poultry and live stock with the mysterious spectronic Supplement D from sunshine. —No other material can make this claim.

Warp Brothers have definite proof—that their window materials help to give health benefits from invisible sun's rays other than the ultraviolet.

Among and typical of the statements with respect to Flex-O-Glass made in the manner stated above are the following:

—Flex-O-Glass—lets through more healthful ultra-violet rays than other glass substitutes.

PAR. 7. Through the use of the advertisements containing the statements, depictions, and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that the superiority of the said products over glass in buildings for poultry and pigs, as claimed by respondent, is due to the fact that the ultraviolet rays of sunlight pass through said products, whereas they will not pass through ordinary glass; that ultraviolet rays are essential to growth and health; that chicks cannot survive without ultraviolet rays; that poultry which is raised or kept in buildings where said products are used, will be healthier, grow to a given size more rapidly, start laying earlier and lay more and better eggs than those kept in buildings where common glass or other glass substitutes are used, regardless of other factors; that when chickens from the same hatching receive the same care and the same diet, those raised under said products will be larger, heavier, and healthier in a given time than those raised under common glass, regardless of the character of the diet or other factors; that pigs raised under said products are healthier and grow faster than those raised under common glass, regardless of other factors; that chickens raised under said products will not have weak legs, crooked breastbones or other manifestations of rickets, roup, canker, or other diseases, and will have strong bones, regardless of other factors; that rickets in chickens will be cured by exposing them to sunlight under said products; that rheumatism in chickens will be benefited by exposing them to sunlight under said products; that ultraviolet rays help cure diseases of man, bird, and beast, and are beneficial to weak lungs and failing health, and that these results will accrue from exposure to sunlight under said products; that said products keep in heat and hold out cold better than glass; that common glass kills chickens kept under it, regardless of other factors; that the likelihood that baby chicks will live, grow, and be healthy is lessened if they are raised in brooder houses with ordinary glass windows, regardless of other factors; that the passage of sunlight through said products results in giving to whatever is below

Complaint

45 F. T. C.

them "a mysterious spectronic supplement" or "mysterious spectronic supplement D" which is something other than ultraviolet rays, and which is beneficial, and that this mysterious phenomenon will not occur when sunlight passes through other window materials; that Flex-O-Glass lets through more ultraviolet rays than other glass substitutes.

PAR. 8. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, ultraviolet rays are not essential to the growth, health, development, nutrition or function of birds or animals. Chicks can survive and thrive without ultraviolet rays. The use of said products in poultry and pig houses will not, regardless of other factors, result in healthier or faster growing poultry or pigs, or result in hens starting to lay earlier, or lay more or better eggs than will be the case when common glass is used.

The only value of ultraviolet rays in connection with the existence of birds or animals is in converting certain body elements into vitamin D, which is essential to proper health growth, nutrition, and function. Only when the diet of birds or animals is deficient in vitamin D will the use of any of said products instead of glass be beneficial in any degree or in any respect. Where such a deficiency exists the extent of the benefit from the use of said products instead of glass will be dependent on many factors, including the severity of the dietary deficiency, the weather, the season of the year, the geographical location in which the products are used, which product is used, the condition of the product, and the size of the area in which it is used in relation to the structure. There are many circumstances in which the use of said products will give no benefit whatever over common glass. Superiority in size and health of a group of chickens raised under said products to another group raised under common glass, both groups receiving the same feed and care will occur only when the common diet is deficient in vitamin D and when the various factors mentioned above are such that the birds kept under respondents' products receive enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome the deficiency in diet. Respondents' products are beneficial in averting roup, canker, and rickets and in building bone only when the diet is deficient in vitamin D and only when the various factors mentioned above are such that the birds received enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome the deficiency in diet.

