

Complaint

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IN THE MATTER OF
EVANSTON LABORATORIES, INC.

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

Docket 5583. Complaint, Sept. 23, 1948—Decision, June 3, 1949

Where a corporation and its president—one of its principal stockholders, who dominated and controlled its advertising, sales policies, and operations—engaged in the processing and interstate sale and distribution of their drug product known as "Red Cell Caps," in advertising through catalogs, circulars, and other advertising literature—

- (a) Falsely represented that use of said "Caps" as directed would materially increase the red cell count and the amount of hemoglobin in the blood; improve the quality of the blood and increase its potency; and provide the blood building solids contained in raw whole blood in the same manner and to the same degree as by blood transfusion;
- (b) Falsely represented that said product was an adequate source of iron, copper, amino acids, proteins, carotene, and other vital blood elements when they were lacking in the blood; that it would aid digestion and eliminate constipation; and that it was an adequate dietary supplement;
- (c) Falsely represented that it was an effective treatment for secondary anemia or hydremia in pregnancy, and for loss of blood during menstruation; and that it would fortify the blood during the menopause;
- (d) Falsely represented that it was a competent and effective treatment for stomach and bowel disorders; and that it relieved the distress of ulcerated stomach and bowels; and
- (e) Represented that 68 out of 100 persons throughout the country have nutritional anemia and that said product would cure such conditions;

Notwithstanding the fact that there are no reliable or authentic statistics which show that said number or any certain number of persons have such anemia; and that said product is neither a cure nor a competent treatment therefor; With capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were true and thereby induce its purchase of said preparation:

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.

Mr. Charles S. Cox for the Commission.

Mr. Henry Junge, of Chicago, Ill., 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 Evanston Laboratories, Inc., a corporation, Merle Slane, Roy Iverson, and Emil Levin,

individually and as officers of the Evanston Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Evanston Laboratories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1316 Sherman Avenue, Evanston, Ill. Until the fall of 1947, it was known as Burner Laboratories, Inc. Merle Slane, Roy Iverson, and Emil Levin are president, treasurer, and secretary, respectively, and the principal stockholders of Evanston Laboratories, Inc., and as such officers dominate and control the advertising, sales policies, and operations of said corporate respondent, Evanston Laboratories, Inc.

PAR. 2. Respondents, under the name Evanston Laboratories, Inc., since the fall of 1947 and under the name Burner Laboratories, Inc., prior thereto, engaged in the business of processing, selling, and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formula and directions for use thereof, are as follows:

Designation: Red cell caps.

Formula: Dehydrated citrated bovine blood.

Directions: One or more capsules after meals.

Respondents cause their said product, when sold, to be transported from their aforesaid place of business in Illinois to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned have maintained, a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to a circular entitled "Increased Blood Potency" and advertisements inserted in the Courier-Journal, Louisville, Ky., issues of January 31, 1948, February 7 and 21, 1948, March 13, 1948, and April 9, 1948, and in the Louisville (Ky.) Times, issues of February 3, 1948, March 2, 26-30, inclusive, 1948, April 2 and 9, 1948, and

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by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and caused the dissemination of advertisements concerning their said product by various means, including, but not limited to, the circulars and advertisements referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

INCREASED BLOOD POTENCY—RED CELL CAPS * * * The new—Pleasant and Easy way to **MORE POTENT BLOOD** and the feeling of well being it brings you.

Red Cell Caps are a concentrated pure food supplement in capsule form containing the solids of pre-tested citrated whole bovine blood in readily digestible powder. The valuable blood building solids contained in raw whole blood has heretofore been available only by blood transfusions and not orally. The Burner process utilizes not only the solids of the red cells, with their valuable iron, copper and hemoglobin content, but also the solids of the plasma and entire blood stream so that the entire blood and health building solids become available for oral use in building more potent blood which is so essential to the building, maintenance and repair of a healthy body and its functions * * *.

WHO SHOULD TAKE RED CELL CAPS AND WHY Anyone whose blood shows a deficiency in red cell count and hemoglobin percentage, * * *. Red Cell Caps increase the potency of the blood quickly and without the usual intolerance or difficulty of inorganic iron, liver, etc.

MEN AND WOMEN WHO HAVE LIVED "TOO FAST," "FEEL AND LOOK TOO OLD" FOR THEIR YEARS AND DON'T WANT TO GIVE UP THE FUN OF LIVING. * * * **RED CELL CAPS** impart the necessary natural blood elements to increase the potency of the blood, if it lacks red cells, hemoglobin, amino acids, protein, carotene or other vital blood elements such as iron and copper.