Exposure to ultraviolet rays of the intensity transmitted by respondents' products is of no value in averting diseases due to causes other than vitamin D deficiency; it is of no value in the treatment of

any condition such as "weak lungs" or "failing health" not caused by vitamin D deficiency, and it has no value in the treatment of any condition caused by a vitamin D deficiency in the absence of additional vitamin therapy.

None of respondents' products are superior to common glass in keeping heat in and cold out.

Common glass does not kill chicks kept under it. Only when baby chicks kept under glass are given a diet deficient in vitamin D, is the likelihood that they will live and thrive reduced.

The "mysterious spectronic supplement" or "mysterious spectronic supplement D" claimed by respondent to result from the passage of sunlight through its materials is a figment of respondents' imagination.

There are other window materials which permit the passage of as many or more ultraviolet rays from the sun as Flex-O-Glass.

PAR. 9. The use by respondents of the said false advertisements with respect to said products has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements, depictions, and representations contained in said advertisements were true, and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the interest 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 June 7, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondents filed their answer, a hearing was convened by a trial examiner of the Commission theretofore duly designated by it, for the purpose of receiving testimony and other evidence in support of and in opposition to the allegations of the complaint. At said hearing there was read into the record a stipulation of facts which had theretofore been agreed upon between counsel for the respondents and counsel in support of the complaint. Said stipulation provides, among other things, that said statement of facts may be made a part of the record and taken as the facts in this proceeding in lieu of evidence in support of and in opposition to the allegations

Findings

45 F. T. C.

of the complaint and that the Commission may proceed upon such statements of facts to make its findings as to the facts, including inferences which may be drawn therefrom, and its conclusion based thereon and enter its order disposing of this proceeding without the presentation of oral argument or the filing of briefs. It further specifically waives the filing of a recommended decision by the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, and the stipulation of facts, 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, accepts the stipulation of facts, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Harold Warp is an individual trading and doing business under the names Flex-O-Glass Manufacturing Co. and Warp Bros., with his office and principal place of business at 1104 North Cicero Avenue, Chicago, Ill. He is now, and for more than 10 years last past has been, engaged in the offering for sale, sale, and distribution of various glass substitutes under the trade names "Flex-O-Glass," "Wyr-O-Glass," "Glass-O-Net," and "Screen Glass."

PAR. 2. "Flex-O-Glass" is a cotton-cloth base filled with French talc and impregnated with a composition of paraffin, microcrystalline, and stearate waxes. "Wyr-O-Glass" is a wire-screen base impregnated with vinyl resin surrounding each wire but not the space between each wire, over which two layers of cellulose acetate are sealed together with a solvent which completely evaporates. "Glass-O-Net" is the same as "Wyr-O-Glass" except mesh is substituted for wire as a base. "Screen Glass" consists of a 14-mesh 0.011 galvanized wire dipped in cellulose acetate butyrate. Said glass substitutes are designed, intended, and recommended for use in the cure, mitigation, treatment, or prevention of disease or to affect the structure of function of the body of animals and fowl, and constitute "devices" as that term is defined in the Federal Trade Commission Act. Respondent Warp sells and distributes in excess of 30,000,000 square feet of the aforesaid products annually.

PAR. 3. In the course and conduct of his aforesaid business, respondent Harold Warp causes, and has caused, his products, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof at their respective points of location in various other

States of the United States and in the District of Columbia; and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. (a) The Respondent Presba, Fellers and Presba, Inc., is a corporation organized under the laws of the State of Illinois, with its offices and principal place of business located at 360 North Michigan Avenue, Chicago, Ill., and is engaged in formulating, editing, testing, and selling advertising matter and advising clients with regard thereto.

(b) Respondent individuals Will B. Presba, Marquis M. Smith, Bert S. Presba, and Vesta N. Rinnman are president, vice president, treasurer, and secretary, respectively, of the corporate respondent, and maintain their place of business at its address. The first three named formulate, direct, control, and execute the acts, practices, policies, and business affairs of the corporate respondent, which formulated, prepared, and placed for the individual respondent Harold Warp certain of the advertising representations hereinafter mentioned. The individual respondent Vesta N. Rinnman, although acting in the capacity of secretary of the corporate respondent, has no financial interest therein but serves as its auditor. She exercises no degree of control in the formulation of the policies of the corporate respondent or the individual respondent Harold Warp and does not participate in the execution of the acts or practices of either of them or in the operation of their business affairs.

PAR. 5. The corporate respondent and each of the individual respondents except Vesta N. Rinnman have acted in conjunction and cooperation with every other respondent in performing certain of the acts and practices hereinafter stated.

PAR. 6. (a) In the course and conduct of their aforesaid business, all respondents except Vesta N. Rinnman have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning the glass substitutes offered for sale, sold, and distributed by the respondent Harold Warp by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and said respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning said glass substitutes by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Findings

45 F. T. C.

(b) Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinbefore set forth, by United States mails, by radio broadcasts, by advertisements inserted in trade journals, magazines, and other advertising, are the following:

The name "Warp's" on a window material means—a material—that will let in lots of the sun's ultra-violet rays that help your poultry and live stock grow stronger and faster.

Warp's Window Materials let through ultra-violet light, the Sunshine Vitamin "D" rays.

4 times as many eggs—Under Warp's Window Material chicks grew twice as fast as those under glass—with same feed and care. Hens started laying earlier, were healthier, grew bigger and laid more eggs.

—you are guaranteed—greater egg production faster growing chicks.

Pigs are healthier and grow faster under Warp's Window Materials.

Let Flex-O-Glass help you raise your baby chicks—free from rickets.

Friends, baby chicks raised in brooder houses with common glass windows don't have a fair change to live, grow and be healthy.

Warp's materials are all—better because they supply spectronic supplement D from the sunshine free.

—only 2 window material made by Warp Brothers furnishes poultry and live stock that mysterious spectronic supplement that helps baby chicks grow faster, prevents rickets, helps hens lay more eggs.

—every one furnishes poultry and live stock with the mysterious spectronic Supplement D from sunshine.—No other material can make this claim.

—Flex-O-Glass—lets through more healthful ultra-violet rays than other glass substitutes.

The above statements and representations were prepared by the corporate respondent from data supplied it by the respondent Harold Warp and were approved by him before being disseminated by said corporate respondent.

(c) Among and typical of other statements, representations, and depictions contained in said advertisements, disseminated and caused to be disseminated as hereinbefore set forth by the respondent Harold Warp by means of the United States mails, by catalogs, circulars, and other advertising, are the following:

—the value of Ultra-Violet Rays of the sun. These rays had been discovered many years before, but twenty years ago their value as life-giving essential elements in growth and health was just becoming understood.—The rays couldn't get through window glass at all.—So we knew the need for something that would help bring life-giving Ultra-Violet Rays to growing things.

Chicks can't thrive without ultra-violet rays.

You get better health, quicker growth, greater production and larger profits with Warp's Window Materials. (Accompanied by depictions of chickens and poultry houses.)

Warp's Window Materials mature chicks quicker with no extra cost for feed. Healthy chicks in one-third less time.

Raise healthier birds that mature quicker.

Depictions of two chickens represented as "same hatch—same feed—same care," one, raised, under respondent's product, large and robust, the other, raised under common glass, small and sickly, at the same age.

More eggs with no extra cost for feed.

Proof that eggs laid by hens kept under Warp's Spectronic Window Materials—produce more healthful "Spectronic" eggs.

—prevent weak legs, crooked breast bone, other diseases and build strong bones.

Avoid roup and canker by having a Flex-O-Glass scratch shed.

Rickets (Leg Weakness)—caused by lack of Ultra-Violet Rays of the sun. Treatment: Turn these into the Flex-O-Glass scratch shed. Change straw often and keep coop clean.

Rheumatism—Best cure is needed exercise with plenty of soft sunlight—which means a Flex-O-Glass scratch shed.