PRE-NATAL CARE FOR THE EXPECTANT MOTHER. * * * **RED CELL CAPS** are ideal for this delicate period * * *. They make the blood more potent without overfeeding * * *. For secondary anemia or hydremia in pregnancy **RED CELL CAPS** get results in cases where women cannot tolerate inorganic iron. Likewise, those whose irritable bowels cannot tolerate Ferrous Sulphate. **RED CELL CAPS** naturally decrease functional constipation. **LOSS OF BLOOD DURING MENSTRUATION. NEEDED BLOOD FORTIFICATION DURING MENOPAUSE. PEOPLE WITH STOMACH AND BOWEL DISTRESS.** Case after case is on the record where **RED CELL CAPS** have relieved the distress of ulcerated conditions of stomach and bowel. The natural blood elements in **RED CELL CAPS** relieved the ulcerated condition very much as they do lesions that don't respond to other means to promote granulation * * *. They tend to aid digestion * * *.

RED CELL CAPS CAN BE USED BY PEOPLE WITH ANY TYPE OF BLOOD. They increase the potency of the blood * * * not the quantity as in trans-

fusions. Just as transfusions are the means of correcting the more serious blood conditions, Red Cell Caps are becoming the means of helping correct the lack of blood potency when due to blood deficiency.

RED CELL CAPS increase the red cell counts and hemoglobin content in every case of nutritional anemia.

PEOPLE WHO ARE TIRED, NERVOUS AND IMPOTENT FROM NUTRITIONAL ANEMIA. Medical authorities say about 68 out of 100 people have nutritional anemia because the food they eat doesn't give them the needed nourishment to maintain their necessary blood potency. RED CELL CAPS help make up that deficiency * * * give such folks more potent blood and at the same time eliminates constipation pleasantly.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondents have represented that the use of the product Red Cell Caps as directed will materially increase the red cell count and the amount of hemoglobin in the blood; will improve the quality and increase the potency of the blood; provides the blood building solids contained in raw whole blood in the same manner and to the same degree as by blood transfusions; that said product is an adequate source of iron, copper, amino acids, proteins, carotene, and other vital blood elements when same are lacking in the blood, will aid digestion and eliminate constipation, is an adequate dietary supplement, is an effective treatment for secondary anemia or hydremia in pregnancy, for loss of blood during menstruation and will fortify the blood during the menopause, is a competent and effective treatment for stomach and bowel disorders, relieves the distress of ulcerated stomach and bowels, that 68 out of 100 persons throughout the country have nutritional anemia and that said product will cure such condition.

PAR. 6. The aforesaid 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, the use of Red Cell Caps as directed or otherwise, will not increase the red cell count or the amount of hemoglobin in the blood nor improve the quality or increase the potency of the blood. The effects and the results of the taking of this product orally and those obtained by a blood transfusion are not comparable in any manner. The use of said product as directed will not provide sufficient amounts of iron, copper, amino acids, proteins, carotene, or other vital blood elements so as to cause any appreciable change in the condition or improvement of the blood. Said product will have no effect upon digestion and will not eliminate or be of value in the treatment of constipation. It has no value as a dietary supplement. It is not an effective treatment for secondary

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anemia or hydremia in pregnancy or for loss of blood during menstruation. Its use will not fortify or have any beneficial effect upon the blood during the menopause. The use of said product will not be of value in the treatment of stomach and bowel disorders and will not relieve the distress of ulcerated stomach or bowel nor be of any benefit to such conditions. There are no reliable or authentic statistics which show that 68 out of 100 or any certain number of persons have nutritional anemia. Said product will not cure nutritional amenia, nor is it a competent or effective treatment therefor.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 23, 1948, issued and subsequently served its complaint in this proceeding upon the respondents Evanston Laboratories, Inc., a corporation, and Merle Slane, Roy Iverson, and Emil Levin, individually, and as officers of Evanston Laboratories, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, the corporate respondent Evanston Laboratories, Inc., and the individual respondent Merle Slane filed their answer on October 29, 1948, admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. The individual respondents Roy Iverson and Emil Levin filed their separate answer on October 29, 1948, with supporting affidavit, setting forth that they were made officers of the corporate respondent solely for the purpose of protecting the financial interests of clients and did not participate in the acts and practices charged in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and the answers filed thereto, 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. Evanston Laboratories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1316 Sherman Avenue, Evanston, Ill. Respondent Merle Slane is president and one of the principal stockholders of the corporate respondent, and as such officer dominates and controls the advertising, sales policies, and operations of said corporate respondent. Respondents Roy Iverson and Emil Levin are treasurer and secretary, respectively, of said corporate respondent, but did not participate in any of the acts and practices hereinafter described.

PAR. 2. Respondents, under the name Evanston Laboratories, Inc., since the fall of 1947 and under the name Burner Laboratories, Inc., prior thereto, have been engaged in the business of processing, selling, and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formula and directions for use thereof, are as follows:

Designation: Red cell caps.