—Ultra-Violet Rays—They help cure diseases.

Warp's Window Materials keep in heat, hold out cold better than glass.

Harold Warp discovered that common glass killed chicks.

Warp Brothers have definite proof—that their window materials help to give health benefits from invisible sun's rays other than the ultra-violet.

PAR. 7. Through the use of the foregoing statements, representations, and depictions and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic, curative, preventive, and beneficial properties of the glass substitutes offered for sale, sold, and distributed by the respondent Harold Warp, respondents represent, and have represented, directly or indirectly, that said products, because they permit the passage of ultraviolet rays of sunlight, are superior to ordinary glass, which will not permit the passage of such rays, when used in buildings for poultry and pigs; that ultraviolet rays are essential to growth and health; that chicks cannot survive without ultraviolet rays; that poultry which is raised or kept in buildings where said products are used will be healthier, grow to a given size more rapidly, start laying earlier, and lay more and better eggs than those raised and kept in buildings where common glass or other glass substitutes are used, regardless of other factors; that when chickens from the same hatching receive the same care and the same diet, those raised under said products will be larger, heavier, and healthier in a given time than those raised under common glass, regardless of diet or other factors; that pigs raised under said products are healthier and grow faster than those raised under common glass, regardless of other factors; that chickens raised under said products will not have weak legs, crooked breastbones, or other manifestations of rickets, roup, canker, and other diseases, and will have strong bones,

regardless of other factors; that rickets in chickens will be cured by exposing them to sunlight under said products; that rheumatism in chickens will be benefited by exposing them to sunlight under said products; that ultraviolet rays help cure disease of man, bird, and beast and are beneficial to weak lungs and failing health and that these results will accrue from exposure to sunlight under said products; that said products keep in heat and hold out cold better than glass; that common glass kills chickens kept under it regardless of other factors; that the likelihood that baby chicks will live, grow, and be healthy is lessened if they are raised in brooder houses with ordinary glass windows, regardless of other factors; that the passage of sunlight through said products results in giving to whatever is below them "a mysterious spectronic supplement" or "mysterious spectronic supplement D" which is beneficial and that this mysterious phenomenon will not occur when sunlight passes through other window materials; that "Flex-O-Glass" lets through more ultraviolet rays than other glass substitutes.

PAR. 8.(a) The statements and representations set forth in paragraphs 6 and 7 above are grossly exaggerated, false, misleading, and deceptive in the following particulars:

(b) In truth and in fact, ultraviolet rays are not essential to the growth, health, development, nutrition, or function of birds or animals. Chicks can survive and thrive without ultraviolet rays. The use of the aforesaid glass substitutes in poultry and pig houses will not, regardless of other factors, result in healthier or faster-growing poultry or pigs, or result in hens starting to lay earlier or lay more or better eggs than will be the case when common glass is used.

(c) 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. Only when the diet of birds or animals is deficient in vitamin D will the use of said products instead of glass be beneficial in any degree or in any respect. Where such a deficiency exists, the extent of the benefit which may be derived from the use of said products instead of glass will be dependent on many factors, including the severity of the dietary deficiency, the weather, the season, of the year, the geographical location in which the products are used, what product is used, its condition, and the size of the area in which it is used in relation to the size of the structure. There are many circumstances in which the use of said products will give no benefit over common glass. Superiority in size and health of a group of chickens raised under said products to another group raised under

common glass, both groups receiving the same feed and care, will occur only when the common diet of both groups is deficient in vitamin D and when the various factors mentioned above are such that the chickens kept under respondent's products receive enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome the dietary deficiency. Respondent's products are beneficial in averting roup, canker, and rickets and in building bone only where a dietary deficiency of vitamin D exists and only when the various factors mentioned above are such that chickens or other fowl receive enough ultraviolet rays to result in the formation of sufficient vitamin D to overcome this deficiency.

(d) Exposure to ultraviolet rays of the intensity transmitted by respondent's products, when used in the construction of poultry houses, is of no value in averting or preventing diseases due to causes other than a vitamin D deficiency; is of no value in the treatment of any condition such as "weak lungs" or "failing health" not caused by a vitamin D deficiency; and has no value in the correction of any deformity caused by a vitamin D deficiency.

(e) None of respondent's products are superior to common glass in keeping heat in and cold out.

(f) Common glass does not kill chicks kept under it. The likelihood that baby chicks will live and thrive when kept under such glass is reduced only when they receive a diet deficient in vitamin D.

(g) Except for permitting the passage of ultraviolet rays, which do not pass through ordinary glass, the passage of sunlight through respondent's products does not result in giving to whatever is below them a "mysterious spectronic supplement" or "mysterious spectronic supplement D" or any other known ray, element, or spectra of the sun known to prevent rickets or other diseases or to aid health or growth in poultry or animals to a greater extent than said rays, supplement, or spectra of the sun supplied, furnished, or transmitted by ordinary glass or by other glass substitutes.

(h) Many other glass substitutes permit the passage of as many or more ultraviolet rays of the sun as "Flex-O-Glass."

PAR. 9. The use by the corporate respondent Presba, Fellers and Presba, Inc., and by the individual respondents Harold Warp, Will B. Presba, Marquis M. Smith, and Bert S. Presba, of the foregoing false, deceptive, and misleading statements and representations with respect to the glass substitutes of the respondent Harold Warp, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does mislead and deceive a substantial portion of the

Order

45 F. T. C.

purchasing public into the erroneous and mistaken belief that such statements, representations, depictions, and advertisements are true and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase products of the respondent Harold Warp.

CONCLUSION

The acts and practices of the corporate respondent Presba, Fellers and Presba, Inc., and of the individual respondents Harold Warp, Will B. Presba, Marquis M. Smith, and Bert S. Presba, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Respondent Vesta N. Rinnman has no control over the formulation, initiation, or carrying out of the policies, acts, and practices of the other respondents.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation of facts entered into by and between respondents and counsel supporting the complaint, which stipulation provides, among other things, that the statement of facts contained therein may be taken as the facts in this proceeding in lieu of other evidence and that the Commission may proceed upon said stipulated facts to make its report stating its findings as to the facts, including inferences which may be drawn therefrom, and its conclusion based thereon and enter its order disposing of this proceeding without the presentation of oral argument, the filing of briefs, or the filing of a recommended decision by the trial examiner; and the Commission having accepted said stipulation of facts and having made its findings as to the facts and its conclusion that the respondents Presba, Fellers and Presba, Inc., Harold Warp, Will B. Presba, Marquis M. Smith, and Bert S. Presba have violated the Federal Trade Commission Act:

I. *It is ordered*, That the respondent Presba, Fellers and Presba, Inc., a corporation, its officers, the respondent individuals Will B. Presba, Marquis M. Smith, Bert S. Presba, and the respondent individual Harold Warp, trading as Flex-O-Glass Manufacturing Co., or Warp Bros., or under any other name or names, the respective agents, representatives, and employees of each or any of them, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of glass substitutes designated "Flex-O-

Glass," "Wyr-O-Glass," "Glass-O-Net," or "Screen Glass," or any other product or products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from directly or indirectly:

A. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that

1. Ultraviolet rays are essential to the growth, health, development, nutrition, or function of birds or animals.

2. Chicks cannot survive or thrive without ultraviolet rays.

3. The use of said products in poultry or pig houses will result in healthier or faster-growing poultry or pigs, or result in hens starting to lay earlier or to lay more or better eggs than will be the case when ordinary glass is used, unless such representations are clearly and expressly limited to the benefits which may result from exposure to such ultraviolet rays of the sun as may be transmitted by said products where such rays adequately compensate for a deficiency of vitamin D in the diet.