Formula: Dehydrated citrated bovine blood.

Directions: One or more capsules after meals.

Respondents cause their said product, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents have disseminated and have caused to be disseminated false advertisements concerning their medicinal preparation designated "Red Cell Caps" by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and have caused the dissemination of false advertisements concerning said medicinal preparation by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of said medicinal preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth,

by the United States mails and by means of catalogs, circulars, and other advertising literature, are the following:

INCREASED BLOOD POTENCY—RED CELL CAPS * * * The new—Pleasant and Easy way to MORE POTENT BLOOD and the feeling of well-being it brings you.

Red Cell Caps are a concentrated pure food supplement in capsule form containing the solids of pre-tested citrated whole bovine blood in readily digestible powder. The valuable blood building solids contained in raw whole blood has heretofore been available only by blood transfusions and not orally. The Burner process utilizes not only the solids of the red cells, with their valuable iron, copper and hemoglobin content, but also the solids of the plasma and entire blood stream so that the entire blood and health building solids become available for oral use in building more potent blood which is so essential to the building, maintenance and repair of a healthy body and its functions * * *.

WHO SHOULD TAKE RED CELL CAPS AND WHY Anyone whose blood shows a deficiency in red cell count and hemoglobin percentage, * * *. Red Cell Caps increase the potency of the blood quickly and without the usual intolerance or difficulty of inorganic iron, liver, etc.

MEN AND WOMEN WHO HAVE LIVED "TOO FAST," "FEEL AND LOOK TOO OLD" FOR THEIR YEARS AND DON'T WANT TO GIVE UP THE FUN OF LIVING! * * * RED CELL CAPS impart the necessary natural blood elements to increase the potency of the blood, if it lacks red cells, hemoglobin, amino acids, protein, carotene or other vital blood elements such as iron and copper.

PRE-NATAL CARE FOR THE EXPECTANT MOTHER. * * * RED CELL CAPS are ideal for this delicate period * * *. They make the blood more potent without overfeeding * * *. For secondary anemia or hydremia in pregnancy RED CELL CAPS get results in cases where women cannot tolerate inorganic iron. Likewise, those whose irritable bowels cannot tolerate Ferrous Sulphate. RED CELL CAPS naturally decrease functional constipation. **LOSS OF BLOOD DURING MENSTRUATION. NEEDED BLOOD FORTIFICATION DURING MENOPAUSE. PEOPLE WITH STOMACH AND BOWEL DISTRESS.** Case after case is on the record where RED CELL CAPS have relieved the distress of ulcerated conditions of stomach and bowel. The natural blood elements in RED CELL CAPS relieved the ulcerated condition very much as they do lesions that don't respond to other means to promote granulation * * *. They tend to aid digestion * * *.

RED CELL CAPS CAN BE USED BY PEOPLE WITH ANY TYPE OF BLOOD. They increase the potency of the blood * * * not the quantity as in transfusions. Just as transfusions are the means of correcting the more serious blood conditions, Red Cell Caps are becoming the means of helping correct the lack of blood potency when due to blood deficiency.

RED CELL CAPS increase the red cell counts and hemoglobin content in every case of nutritional anemia.

PEOPLE WHO ARE TIRED, NERVOUS AND IMPOTENT FROM NUTRITIONAL ANEMIA. Medical authorities say about 68 out of 100 people have nutritional anemia because the food they eat doesn't give them the needed nourishment to maintain their necessary blood potency. RED CELL CAPS help make up that deficiency * * * give such folks more potent blood and at the same time eliminates constipation pleasantly.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondents have represented that the use of the product Red Cell Caps as directed will materially increase the red cell count and the amount of hemoglobin in the blood; will improve the quality and increase the potency of the blood; provide the blood building solids contained in raw whole blood in the same manner and to the same degree as by blood transfusions; that said product is an adequate source of iron, copper, amino acids, proteins, carotene, and other vital blood elements when same are lacking in the blood; that it will aid digestion and eliminate constipation; that it is an adequate dietary supplement, is an effective treatment for secondary anemia or hydremia in pregnancy, for loss of blood during menstruation, and will fortify the blood during the menopause; that said product is a competent and effective treatment for stomach and bowel disorders; relieves the distress of ulcerated stomach and bowels; and that 68 out of 100 persons throughout the country have nutritional anemia and that said product will cure such condition.

PAR. 6. The aforesaid 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, the use of Red Cell Caps as directed or otherwise will not increase the red cell count or the amount of hemoglobin in the blood nor improve the quality or increase the potency of the blood. The effects and the results of the taking of this product orally and those obtained by a blood transfusion are not comparable in any manner. The use of said product as directed will not provide sufficient amounts of iron, copper, amino acids, proteins, carotene, or other vital blood elements so as to cause any appreciable change in the condition or improvement of the blood. Said product will have no effect upon digestion and has no value in the treatment of constipation. It has no value as a dietary supplement. It is not an effective treatment for secondary anemia or hydremia in pregnancy or for loss of blood during menstruation. Its use will not fortify or have any beneficial effect upon the blood during the menopause. The use of said product will not be of value in the treatment of stomach and bowel disorders and will not relieve the distress of ulcerated stomach or bowels nor be of any benefit to such conditions. There are no reliable or authentic statistics which show that 68 out of 100 or any certain number of persons

have nutritional anemia. Said product will not cure nutritional anemia, nor is it a competent or effective treatment therefor.

PAR. 7. The use by the respondents of the statements and representations hereinabove described with respect to their preparation "Red Cell Caps," disseminated as aforesaid, has the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchasing public because of such erroneous and mistaken belief to purchase respondents' preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents Evanston Laboratories, Inc., and Merle Slane, individually and as an officer of Evanston Laboratories, Inc., in which answer said respondents admit all material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearings as to said facts, and the answer of the respondents Roy Iverson and Emil Levin, with supporting affidavits setting forth that they were made officers of the corporate respondent solely for the purpose of protecting the financial interests of their clients and did not participate in the acts and practices charged in the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents Evanston Laboratories, Inc., a corporation, and Merle Slane, individually and as an officer of Evanston Laboratories, Inc., have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Evanston Laboratories, Inc., a corporation, and its officers, and respondent Merle Slane, individually, and their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' medicinal preparation designated "Red Cell Caps," or any other preparation of substantially similar composition or possessing substantially similar

properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That the use of respondent's preparation will increase the red-cell count or the amount of hemoglobin in the blood;

(b) That the use of respondents' preparation will improve the quality or increase the potency of the blood;

(c) That respondents' preparation provides blood-building solids comparable to that supplied by raw whole blood in blood transfusions, or that its use, orally, has any effect or result comparable to those obtained by blood transfusion;

(d) That respondents' preparation will provide sufficient amounts of iron, copper, amino acids, proteins, carotene, or other vital blood elements so as to cause any appreciable change in the condition or improvement of the blood;

(e) That respondents' preparation has any effect in the aid of digestion;

(f) That respondents' preparation will eliminate constipation or have any value in the treatment of constipation;

(g) That respondents' preparation has any value as a dietary supplement;

(h) That respondent's preparation is effective in the treatment of secondary anemia, hydremia in pregnancy, or for loss of blood during menstruation;

(i) That respondents' preparation has any beneficial effect in fortifying the blood or has any beneficial effect upon the blood during the menopause;

(j) That respondents' preparation has any value in the treatment of stomach or bowel disorders or that it will relieve the distress of ulcerated stomach or bowels;

(k) That respondents' preparation is a cure or remedy for nutritional anemia or that it constitutes a competent or effective treatment therefor;

(l) That any substantial number of persons are suffering from nutritional anemia unless based upon reliable and authentic statistics.

2. Disseminating or causing to be disseminated 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

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defined in the Federal Trade Commission Act, of respondents' preparation, "Red Cell Caps," which advertisements contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the complaint be dismissed as to the respondents Roy Iverson and Emil Levin, individually and as officers of Evanston Laboratories, Inc.

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

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IN THE MATTER OF
THE A. S. KREIDER SHOE CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5577. Complaint, July 21, 1948—Decision, June 21, 1949*

Shoes, regardless of their design and construction, cannot be relied upon to keep the feet healthy and cannot prevent or correct disorders, deformities, or abnormalities of the feet. Disorders of the feet may result from many different causes of a local or systemic character, requiring different methods of treatment depending upon the nature and extent of the disorder and the disturbance in function, which varies from individual to individual, and proper treatment of practically every foot disease requires as an indispensable prerequisite, a diagnosis and determination of the nature or type of the disorder. And in order to make such diagnosis and determination, a comprehensive physical examination of the lower extremities and other parts of the body, including a detailed history of the patient and ailment, are required.

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Pollyanna Health Shoes," which it made and sold in several types in appropriate sizes for children of all ages, making said shoes for no particular person or prescribed foot condition, but selling the same in volume to retail stores for resale to any and all persons who desired them for any reason; in advertising said shoes in newspapers, by pamphlets and by other advertising literature—

Falsely represented, directly and by implication, that its said shoes were health shoes or so constructed that they would prevent and cure diseases and abnormalities of the feet, and keep the feet healthy, prevent development of abnormalities and deformities thereof, and correct any disorder of the feet which might be present:

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 practice in commerce.

Mr. Clark Nichols for the Commission.

Mr. Daniel R. Forbes, of Washington, D. C., 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 The A. S. Kreider Shoe Co., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Com-