4. Said products supply, furnish, or transmit to poultry or animals rays or any spectra of the sun other than ultraviolet rays which prevent rickets or other diseases or aid health or growth to a greater extent than said rays or spectra supplied, furnished, or transmitted by ordinary glass or other glass substitutes.

5. The product "Flex-O-Glass" permits the passage of more ultraviolet rays than other glass substitutes.

6. The use of the product "Flex-O-Glass" in poultry houses will prevent rickets in poultry unless such representation is clearly and expressly limited to the benefits which may result from exposure to such ultraviolet rays of the sun as may be transmitted by said product where such rays adequately compensate for a deficiency of vitamin D in the diet.

II. *It is further ordered*, That, in addition to the foregoing, the respondent Harold Warp, as designated in paragraph I, cease and desist from directly or indirectly disseminating or causing to be disseminated, in the manner and for the purposes hereinbefore stated, any advertisement which represents, directly or through inference, that

A. 1. The use of said products in the construction of poultry houses will prevent roup, canker, rickets, or other diseases of poultry or will aid or assist in building strong bones in poultry or will act as a cure, remedy, or competent or effective treatment for "weak lungs," "failing

Order

45 F. T. C.

health," or other unfavorable conditions of health in poultry, unless such representations are clearly and expressly limited to the benefits which may result from exposure to such ultraviolet rays of the sun as may be transmitted by said products where such rays adequately compensate for a deficiency of vitamin D in the diet.

2. The use of said products in the construction of poultry houses has any value in acting as a cure, remedy, or an effective or competent treatment in correcting any deformity in poultry caused by a vitamin D deficiency.

3. Said products are superior to common glass in keeping heat in and cold out.

B. Disseminating, or causing the dissemination of any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said products, which advertisement contains any of the representations prohibited by paragraphs I and II hereof.

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

IV. *It is further ordered*, That as to the respondent Vesta N. Rinnman the complaint be, and it is hereby, dismissed without prejudice to the right of the Commission to reopen it or to take such further action at any time in the future as may be warranted by the then existing circumstances.

Syllabus

IN THE MATTER OF

A. N. S. SALES, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5558. Complaint, May 24, 1948—Decision, Feb. 3, 1949*

Where a corporation; its three officers who owned and directed it; and its manager; engaged in the interstate sale and distribution of push cards and punch boards, including (1) many designed for the sale or distribution of various specified articles, as explained by legends or instructions set forth thereon, under plans whereby customer's success or failure in securing a winning number determined whether he received, without additional charge, one of such articles at much less than its normal retail price, or nothing; and (2) other devices with blank spaces upon which the purchasers placed instructions of similar import, and which were used solely by ultimate purchasers in combination with other merchandise, for sale or distribution thereof by lot or chance—

- (a) Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles in commerce, by whom the articles and devices concerned were assembled and sold to retail dealers, and exposed by latter to purchasing public in accordance with aforesaid sales plan; and

Where said corporation and individuals, engaged in interstate sale and distribution also of certain assortments of guns, knives, pipes, cigarette lighters, field glasses, and other articles, and punch boards, for use in the sale and distribution of such articles under a plan whereby, as announced thereon, the success or failure of the purchaser in securing certain numbers determined whether or not he received for 5 cents one of the aforesaid articles, the retail value of which was in excess of said amount, or nothing further—

- (b) Sold such assortments to retailers, by whom they were similarly exposed and sold to the purchasing public in accordance with the aforesaid plan, and thus distributed the articles to the purchasers of punches from the board, wholly by lot or chance; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of their merchandise, contrary to an established public policy of the Government of the United States, and in violation of the criminal laws;

With the result that many members of the purchasing public by reason of the element of chance involved, were induced to trade or deal with retailers who thus sold or distributed their merchandise; many retailers were induced to deal or trade with manufacturers, wholesalers, and jobbers who sold and distributed their products together with said push cards or punch boards; and gambling was taught and encouraged; all to the injury of the public: