

Complaint

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-

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mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereof as follows:

PARAGRAPH 1. Respondent, The A. S. Kreider Shoe Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Annville, Pa.

PAR. 2. Respondent is now and for several years last past has been, engaged in the manufacture and sale of certain devices in commerce, as "devices" are defined in the Federal Trade Commission Act. The designation used by respondent for said devices is "Pollyanna Health Shoes."

PAR. 3. Respondent causes and has caused said devices when sold to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia and at all times herein has maintained a course of trade in said devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of advertisements concerning its said devices 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, circulars entitled "Keep the Growing Feet Healthy" and "Pollyanna Health Shoes," by advertisements in "Foot Wear News," issue July 27, 1946, "Creative Foot Wear," June 1946, "Boot and Shoe Recorder," May 1946, "Womens Wear Daily," July 19, 1946, and October 5, 1945, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of advertisements concerning its said devices by various means, including but not limited to the circulars and advertisements referred to above for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

Circular entitled "Keep The Growing Feet Healthy" depicting the side view of a shoe with foot and toes outlined inside, with arrows pointing to different parts of the shoe from the following statements, "Snug Ankle Fit," "High Counter Moulded to Last," "Built Up Heel To Prevent Turning," "Snug Fitting Arches," "Snug Fitting Waist," "Steel Shank," "Free Fitting Ball," "Plenty of Room

For Toes To Move Back And Forth," and depicting the bottom full sole of a shoe with arrows pointing to different parts of the sole from the following statements, "Cupped Heel Seat Making Room for Oscalsis Bone," "Visible Steel Arch Support," "Airy Arch," "Pat App For," "Innersole Cup For Outer and Inner Metatarsal Bones;"

Circular entitled "Pollyanna HEALTH SHOES, POLLYANNA SHOE CO." with strip pictures on border showing children at play.

Advertisements in newspapers and trade journals as follows:

Pollyanna HEALTH SHOES, one famous brand that serves Toddlers to Teens.

Pollyanna HEALTH SHOES, one famous brand that serves Toddlers to Teens. 51 years of fine Pennsylvania craftsmanship in shoes that incorporate every important health feature known to foot-fitting science. That's why you will find this famous name featured in hundreds of leading children's shoe operations. Sorry, no new dealers right now. It won't be long though! H. S. Kreider Shoe Co., Annville, Pa.

PAR. 6. Through the use of the advertisements containing statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

That its said devices are "Health Shoes," thereby representing that said devices will keep the feet healthy, will prevent the development of abnormalities or deformities of the feet and correct any disorder of the feet which may be present; that its devices "keep the growing feet healthy," thereby representing that said devices will keep the growing feet healthy, will prevent the development of abnormalities or deformities in growing feet and correct any disorder which may be present in growing feet; that its devices contain features that will keep the feet healthy, will prevent the development of abnormalities or deformities of the feet and correct any disorder of the feet which may be present; that its devices contain every important feature known to foot-fitting science.

PAR. 7. The 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 respondent's devices are not "Health Shoes" and their use will not keep the feet healthy, will not prevent the development of abnormalities or deformities of the feet and correct any disorders of the feet which may be present. The use of said respondent's devices will not keep the growing feet healthy, will not prevent the development of abnormalities or deformities in growing feet and correct any disorders which may be present in the growing feet. Respondent's devices do not contain features that will keep the feet healthy, prevent the development of abnormalities or

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deformities of the feet and correct any disorders of the feet that may be present. Respondent's devices do not contain every important feature known to foot-fitting science.

PAR. 8. 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 July 21, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, The A. S. Kreider Shoe Co., a corporation, charging it with use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer by respondent thereto, a stipulation as to the facts was entered into by and between the attorney for the respondent and Daniel J. Murphy, Chief of the Trial Division, subject to the approval of the Commission, whereby it was stipulated that the statement of facts set out in said stipulation might be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint and in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, the answer thereto, and the stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The A. S. Kreider Shoe Co., is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business located at Annville, Pa.

PAR. 2. Respondent for several years last past has been engaged in the manufacture and sale of certain devices in commerce, as "de-

vices" are defined in the Federal Trade Commission Act. The designation used by the respondent for said devices in "Pollyanna Health Shoes." Respondent manufactures and sells several types of these shoes in appropriate sizes for children of all ages. They are not made for any particular person or prescribed foot condition, but are sold in volume to retail stores for resale to any and all persons who desire them for any reason.

PAR. 3. Respondent causes, and has caused, said "Pollyanna Health Shoes," when sold, to be transported from its place of business in the State of Pennsylvania 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 "Pollyanna Health Shoes" in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said devices by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. The respondent has also disseminated, and caused the dissemination of, false advertisements concerning its said devices by various means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of its said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in the said advertisements disseminated, and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, by pamphlets, and by other advertising literature, with reference to said "Pollyanna Health Shoes" are the following:

Circular entitled, "Keep The Growing Feet Healthy," depicting the side view of a shoe with foot and toes outlined inside, with arrows pointing to different parts of the shoe from the following statements, "Snug Ankle Fit," "High Counter Moulded to Last," "Built Up Heel To Prevent Turning," "Snug Fitting Arches," "Snug Fitting Waist," "Steel Shank," "Free Fitting Ball," "Plenty of Room For Toes To Move Back And Forth," and depicting the bottom full sole of a shoe with arrows pointing to different parts of the sole from the following statements, "Cupped Heel Seat Making Room for Oscalsis Bone," "Visible Steel Arch Support," "Airy Arch," "Pat App For," "Innersole Cup For Outer and Inner Metatarsal Bones."

Circular entitled "Pollyanna HEALTH SHOES, POLLYANNA SHOE CO." with strip pictures on border showing children at play.

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Advertisements in newspapers and trade journals as follows:

Pollyanna HEALTH SHOES, one famous brand that serves Toddlers to Teens.

Pollyanna HEALTH SHOES, one famous brand that serves Toddlers to Teens. 51 years of fine Pennsylvania craftsmanship in shoes that incorporate every important health feature known to foot-fitting science. That's why you will find this famous name featured in hundreds of leading children's shoe operations. Sorry, no new dealers right now. It won't be long though! H. S. Kreider Shoe Co., Annville, Pa.

PAR. 5. Through the use of the advertisements containing statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that its devices are "Health Shoes," thereby representing that the shoes sold by it and so designated are constructed in such a manner that they will prevent and cure diseases and abnormalities of the feet and that they will keep the feet healthy, prevent the development of abnormalities and deformities of the feet, and correct any disorder of the feet which may be presented.

PAR. 6. The advertisements and representations 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 respondent's devices are not health shoes and will not keep the feet healthy, prevent the development of abnormalities or deformities, or correct any disorder of the feet which may be present.

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. Any condition which interferes with the structural strength of the foot (arrangement of the bones and ligaments) or with the proper balance of the leg on the foot (muscular control) results in a disorder of the foot. Muscle weakness, incorrect weight-bearing thrust upon the foot, short heel cord, and infantile paralysis are among the common conditions giving rise to disorders of the feet in children. Muscular weakness may be caused by excess weight, malnutrition, rickets, endocrine disorders, infantile paralysis, and other diseases which specifically adversely affect the integrity of muscular and ligamentous functions of the lower extremities. Various conditions of the lower extremities such as bowlegs, knock-knees, flatfoot, clubfoot, pigeon-toes, short heel cord, claw foot, metatarsalgia, spastic lower extremities, infantile paralysis, and arthritis, all are or contribute to foot disorders. Because of these facts proper treatment of practically every foot disease requires as an indispensable prerequisite a diagnosis and determination

of the nature or type of the disorder. 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. Even in the same individual, the condition of the feet may be such that one foot may require an entirely different shoe than the other foot. 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. Respondent's shoes do not incorporate every important so-called "health" feature known to foot-fitting science. "Pollyanna Health Shoes" are not properly or truthfully designated as "health shoes" or as possessing health features, and the wearing of these shoes will not keep the feet healthy and will not prevent or correct disorders or abnormalities of the feet.

CONCLUSION

The aforesaid acts and practices of the respondent, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, and stipulation as to the facts, in which stipulation respondent waived all intervening procedure and further hearing as to the said facts, 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, The A. S. Kreider Shoe Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's device now designated "Pollyanna Health Shoes," or any other device of substantially similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) That respondent's said device constitutes or is a "health" shoe.

(b) That the use of respondent's said device will keep feet healthy, prevent the development of abnormalities or deformities of the feet, or correct any disorders or abnormalities of the feet.

2. Disseminating or causing to be disseminated, 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 respondent's devices, "Pollyanna Health Shoes," any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

PARKER HERBEX CORP. Complaint, May 17, 1944. Order, July 2, 1948. (Docket 5160.)

Charge: Advertising falsely or misleadingly as to qualities, results, and safety of product or offering, and Commission approval; furnishing means and instrumentalities of misrepresentation and deception; and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of various cosmetic and drug preparations for the hair and scalp, including respondent's Herbex Hair Softener, Herbex Areata Special, Herbex Special Tincture of Capsicum, Herbex Special Tincture of Jaborandi, Herbex Special Tincture of Mullein, Herbex Triple X, Herbex No. 1, Herbex No. 2, Herbex No. 3, Herbex Tincture of Exite, Herbex Special White Ointment, Herbex Special Pink Ointment, Herbex Standard Yellow Ointment and Herbex Areata Salve; and in connection with the sale to professional hair dressers and beauty parlor operators of "The Parker Herbex Method," course to inform them how to use respondent's said drugs and cosmetics in the care and treatment of the hair and scalp (and consisting of two charts designated "The Parker Herbex Professional's Chart" and "The Professional Parker Herbex Treatment"), and "The Parker Herbex Method of Individualized Hair Treatments"; represented as enabling said dressers and operators (whom it "licenses" upon the passing of a satisfactory examination) to recognize and successfully treat therewith the various ailments and conditions set out.

Record closed without prejudice by the following order:

Respondent is engaged in the sale of certain drug and cosmetic preparations intended for use in the treatment of various diseases and conditions of the hair and scalp. To promote the sale of these preparations respondent also sells a course of instruction designed to inform professional hair dressers and beauty-parlor operators how to use the preparations. This course of instruction consists of certain charts and a book entitled "The Parker Herbex Method of Individualized Hair Treatments," in all of which respondent's preparations are advertised and prescribed for many diseases and conditions of the hair and scalp, including, among others, eczema, psoriasis, pityriasis, dandruff, seborrhea, and baldness.

The complaint issued by the Commission in this proceeding challenged the efficacy of respondent's preparations for many of the dis-

eases and conditions for which they were advertised and prescribed by respondent, and also challenged the ability of respondent's course of instruction to enable one to recognize, diagnose, or effectively treat certain of said diseases and conditions.

Respondent having filed a motion to dismiss the complaint on the ground that all of the advertising in question had been discontinued, the Commission on February 11, 1948, entered an order denying said motion but directing, for the reasons therein stated, that respondent be afforded an opportunity to enter into an appropriate written agreement not to resume the use of said advertising or any advertising similar thereto, and that in the event of the execution of such agreement the matter be resubmitted to the Commission for further consideration looking to the closing of the case without prejudice.

Respondent having now executed and tendered to the Commission such an agreement, and the Commission being of the view that in the circumstances here existing the public interest does not require further corrective action by the Commission in the matter:

It is ordered, That said agreement be, and it hereby is, accepted, and this proceeding be, and it hereby is, closed without prejudice to the right of the Commission to reopen it and take such further action therein in the future as may be warranted by the then existing circumstances.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Colladay, Colladay & Wallace, of Washington, D. C., and *Haggerty, Myles & Wormser*, of New York City, for respondent.

THE GEORGES RIVER WOOLEN MILLS. Complaint, January 11, 1944. Order, July 14, 1948. (Docket 5116.)

Charge: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of product in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction and manufacture for introduction and sale of fabrics used by purchasers for the manufacture of ladies' coats and other garments.

Dismissed without prejudice by the following order:

This matter came on for final hearing before the Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, recommended decision of the trial examiners, and briefs in support of and in opposition to the complaint. No oral argument was requested.

The complaint, issued January 11, 1944, charges that since July 15, 1941, respondent has violated the provisions of the Wool Products

Labeling Act of 1939 and the rules and regulations promulgated thereunder by the manufacturer and introduction into commerce, and the sale, transportation, and distribution in commerce, of wool products which were misbranded within the meaning of said act, rules, and regulations and that said acts, practices, and methods constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The evidence adduced discloses that respondent is engaged in the introduction, manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce of wool products, including specifically three fabrics sold in 1942 under style Nos. 112, 103, and 106. Style 112 was labeled "100% wool," and the evidence fails to show that the fiber content of said style deviated from the percentage shown on the label used thereon except to the extent of such unavoidable variations as resulted in the manufacture thereof despite the exercise of due care.

It appears to the Commission that the fabric content of both style Nos. 103 and 106 failed to meet the percentage of wool content stated on the respective labels used thereon in 1942 and that said failure did not result from unavoidable variations in the manufacture thereof. The use of said labels was discontinued late in 1942 and has not since been resumed, and no further sales of these respective style numbers have been made under said labels. The Commission is of the opinion that the public interest does not require further corrective action with regard to these at this time.

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

Before *Mr. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. Carrel F. Rhodes and *Mr. Robt. N. McMillen* for the Commission.

Hutchinson, Pierce, Atwood & Scribner, of Portland, Maine, and *Mr. Meyer Boskey*, of New York City, for respondent.

FOOD, INCORPORATED, NATURE FOOD CENTRES, INC., ET AL. Complaint, February 3, 1945. Order, July 20, 1948. (Docket 5271.)

Charge: Advertising falsely or misleadingly as to qualities, results, and composition of product, and as to scientific or relevant facts with respect thereto; and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of a large and diversified line of so-called health food preparations

and allied commodities, and through the use in said connection, and as a part of respondents' sales literature of a magazine entitled "Nature's Health News", articles in which, of a pseudo or semi-medical nature, further advertise and promote sale of many of respondents' products.

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 Food, Inc., a corporation, Nature Food Centres, Inc., a corporation, sometimes trading as Healthmode Products Co., Nature Food Centres of Connecticut, Inc., a corporation, Nature Food Centres of Rhode Island, Inc., a corporation, and Andrew F. Rosenberger, Emily M. Rosenberger, and Henry K. Rosenberger, individually and as officers and directors of said corporations, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Food, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 716 Columbus Avenue, Boston, Mass. Said corporation serves as a broker for merchandise handled by respondent Nature Food Centres, Inc. and, acting as a holding company, holds the controlling stock in said Nature Food Centres, Inc.

PAR. 2. Nature Food Centres, Inc., sometimes trading as Healthmode Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 716 Columbus Avenue, Boston, Mass. Said corporation is now and for several years last past has been operating in various cities located throughout the State of Massachusetts a number of retail stores, some with health food lunch bars, for the over-the-counter sale to the public of a large and diversified line of so-called health food preparations and allied commodities, marketed by respondent corporation under various and sundry trade or brand names. Said respondent corporation further maintains a mail-order department for the sale of said merchandise.

Respondent Nature Food Centres, Inc., sometimes trading as Healthmode Products Co., also offers for sale and sells the afore-described merchandise to so-called associate stores variously located in the States of Massachusetts and New York. Said retail stores purchase the said merchandise for sale to the public under the same trade or brand names under which said products are marketed by respondent Nature Food Centres, Inc.

PAR. 3. Respondent Nature Food Centres of Connecticut, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 641 Main Street, Hartford, Conn. Said corporation is now and for several years last past has been operating a number of retail stores in the State of Connecticut for the over-the-counter sale to the public of the afore-described merchandise under the same trade or brand names under which said products are marketed by Nature Food Centres, Inc. Respondent Nature Food Centres, Inc., holds the controlling stock in respondent Nature Food Centres of Connecticut, Inc.

PAR. 4. Respondent Nature Food Centres of Rhode Island, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 94-96 Washington Street, Providence, R. I. Said corporation is now and for several years last past has been operating a number of retail stores in the State of Rhode Island for the over-the-counter sale to the public of the afore-described merchandise under the same trade or brand names under which said products are marketed by respondents Nature Food Centres, Inc., and Nature Food Centres of Connecticut, Inc. Respondent Nature Food Centres, Inc., also holds the controlling stock in respondent Nature Food Centres of Rhode Island, Inc.

PAR. 5. Respondents Andrew F. Rosenberger, Emily M. Rosenberger, and Henry K. Rosenberger are the officers and directors of and formulate and control the policies and activities of said corporate respondents including the acts and practices hereinafter set forth. The address of said individual respondents is 130 Essex Street, Brookline, Mass.

PAR. 6. Respondents in the course and conduct of their businesses as aforesaid solicit the sale of the afore-described merchandise under various and sundry trade or brand names through and by means of newspaper and radio broadcast advertisements and advertising sales literature distributed to the public. Included in such sales literature is a magazine entitled "Nature's Health News," circulated by respondents for the purpose of acquainting prospective purchasers with said merchandise and the cities and the stores wherein said products may be obtained. Respondents, through articles of a pseudo or semi-medical nature appearing in said magazine and through radio programs of like content, further advertise and promote the sale of many of said products.

Respondents, in the marketing of said products, in the course and conduct of their business as aforesaid, from time to time offer for sale

and sell the same product under diverse advertising representations and claims, or under identical or substantially identical advertising representations and claims offer for sale and sell the same product under different trade or brand names. Respondents also substitute one product for another product of different trade or brand name but of like or similar kind, content, or description, and offer for sale and sell the same under the identical or substantially identical advertising representations and claims which accompanied and solicited the sale of the other product.

PAR. 7. Among the products offered for sale and sold by respondents in the manner and method as hereinbefore described are the following:

Vi-B, a partially defatted dehydrated wheat germ product. By analysis said product is shown to contain the following:

Moisture	7.0%
Total Solids	93.0%
Ash	4.92%
Protein (N x 6.25)	38.0%
Fat (ether extract)	2.05%
Crude fiber	2.90%
Carbohydrates other than crude fiber (by difference) (N. F. ext.)	45.13%
Potassium as K	1.08
Calcium as Ca	0.067
Magnesium as Mg	0.353
Phosphorus as P	1.100
Manganese as Mn	0.0092
Copper as Cu	0.0014
Iron as Fe	0.011

Lenderize Tablets, formerly sold by respondents as *Slender-ize Tablets*. The formula for said tablets is as follows:

Celery Leaf Concentrate	15%
Spinach	15%
Rhubarb root powdered	15%
Dulse	15%
Parsley Concentrate	12½%
Irish Moss Powdered	20%
Rhubarb Stalk Concentrate	5%
Cinnamon for flavor	2½%

Nature's Intestinal Tonic Tablets.—The formula for said tablets is as follows:

Psyllium Seed	30%
Rhubarb Root	20%
Carrot Top Powder	6%
Kelp Powder	5%
Anise Seed	5%
Chili Powder	2%
Nutmeg Powder	1%

Sodium Glutamate.....	1%
Yeast.....	30%
Vitamin A and D Concentrate.....	0.45%

One gram of the Vitamin A and D concentrate equals 100,000 U. S. P. Units of Vitamin A and 14,000 U. S. P. Units of Vitamin D.

Vig-Ore Sodium Tablets.—Said tablets consist essentially of dried seaweed and by analysis said tablets are shown to contain the following:

Ash.....	32.7
Sodium.....	1.3
Iodine.....	0.086

The alkalinity of the Ash is equivalent to 2.97 cc. of normal acid per tablet.

Seaflorea Tablets.—Said tablets consist essentially of dried seaweed and by analysis are shown to contain the following:

Ash.....	22.7
Iron.....	0.08
Iodine.....	0.17
Potassium.....	2.6
Manganese.....	0.05
Magnesium.....	0.05
Sodium.....	3.0
Calcium.....	1.54
Copper.....	0.0007

Myneral Broth.—This product is composed of the following ingredients:

tomato	parsley	alfalfa
celery	spinach	salt
barley	carrot	celery seed
yeast	orange	chili
pimiento	watercress	monosodium glutamate

This product contains 21.2 percent of ash, of which not more than 13.4 percent is sodium chloride. The alkalinity of the ash is equivalent to 0.8 cubic centimeter of normal acid per gram.

G. P. L. Tablets.—This contains concentrates of the following:

lettuce	parsley
endive	garlic
dulse	

PAR. 8. In the course and conduct of their aforesaid businesses, the respondents have disseminated and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning the aforescribed products by United States mails, and by various other means in commerce, as "commerce" is defined in the

Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products 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. 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, by advertisements inserted in newspapers and other advertising literature and by radio continuities, are the following:

Advertisements respecting Vi-B

New Health and Hope for Folks Over 40

"Turn Back the Years"

"You may have read in a recent issue of The New York Times that two Boston physicians have found a 'rapid and often spectacular cure' for heart disease caused by Malnutrition. THIS CURE WAS THE MINISTRATION OF VITAMIN B. Two days later the same newspaper published a scientific report of the further wonders of Vitamin B—how its addition to the diet restores color to the hair, and how appetite is greatly increased by it.

* * * Vi-B improves digestion, nourishes the nerve tissues, promotes restful sleep, and invigorates the system."

IF YOU SUFFER FROM

Low Vitality

Neuritis, Nervousness and

Other Nerve Disorders

Stomach Ulcer, Colitis or
Constipation

Loss of Appetite or Anorexia

Anemia

Arthritis

—YOU NEED THIS
NEW FOOD ELEMENT

Think of it! Just by adding one or two spoonfuls of Vi-B to your daily diet, you can bring pep and sparkle to your existence. You can feed and strengthen your nerves and brain, sharpen your appetite, invigorate your sexual system, promote better digestion, and avoid constipation.

Advertisements respecting Slender-ize (Lenderize)

Can you imagine eating 3 square meals a day and yet losing 2½ pounds, or more, of excess weight a week? Such amazing weight losses are reported every day by many women who have reduced by the Slender-ize Method. The Slender-ize Method of Reducing aids you in removing excess fat quickly and safely, and without the use of dangerous drugs, strenuous exercise, or starvation diets.

It's easy. All you have to do is to take the tiny Slender-ize Reducing Tablets and follow the instructions outlined in the Slender-ize Method book. These all food adjunct tablets supply you with an abundance of the minerals needed to balance your meals, and they are also needed for a more complete and faster elimination of excess fat. You will find the safe, open formula for Slender-ize Reducing Tablets inside every package. Present it to your doctor for his approval.

Get your copy of the Slender-ize Method book, for it tells you all you should know in order that you may reduce quickly and safely. In brief, it tells you how to eat your common, every day foods, so as to lose weight. It gives you simple exercises that take off pounds of flabby fat without undue exertion.

You have seen the Slender-ize Method of Reducing recommended and endorsed by the beauty and diet editors of many well known publications, so why hesitate? Begin today to Slender-ize, and win back the slim, youthful body which is rightfully yours.

Advertisements respecting Intestinal Tonic Tablets

I have mentioned several times in this broadcast that if you suffer from migraine headaches, that you should beware of chronic food delay. For this condition can make the pain of a migraine headache much more frequent and terrifying. If you suffer from chronic food delay, get at the cause of your condition scientifically and naturally. Do not use drugs containing cathartic that practically tear your system to pieces. Use a gentle, thorough acting laxative like Nature's Intestinal Tonic Tablets."

* * * * *

These tablets are never sold with the intention of having the purchaser use them forever. It clearly states on the label of every bottle of Nature's intestinal Tonic Tablets that the daily ration of these tablets is to be cut down every day, so that, in time, the person suffering from chronic food delay can eliminate their use entirely. I do not intend that any person should go on forever taking laxative tablets. He should take Nature's Intestinal Tonic Tablets only long enough, so that, he will once again have a natural bowel action. You see, friends, Nature's Intestinal Tonic Tablets are more than just laxative acting. They contain many important vitamins; they contain Vitamin A, B, C, and G. All of these vitamins are very important and you need them in your daily foods for healthful living.

Advertisements respecting Vig-Ore Sodium Tablets.

New Food Sodium Tablets
and Special Arthritis Diet

RELIEVE ARTHRITIS
& RHEUMATIC PAINS . . .

Powerful Dissolver gets at Acid
Poisons which cause Aching Pains
of Arthritis, Muscular Rheumatism,
Neuritis, Sciatica and Lumbago.

Are you treating your Arthritis or other rheumatic pains with salves and liniments? As you have discovered, such preparations bring only temporary relief. For permanent, lasting relief, YOU MUST GET AT THE CAUSE OF YOUR CONDITION.

Advertisements respecting Seaflorea Tablets.

The Minerals in Seaflorea tablets make them a nutritious food for the adult, and helps to preserve youth and stamina. The natural organic iodine found in them will prevent goitre, regulate weight, and aids the entire glandular system * * * Seaflorea tablets contain approximately twenty times more organic minerals than any other known natural food. Seaflorea tablets contain five hundred times more iron than lettuce, and five thousand times more iodine than fish or other sea foods.

* * * * *

The Minerals in these sea vegetables make them a vigorous gland food and health food. They have a definite effect upon the glandular system, besides having a very noticeable effect on the nerves, blood pressure, the heart action, and many other disorders of the human system * * * you may purchase these sea vegetables in a convenient, palatable form at all Nature Food Centres stores. These tablets are called Sea Flora Tablets * * *

* * * So, in spite of the fight that medical science is making to control disease, we find an increase in cancer, diabetes, Bright's disease, hardening of the arteries, heart conditions, and many other ailments due in many cases to mineral deficiencies.

If you, too, suffer from a mineral deficiency, take steps NOW to correct your condition. Read the symptoms of mineral deficiencies on the right side of this page. Read the true facts about Seafflora Mineral Tablets, and discover for yourself if they will help you to regain normal health.

SYMPTOMS of MINERAL DEFICIENCIES

Minerals found in Sea Vegetables and in your body.

Symptoms and Ailments which may develop from lack of minerals.

IODINE—Gland Disturbances, Skin Diseases. Nervousness, Overweight, Underweight. Low Vitality. Goitre.

CALCIUM—Bone Deformities. Stomach Troubles. Rickets. Poor Resistance to Disease. Weak Muscles, Poor Blood.

IRON—Headaches. Anemia. Weakness. Lack of Vitality and Color. Nervousness.

SODIUM—Acidosis. Rheumatic Ailments. Gall Bladder and Kidney Stones. Hardening of the Arteries. Sinus infections.

POTASSIUM—Constipation. Heart Disorders. High Blood Pressure. Female Trouble. Prostate Gland Disorders.

MAGNESIUM—Nervous Conditions. Underweight. Skin Diseases. Anemia. **COPPER**—General Debility. Anemia.

PHOSPHORUS—Nervousness. Gland Troubles. Brain Disorders.

While many people may be mineral starved, the one mineral which seems to be most deficient is iodine. Our common foods such as lettuce, apples, milk, eggs, meats, etc., contain but minute traces of this most important mineral.

Pounds of Food Needed for One Day's Supply of Organic Iodine for the Human System.

200 lbs. of Wheat
97 lbs. of Dried Apples
11 lbs. of Spinach (dry)
7 lbs. of String Beans (dry)
44 lbs. of Milk
21 lbs. of Butter
37 lbs. of Lettuce
44 lbs. of Beef

Or Instead
Approximately One
Teaspoonful of Seaflora
Powder or Six Seaflora
Tablets

* * * * * * * *

* * * It has been stated that probably 60,000,000 people in this country do not get enough iodine in their foods * * *

Advertisements respecting Myneral Broth

To all of you who suffer from an acid condition, or those who wish to assure themselves that their foods will be predominantly alkaline, I suggest that they include Myneral Broth in their daily menus.

* * * * * *

Health scientists agree that when your body reaches a high degree of acidity, sometimes resistance is broken down and the body succumbs very easily to such forms of poor health as: nervous exhaustion, stomach troubles, colds, headaches, high blood pressure, rheumatism, skin eruptions, and many much more serious conditions.

To restore good health, you may need to restore your alkaline balance. Myneral Broth supplies an abundance of the minerals necessary to aid in halting acidity.

* * * * * *

Why suffer from poor health caused by an excess acid condition a day longer, when the means of combating this condition can be purchased at an extremely low price at your nearest Nature Food Centres Store.

* * * * * *

* * * Practically every disease that man is known to suffer from can be traced readily to an acid condition. An acid condition within the body can cause rheumatic ailments, stomach disorders, kidney troubles, colds, colitis, diabetes, varicose veins, and just hundreds of other ailments * * *

Advertisements respecting G. P. L. Tablets

Aid relief of dizziness and headaches due to high blood pressure with G. P. L. tablets * * * The continued use of G. P. L. tablets at prescribed intervals may be valuable in lowering high blood pressure in many cases * * * If you suffer from the torturing pains of high blood pressure and hardening of the arteries try G. P. L. tablets, as have thousands of others.

PAR. 9. Through the use of the statements, representations, and advertisements hereinbefore set forth, and others of similar import and meaning, but not specifically set out herein, respondents have represented, and do now represent, directly and by implication:

Representations with respect to Vi-B

That Vi-B constitutes a competent and adequate treatment for low vitality, neuritis, nervousness and other nerve disorders, stomach ulcers, colitis, constipation, lowered sex interest, anemia, arthritis, loss of appetite, premature aging and high blood pressure; that its use will restore color to the hair; improve the digestion, promotes restful sleep and will cure heart diseases.

Representations with respect to Lenderize Tablets

That Lenderize Tablets, formerly sold as Slender-ize Tablets, used in connection with the instructions in the Slender-ize Method Book, constitutes a competent, easy and effective treatment for obesity and that the tablets supply an abundance of the minerals needed to balance meals.

Representations with respect to "Nature's Intestinal Tonic Tablets"

That the use of "Nature's Intestinal Tonic Tablets" will cure "chronic food delay" or constipation and guarantees a natural bowel action and that said product contains therapeutically significant amounts of Vitamins A, B, D, and G.

Representations with respect to "Vig-Ore Sodium Tablets"

That "Vig-Ore Sodium Tablets" constitute an adequate and competent treatment for the pains of arthritis, muscular rheumatism, neuritis, sciatica and lumbago; and that said tablets contain approximately 20 times more food sodium than celery.

Representations with respect to Seaflora Tablets

That "Seaflora Tablets" invigorate the glands and constitute a competent and effective treatment for diseases of the nerves, high blood pressure and heart action; that cancer, diabetes, Bright's disease, hardening of the arteries and heart conditions are due in many cases to mineral deficiencies and that the recommended daily dose of "Seaflora Tablets" will provide sufficient mineral matter to correct those diseases when they arise from mineral deficiencies; that lack of sufficient iodine causes gland disturbances, skin diseases, nervousness, overweight, underweight, low vitality and goitre and that "Seaflora Tablets" contain sufficient iodine to prevent said ailments or to overcome the same; that lack of sufficient calcium causes bone deformities, stomach troubles, rickets, poor resistance to disease, weak muscles and poor blood, and that "Seaflora Tablets" contain sufficient calcium to prevent or to overcome said ailments; that lack of sufficient iron causes headaches, anemia, weakness, lack of vitality and color, nervousness and that "Seaflora Tablets" contain sufficient iron to prevent or to overcome said ailments; that lack of sufficient sodium causes acidosis, rheumatic ailments, gall bladder and kidney stones, hardening of the arteries and sinus infections and that "Seaflora Tablets" contain sufficient sodium to prevent or to overcome said ailments; that lack of sufficient potassium causes constipation, heart disorders, high blood pressure, female trouble, prostate gland disorders, and that "Seaflora Tablets" contain sufficient potassium to prevent or to overcome said ailments; that lack of sufficient magnesium causes nervous conditions, underweight, skin diseases and anemia, and that "Seaflora Tablets" contain sufficient magnesium to prevent or to overcome said ailments; that lack of sufficient copper causes general debility and anemia and that "Seaflora Tablets" contain sufficient copper to prevent or to overcome said ailments; that lack of sufficient phosphorus causes nervousness, gland troubles and brain disorders and that "Seaflora Tablets" contain sufficient phosphorus to prevent or to overcome said ailments.

That 60,000,000 people in this country suffer from a deficiency of iodine; that a deficiency of iodine plays havoc with one's health; that the common foods such as lettuce, apples, milk, eggs, meats, wheat, dried apples, spinach, string beans, butter, etc., contain but insignificant traces of iodine in comparison to the daily amount needed for proper health.

Representations with respect to Myneral Broth

That Myneral Broth constitutes an adequate and competent treatment for those who suffer from an acid condition or who wish to assure themselves that their foods will be predominately alkaline; that an acid condition of the body results in nervous exhaustion, stomach troubles, colds, headaches, high blood pressure, rheumatism, skin eruptions, kidney troubles, colitis, diabetes, varicose veins; that in fact an acid condition of the body is the cause of practically every disease.

Representations with respect to G.P.L. Tablets

That G.P.L. Tablets constitute an adequate and competent treatment for dizziness and headaches due to high blood pressure; that the continued use of G.P.L. Tablets at prescribed intervals will lower high blood pressure and are of value in relieving the pains of high blood pressure and hardening of the arteries.

PAR. 10. The aforesaid statements, representations, implications and claims, and others of the same import not specifically set out herein, are grossly exaggerated, false and misleading, and constitute false advertisements.

In truth and in fact:

Vi-B does not constitute a competent or adequate treatment for low vitality, nervousness, and other nerve disorders, stomach ulcers, colitis, lowered sex interest, anemia, arthritis, premature aging, high blood pressure, or of all forms of neuritis. Vi-B is of value in the treatment of constipation and the loss of appetite only in those relatively rare instances where these conditions arise from a Vitamin B deficiency. Its use will not restore color to the hair or be of benefit in cases of sleeplessness. It will not cure heart disease.

Lenderize Tablets, formerly sold as Slender-Ize Tablets, used alone or in connection with the instructions in the Slender-ize Method Book, do not constitute a competent or effective treatment for obesity. The sole effect of this product is that of a laxative. Its use as recommended is not safe as it will likely cause harmful irritation of the intestinal tract and may be dangerous to health. Respondents' method of weight reduction is not easy as it requires the restriction of diet which is difficult for obese persons to follow. These tablets when taken as directed supply only a small fraction of the essential minerals, calcium, phosphorus and iron.

The advertisements for this product constitute false advertisements for the further reason that they fail to reveal the material fact that in addition to the use of the tablets a severely restricted diet is required.

Nature's Intestinal Tonic Tablets will not cure "chronic food delay" or constipation nor will their use over any period of time guarantee a natural bowel action. The only therapeutic effect of this product is to cause an evacuation of the intestinal tract. Such effect is only

temporary. Said tablets do not contain Vitamins A, B, D, and G in sufficient quantity to warrant their presence being advertised as therapeutically significant for such quantity as may be present would not provide more than a fraction of the minimum daily bodily requirements for these vitamins.

The use of Vig-Ore Sodium Tablets does not constitute an adequate or competent treatment for the pains of arthritis, muscular rheumatism, neuritis, sciatica, and lumbago. The recommended daily dosage of these tablets would have no therapeutic significance to the individual on an ordinary diet because of the fact that deficiency of sodium is of rare occurrence, and increased amounts ingested are promptly excreted.

"Seafflora Tablets" do not constitute a satisfactory or effective gland food or a competent effective treatment for diseases of the nerves, high blood pressure, or heart action. Cancer, diabetes, Bright's disease, hardening of the arteries, or heart conditions are not due to mineral deficiencies. With the exception of a deficiency of calcium causing bone deformities and rickets, a deficiency of iron and copper causing anemia and a deficiency of iodine causing goitre there is no relationship between the deficiencies of the various minerals in these tablets and the various conditions and diseases as set out in the respondents advertising with respect to this preparation and the various conditions and diseases are not caused by a deficiency of the various minerals as claimed by respondents except as above noted. These tablets, when taken as directed, will not provide sufficient calcium to either prevent or to constitute an adequate treatment for bone deformities or rickets or provide sufficient iron or copper to prevent or constitute an adequate treatment for anemia. With the exception of iodine as a prevention or treatment for goitre, the various minerals in these tablets and listed in said advertisements will not prevent nor do they constitute competent or adequate treatment for the diseases, conditions, and ailments as claimed by respondents in said advertisements. The reference to the amount of ordinary foods needed to supply the daily requirement of iodine for the human system is misleading in that the amounts of various foods which are therein listed all supply several times the minimum daily requirements for this mineral. There is no authoritative data to support the statement that 60,000,000 or any certain number of people in this country suffer from a deficiency of iodine.

Myneral Broth is not an alkalizer or a cure for acidity, and is devoid of any therapeutic value when used for such conditions. Nervous exhaustion, stomach trouble, colds, headaches, high blood pressure, rheumatism, skin eruptions, kidney trouble, colitis, diabetes and varicose veins are not caused by excess acidity, and the product Myneral

Broth does not constitute a competent or adequate treatment for such conditions. The amount of alkali in the preparation is too small to exert any significant effect as an alkalizer or to correct systemic hyperacidity or conditions caused thereby. There is no scientific basis for the claim that most diseases are caused by an acid condition of the body.

G. P. L. Tablets possess no therapeutic value in the treatment of dizziness and headaches due to high blood pressure nor will their use relieve the pains of high blood pressure or hardening of the arteries. They will not be effective in lowering high blood pressure.

PAR. 11. The advertisements disseminated with respect to the preparations, Lender-ize Tablets and Nature's Intestinal Tonic Tablets, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations therein contained and material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, said preparations are irritant laxatives and are potentially dangerous when taken in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 12. The use by respondents of the aforesaid false advertisements, disseminated as aforesaid, has had and now has the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and claims contained in said advertisements are true, and have the capacity and tendency to, and do, cause a substantial portion of the purchasing public to purchase respondents' products as a result of such erroneous and mistaken belief.

PAR. 13. 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 intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon respondents' petition for dismissal of this proceeding, or for suspension of further action herein, without prejudice, and the answer to said petition, filed by counsel supporting the complaint; and

It appearing from said petition and from the record that the advertising representations complained of were discontinued in 1941, approximately four years prior to the date of the issuance of the complaint; and

Respondents having agreed that if at any time in the future the use of any of said representations should be resumed the Commission, upon the basis of the evidence now in the record and without further proceedings, may make its findings as to the facts and conclusion and issue such order to cease and desist as it may deem appropriate; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in the matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to reinstate said complaint and to take such further action herein as may be warranted if the practices complained of should be resumed.

Commissioner Mason not participating because of absence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Karl Stecher and *Mr. D. C. Daniel* for the Commission.

Mr. George Landesman and *Walter L. & Robert M. Post*, of New York City, for respondents.

CAST IRON SOIL PIPE ASSOCIATION, ITS OFFICERS AND MEMBERS. Complaint, March 26, 1937. Order, July 30, 1948. (Docket 3091.)

Charge: Combining and agreeing to lessen and restrain competition through use of the Birmingham Plus pricing system, in violation of the Federal Trade Commission Act; and discriminating in price, through use thereof by producers not located at Birmingham, in violation of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Complaint: Pursuant to the provisions of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, and commonly known as the Federal Trade Commission Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respect in count I hereof.

Also pursuant to the provisions of section 2 of an act of Congress, approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, as so amended, and it appearing to the Commission that a proceeding by it

in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in such respect in count II hereof.

Count I

PARAGRAPH 1. The respondent, the Cast Iron Soil Pipe Association, is a voluntary unincorporated Association, comprising corporate respondents named herein as its members, and having its principal place of business in the city of Birmingham, Ala. The said respondent Association is hereinafter referred to as the "Association."

Respondents Wiley Alford, Harvey D. Ritter, James R. Hedges, and I. W. Rouzer are respectively president, vice president, treasurer, and executive secretary of the Association, and are herein collectively referred to as "respondent officers," and reside respectively at Attalla, Ala.; Linfield, Pa.; Chattanooga, Tenn., and Birmingham, Ala.

Respondent Alabama Pipe Co. is an Alabama corporation having its principal place of business at Anniston, Ala., and 12 foundries in Alabama and one at Chattanooga, Tenn. This respondent has far larger productive capacity and average production than any other producer in the industry.

Respondent Anniston Foundry Co. is an Alabama corporation having its principal place of business and foundry at Anniston, Ala.

Respondent Anniston Soil Pipe Co. is an Alabama corporation having its principal place of business and foundry at Anniston, Ala.

Respondent Buffalo Pipe and Foundry Corp. is a New York corporation having its principal place of business at Tonawanda, N. Y., and foundries at Buffalo and Medina, N. Y.

Respondent Central Foundry Co. is a Maine corporation with its principal place of business at New York City and four foundries in northern Alabama; and one each at Newark, N. J., Dundalk, Md. and Vincennes, Ind.

Respondent Charlotte Pipe & Foundry Co. is a North Carolina corporation having its principal place of business and foundry at Charlotte, N. C.

Respondent Crown Pipe & Foundry Co. is an Ohio corporation having its principal place of business and foundry at Jackson, Ohio.

Respondent Drapery Hardware Co. is a California corporation with principal place of business and foundry at Los Angeles, Calif.

Respondent Eastern Foundry Co. is a Pennsylvania corporation with its principal place of business and foundry at Boyertown, Pa.

Respondent East Penn Foundry Co. is a Pennsylvania corporation with its principal place of business and foundry at Macungie, Pa.

Respondent Essex Foundry Co. is a New Jersey corporation with its principal place of business and foundry located at Newark, N. J.

Respondent Fraters Valve & Fitting Co. is a California corporation with its principal place of business and foundry at Los Angeles, Calif.

Respondent Goslin-Birmingham Manufacturing Co., Inc., is an Alabama corporation with its principal place of business and foundry at Birmingham, Ala.

Respondent The Hajoca Corp. is a Delaware corporation with its principal place of business at Philadelphia, Pa., and a foundry at Lansdale and one at Quakertown, Pa.

Respondent Hedges-Walsh-Weidner Co. is a Tennessee corporation with its principal place of business and foundry at Chattanooga, Tenn.

Respondent Hercules Foundries, Inc. is a California corporation with its principal place of business and foundry at Los Angeles, Calif.

Respondent Interstate Foundry Co. is a corporation under the laws of Alabama with its principal place of business and foundry at Anniston, Ala.

Respondent Jakes Foundry Co. is a Tennessee corporation with its principal place of business and foundry at Nashville, Tenn.

Respondent Kilby Pipe Co. is an Alabama corporation with its principal place of business at Anniston, Ala., and its foundry at Birmingham, Ala.

Respondent Medina Foundry Co. is a New York corporation with its principal place of business and foundry at Medina, N. Y.

Respondent Medina Iron & Brass Co. is a New York corporation with its principal place of business and foundry at Medina, N. Y.

Respondent N. O. Nelson Manufacturing Co. is a Missouri corporation having its principal place of business at St. Louis, Mo., and a foundry at Bessemer, Ala.

Respondent Pacific States Cast Iron Pipe Co. is a Nevada corporation with its principal place of business and foundry at Provo, Utah.

Respondent Pacific States Cast Iron Fittings Co. is a California corporation with its principal place of business and foundry at Los Angeles, Calif.

Respondent Rich Manufacturing Co. Ltd. is a California corporation with its principal place of business and foundry at Los Angeles, Calif.

Respondent Rudisill Foundry Co. is an Alabama corporation with its principal place of business and foundry at Anniston, Ala.

Respondent Salem Brass & Iron Manufacturing Co. is a New Jersey corporation with its principal place of business and foundry at Bridgeton, N. J.

Respondent Sanitary Co. of America is a Delaware corporation with its principal place of business at Linfield, Pa., and foundries located at Linfield and East Greenville, Pa.

Respondent Sanitary Pipe Co. is an Alabama corporation with its principal place of business and foundry at Alexander City, Ala.

Respondent Southern Pipe & Foundry Co., Inc., is a Tennessee corporation with its principal place of business and foundry at Knoxville, Tenn.

Respondent Southern Pipe & Foundry Co. is an Alabama corporation with its principal place of business and foundry located at Birmingham, Ala.

Respondent Stringer Brothers Co., Inc., is an Alabama corporation with its principal place of business at Chicago and foundry at Gadsden, Ala.

Respondent Walker Machine & Foundry Corp. is a Virginia corporation with its principal place of business and foundry at Roanoke, Va.

Respondent Walworth-Alabama Co. is an Alabama corporation with its principal place of business and foundry at Attalla, Ala.

Respondent Harry C. Weiskittel Co., Inc., is a Maryland corporation with its principal place of business and foundry at Baltimore, Md.

The above-described corporate respondents are collectively referred to herein as "producing respondents."

PAR. 2. All of the producing respondents are engaged in the production of cast iron soil pipe, including a variety of fittings therefor, hereinafter sometimes referred to merely as "pipe"; certain of them also make and sell other products. The said respondents comprise more than three-fourths numerically of the producers of cast iron soil pipe in the country and produce more than 90 percent of said pipe produced and sold in the country. In the sale and distribution of cast iron soil pipe producing respondents cause their pipe to be shipped and transported from the various points of its production in certain respective States, through and into other States of the United States. Respondents with foundries east of the Mississippi River sell over wide consuming areas, most of them quoting prices and on occasion making sales in the large consuming centers of New York, Pennsylvania, and Ohio. Producing respondents are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted, or restrained as in paragraphs 4, 5, 6, and 7 hereof set forth. There are other producers of cast iron soil pipe who, in the ordinary course of their business, seek the same customers that are sought by one or more of producing respondents. These producers, hereinafter referred to as "nonmember producers", also cause their pipe to be shipped and transported from the various points of its production in certain respective States, through and into

other States of the United States. They also are in competition among themselves and with producing respondents except insofar as their said competition has been hindered, lessened, restricted, or restrained by their adherence to, concurrence in, or adoption of the methods in paragraphs 4 to 8 inclusive hereof described. The Association and respondent officers are not engaged in commerce but are engaged in unfair methods, as described in said enumerated paragraphs, which directly affect competition among producing respondents and also directly affect competition among them and nonmember producers, all of whom are engaged in the sale of cast iron soil pipe among the States as in this paragraph described.

PAR. 3. The chief raw materials required for cast iron soil pipe are pig iron, scrap iron, and coke. Pig iron and coke are produced in, and scrap iron is procured from, widely separated parts of the country. Said pipe is a foundry product and is produced in widely separated parts of the country. The average annual production thereof is between 400,000 and 500,000 tons. It is a standard commodity made in standardized specifications not differing substantially among producers in quality nor customarily offered for sale or sold upon the basis of quality. The cast iron soil pipe industry belongs to the class known as heavy goods industries; and the cost of delivery of pipe to points not in the vicinity of the respective points of production generally constitutes a substantial element of the cost of the pipe laid down at destination. A great preponderance of pipe is shipped in carload lots. Said pipe is used chiefly for plumbing and the disposition of waste, for purposes frequently referred to as sanitary. Purchasers consist chiefly of contracting plumbers and of wholesalers and warehousemen from whom also plumbers and builders frequently secure supplies.

PAR. 4. The respondents or their predecessors entered into and put into effect, and respondents for over 10 years last past have continued and now have in effect a combination among themselves to hinder, lessen, restrict, and restrain competition, and particularly competition in price, among producing respondents in the course of their aforesaid commerce among the States in cast iron soil pipe. The said combination is made effective by understanding or agreement to employ, and the actual employment of, the methods and practices set forth in paragraphs 5 to 8 inclusive of this count I.

PAR. 5. (a) In pursuance of the combination alleged in paragraph 4 hereof, respondents or their predecessors adopted and inaugurated, and respondents have pursued, at most times during the last 10 years and with respect to the major part of their business, a system of pricing often referred to as a single basing point system. Under the said

system, to the extent that the same is followed, all pipe wherever produced, is sold at delivered prices based on Birmingham, Ala., as the industry's sole basing point for calculating delivered prices for destinations throughout most, if not all, of the United States. Delivered prices as charged under said system by producing respondents at any given destination, as more specifically appears in subparagraph 5 (b) below, approximate the base price at Birmingham plus the rate of freight from Birmingham to any such destination.

(b) The precise formula used for the said system, for carload shipments, is as follows: Respondents have arbitrarily postulated \$100 per ton as a point of departure for calculating their delivered prices. From this figure is deducted a basic discount at Birmingham, for example 60 percent, which would result in a base price at Birmingham of \$40. This basic discount, however, as to customers located elsewhere than at Birmingham, as increasing distances from Birmingham are reflected in increasing freight rates, is reduced one-fourth of 1 percent for every 25 cents difference in net ton of such increased freight rates from Birmingham, which are quoted in cents per ton. This results in a delivered price equivalent to the base price at Birmingham plus the rate of freight from Birmingham to the buyer's freight station. Actual freight charges are either prepaid by producer or, if shipment is sent collect, are charged by buyer to producer. From delivered prices so derived are deducted trade discounts which vary for different classes of buyers, but are uniform to buyers of the same class, as a result of respondents' combination alleged in paragraph 4 hereof. Typical trade discounts are 10, 10 and 5 to wholesale buyers. The system as described in this subparagraph (b) applies generally also to less-than-carload shipments, as to which, however, the discounts allowed are not so large. The system of pricing, in this subparagraph 5 (b) described, is hereinafter referred to as the "Birmingham Plus system," and the prices made thereunder as "Birmingham Plus prices."

(c) For example, it will be assumed that a Chicago wholesaler is buying in carload quantities extra heavy 4-inch pipe (the size more commonly sold than all others combined) and that the basic discount is 60 percent. Using the said postulate of \$100, the 60 percent discount results in a base price at Birmingham of \$40. The rate of freight from Birmingham to Chicago on cast iron soil pipe being \$8 per ton, the basic discount of 60 percent is reduced one-fourth of 1 percent for every 25 cents of rate of freight per ton from Birmingham to Chicago. Since said \$8 freight rate is divisible by 25 cents with a quotient of 32, one-fourth of 32 percent, or 8 percent, is to be subtracted from the 60 percent basic discount. This leaves a discount of 52 percent to be used in deriving the Chicago delivered price, instead of the Bir-

mingham basic discount of 60 percent. The resulting delivered price at Chicago, irrespective of where the pipe was actually produced, is \$48. Assuming that the trade discounts to the wholesale buyer are 10, 10, and 5, the resulting net price at Chicago is approximately \$36.94 per ton.

(*d*) The Birmingham Plus pricing formula as stated in subparagraph (*b*) of this paragraph 5 gives results, as said system is exemplified in subparagraph (*c*) in this paragraph 5, only approximately. Respondents thereunder quote and sell cast-iron soil pipe upon price lists which include also a great variety of fittings for the pipe. All producing respondents use identical price lists which were adopted by concerted action about 10 years ago and have not since been substantially modified. Advances in delivered prices are made, also by concerted action on respondents' part, by reducing the basic discount made from the aforesaid \$100; and reductions are made by increasing said basic discount. The list prices of pipe have been so fixed as to approximate as nearly as possible to \$130 per ton in order that, when the trade discounts, in subparagraph (*b*) of this paragraph 5 mentioned, are applied the net resulting prices, Birmingham, shall approximate as nearly as practicable the \$100 postulated as the point of departure for the formula stated in subparagraph (*b*) of this paragraph 5. Thus the Birmingham Plus system as generally stated in subparagraphs (*a*) and (*b*) of this paragraph 5 is effectuated for the most frequently sold sizes of pipe. The sizes of pipe listed at prices which do not approximate \$130 as foreshaid and fittings are nevertheless quoted and sold by respondents in carload lots at list prices which have been agreed upon, and which are subject to uniform basic and trade discounts, all as more fully alleged in subparagraph (*b*) of this paragraph 5.

PAR. 6. The effect of the adoption, continuance, and maintenance of the Birmingham Plus system in the cast-iron soil-pipe industry, to the extent that the system has been and is followed, has been and is completely to destroy competition in price. Thereunder each producing respondent makes a delivered price identical with that made by every other producer adhering to the system, to any given customer wherever said customer may be located. This is done by each with the knowledge that all other producers following the system will quote and charge delivered prices identical with his own and with one another. Among the further effects of the Birmingham Plus system, to the extent that the same is in use, are the following:

(*a*) Each producing respondent, except those located in the Birmingham district, receives his highest net return, or true price, when he sells to buyers in his own locality, since he adds to the base price at

Birmingham the rate of freight from Birmingham to his own said locality and has no actual cost of delivery except, in some instances, switching charges. He does not however, when following the Birmingham Plus system, reduce his local delivered price in order to hold the business of buyers located in his own city or vicinity. On the contrary, he refrains from price competition and offers no price concessions such as might, if met by distant producers, make the business undesirable to the latter producers. Thus each respondent producer, when the system is followed, is enabled to sell at the location or in the vicinity of the foundries of other producers, without encountering any actual price competition from such other producers. In many instances respondent producers transport their said products beyond the successive localities of several producers into far distant points of consumption, all without having encountered any competition in delivered prices from any such producer. Each producer receives reciprocal protection against price competition throughout the country in return for refraining from competing in price with other producers, each of whom might otherwise sell in the territory adjacent to and most naturally and economically to be supplied from his own foundry at prices which would reflect his natural advantages. The buying public thus pay higher delivered prices for pipe than if the Birmingham Plus system were not employed: to wit, a higher aggregate of actual price plus cost of transportation.

(b) Through the inclusion, in the delivered prices which producing respondents exact, of sums measured by the rate of freight from Birmingham to the freight station of each buyer, sums greater than the actual cost of transportation from the place of production to the buyer's freight station, the buying public pay delivered prices precisely as though all the cast-iron soil pipe produced in the United States were produced at and shipped from Birmingham.

(c) Advantages which would accrue to buyers located near raw materials and near cast-iron soil-pipe foundries under conditions of price competition are destroyed by the Birmingham Plus system. The buying public pay the same prices precisely as though there were no natural advantages for the production of cast-iron soil pipe other than those at Birmingham and no means of transporting said pipe from any other producing point cheaper than those available from Birmingham to given destinations.

(d) Under the Birmingham Plus system the prices charged by respondent producers are made without regard to the varying local conditions of demand and supply. They are made through a concert of action which is formulated and expressed in terms of the Birmingham Plus system which applies throughout most, if not all, of the country.

(e) Under the Birmingham Plus system, producing respondents who follow the said system and who are well located with regard to raw materials, means of transportation, and proximity to large consuming populations and who are well financed and ably conducted do not avail themselves of their competitive advantages. The buying public lose the advantages of efficiency and economy in production and distribution which would result from price competition.

(f) By the concert of action embodied in the Birmingham Plus system the buying public are caused to pay artificially enhanced prices for cast-iron soil pipe.

PAR. 7. In further support of the combination alleged in paragraph 4 producing respondents have agreed upon and now employ uniform terms of sale, a standardized form of contract and a uniform system of classification of buyers and of preferential discounts to certain classes of buyers.

PAR. 8. Respondents in pursuance of their combination averred in paragraph 4 have used various means, including meetings, correspondence, persuasion, and constraint upon members of the Association who do not adhere thereto, and upon resistant producers not members of the Association, to carry the same into effect and thereunto have employed the Association and its officer respondents and other agents and representatives.

PAR. 9. The acts and practices in this count set forth are all to the prejudice of the public and are destructive of the competition of respondent and nonmember producers of cast iron soil pipe; they have a substantial and dangerous tendency to hinder, lessen, restrict and restrain, and actually have unduly, directly and substantially hindered, lessened, restricted and restrained price competition in interstate commerce in said pipe; they have increased the prices of said pipe to the buying public; and they constitute unfair methods of competition within the intent and meaning of the aforesaid Federal Trade Commission Act.

Count II

PARAGRAPHS 1 TO 5, INCLUSIVE. Paragraphs 1 to 5, inclusive, of count I of this complaint are hereby incorporated in this count II, with the same respective numerical designations and to the same extent as if they and each of them were set forth in full and repeated verbatim in this count.

PAR. 6. The producing respondents located at points other than Birmingham, insofar as they follow the Birmingham Plus system, sell at delivered prices which comprise the base price at Birmingham plus the freight from Birmingham to destination. Such delivered prices are not, however, the actual prices received by such respondents.

In order to derive the actual prices received, the prices which the producing respondent actually pays for transportation of the pipe to the buyer must be deducted from the delivered prices. The actual costs which producing respondent incurs for such transportation vary with the respective locations of the buyers. Such producing respondent charges buyers, who are located in the cities where his foundry is also located, higher actual prices than he charges to other buyers. The producing respondents located elsewhere than at Birmingham thus discriminate in substantial amounts among their buyers. These discriminations are made with the purpose alleged in paragraph 4.

PAR. 7. (a) The operation of the Birmingham Plus system and the discriminations in price resulting therefrom are susceptible of illustration by a comparison of typical delivered prices with corresponding actual prices received for pipe at locations named below in subparagraph (c) of this paragraph. The said prices are not averred as actually having been quoted or charged at any particular time or necessarily at any time. They are illustrative of prices quoted and charged in this industry in the regular course of business and show typical discriminations which occur as the result of the Birmingham Plus system.

(b) For the purpose of the illustrations below set forth, these assumptions are made: (1) that the Birmingham Plus system is in full effect; (2) that after making the basic discount, the existing base price per ton is \$40; (3) that each producer actually ships all-rail rather than availing itself of less costly truck or water delivery; and (4) that buyers are located at the points named.

(c) For each respective sale postulated in each illustration, about to be given, the identical base price per ton at Birmingham is first given; second the all-rail rate of freight per ton from Birmingham to the point named; third appears the sum of these two factors, constituting the delivered price; fourth the current all-rail rate of freight from the point of production to the freight station of the buyer; fifth appears, by subtraction of the fourth item from the third, the actual price which the producer receives at the respective points named. The illustrations above described are submitted in tabular form in lieu of extended textual averment and are hereby made a part of this complaint, to wit:

Sales by Newark, N. J., producer

	Newark, N. J.	Boston, Mass.	New York, N. Y.	Philadel- phia, Pa.	Baltimore, Md.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	10.00	11.60	10.00	9.40	8.80
"Delivered price".....	50.00	51.60	50.00	49.40	48.80
Less freight to destination.....	0	4.90	2.00	3.20	4.30
Actual price received.....	50.00	46.70	48.00	46.20	44.50

Sales by Quakertown, Pa., producer

	Quaker- town, Pa.	Boston, Mass.	New York, N. Y.	Philadel- phia, Pa.	Baltimore, Md.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	9.60	11.60	10.00	9.40	8.80
"Delivered price".....	49.60	51.60	50.00	49.40	48.80
Less freight to destination.....	0	5.80	3.50	2.10	3.70
Actual price received.....	49.60	45.80	46.50	47.30	45.10

Sales by Vincennes, Ind., producer

	Vincennes, Ind.	Indianap- olis, Ind.	Chicago, Ill.	St. Louis, Mo.	Louisville, Ky.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	6.40	7.20	8.00	6.80	6.20
"Delivered price".....	46.40	47.20	48.00	46.80	46.20
Less freight to destination.....	0	3.60	4.70	3.80	3.60
Actual price received.....	46.40	43.70	43.30	43.00	42.60

Sales by Medina, N. Y., producer

	Medina, N. Y.	Buffalo, N. Y.	New York, N. Y.	Albany, N. Y.	Boston, Mass.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	9.80	9.60	10.00	10.80	11.60
"Delivered price".....	49.80	49.60	50.00	50.80	51.60
Less freight to destination.....	0	2.10	6.20	5.00	6.60
Actual price received.....	49.80	47.50	43.80	45.80	45.00

Sales by Baltimore, Md., producer

	Baltimore, Md.	Washing- ton, D. C.	Phila- delphia, Pa.	New York, N. Y.	Boston, Mass.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	8.80	8.60	9.40	10.00	11.60
"Delivered price".....	48.80	48.60	49.40	50.00	51.60
Less freight to destination.....	0	2.00	2.30	4.30	6.60
Actual price received.....	48.80	46.60	47.10	45.70	45.00

Sales by Chattanooga, Tenn., producer

	Chatta- nooga, Tenn.	Indian- apolis, Ind.	Columbus, Ohio	Pittsburgh, Pa.	Memphis, Tenn.
Base price, Birmingham.....	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
Freight from Birmingham.....	3.80	7.20	7.60	8.80	4.90
"Delivered price".....	43.80	47.20	47.60	48.80	44.90
Less freight to destination.....	0	6.40	6.80	8.00	5.40
Actual price received.....	43.80	40.80	40.80	40.80	39.50

PAR. 8. The discrimination in price as set forth in paragraphs 6 and 7 of this count is the result of the combination alleged in paragraph 4. By means of the said discrimination and in accordance with the aforesaid purpose under which it was undertaken, competition in price is eliminated among producing respondents and nonmember producers to the precise extent that the Birmingham Plus system is followed. To such extent, every producer knows what every other producer fol-

lowing the system will quote and charge as his delivered price at any given destination, and that such delivered prices will be identical. Each said producer knows that, in reciprocity for his omission to offer price competition in the consuming areas where he has a natural advantage and where he receives his highest actual price, he will receive the same immunity from price competition when he sells in the consuming areas where any other producer following the system receives his highest actual price. Each reciprocally waives the advantages which he has in certain consuming areas in order that there may not be anywhere competition in price between producers who, except for such reciprocal waiver, would be in normal active competition in price.

PAR. 9. The acts of discrimination in interstate commerce, and in the course of such commerce, in this count set forth may have the effect substantially to lessen competition, and actually do substantially lessen competition in cast iron soil pipe of like grade and quality and constitute unlawful discrimination in price within the intent and meaning of section 2 of the aforesaid Clayton Act as amended by the aforesaid Robinson-Patman Act.

Dismissed without prejudice by the following order:

This matter coming before the Commission for its consideration of a motion filed by counsel supporting the complaint for dismissal of the complaint herein without prejudice, no answer thereto having been filed by respondents; and

It appearing from said motion (1) that since the date of issuance of the complaint, namely, March 26, 1937, substantial changes have occurred in the identity of the parties engaged in the production and sale of cast iron soil pipe and that as a result there is doubt that the complaint brings before the Commission the proper parties; (2) that the principal respondent, Cast Iron Soil Pipe Association, and a large number of the producers and sellers of cast iron soil pipe named in the complaint as parties respondent have long since ceased active operation, many of the corporate respondents having actually ceased to exist; and (3) that it is not feasible to amend the present complaint to adequately take account of and properly provide for the afore-mentioned conditions; and

The Commission being of the opinion that in the circumstances the motion should be granted:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings or to take such further action in the matter as may be warranted.

Mr. Eugene W. Burr, Mr. Lynn C. Paulson and Mr. Rice E. Schrimsher for the Commission.

Cravath, Swaine & Moore, of Washington, D. C., for respondents with the exception of Stringer Brothers Co., Inc., which was represented by *Knox, Acker, Sterne & Liles*, of Anniston, Ala., attorneys for trustee in bankruptcy.

HERBERT RALSTON AND LOUIS W. GOODKIND, TRADING AS LONDONDERRY, LTD. Complaint, March 18, 1943. Order, July 30, 1948. (Docket 4931.)

Charge: Assuming or using misleading trade or corporate name as to source or origin of product; and misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of product in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the manufacture and sale of women's coats.

Complaint: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Herbert Ralston and Louis W. Goodkind, doing business as Londonderry, Ltd., hereinafter referred to as respondents, have violated the provisions of the said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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. For several years prior to March 1942, respondents operated a business through the medium of a corporation incorporated under the laws of the State of New York, under the name Londonderry, Inc., which they controlled and managed, and whose business policies and practices they determined and controlled. Since March 1942, respondents have operated the same business as a partnership under the trade name Londonderry, Ltd., and maintain their offices and principal place of business at 512 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents are now and during all times mentioned herein have been engaged in the manufacture, sale, and distribution of women's coats.

Respondents cause and have caused said coats when sold by them to be transported from their place of business in the State of New York to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Through the use of their trade name, Londonderry, Ltd., respondents have represented and now represent that their business is incorporated under British laws and that Londonderry, Ireland, is the source of the goods they sell. Londonderry is the name of a county and city in northern Ireland, well-known in this country. The word "Limited" and the abbreviation "Ltd." are primarily of British origin and are used throughout the British Isles to designate a class of corporations. Further, respondents use the phrase "Sport Clothes in the English Manner" on their letterhead and in other advertising, which adds to the strength of the representation that their goods are of British origin. In truth and in fact, no connection exists between respondents' business and the city and county of Londonderry or the British Isles, and the goods they sell do not have their origin there.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for coats from the British Isles.

PAR. 5. During the period the respondents operated their said business as a corporation they manufactured and distributed coats as aforesaid which were label "Royal Camel" and which labels bore a likeness or picture of a camel. Such labels constituted a representation that the coats were made entirely of camel hair fabric when in truth and in fact said coats were not made entirely from camel hair fabric but were made from fabric which contained a substantial amount of fibre other than camel hair.

PAR. 6. Through the use of the aforesaid acts and practices the respondents have deceived or misled members of the purchasing public into the erroneous and mistaken belief that such representations were true and on account of such erroneous and mistaken belief a substantial number of purchases of respondents' products have been made.

PAR. 7. Among the coats manufactured by the respondents and which have been sold and distributed in said commerce by respondents since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that said coats are composed in whole or in part of wool, reprocessed wool or reused wool as those terms are defined in the said act.

Among the said wool products sold and distributed by respondents in said commerce as aforesaid were coats labeled "Royal" and "Worumbo" which were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under such act, in that said wool products, when introduced in said commerce, did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum

of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) re-used wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or, in lieu thereof, a registered number with name of a reseller under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of the said act with respect to such wool product.

PAR. 8. The aforesaid acts, practices and methods 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 intent and meaning of the Federal Trade Commission Act.

Order closing case without prejudice, follows:

This matter came on to be heard in regular course upon motion of March 1, 1948, by counsel supporting the complaint to close the case without prejudice, to which no answer has been filed by the respondents.

The complaint herein, issued March 18, 1943, charges respondents with unfair and deceptive acts and practices in commerce in the sale and distribution of ladies' coats through the use of its trade name and the slogan "Sports Clothes in the English Manner" in advertising, by which it is charged that the purchasing public was led to believe that said commodities of domestic manufacture and origin were produced in England or originated in the British Isles. The complaint further charges that since July 15, 1941, respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder by the manufacture and introduction into commerce and the sale, transportation, and distribution in commerce of wool products which were misbranded within the meaning of said act, rules, and regulations and that said acts, practices, and methods constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The evidence of record clearly establishes that distribution of respondents' advertising representations is, and has been, restricted solely to retail merchants, who purchase said coats and suits for resale, and that none of them have been thereby misled or deceived. It appears that the use of the labels challenged in the complaint was discontinued early in 1942 and has not since been resumed and that since that date no further sales of respondents' suits and coats have been made upon said labels. The Commission is of the opinion that the

public interest does not require further corrective action with regard to these at this time.

It is therefore ordered, That this case be, and it hereby is, closed without prejudice to the right of the Commission to reopen and resume trial thereof or to take such action as future facts may warrant.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett, *Mr. George M. Martin* and *Mr. J. W. Brookfield, Jr.* for the Commission.

Fennelly, Lowenstein, Engelhard & Pitcher, of New York City, for respondents.

UNITED STATES SHOE CORP., also trading as RED CROSS SHOE Co. Complaint, July 21, 1942. Order, August 2, 1948. (Docket 4786.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to connection with the American National Red Cross Society; endorsement, approval, or sponsorship of product by the Red Cross, and were put on the market with the approval of the Red Cross; manufacture of product in accordance with standards prescribed by the Red Cross, or manufacture in factories operated by it and as to business operations of the Red Cross; through unauthorized and unlawful use of the American Red Cross sign and emblem or simulations thereof; in connection with the manufacture and sale of women's, misses', and other styles and types of shoes; and, in aforesaid connection, aiding and abetting unfair and deceptive acts and practices and furnishing means and instrumentalities of misrepresentation and deception, through encouraging and permitting use of the name and emblem by dealers, and furnishing advertising copy containing such deceptive matter, and in other ways.

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 United States Shoe Corp., 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 in the public interest, hereby issued its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United States Shoe Corp. is a corporation organized and doing business under and by virtue of the laws of the State of Ohio, having its principal offices and place of business located at 1658 Harold Street, Cincinnati, Ohio. Branch factories are maintained by respondent at Chillicothe, Greenfield, and Harrison, Ohio. Respondent company was incorporated on November 1, 1931.

PAR. 2. Respondent for more than 5 years last past has been engaged in the manufacture, offering for sale, sale, and distribution of women's, misses', and other styles and types of shoes. Respondent causes and

has caused said shoes, when sold by it, to be transported from its said place of business in the State of Ohio to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said women's, misses', and other styles and types of shoes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. On August 8, 1864, a diplomatic conference was convoked at Geneva, Switzerland, attended by representatives of some 26 European governments. The outcome of this conference was the Geneva convention of August 22, 1864, for the "Amelioration of the Condition of the Wounded in Time of War," known as the Red Cross convention.

Article VII of this convention provided that a distinctive and uniform flag should be adopted for hospitals, ambulances, and evacuations, such flag to be accompanied on every occasion by the national flag. Arm-badges (brassards) were allowed for individuals neutralized. It was further provided in this article:

The flag and the arm-badge shall bear a red cross on a white ground.

Twelve European countries were signatories to this convention and some 38 countries throughout the world, including the United States, gave their adherence to the convention and thereby became parties thereto.

As a result of a further international convention concluded at Geneva, Switzerland, on October 8, 1868, the provisions of the original Red Cross Convention were adapted and made applicable to naval warfare. Hospital ships were to make themselves known by hoisting, together with their national flag, "the white flag with a red cross provided by the Geneva Convention."

Leading world powers, including the United States, "animated by a desire to lessen the inherent evils of warfare as far as within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field," concluded a further international Red Cross Convention at Geneva on July 6, 1906.

This convention enlarged, extended and clarified former provisions of the original 1864 convention and more clearly defined the responsibilities of belligerents with respect to the sick and wounded.

Article 18 of chapter VI of the 1906 convention provided:

Out of respect to Switzerland, the heraldic emblem of the red cross on a white ground formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Articles 19, 20, 21, and 22 of Chapter VI, provided respectively: That this emblem was to appear on flags and brassards as well as upon all material appertaining to the sanitary service; that protected personnel should wear attached to the left arm brassards bearing a red cross on a white ground; that the distinctive flag of the convention could only be displayed over the sanitary formations and establishments which were given protection, and that the sanitary formations of neutral countries should fly the flag of the convention. Articles 23 and 27 of this convention prohibited, or undertook to prohibit, commercial use of the Red Cross name or emblem.

Article 27 of chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Article 30 of the convention provided that it should become operative, as to each power, 6 months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting States, the 1864 convention to remain in force between the parties who signed it but who might not ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative 1 year after a notification in writing should have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross Convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States 6 months from February 9, 1907, that is, in August 1907. This convention was never denounced by the United States either in whole or in part.

The United States became a party signatory to a new and still further Red Cross Convention concluded at Geneva on July 27, 1929, by some 45 countries of the world "equally desirous of diminishing, so far as lies within their power, the evils inseparable from war, and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field." This convention, after broadening and making more definite existing treaty provisions relating to the foregoing, including the rights and duties of belligerents in such relation, provides in article 19 that "out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by a reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies."

Article 20 of this convention provides that this emblem shall appear on flags and brassards as well as upon all material appertaining to the sanitary service.

Article 24 provides that the emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" may be used, whether in time of peace or war, only to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.

Article 25 provides that the provisions of the convention shall be respected by the high contracting parties under all circumstances.

Articles 28 to 30, inclusive, of chapter VIII, deal with "The Repression of Abuses and Infractions." Article 28 provides that the Governments of the high contracting parties "whose legislation may not now be adequate" shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

Subparagraph (b) of article 28 obligates each state to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss national pride. It is provided in subparagraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation or, at the latest, 5 years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were

deposited at Geneva, February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and 1929 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the Swiss Confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1929 by diplomatic conferences. Conferences held at the Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peacetime disasters.

PAR. 4. The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was first incorporated in July 1881 under the laws of the District of Columbia. It was reincorporated April 17, 1893, again under the laws of the District of Columbia, and on June 6, 1900, the organization was incorporated by act of Congress as the American National Red Cross. The act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes contemplated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in article 7 of that convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been

performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 act it was made a misdemeanor for any person to falsely and fraudulently hold himself out as, or to represent, or pretend himself to be, a member of, or an agent for, the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material, or to wear, or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of or an agent for the American National Red Cross.

The act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized, foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy, and Japan.

The American National Red Cross was nationally incorporated by an act of Congress of January 5, 1905, which repealed the prior Congressional act of June 6, 1900. The act of 1905 undertook to give statutory protection to the Red Cross emblem, which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of

Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva Conference, and a provision in the 1905 act extended the national and international relief to be carried on by the Society to that of investigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devising and carrying on measures for preventing the same.

Section 4 of the act of 1905 also made it unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross Society, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he was a member of, or an agent for, the American National Red Cross. This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful for any person or corporation, other than the Red Cross of America, not then lawfully entitled to use the sign of the Red Cross, thereafter to use such sign or any insignia colored in imitation thereof for the purpose of trade or as an advertisement to induce the sale of any article whatsoever. This section further provided that anyone violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than one nor more than \$5,000, or imprisonment for a term not exceeding 1 year, or both, for each and every offense, the fine so collected to be paid to the American Red Cross. The act of January 5, 1905, like the preceding act of June 6, 1900, contained a provision that Congress should have the right to repeal, alter, or amend the act at any time.

By act of June 23, 1910, Congress amended section 4 of the Red Cross Statute of 1905 so as to read:

SEC. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or materials; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an

advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words: *Provided, however,* That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. * * *

This amending act retained the same penalties that had been previously enacted into section 4 of the Red Cross Act of January 5, 1905.

PAR. 5. In pursuance of the organic act of 1905 chartering the American National Red Cross "Under Government supervision" the organization became and has continued to be a great charitable association, quasi-governmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under section 5 of the organic act the President of the United States names not only the chairman of the central committee or governing body of the organization but also designates certain members of the committee, one each to be named by him from the Departments of State, War, Navy, Treasury, and Justice.

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance of its bylaws the President of the United States shall, upon his acceptance, be ex-officio President of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under section 12 of the act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States, buildings, etc.

The American Red Cross being a quasi-governmental organization, operates under Congressional charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross from its inception in the United States has always been financed and supported and maintained by the general public, including the period of time from the year 1881 on down to the present time. The American Red Cross is now and has always represented, typified, and constituted the organized effort of the American public in connection with the amelioration of the condition of the sick and wounded in time of war and the relief and succor of those suffering from national disasters. The American Red Cross has been designated frequently by Congress to disburse public funds appropriated from the United States Treasury for use in the relief of national disasters.

The American Red Cross has been and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development through the years of its history. Its individual membership now comprises nearly 30,000,000 persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes.

It has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross.

PAR. 6. The Red Cross name and emblem as provided by the Geneva Convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva Convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers, and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as cambrics, hermetically sealed goods, oysters, fruits, and vegetables; hydraulic hose, domestic lye, medicine for skin diseases, portland cement, bitters, flour, spices, coffee, baking powder, hard soap, crackers, candy; stoves, ranges, and furnaces; flavoring extracts, cough sirups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks, feet, and tongues; yarns and thread, kindling wood, pills, malt liquors, but-

ton fasteners; boots, shoes, and shoe-laces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, antiseptic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect powder, fishnetting; shirts, collars, and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, flavoring extracts, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters, and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The foregoing widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in general confusion and misunderstanding on the part of the public concerning the activities, aims, and purposes of the American Red Cross. Members of the consuming public became convinced thereby that the Red Cross manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom. Quack medicines, even alcoholic preparations, were sold under the Red Cross name and insignia. Manufacturers repeatedly sought to enlist the Red Cross in various commercial ventures, offering division of profits in connection with the use of the society's name and emblem, such offers being occasioned by the publication and circulation of advertisements of others using the Red Cross name and emblem.

PAR. 7. On February 19, 1917, the Krohn-Fechheimer Co., a corporation duly organized under the laws of the State of Ohio and located in the City of Cincinnati, Ohio, applied at the United States Patent Office for the registration of a trade-mark for ladies' leather shoes. Accompanying said application was a drawing consisting of a red Greek cross with the words "Red Cross" above on a white background, all enclosed in concentric circles. Said trade-mark, it was recited in the application, was for ladies' leather shoes, in Class 39, Clothing, and the mark, it was stated, had been continuously used in applicant's business and in the business of its predecessor, Krohn-Fechheimer & Co. since October 1898. Said application further stated that the trade-mark was usually displayed by stamping the same upon the soles of the shoes, or by attaching a ribbon on which the mark was shown as a part of the inside lining of the top of the ankle part of the shoe. This trade-mark, No. 124,550, Serial No. 101,496, was registered at the United States Patent Office on February 25, 1919.

On January 11, 1921, the Krohn-Fechheimer Co., filed application with the United States Patent Office for registration of another trade-mark for ladies' and misses' leather shoes. This application was accompanied by a concentric circle drawing. In the inner circle appeared a red line Greek cross on a white background. Above the drawing of the cross appeared the words "Red Cross." Below it, also in the inner circle, appeared the words "Noiseless Shoe." In the outer or border circle appeared the following words:

Krohn-Fechheimer & Co.—Cinti U. S. A.

This application stated that the applicant company had adopted and used the trade-mark shown in the drawing for ladies' and misses' leather shoes in class 39, clothing, ownership of registration No. 124,550, dated February 25, 1919, being set forth and claimed. It was further recited in the said application that the mark had been continuously used in the business of the applicant corporation and in the business of its predecessor, Krohn-Fechheimer & Co., since October 1898. It was also recited that the trade-mark was applied or affixed to the goods, or to packages containing the same by placing upon the packages containing the goods a printed label on which the trade-mark was shown, by stamping the trade-mark upon the soles of the shoes, or by attaching a ribbon on which the mark was shown, as a part of the lining of the shoe. This trade-mark, No. 156,806, Serial No. 142,080, was registered July 11, 1922.

On January 2, 1926, Milton J. Meyer & Co., Inc., of New York, N. Y., assignor to the United States Shoe Co. of Cincinnati, Ohio, filed application with the United States Patent Office for registration of a trade-mark for children's leather shoes in class No. 39, clothing. Accompanying this application was a drawing of a Greek cross upon which was imposed the letters "M. J. M. & Co.," the words "Red Cross," in conspicuous lettering, appearing independently of and to the right of the red cross mark. The application for this mark stated that applicant had used it on children's leather shoes since 1891. This trade-mark, No. 229,194, Serial No. 225,438, was registered June 21, 1927. The mark was to be applied to the goods and boxes containing the same by affixing thereto a label on which the mark was displayed. The concluding paragraph of the application for registration of this trade-mark recited that applicant was the owner of Reg. No. 124,550, dated February 25, 1919, and Reg. No. 156,806, dated July 11, 1922.

Respondent company alleges, as assignee, ownership of and legal right to the use of the above-described trade-marks.

PAR. 8. In the course and conduct of its aforesaid business as described in paragraph 2 herein, respondent United States Shoe Corp., for the purpose of inducing the sale of its said ladies' and misses' and

other styles and types of shoes, between and among the various States of the United States, has made and is now making various false, misleading, and confusing advertising representations concerning its said products. In advertisements appearing in nationally known newspapers and magazines of general interstate circulation, by radio continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to listeners thereto located in States of the United States other than the State of Ohio, by letterheads, invoices, and window signs and posters circulated and distributed in commerce, by sample material distributed among wholesale and retail dealers throughout the United States by some 1,500 sales agents of respondent, on wrappers, cartons, and containers in which respondent's said shoes are distributed in commerce, among and between the various States of the United States and in the District of Columbia and by various other means in such commerce, respondent has used, and prominently displays and has displayed for more than 5 years last past, the emblem of the American National Red Cross Society and the words "Red Cross."

On containers, cartons, and wrapping for its said shoes and upon the inside lining of shoes and upon the soles thereof appears the following trade-mark:

A concentric circle design, the inside circle of which contains and has contained a reproduction of a cross. Above the drawing of the cross appears in capital letters the words "RED CROSS" and beneath the cross the word "SHOE" in capital letters. In the outside or border circle appears the following wording or legend in heavy capital letters:

THE UNITED STATES SHOE CORP.

CINTI U. S. A.

The cross appearing in the center or inner circle of the said company's trade-mark is colored in red and is an exact replica or reproduction of the emblem of the American National Red Cross and of the Geneva conventions. The words "Red Cross" appearing above the pictorial representation of the cross itself are printed in capital letters. On the tops and ends of containers for respondent's said shoes also appears the following legend, printed in large conspicuous red letters:

THE RED CROSS SHOE

The above-described trade-mark and the legend "Red Cross Shoe" also appear in conspicuous type on large and attractively illustrated circulars distributed by respondent company in commerce.

On letterheads and invoices employed by respondent company in connection with the sale of its products in commerce, the last above-described red cross trade-mark is printed thereon. The cross invari-

ably appears in red, and is accompanied in each instance by the legend, in heavy red lettering:

The Red Cross Shoe

Said trade-mark and the words "Red Cross Shoes" are also printed on catalogs and on covers for the same, distributed alike by respondent in commerce.

In further connection with the sale and distribution of its said shoes in commerce, respondent company supplies dealers in various cities and towns of the States of the United States with advertising copy to be run in magazines and newspapers of general circulation. Said copy in each instance reproduces the last above-described red cross trade-mark of respondent and in various places employs the legends "Red Cross Shoe" and "Red Cross Shoes." Said advertisements also contain such further legends as:

Advertised in Life, and As advertised in Vogue

Said advertising copy from time to time consists of advance proofs of newspaper and magazine advertising showing photographs of glamorous radio stars and of prominent socialites, with a short printed endorsement of Red Cross shoes under each picture therein. Beneath the matrix proofs transmitted of such advertising appears some such off-the-record warning to the dealer as:

Important: Please do not change in any way the statements of these women regarding Red Cross Shoes—and make no change in general copy of advertisement which would imply any more endorsement of Red Cross Shoes by them than in above copy.

Respondent company in further connection with the offering for sale and sale of its said products in commerce has from time to time contracted for elaborate, illustrated write-ups of "Red Cross Shoes" in prominent weekly and monthly magazines of general circulation. Contemporaneously with or immediately prior to the publication of such articles, dealers and distributors handling respondent's products throughout the country are furnished by respondent with proof sheets of such articles and said dealers and distributors by arrangement with respondent send out and have sent out and distributed to customers circular letters announcing the date of the approaching publication of the write-up in question and enclose and have enclosed therewith proof sheets of said write-up. A typical advance cover page or proof of such magazine article contains the name of the publishing magazine in large letters, a full length picture of an attractive young miss wearing a black and white model of a "Red Cross Shoe," and beneath the

illustration appears the following printing in conspicuous white lettering on a red background:

An advertisement of United States Shoe Corporation appears in
April 29, 1940.

An exciting glimpse behind the scenes at the making of Red Cross Shoes.

On the back of the sheet containing said advance copy of the illustrated write-up appears a large reproduction of United States Shoe Corp.'s Red Cross trade-mark, the cross printed in red, and beneath this advertisement in heavy black type announcing the name and address of the particular dealer handling "Red Cross Shoes." The write-up in question printed on the inside sheets and profusely illustrated is entitled:

—Goes to a Red Cross Shoe party.

The text of said article, including explanatory matter under the various illustrations showing factory operations, contains numerous references to "Red Cross Shoes." Said text contains such further references or legends as:

"Red Cross 'Limit Lasts'," "Red Cross Cobbie", "Red Cross Shoe Employee", "Red Cross Shoe Craftsman"; "Red Cross Shoe Plant."

* * * Hundreds of dealers are on the waiting list for the Red Cross Shoe franchise in their communities;

* * * The Red Cross Shoe emblem is the guide-mark to style, fit and value for women everywhere;

* * * To more than 1600 progressive dealers in 48 states, over 13,000 pairs of Red Cross Shoes are shipped daily from the three great Red Cross Shoe plants in Ohio. Red Cross Shoes (known as the "Gold Cross") are also made in England (Somerville Bros. Ltd., its license from United States Shoe Corporation). Red Cross Shoes will also be licensed for manufacture soon in Norway, Sweden, and Australia. * * *;

In full page advertisements appearing in colors in leading metropolitan newspapers of the country with large general circulation, respondent company advertises and has advertised "Red Cross Shoe Week" and "Red Cross Shoes." The trade-mark employed by respondent in the sale and distribution of its said shoes, containing an exact reproduction of the emblem of the American Red Cross in red, appears conspicuously in said advertisements and in said advertisements and in other printed matter circulated in commerce by respondent, the attention of customers and prospective customers is invited and directed to:

The Red Cross Shoe Company, Cincinnati, Ohio.

In the telephone and city directory of the city of Cincinnati, Ohio, there appear respectively street and telephone numbers for "The Red Cross Shoe Co."

In other advertisements carried in newspapers of general circulation there have appeared such legends and expressions as:

Red Cross Recommends Strap Shoes for Real Comfort;
 Official Red Cross Service Shoe;
 "Red Cross Service Shoes"; "Red Cross Shoe news."

In trade magazines of general circulation the following among other statements have appeared in interviews with officials of respondent company:

"Red Cross", synonymous with "Limit Last" * * *;
 * * * the phrase "Red Cross" which incidentally is now a heritage from the period of industrial expansion prior to 1905 * * *

PAR. 9. Respondent, further, in connection with the offering for sale, sale, and distribution of its said products in commerce has entered into arrangements with various dealers and outlets handling its shoes throughout the United States to use, and has influenced and permitted said dealers and outlets to use and employ, respondent's red cross trade-mark. Many of such dealers and outlets, with the knowledge and approval of and at the instance of respondent company have used and are using said trade-mark in advertising in such manner as to give it the aspect of a brand or trade-mark owned by them. In some instances various of said dealers and outlets have even altered the red cross trade-mark employed by respondent so as to retain only in connection therewith the white inner circle upon which are imposed a replica of the Geneva red cross emblem and the words: "Red Cross Shoes."

Respondent further, in connection with the offering for sale, sale, and distribution of its said products, in commerce, has encouraged and permitted dealers and outlets to employ the word "Red Cross" in firm or corporate names.

PAR. 10. Through the use of the above-described acts, practices, and representations, and others not herein set out, all of which involve the use by respondent of the red cross name and emblem in advertising, trademarking, branding and selling its said shoes, respondent variously represents and implies and has represented and implied to customers and to prospective customers:

That there is some connection between the American National Red Cross Society, herein referred to as the Red Cross, and the respondent company; that the Red Cross, is financially interested in the sale of respondent's said shoes and obtains a royalty or percentage thereon; that respondent's said shoes are endorsed, approved, or sponsored by the Red Cross, and are put on the market with the approval of the Red Cross, that respondent's said shoes are used by the Red Cross; that respondent's said shoes are manufactured in accordance with standards prescribed by the Red Cross, or manufactured in

factories operated by the Red Cross; that respondent company is financially connected or affiliated with and received financial support from the Red Cross; that the American Red Cross is engaged in business and operates and conducts stores or business enterprises in the United States.

PAR. 11. The aforesaid acts and practices used and employed by respondent and the aforesaid representations and implications made and disseminated by respondent as aforesaid, are false, misleading, deceptive, and confusing for in truth and in fact respondent is not connected or associated with the Red Cross in any way, financially, contractually, or otherwise. The Red Cross has not endorsed, sponsored, or approved respondent's aforesaid shoe products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondent company or otherwise, and the Red Cross is not now and never has been interested directly or indirectly in the sale of any product or products sold by respondent under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard for any article of commerce produced by respondent, no article of commerce manufactured or distributed by respondent is now or ever has been sold with the approval of the Red Cross, and the Red Cross has not been requested to give and has not given the respondent permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact the American Red Cross has never been engaged in any kind of commercial enterprise directly or indirectly, has never been engaged directly or indirectly in the sale of any product, has never prescribed any sanitary or other standard for any article of commerce not intended for its own use; no article of commerce is now or ever has been sold with the approval of or been sponsored by the Red Cross, and the Red Cross has never given respondent or any other manufacturer, wholesaler, retailer, or other dealer, permission to employ the Red Cross name or emblem as a trade-mark or otherwise, in advertising, branding, labeling, or marking any product. Nor has there ever been any connection or business relationship between respondent and the American Red Cross.

PAR. 12. Furthermore, respondent's use of the Red Cross name and emblem is not and does not constitute a lawful use in that, among other things:

Whatever rights respondent company claims and asserts through assignments alleged to have been executed to it were not acquired prior to January 5, 1905, but long subsequent to said date;

Respondent company through the medium of said alleged assignments has appropriated to its own commercial ends and purposes the

Red Cross name and emblem that had theretofore been adopted and employed on behalf of the general public by the Red Cross organization in the United States in carrying out relief work in time of war or national disaster, neither respondent company nor any of its alleged assignors having sought or obtained from the Red Cross permission for such use;

Respondent company has induced and permitted various firms, persons, and corporations not so entitled, to use the Red Cross name and emblem, including the trade-mark employed by respondent in connection with the sales of shoes in commerce, thereby placing in the hands of dealers and distributors of respondent an instrument with which they may deceive and have deceived purchasers and prospective purchasers of shoes;

For many years respondent company has not been using, and is not now using the Red Cross name and emblem in stamping their products or packages as the applications of Krohn-Fechheimer and Meyer & Co. indicated would be done, but is now and has been using said name and emblem in promoting and executing an ever increasing, widespread campaign of newspaper and magazine advertising. Respondent company has flagrantly disregarded the trade-marks of the Krohn-Fechheimer Co. and the Meyer Co. and has modified said marks in a substantial manner, substituting the phrase "United States Shoe Corp." for "Krohn-Fechheimer" and deleting from the Meyer trade-mark the identifying initials and phraseology which said mark contained. Respondent has further omitted the words "Noiseless Shoe" from one Krohn-Fechheimer mark (No. 156,806) and has added the word "Shoe" to the other mark (No. 124,550). Respondent company is not using and has not been using the said trade-marks for the same purposes and uses for which they were granted and issued.

PAR. 13. Respondent's aforesaid acts, practices, and representations in connection with the sale of its products have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that respondent has some association, connection, or affiliation with the Red Cross, that respondent's products are approved, sponsored, or endorsed by the Red Cross, that the Red Cross engages in commercial enterprises and is interested financially in the sale of respondent's products, and that the use by respondent of the Red Cross name and emblem indicates that respondent is manufacturing its said products in accordance with standards prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and

are being induced to purchase substantial quantities of respondent's said products.

The acts and practices of respondent and the implications and results flowing therefrom, including the manner in which respondent has employed the trade-marks hereinbefore described, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, and are in violation of public law and of the Federal Trade Commission Act.

Dismissed without prejudice by the following order:

The respondent in this proceeding having tendered to the Commission a stipulation as to the facts and agreement to cease and desist covering substantially all of the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act, which said stipulation and agreement has been accepted and approved;

And the Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at the present time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to issue another complaint and institute such further proceedings against the respondent as may be warranted if the practices which the respondent has agreed to discontinue should be resumed.

Mr. Marshall Morgan and Mr. Randolph W. Branch for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COHN-HALL-MARX Co. Complaint, June 16, 1945. Order, August 19, 1948. (Docket 5335.)

Charge: Advertising falsely or misleadingly as to composition, qualities, or properties and comparative merits of products and furnishing means and instrumentalities of misrepresentation and deception through supplying false and misleading advertising as pattern for local; in connection with the manufacture and sale of fabrics, including a "Cohama Nylon Fleece" and a "Cohama's Super Rayon Lambskin."

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 Cohn-Hall-Marx Co., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Cohn-Hall-Marx Co. is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of New York, and has its principal office and place of business at 1412 Broadway, New York, N. Y. The respondent is now and for a number of years last past has been engaged in the manufacture, sale, and distribution of fabrics, including a "Cohama Nylon Fleece" and a "Cohama's Super Rayon Lambskin."

The respondent has caused and now causes its said fabrics, when sold by it, to be transported from its said place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said fabrics in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the sale of its "Cohama Nylon Fleece," the respondent engaged in an extensive sales promotional campaign. The respondent furnished certain information that was used by a purchaser of its fabric for manufacture into garments as the basis for a news item which appeared in a publication of general circulation. Said news item was captioned "First Nylon Fleece Coat Said To Be 100 Percent Warmer Than Wool" and contained the following statement, among others:

Mr. Chapman has had the new fabric tested by the United Merchants & Manufacturers Corporation and reports garments 100 percent warmer than wool in winter, and 100 percent cooler in summer * * * 4,000 percent more water repellant, and 100 percent more cleanable.

In addition, the fabric was said to be non-crushable. Because of this "indestructibility" of the fabric Mr. Chapman has applied for the trade-mark "Wear-ever" for the coats.

Advertising subsequently used by the respondent which it furnished to its customer-trade for use as a pattern for local advertising represented the fabric as "Nylon Fleece * * * Made of Nylon." Certain of the advertising carried the representation "The Nylon Fleece * * * is made with only a snitch of cotton." The advertising also represented that garments made from said fabric would be "100 percent warmer than wool in winter" and by "verified facts" the wearer would feel "much warmer than in wool" and "100 percent cooler in summer"; that the fabric possessed the property of "indestructibility"; that the "fleecy part of the fabric does not wear off as in wool"; that the "elasticity of the nylon pile eliminates 'wear off'"; that the "pile actually replaces itself upon wear"; that "a coat of nylon fleece practically replaces a raincoat"; that the fabric is "4,000 percent more water repellant * * * highly impervious to dampness * * * highly impervious to humidity, shedding it rather than absorbing it";

that "since it actually sheds dust and dirt it tends never to get really soiled"; that "most stains can be removed by merely brushing * * *"; and that it is "100 percent more cleanable."

Another fabric manufactured by Cohn-Hall-Marx Co. has been offered for sale and sold by it in commerce, under the trade name "Cohama's Super Rayon Lambskin."

PAR. 3. The aforesaid representations and statements are false, misleading, and deceptive. In truth and in fact, said fabric is neither a wool product, as connoted by the word "fleece," nor is it composed wholly of nylon, as indicated by use of the statements "made of nylon" and "100 percent nylon." Actually, said fabric contains no wool, and though it is faced with nylon, it is provided with a backing of cotton—a fact which, in some instances, is not disclosed at all, in other instances, is not conspicuously revealed, and in still others, is referred to as "only a snitch of cotton." The nylon face of said fabric is not a pile but is a nap, as such terms are understood to mean to those associated with the clothing and textile industries. Garments made from such fabric would not be "100 percent cooler in summer" or "100 percent warmer in winter" than wool, nor do the tests referred to in the advertising as having been made by the United Merchants and Manufacturers' Corp. support such representations. Said fabric does not possess the quality of "indestructibility" as represented. The nylon nap of the fabric does not, as claimed, replace itself with wear. It will wear off when subjected to friction and use. Said fabric is not impervious to dampness or humidity in the sense that it would not absorb moisture and wet through. It is not, as represented, 4,000 percent more water repellant than a fabric having a wool nap, nor will it replace a raincoat, as claimed. The nylon-napped face of the fabric does not shed dust and dirt to the extent that it is proof against such conditions or will never get "really soiled." It is not true that most stains can be removed from such face by mere brushing or that there is any marked distinction between the effort required to remove stains which can be gotten rid of by brushing out from either a nylon-napped fabric or a surface of wool nap.

Said fabric sold under the trade name Cohama's Super Rayon Lambskin is not and was not, as connoted by the word "lambskin," made from the skin of a lamb.

PAR. 4. The use by the respondent of the foregoing false, misleading, and deceptive representations and statements with respect to its said fabrics, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers and prospective purchasers into the erroneous and mistaken belief that such representations are true, and causes a

substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said fabrics. By said acts and practices, respondent also places in the hands of the purchasers of the aforesaid fabrics for resale, a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the qualities and actual fiber content of these said fabrics.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Dismissed by the following order:

This proceeding came on to be heard in regular course upon the complaint, answer, testimony, and other evidence, recommended decision of the trial examiner and exceptions thereto, and the oral arguments of counsel.

The complaint alleges false and misleading representations by the respondent concerning two fabrics, one designated "Cohama Nylon Fleece," and the other "Cohama Super Rayon Lambskin." As to the "Nylon Fleece," it is charged that this fabric is not made wholly of nylon, or composed of wool as implied by the word "Fleece." Certain representations made as to characteristics of this fabric are also alleged to be false. The record shows this fabric was made of nylon pile on cotton backing, with a fiber content of approximately 60 percent nylon and 40 percent cotton. As used, the term "Fleece" was descriptive of the texture of the fabric. In its advertisements respondent disclosed that the fabric was nylon and cotton, with the result that there is no showing that the designation "Nylon Fleece" as used by respondent had the tendency or capacity to mislead. Grossly exaggerated representations concerning the characteristics of this fabric were made by a customer of respondent, but it is not established that these representations were supplied, suggested, or authorized by respondent. Corrective action upon the representations made by respondent's customer has been concluded in another proceeding.

The term "Cohama Super Rayon Lambskin" is charged to be misleading because the product is not made of lambskin. This material is made wholly of rayon and is a thin fabric suitable for summer dresses. The only advertisement of this material contained in the record describes it as "an all-rayon printed crepe." It is impossible to believe and the record contains nothing to indicate that this advertising or the appearance of the fabric itself could result in the deception alleged.

Having fully considered the matter and for the reasons stated:
It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Stroock & Stroock & Lavan, of New York City, for respondent.

UNION FOUNTAIN PEN CO., INC., trading as MORRISON FOUNTAIN PEN CO. Complaint, June 23, 1944. Order, September 1, 1948. (Docket 5184.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and misrepresenting products, as official Army and Navy products, having the official approval of the Government, as represented by the Army, the War Department, and the Navy Department, and as having of said Departments endorsement, approval, recommendation, and preference; in connection with the offer and sale of respondent's fountain pens and pencils, together with pouches and boxes, for use by members of the Army and Navy.

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 Union Fountain Pen Co., Inc., a corporation, trading as Morrison Fountain Pen Co., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Union Fountain Pen Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 79 Fifth Avenue, New York, N. Y. It is also trading as Morrison Fountain Pen Co.

PAR. 2. For more than 2 years last past, respondent has been engaged, and is now engaged, in the sale and distribution to members of the public, of fountain pens and pencils, together with pouches and boxes for carrying and displaying said pens and pencils. In the course and conduct of said business, respondent has caused, and now causes, said pens and pencils, together with said pouches and boxes, when sold, to be transported from its place of business in the State of New York, to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent, heretofore, and at all times mentioned herein, has maintained, and now maintains, a course of trade in said pens and pencils, together with said pouches and boxes, among

and between the various States of the United States and in the District of Columbia. Among said purchasers from respondent are retailers who purchase said pens and pencils, together with said pouches and boxes, for resale to members of the public. Some of said pens and pencils are olive drab in color and are encased in pouches of the same color and packaged in containers bearing the words "military set," and some of said pens and pencils are navy blue in color and are encased in pouches of the same color and packaged in containers bearing the words "navy set."

PAR. 3. In the course and conduct of said business and for the purpose of inducing the purchase by members of the public of said fountain pens and pencils, together with said pouches and boxes, respondent has made and makes various representations and implications concerning said pens and pencils, by means of various acts and practices. Among and typical of the acts and practices, by means of which respondent has made and makes said representations and implications, are the following:

(a) By a gold-colored crest or design simulating the United States Army officer's cap insignia affixed to the top ends of pens and pencils having an olive drab color.

(b) By a gold-colored crest or design simulating the United States Army officer's cap insignia, and the letters "U. S. A.," stamped on pouches, leatherlike in appearance and olive drab in color, for carrying and displaying sets of said pens and pencils having an olive drab color.

(c) By a label, having white lettering and an olive drab background, on paper boxes, for holding and displaying said pens and pencil sets and pouches having an olive drab color, as follows:

Morrison Military Set

With
Official

Pictorial representation of
Crest or design simulating
United States Army
Officer's cap insignia
and the letters "U. S. A."

Army
Insignia

(d) By a gold-colored crest or design simulating the United States Navy chief petty officer's cap insignia, with the letters "U. S. N." affixed to the top ends of pens and pencils having a navy blue color.

(e) By a gold-colored crest or design simulating the United States Navy chief petty officer's cap insignia, with the letters "U. S. N." stamped on pouches, leatherlike in appearance and olive drab in color,

for carrying and displaying sets of said pens and pencils having a navy blue color.

(f) By a label, having white lettering and a navy blue background, on paper boxes for holding and displaying said pens and pencil sets and pouches having a navy blue color as follows:

Morrison Navy Set

With
Official

Pictorial Representation of
Crest or design simulating
United States Navy
Chief Petty Officer's
cap insignia
with the letters "U. S. N."

Navy
Insignia

(g) By the words "official Army insignia" as a part of window and counter display cards holding sets of said pens and pencils.

PAR. 4. (1) The use by the respondent of the olive drab color on certain of its fountain pens, pencils, pouches, and boxes, an army insignia, the letters "U. S. A.," and the words "military set" and "with official Army insignia," and the use by it of the navy blue color on certain of its fountain pens, pencils, pouches, and boxes, a navy insignia, the letters "U. S. N.," and the words "Navy set" and "with official Navy insignia," and the manner in which said pens and pencils are displayed to members of the public, as aforesaid, have the capacity and tendency to cause many members of the purchasing public, including members of the Army and Navy of the United States, and relatives and friends thereof, and do cause and have caused them, to have the impression and belief that said pens and pencils are official Army and Navy pens and pencils, that they have the official approval of the United States Government, as represented by the United States Army, the War Department, the United States Navy and the Navy Department, and that said Departments of the Government have endorsed, approved, recommended and stated a preference for said pens and pencils, for use by members of the Army and Navy of the United States. Many persons are influenced into such impression and belief by one or more of such acts and practices. The use of the official Army and Navy insignia by respondent in the manner aforesaid, in particular, has the capacity and tendency to cause and does cause and has caused such impression and belief to be created in the minds of many persons.

(2) The representations and implications thus made by respondent are false and deceptive, for, in truth and in fact, said fountain pens

and pencils so displayed and sold to members of the public are not official Army and Navy pens and pencils, and do not have the official approval of the United States Government, as represented by the United States Army, the War Department, the United States Navy, the Navy Department or any other department or agency of the Government, and no department or agency of the Government has endorsed, approved, recommended or stated a preference for said pens and pencils, for use by members of the Army or Navy of the United States.

PAR. 5. The foregoing acts and practices used by respondent in connection with the offering for sale, and the sale and distribution in commerce of said fountain pens and pencils, together with pouches and boxes, have misled and deceived, and have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of said pens and pencils, together with said pouches and boxes, into the erroneous and mistaken belief that the representations and implications aforesaid are true, and to induce them to purchase said pens and pencils, together with said pouches and boxes, on account thereof for resale and use. As a result of said erroneous and mistaken belief substantial quantities of said pens and pencils have been purchased in said commerce, for resale to the purchasing public and for use by purchasers and members of the public.

PAR. 6. 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.

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon motion of March 4, 1948, by counsel supporting the complaint to close the case without prejudice, to which no answer has been filed by respondent.

The complaint herein, issued June 23, 1944, charges respondent with unfair and deceptive acts and practices in commerce in the sale and distribution of fountain pen and pencil sets through the use thereon, or in advertising thereof, of replicas of official Army and Navy insignia and other representations indicating approval by the Government of the United States, by which it is charged that the purchasing public was led to believe that said commodities were produced by, or under the supervision of, or had the approval of the Government of the United States.

The record clearly establishes that respondent for 3 years or more prior to 1945 used the insignia and other representations challenged in the complaint and that it was a common practice during World War II to use or place upon merchandise Army and Navy insignia

where such merchandise was offered for sale and sold to members of the armed forces and members of the general public. It appears that respondent discontinued the manufacture of these fountain pen and pencil sets in 1945 and since said date the use of insignia and other representations challenged in the complaint has been terminated and has not since been resumed. The Commission is therefore of the opinion that the public interest does not require further corrective action in this matter at this time.

It is ordered, That this case be, and it hereby is, closed 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.

Before *Mr. George Biddle*, trial examiner.

Mr. D. E. Hoopingarner and *Mr. D. C. Daniel* for the Commission.

Mr. Archibald Palmer, of New York City, for respondent.

CANUTE Co. Complaint, October 14, 1944. Original order, March 31, 1947. Docket 5234, 43 F. T. C. 370. Order vacating, setting aside findings, etc., September 1, 1948.

Charge: Advertising falsely or misleadingly and using misleading product name or title as to composition, nature, qualities, and safety of product; in connection with the sale of a hair dye designated "Canute Water."

Order vacating and setting aside the findings as to the facts and conclusion and order to cease and desist, and dismissing finally the complaint, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondent had violated the provisions of the Federal Trade Commission Act, and having issued on March 31, 1947, its order to cease and desist; and

The respondent having filed on May 29, 1947, its petition for review in the United States Circuit Court of Appeals for the Seventh Circuit and the record of this proceeding having been certified by the Commission to said Court on September 12, 1947; and respondent having filed its opening brief in said Court on March 8, 1948; and

The United States Circuit Court of Appeals for the Seventh Circuit, upon the motion of the Federal Trade Commission in which the respondent joined, having entered on August 12, 1948, its order remanding this case to the Federal Trade Commission for the purpose of enabling the Commission to set aside its findings as to the facts, conclusion and order to cease and desist entered March 31, 1947, and to dismiss finally the complaint herein; and

The Federal Trade Commission having reconsidered the record of this proceeding and the testimony and other evidence in support of and in opposition to the allegations of the complaint; and the Commission being now of the opinion that the allegations of the complaint are not sustained by the greater weight of the evidence; and the Commission being now fully advised in the premises:

It is ordered, That the findings as to the facts, conclusion drawn therefrom and order to cease and desist entered in this proceeding on March 31, 1947, be and the same are hereby vacated and set aside and the complaint herein be and the same hereby is finally dismissed.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McQuat and *Mr. William L. Taggart* for the Commission.
Miller, Mack & Fairchild, of Milwaukee, Wis., for respondent.

NOTE.—The Commission found that deception was engendered by the use of the term "water" in respondent's trade name for its clear hair dye, and that use of term "pure" in advertising to describe its said preparation was deceptive; and that other charges of the complaint as to properties and results of use of product, and safety thereof were not sustained by the greater weight of the evidence.

The Commission's order required respondent in advertising to cease and desist from representing directly or through inference, that respondent's preparation is water or anything other than hair dye, or which advertisements use in the context thereof the term "pure" to designate or describe respondent's preparation, Canute Water, and in connection with use of its trade name to cease and desist from, directly or indirectly, using the term "Canute Water" as a brand or trade name, or the term "Water" as a part of such brand or trade name, to designate or describe respondent's hair-dye preparation without clearly and conspicuously stating in immediate connection and conjunction therewith that said preparation is a silver-nitrate hair dye.

L. M. MILLSAP, trading as NU-ZIP PRODUCTS Co. Complaint, September 11, 1947. Order, September 2, 1948. (Docket 5511.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a product called "Nu-Zip Battery Desulphater."

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 L. M. Millsap, an individual trading as Nu-Zip Products Co., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is L. M. Millsap, an individual trading as Nu-Zip Products Co., with his principal office and place of business located at 3042 Lawrence Ave., Chicago, Ill.

PAR. 2. Respondent is now and for more than 5 years last past, has been engaged in the sale and distribution of a product called "Nu-Zip Battery Desulphater." Respondent causes said product when sold to be shipped from his aforesaid place of business in the State of Illinois, to purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. In the course and conduct of the business as aforesaid, and for the purpose of inducing the purchase of said "Nu-Zip Battery Desulphater," the respondent now makes and has made and has placed in the hands of others the means whereby are made, many false and misleading statements and representations by means of advertisements inserted in magazines of general circulation, pamphlets, circulars, letters and other media circulated and distributed through the United States mails and otherwise in commerce. Among, and typical, but not all inclusive, of such representations so made and published, are the following:

Sure!
Batteries Wear Out
But . . .
NU-ZIP Makes 'em
Last Longer!

If you can have the little Nu-Zip wash boy (and you can) clean the hardened, injurious lead sulphate from the plates and keep it off for a year, by treating the battery with Nu-Zip's scientific, chemical desulphater (only a battery plate cleaner), why not do it? * * * it gives longer, useful life * * *.

Nu-Zip Battery Desulphater should be used in new batteries, also old ones * * *. Nu-Zip Battery Desulphater will desulphate hardened, injurious lead sulphate in battery plates and keep it from forming again.

MR. DEALER: If you have batteries in stock that are sulphated—hard to charge—perhaps will not hold a charge—use Nu-Zip to desulphate them. Makes a better battery to deliver—prevents further trouble.

Nu-Zip desulphates a battery that has lead sulphate on the plates . . . keeps it from forming in a new battery * * *.

PAR. 4. By and through the use of the statements and representations hereinabove set out and others of similar import, but not specifically set out herein, respondent represents and has represented, directly and by implication, that said product, "Nu-Zip Battery De-

sulphater" will lengthen the life of a storage battery, that it will prevent the formation of lead sulphate in a new battery and in a battery in use, and that it will prevent the recurrence of sulphation in a battery.

PAR. 5. In truth and in fact, respondent's said product "Nu-Zip Battery Desulphater" will not lengthen the life of a storage battery. It will not prevent the formation of lead sulphate in a battery. The composition of the material contained in respondent's said product does not indicate the presence of any constituent element which would materially alter the fundamental reactions occurring in storage batteries, its use, either in a new battery or in an old one, is of no beneficial value whatsoever, and the claims made for said product as hereinabove set out are not justified in any manner, or to any extent.

PAR. 6. The use by respondent of the false, deceptive and misleading statements and representations set forth herein, has had and now has the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of respondent's said product as a result of such erroneous belief, so engendered.

PAR. 7. The aforesaid acts and practices of 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.

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon motion of June 11, 1948, by counsel supporting the complaint to close the case without prejudice, to which no answer has been filed by respondent.

The complaint herein charged the respondent with unfair and deceptive acts and practices in commerce in the sale and distribution of a product called "Nu-Zip Battery Desulphater" through the use of false, misleading, and deceptive advertising representations that said product would lengthen the life of a storage battery, prevent the formation of lead sulphate in a new battery and in battery use, and that it would prevent recurrence of sulphation in a battery.

It appears to the Commission that respondent's business of selling and distributing "Nu-Zip Battery Desulphater" was terminated about the first of 1948, following complete destruction by fire of the building in which said business was operated, that since said date respondent has been engaged in marketing a wholly unrelated product, and that there is no reason to believe that respondent will resume the acts and practices charged in the complaint. The Commission is therefore of the opinion that the public interest does not require further corrective action in this matter at this time.

It is ordered, That this case be, and it hereby is, closed 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.

Mr. D. C. Daniel for the Commission.

THE HERMAN NELSON CORP. Complaint, December 29, 1939. Order, September 23, 1948. (Docket 3981.)

Charge: Advertising falsely or misleadingly as to nature and qualities, properties or results of product; in connection with the manufacture and sale of ventilating equipment designated as "air-conditioning."

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 Herman Nelson Corp., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing 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. The respondent, the Herman Nelson Corp., is a corporation organized under the laws of the State of Illinois with its principal office and place of business located in the city of Moline in said State of Illinois.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of ventilating equipment. Said equipment is manufactured by respondent in its factory situated in the city of Moline, State of Illinois. Respondent causes such equipment, when sold, to be transported from its factory situated in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times herein mentioned, respondent has maintained a course of trade in said equipment in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and to induce the purchase of its said product the respondent advertises such product in periodicals and by means of catalogs, pamphlets, letters, and other printed or written matter disseminated among prospective purchasers. In such advertising matter the respondent designates and refers to its said equipment as "air-conditioning" equipment and represents through the use of such designation and otherwise that such equipment will "air-condition" school buildings and other buildings in which it may be installed.

PAR. 4. Such representations are grossly exaggerated, false and misleading. In truth and in fact respondent's product will not "air-condition" any building within the proper and accepted meaning of the term.

The term "air-conditioning" signifies that simultaneous control by a mechanical device of various factors affecting both the physical and chemical conditions of the atmosphere within a given structure, such factors including temperature, humidity, and the motion or circulation of the air within the structure. A device which does not control each and all of such designated factors may not properly be represented, designated or referred to as an air-conditioner within the purview and meaning of the term as generally understood by the air-conditioning industry and the public.

In truth and in fact respondent's product is an air ventilating unit only, being a mechanical device for ventilating the room in which it is installed and heating the air drawn from the outside through a vent in the wall of the building. No provision is made for adding moisture to the air or taking moisture from the air or for cooling the air below the temperature of that outside the building. The device serves only to heat the air and provide for its circulation through the room. The device is not an air-conditioner within the meaning of the terms as understood by the air-conditioning industry and the purchasing public.

PAR. 5. The practices of the respondent in designating its product "air-conditioning" equipment and in representing that such product will air-condition buildings have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such product is an air-conditioner within the accepted meaning of the term as herein set forth and that such product performs functions which it does not in fact perform. As a result of such erroneous and mistaken belief the purchasing public is induced to and does purchase a substantial quantity of respondent's product.

PAR. 6. The aforesaid acts and practices of the respondent as herein set forth 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.

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon motion of March 31, 1948, by counsel supporting the complaint to close the case without prejudice, to which no answer has been filed by respondent.

The complaint herein charges the respondent with unfair and deceptive acts and practices in commerce in the sale and distribution of

ventilating equipment through the use of the term "air-conditioning" in advertising a mechanical air ventilating unit, by which air is drawn through a vent in the wall of a building, heated and circulated throughout the room, but which does not control humidity or cool air below the temperature of the outside of the building and which is not properly described as "air-conditioning" equipment.

It appears to the Commission that respondent terminated the use of all advertisements containing the term "air-conditioning" in 1940, that the use of said term has not since been resumed, and that there is no present reason to believe that respondent will resume its use in the future. The Commission is of the opinion that the public interest does not require further corrective action in this matter at this time.

It is therefore ordered, That this case be, and it hereby is, closed 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.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. James I. Rooney, Mr. S. F. Rose, and Mr. D. C. Daniel for the Commission.

Sollo, Graham & Califf, of Moline, Ill., for respondent.

NEVA-WET CORPORATION OF AMERICA, SANI-AGE CORPORATION OF AMERICA ET AL. Complaint, August 4, 1942. Order, November 10, 1948. (Docket 4793.)

CHARGE: Advertising falsely or misleadingly and using misleading product name or title as to qualities, properties, or results of products, and furnishing means and instrumentalities of misrepresentation and deception; in connection with the manufacture and sale of a product or preparation designated by the names "Neva-Wet," "Water-Shed," "Ever-Dry," "Stai-Dry," "Sani-Steril," etc., and in connection with the manufacture, sale and distribution of a product designated "Sani-Age."

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 Neva-Wet Corp. of America, a corporation, Neva-Wet Bottling Co., Inc., a corporation, and Samuel Howard Lefkowitz and Irving Lefkowitz, individuals, trading as Sani-Age Co., and as Sani-Age Corp. of America, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Neva-Wet Corp. of America, is a corporation organized and existing under the laws of the State of Delaware, and having its office and principal place of business at 500 Fifth Avenue, city and State of New York. Respondent Neva-Wet Bottling Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, and having its office and principal place of business at 683 Fifth Avenue, city and State of New York. A majority of the outstanding shares of respondent Neva-Wet Bottling Co., Inc., is owned by respondent Neva-Wet Corp. of America. Respondents Samuel Howard Lefkowitz and Irving Lefkowitz are individuals, trading under the names of Sani-Age Co. and Sani-Age Corp. of America, and having an office and principal place of business at 500 Fifth Avenue, city and State of New York. The said individual respondents are, and at all times mentioned herein have been, respectively president-treasurer and vice president-secretary of, directors of, and principal stockholders in the respondent Neva-Wet Corp. of America, respectively vice president and secretary of, and directors of, respondent Neva-Wet Bottling Co., Inc., and in control of the management, policies, and operation of said corporations, particularly in respect to the acts, practices, and methods herein alleged.

PAR. 2. Respondents are now, and have been for more than 5 years last past, engaged in the business of manufacturing, selling, and distributing a product or preparation designated by the names "*Neva-Wet*," "*Water-Shed*," "*Ever-Dry*," "*Stai-Dry*," "*Sani-Steril*" and other names, designed and intended, when applied to various fabrics and furs, to impart to them water repellant, stain resistant, and other qualities, in the distributing and selling to retail merchants the "*Neva-Wet*" preparation in bottles for use in the home treatment of hosiery, underwear, and other articles of light apparel, and manufacturing, selling, and distributing a product or preparation designated as "*Sani-Age*" designed and intended, when applied to various fabrics, to impart to them germproof, antiseptic, and other qualities.

PAR. 3. In the course and conduct of their said business, respondents have caused said preparations, when sold, to be transported from their aforesaid places of business in the State of New York to purchasers thereof located in various other States of the United States, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, courses of trade in the said preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business in the sale of "*Neva-Wet*" chemicals the said respondents are now, and at all times

mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, also engaged in the sale and distribution in commerce, among and between the various States of the United States and in the District of Columbia, of preparations designed and intended to be used for substantially the same purposes as those of the said respondents. Among such competitors are many who do not misrepresent the qualities, or the nature thereof, which will be imparted to fabrics or furs by treatment with said preparations, and who do not furnish their customers with means or instrumentalities for deceiving the public.

PAR. 5. The product designated by the name "Neva-Wet," and by the other names set forth in paragraph 2 hereof, is sold principally to manufacturers, finishers, converters, and dyers of textiles who have been licensed by respondent Neva-Wet Corp. of America to use a secret process of application, devised by it and known as the "Neva-Wet Process." The ingredients of the product and the process of its application may vary in some respects, dependent upon the nature of the fabrics to which it is to be applied. For like materials the process and product are substantially identical, regardless of the name by which it is described, whether it be "Neva-Wet" or one of the other names set forth in paragraph 2 hereof.

PAR. 6. In the course and conduct of respondents' business, and for the purpose of inducing manufacturers, converters, and dyers of textiles and others to acquire licenses from respondent Neva-Wet Corp. of America, to use its "Neva-Wet Process," and to purchase its chemicals therefor, and of inducing manufacturers, wholesalers, and retailers of products made in whole or in part of textiles to manufacture and to purchase articles, the textile portion of which has been subjected to the said process, and of inducing retailers to purchase bottled "Neva-Wet," said respondents have made and caused to be made, by means of advertisements in newspapers and magazines and other publications having a general circulation throughout the various States of the United States, and by means of advertising letters and circulars sent to prospective licensees of its "Neva-Wet Process," to prospective purchasers of textiles and textile products to which said process has been applied, and of bottled "Neva-Wet," representations and claims with respect to the qualities imparted to such fabrics and articles by the said "Neva-Wet Process."

Among and typical of said representations and claims so made are the following:

Eighty percent of pneumonia is caused by damp or wet clothes. This is avoided when wearing "Neva-Wet" treated garments.

Neva-Wet in bottle form now enables a woman to process her hose and intimate apparel made of washable fabrics in her own boudoir. By so doing she

can return home dry, spotless and stainless no matter how bad the elements were while she was exposed to them.

Sheds Water Like a Ducks Back.

The Neva-Wet Corporation of America will replace any garment attacked by moths any time within a twelve month period.

Neva-Wet also increases the tensile strength of fabrics which means added wearing durability.

Neva-Wet processed garments do not require washing and cleaning nearly as often as untreated garments.

One of the most objectionable features of intimate garments is the perspiration odor. You do not need to worry about B. O. if you wear "Neva-Wet" treated garments, because the perspiration odor is neutralized.

Neva-Wet is a chemical process that renders fabrics to which it is applied water and moisture repellant, perspiration, spot and stain resistant and moth impervious (in the case of woolen fabrics only and guaranteed for one year).

Run and snag resistant hosiery may sound like a myth but it has become a determinate reality with the improved "Neva-Wet" process—Dig a sharp finger nail or a nail file into the sheerest "Neva-Wet" processed hose. They're run resistant! Rough furniture or kittens claws will not cause snags.

PAR. 7. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, said respondents have represented, directly and by implication, that clothes and garments treated by the "Neva-Wet Process": will not become damp or wet, but will remain dry regardless of the weather to which they are exposed, and are in fact waterproof; will be given, if made of wool, significant and substantial protection against damage by moths for a period of 1 year; are more durable, and require less washing and cleaning than untreated garments or clothes; will not retain the odor of perspiration by reason of its neutralization, and are resistant to spots and stains. Respondents have also represented in the manner set forth above that fabrics, in general, so treated are waterproof and, if made of wool, substantially protected against damage by moths for a period of 1 year, have increased tensile strength and durability, require less washing and cleaning, will not retain the odor of perspiration and are resistant to spots and stains; and that stockings so processed are run-resistant and snagproof. Respondents have also represented in the manner set forth above that the claimed results of said process of treatment are permanent, except as to protection against damage by moths.

PAR. 8. Through the use of the names and designations "Neva-Wet," "Water-Shed," "Ever-Dry" and "Stai-Dry" respondents have represented, directly and by implication, that garments and fabrics treated with said preparation will not become wet, but will remain dry, and are in fact waterproof and through the use of the names "Sani-Steril," to describe such product have represented that those treated with said preparation are sterilized and remain sterile.

PAR. 9. The aforesaid claims and representations so made and disseminated by said respondents in the course of their aforesaid business are exaggerated, misleading, and untrue. In truth and in fact, clothes and garments treated by said process will become damp or wet and will not remain dry under many usual conditions of use, and are not waterproof, sterilized, or sterile. They are not, if made of wool, substantially protected against damage by moths for 1 year. They will need to be cleaned and washed as frequently as, and are no more durable than, untreated garments. They will retain the odor of perspiration, and there are many things which will cause them to become stained or spotted. These things are also true of fabrics in general, treated by said process. Treated hosiery is not rendered snagproof, runproof, or resistant to runs. Any desirable qualities this process may impart are of but temporary duration as they are lost in the process of laundering or dry cleaning.

PAR. 10. The product designated by the name "Sani-Age" is sold to manufacturers, converters, finishers, and dyers of fabrics, is represented as being of value in the prevention of disease in man, and is a drug as "drug" is defined in the Federal Trade Commission Act.

PAR. 11. In the course and conduct of their said business, said respondents have disseminated, and are now disseminating, and have caused and are now causing, the dissemination of, false advertisements concerning their said product "Sani-Age" by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product, and respondents have also disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. 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, by advertisements in newspapers or periodicals, and by circulars, leaflets, pamphlets, letters, and other advertising literature, are the following:

This test showed that the cloth possesses an agent which inhibits growth of *Staphylococcus Aureus* and causes self-sterilization of the cloth.

Sani-Age is the final human purge in the eternal combat against germ life on the clothes we wear and in the homes in which we live.

Sani-Age renders fabrics . . . actively antiseptic and germ resistant.

Sani-Age safeguards health by rendering fabrics . . . antiseptic and germ resistant.

Sani-Age renders fabrics germ free and antiseptic . . .

Sani-Age renders garments . . . antiseptic and germ resistant.

. . . there can be no germ life on a fabric processed with Sani-Age.

From the standpoint of complete sanitation in every sense that the word implies, Sani-Age stands unparalleled . . .

The antiseptic quality of Sani-Age processed fabrics is an important health factor because it prevents bacterial growth in the things which are continually in close contact with our bodies.

Sani-Age . . . prevents perspiration odor by eliminating its cause—bacteria growth.

Fabrics treated with Sani-Age are immune to perspiration odor.

Sani-Age . . . promotes greater wear in fabrics by eliminating perspiration rot.

Sani-Age . . . insures personal daintiness by preventing perspiration odor in fabrics.

In addition to its definite germ resistant and actively antiseptic properties, Sani-Age also renders fabrics resistant to perspiration spots, stains, and moisture . . .

PAR. 12. Through the use of the aforesaid statements and representations, and others similar thereto not specifically set out herein, said respondents have represented, directly and by implication, that fabrics, and garments made therefrom, which have been treated with "Sani-Age" are actively antiseptic, germicidal, and self-sterilizing; are a safeguard to health; become and remain completely sanitary, germproof, and germ free; are rendered immune to the odor of perspiration, and resistant to perspiration spots, to stains, and to moisture. Respondents have also represented, in the manner set forth above, that the claimed results of this treatment are permanent.

PAR. 13. The aforesaid claims and representations so made and disseminated by said respondents, in the course of their aforesaid business, are exaggerated, misleading, and untrue. In truth and in fact, fabrics treated with "Sani-Age," and garments made therefrom are not actively antiseptic, germicidal, nor self-sterilizing. The opportunity for fabrics to become germ infected after treatment and before final sale of the garments made therefrom is so continuous that the treatment in no sense safeguards the health of those through whose hands it passes or that of the ultimate user. Neither the treated fabrics nor garments made therefrom are germproof or germ free. Garments made from treated fabrics will become impregnated with the odor of perspiration by sufficient contact therewith, and such garments are no more resistant to perspiration spots, to stains, or to moisture than are those made from untreated fabrics. Any desirable qualities this process may impart are but temporary.

PAR. 14. The use by the respondents of the foregoing exaggerated, misleading, and untrue designations, statements, representations, and claims with respect to said preparations has had, and now has, the

capacity to, and does, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such claims, representations, statements, and designations are true, and to induce them to purchase said preparations on account thereof. Respondents' said acts and practices have placed in the hands of retail dealers who purchase products treated with the said preparations, and who purchase the bottled "Neva-Wet," and resell the same to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

As a result of respondents' said acts and practices trade has been unfairly diverted to them from their competitors engaged in the sale in commerce between and among various States of the United States and in the District of Columbia, of preparations and products designed and intended to accomplish substantially the same purposes as those sold and distributed by said respondents, who truthfully represent their products as set forth in paragraph 4 hereof. In consequence thereof, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 15. The aforesaid acts and practices as herein alleged are all to the prejudice and injury of respondents' competitors and of the public, 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.

Dismissed without prejudice by the following order:

This matter coming on to be heard by the Federal Trade Commission upon a motion for dismissal of the complaint herein without prejudice, filed by counsel in support of the complaint, no answer thereto having been filed by the respondents; and

It appearing from said motion (1) that the respondent Neva-Wet Corp. of America is no longer in existence, its charter having become inactive and void April 1, 1942, and proclaimed by the Governor of the State of Delaware in January 1943 for nonpayment of taxes; (2) that the respondent Neva-Wet Bottling Co., Inc., is no longer in existence, its charter having become inoperative and void April 1, 1940, and proclaimed by the Governor of the State of Delaware in January 1941 for nonpayment of taxes; (3) that all the connections of the respondent Irving Lefkowitz with said corporations were terminated in April 1940 and that since said date this respondent has taken no part in the sale of the products to which the complaint refers; and (4) that the respondent Samuel Howard Lefkowitz has not for over 3 years advertised or sold any of the preparations to which the complaint refers and that for this period of time no business in these preparations has been carried on; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time and that therefore the motion of counsel in support of the complaint should be granted:

It is ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against these respondents, or any of them, based upon the same practices charged in this complaint as being in violation of law, or any other practices, or to take such further or other action in the future as the Commission may deem warranted by the then existing circumstances.

Mr. Randolph W. Branch for the Commission.

Mopper & Weinberg, of New York City, for respondents.

GENERAL MOTORS CORP. AND AC SPARK PLUG Co. Complaint, September 8, 1939. Order November 17, 1948. (Docket 3886.)

CHARGE: Dealing on exclusive and tying basis in violation of section 3 of the Clayton Act; discriminating in price in violation of sections 2 (a) and 2 (d) of the Clayton Act as amended; and concerted and coercively fixing and enforcing resale prices in restraint of trade in violation of section 5 of the Federal Trade Commission Act; in connection with the manufacture, distribution, and sale of spark plugs, spark plug parts, oil filters, oil filter renewal cartridges, and other automobile parts and accessories.

COMPLAINT: The Federal Trade Commission, having reason to believe that the General Motors Corp., a corporation, and AC Spark Plug Co., a corporation, and each of them, jointly and severally, are violating, and since June 19, 1936, have violated, the provisions of sections 2 (a), 2 (d), and 3 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 15, sections 13 and 14) and have been and are using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act (U. S. C. title 15, section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its complaint, charging as follows:

I

Charging violation of section 3 of the Clayton Act, the Commission alleges:

PARAGRAPH 1. Respondent, General Motors Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in General Motors Building, Detroit, Mich. Said

respondent is now, and for more than 3 years past has been, engaged in the manufacture of automobiles and automobile accessories, parts, and supplies, including spark plugs and spark plug parts, oil filters and oil filter renewal cartridges, and in the distribution and sale thereof. The manufacture of spark plugs, oil filters, and oil filter renewal cartridges is carried on by said respondent by and through its AC spark plug division.

PAR. 2. Respondent, AC Spark Plug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in the AC Building, Flint, Mich. Said respondent is engaged in the distribution and sale of spark plugs, spark plug parts, oil filters, oil filter renewal cartridges, and other automobile parts and accessories, hereinafter collectively referred to as "AC products." Said respondent is a wholly owned subsidiary of respondent General Motors Corp.

PAR. 3. Said respondents transport their said AC products, or cause the same to be transported, for distribution and sale, from the places where such products are manufactured or stored, into and through the various States of the United States to their customers and purchasers thereof located in other States of the United States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade in commerce in said AC products manufactured, sold, and distributed by respondents between the States wherein respondents' factories and warehouses are located and various other States of the United States. Respondents' said AC products are sold and distributed by them for use, consumption, and resale within the United States and the District of Columbia.

PAR. 4. Respondents distribute and sell their AC products throughout the United States in the same territories and places as, and in substantial competition with, other persons and corporations engaged in the manufacture, distribution, and sale of similar products of like grade and quality. Respondents for the past several years have annually furnished, in the original equipment field, more spark plugs than any other domestic spark plug manufacturer, supplying annually about one-half of the spark plugs used for original equipment on automobiles manufactured in the United States. Respondents, with one other manufacturer, during the year 1937 supplied more than 95 percent of the spark plugs used as original equipment in the automobile industry in the United States and about 90 percent of the spark plugs sold in the United States for all uses.

PAR. 5. The business of distributing and selling spark plugs and oil filters is divided into two main categories: First, the sale of such

products through automobile and other motor manufacturers for use as original equipment; and second, the distribution and sale of such products for replacement of original equipment. The life of a spark plug or oil filter is normally shorter than the life of an automobile, and a complete replacement of spark plugs and oil filters is usually necessary several times during the normal operating life of every automobile. Consequently, the volume of spark plugs and oil filters sold for replacement use is greater than the volume of such products sold for original equipment. The distribution and sale of such products for replacement is carried on chiefly by automobile service stations, automobile dealers, automobile parts dealers, electrical repair shops, and garages throughout the United States. Said products are also sold by chain stores, mail-order houses, oil and tire companies, and others. The customers of respondents purchasing such AC products for resale, and many of their customers, are competitively engaged in the resale of such products at wholesale and retail in the various territories and places where said customers respectively carry on their businesses.

PAR. 6. Respondents' AC products are sold and distributed by more than 3,000 wholesalers of automobile parts and accessories located throughout the United States, and respondent AC Spark Plug Co. has negotiated and entered into contracts with some 1,500 of such wholesalers, which contracts are now in force, governing the terms of, and for the sale of, said products. Respondents maintain direct contact with all of said contracting wholesalers and prescribe and enforce the prices, terms, and conditions of sale of their products by such wholesalers. Respondents' contracts with certain of said wholesalers classified by them as "D" or distributor accounts provide that such wholesaler will stock, handle, sell, and distribute said AC products on an exclusive basis, and substantial sales by said respondents to said "D" or distributor accounts are made on the condition contained in said contracts that said "D" or distributor purchasers shall not use or deal in similar products manufactured or sold by any competitor or competitors of respondents, and the prices fixed in said contracts and charged to said "D" or distributor accounts have been fixed and charged upon said condition, agreement, and understanding. Respondents have also entered into contracts with a substantial number of other wholesalers handling, selling, and distributing said AC products and have sold their said products to such other wholesalers and have fixed prices for such products charged and to be charged such wholesalers on the condition, agreement, and understanding that such other wholesalers so purchasing respondents' said AC products shall not use or deal in similar products manufactured or sold by a competitor or competitors of respondents.

PAR. 7. The result, and effect of said acts, policy, and practices of respondents has been to persuade, compel, and coerce many of such wholesalers and dealers in spark plugs and oil filters throughout the United States to cancel sales contracts with respondents' competitors, to discontinue dealing in and selling the products of such competitors, and to refuse to deal in or purchase the products of such competitors, and has been, and may be, to substantially lessen competition and tend to create a monopoly in the distribution and sale of spark plugs and oil filters in trade and commerce among the several States of the United States and the District of Columbia.

II

Charging violation of section 2 (a) of the Clayton Act as amended, the Commission alleges:

PAR. 8. Paragraphs 1 to 5, inclusive, of charge 1 hereof are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth at length.

PAR. 9. In the course and conduct of their business respondents sell directly to wholesalers and distributors classified by respondents into "D," "J," "A-1," and "A-4" accounts, which said accounts in turn supply to other dealers classified by respondents as "JC," "L," "A-5," and "A-6" accounts, and to other dealers in said AC products not classified and not holding contracts for the purchase of said products. Said dealers classified as "JC," "L," "A-5," and "A-6" accounts are under direct contract with respondents. Since June 19, 1936, respondents have discriminated in price between different purchasers of their AC spark plugs of the same grade and quality by selling said plugs for use and resale in the United States and in the District of Columbia to "D" and "A-1" accounts at a unit price of 27½ cents, to "J" and "A-2" accounts at a unit price of 31 cents, to "JC" and "A-5" accounts at a unit price of 34 cents, to "L" and "A-6" accounts at a unit price of 37 cents, and to still other accounts not under direct contract with respondents at a unit price of 41 cents, and by selling the same AC spark plugs to automobile manufacturers and others for original equipment on automobiles and motor vehicles at a unit price of 6 cents or less.

PAR. 10. By thus selling their AC products at the prices set out in the preceding paragraph, respondents have discriminated in price between (1) classes of their direct accounts; (2) classes of their indirect accounts; (3) direct accounts and indirect accounts; (4) all contract accounts and noncontract dealers; (5) all replacement accounts and original equipment accounts, and the effect of said discriminations in price may be substantially to lessen competition, tend to

create a monopoly in the line of commerce in which respondents are engaged; to injure, destroy, and prevent competition between and among respondents' customers receiving the benefit of said discrimination and respondents' customers who do not receive the benefit of such discrimination, and between respondents and others competitively engaged with respondents in the manufacture, sale, and distribution of spark plugs, oil filters, and oil filter renewal cartridges.

III

Charging violation of section 2 (d) of the Clayton Act as amended, the Commission alleges:

PAR. 11. Paragraphs 1 to 5, inclusive, in charge I hereof, are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth at length.

PAR. 12. Before respondents will enter into a contract with a dealer in respondents' products classified by them as a "J" or jobber account, the credit of such "J" or jobber account must be guaranteed by a wholesale distributor classified by respondents as "D" or distributor account. After such contracts with "J" or jobber accounts have been entered into, respondents thereafter pay to each wholesaler classified by, and under contract to, respondents as "D" or distributor account as compensation for and in consideration of the credit service so rendered by such "D" or distributor account in connection with the sale by respondents of their AC products, an amount equal to 10 percent of all purchases of said AC products by such "J" account from respondents. Each of said classes of respondents' customers classified by them as "D" and "J" accounts is in competition in the resale of respondents' AC products, a "D" account frequently competing with a "J" account whose credit he guarantees. Such payment or consideration of 10 percent as hereinabove described is not available on proportionately equal terms to all of respondents' customers competing in the distribution of respondents' AC products.

IV

Charging violation of section 5 of the Federal Trade Commission Act, the Commission alleged:

PAR. 13. Paragraph 1 to 6 of charge I hereof and Paragraph 9 of charge II hereof are hereby repeated and made a part of this count as fully and with the same effect as though here again set forth at length.

PAR. 14. As hereinbefore set out and described, respondents sell directly to wholesalers and distributors classified by respondents into "D," "J," "A-1," and "A-4" accounts (hereinafter referred to as

direct accounts which said accounts in turn supply said AC products to other dealers classified by respondents as "JC," "L," "A-5," and "A-6," "C," and "F" accounts (hereinafter referred to as indirect accounts), and to other dealers in said AC products not classified and not holding contracts for the purchase of said products. Respondents have engaged in the practice of negotiating and entering into contracts with said indirect accounts classified by it as "JC," "L," "A-5," "A-6," "C," and "F," by the terms of which and by the issuance of price lists, instructions to their direct issuance of price lists, instructions to their direct accounts, coercion and close supervision of the resale policy of such direct accounts, respondents fix, prescribe, and control the prices, terms, and conditions upon which their said direct accounts may supply their said AC products to the indirect accounts above mentioned and to other dealers in such products not holding such AC contracts. For AC Blue Top Spark Plugs, respondents, fix a price of 34 cents per plug to "JC" and "A-5" accounts, a price of 37 cents to "L" and "A-6" accounts, and a price of 41 cents to noncontract dealers purchasing in lots of 10 or more. Similar price differentials are in force throughout the entire line of AC products. Direct accounts are required to call upon indirect accounts and to inform the respondents from time to time as to the amount of stock carried, the volume of sales being made by such accounts, the amount of stock of competitors of respondents carried, and the amount of sales thereof. By thus fixing the prices at which their direct accounts must resell AC products to their indirect accounts and noncontract dealers, respondents have induced, coerced, and compelled their said direct accounts to discriminate in price between the various classifications of said indirect accounts and between said indirect accounts and said noncontract dealers.

PAR. 15. In the contracts entered into by respondents with said indirect accounts, as described in the preceding paragraph hereof, the special price quoted in the contract is given upon the condition and agreement that the dealer will carry a certain minimum stock of AC spark plugs and purchase a minimum quantity of such plugs during the calendar year covered by the contract. Said contracts provide that they may be canceled and the prices fixed therein may be withdrawn by respondents at any time if the contract holder fails to carry the required stock or purchase the agreed amount of AC spark plugs and further that they may be canceled by respondents upon given notice without specification of reason. The direct accounts under AC contracts are instructed by respondents that all said contracts and the prices quoted therein may be canceled and withdrawn by respondents if said direct accounts do not increase their volume of sales of AC spark plugs from year to year. Respondents exercise a complete

supervision and control over both direct and indirect accounts through respondents' direct representatives who inform and instruct the direct and indirect accounts of respondents that unless said resale prices are maintained as arbitrarily fixed by respondents in said contracts and unless said minimum stock and purchase requirements are fully complied with, and that unless said direct and indirect accounts handle respondents' AC products exclusively and refuse to stock, handle, sell, or distribute the products of respondents' competitors that the said contracts will be canceled by respondents as to all or any of respondents' products or that the said account will be reclassified and the prices, fixed in said contracts, raised by respondents. The tendency and effect of such contracts and of such acts and practices by respondents is to induce, coerce, and compel the dealers holding such contracts to deal in AC spark plugs and other AC products exclusively and to prevent them from dealing in the products of respondents' competitors. By negotiating such contracts and requiring their distributors to adhere thereto and constantly supervising and checking their distributors' sales and distributing activities and by their threats and instructions issued by respondents' representatives, respondents effectively close to their competitors a substantial number of actual and potential outlets for the distribution and sale of spark plugs and oil filters.

PAR. 16. By the acts and practices above described, respondents have agreed with and compelled their distributors to maintain the various prices fixed by the respondents for the resale of their AC spark plugs and other AC products to the restraint of trade in commerce between the various States and in the District of Columbia; have obstructed, hampered, and interfered with the normal and natural flow of trade and commerce in such products; have hindered and lessened competition in the distribution and sale of such products; and have injured their competitors by unfairly diverting business and trade from them and depriving them thereof; and have engaged in unfair acts and practices as to their competitors and as to their indirect customers; all to the prejudice and injury of the public.

Dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon its own motion upon the complaint issued September 8, 1939, and the answer thereto filed October 28, 1939; and it appearing to the Commission that no further proceedings were had in this matter primarily due to respondents' activities in defense and war production, and this delay having necessitated a recent reinvestigation of the facts; and it further appearing to the Commission that its charges with respect to the current acts and practices of respondents should be stated in a new complaint:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the institution of further proceedings.

Mr. L. E. Creel, Jr., Mr. J. N. Chapman and Mr. J. W. Adair for the Commission.

Mr. Albert M. Levert and Mr. John Thomas Smith, of New York City, for respondents.

SEALY, INC., ET AL. Complaint, March 18, 1944.¹ Order, November 22, 1948. (Docket 4987.)

CHARGE: Combining and conspiring and using an agreed and planned restrictive, monopolistic, and price fixing common course of action in restraint of trade, and advertising falsely or misleadingly as to fictitious mark-up prices; in connection with the manufacture, distribution, and sale of mattresses, bedsprings, and other related products.

AMENDED AND SUPPLEMENTAL 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 corporations, partnerships, and individuals named herein and hereinafter referred to as respondents have violated the provisions of section 5 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 amended and supplemental complaints, stating its charges in such respect as follows:

PARAGRAPH 1. The respondent, Sealy, Inc., is a nonprofit, cooperative corporation organized August 22, 1933, under the laws of the State of Delaware, with its principal office located in the American Furniture Mart, 666 Lake Shore Drive, Chicago, Ill. Its capital stock is almost wholly owned by members of the Sealy Group, hereinafter defined.

The object and purpose of respondent Sealy, Inc., is to promote the mutual interests of the 23 respondent manufacturers, known as Sealy group members. Said members are engaged in the manufacture, sale, and distribution of mattresses and most of them also manufacture, sell, and distribute bed springs and/or other related products.

Respondents, Jacob R. Haas and John M. Brody, Jr., are the president and executive vice president, respectively, of respondent Sealy, Inc. The names of the respondent vice president, treasurer, and secretary and the members of the executive committee of said Sealy, Inc., are unknown to the Commission.

Respondents, Morris Stein and Morris Nierenberg, are individuals doing business as copartners under the name of Colorado Mattress

¹ Amended and supplemental.

Manufacturing Co., whose principal place of business is in Denver, Colo.

Respondents, Willford R. Sutherland and Sidney Sutherland, are individuals doing business as copartners under the name of Dixie Mattress Co., whose principal place of business is in Richmond, Va.

Respondent, Eagle Mattress Co., Inc., is a Massachusetts corporation whose principal place of business is in Allerton, Mass.

Respondent, Fort Pitt Bedding Co., is a Pennsylvania corporation whose principal place of business is in Pittsburgh, Pa.

Respondent, Gordon Sleeprite Corp., is a Maryland corporation whose principal place of business is in Baltimore, Md.

Respondents, J. L. Metcalfe and T. O. Metcalfe, are individuals doing business as copartners under the name of Graham Mattress Co. whose principal place of business is in Bluefield, W. Va.

Respondent, Fred G. Hodges Bedding Co., is a Pennsylvania corporation whose principal place of business is in Reading, Pa.

Respondent, Long Island Mattress Co., Inc., is a New York corporation whose principal place of business is in Brooklyn, N. Y.

Respondents, Samuel Hertz and Morris Lewis, are individuals doing business as copartners under the name of Made-Wel Bedding Co., whose principal place of business is in Passaic, N. J.

Respondent, the Charles A. Maish Co., is an Ohio corporation whose principal place of business is in Cincinnati, Ohio.

Respondent, Osiason, Inc., is a Massachusetts corporation whose principal place of business is in Fall River, Mass.

Respondent, the Ohio Mattress Co., is an Ohio corporation whose principal place of business is in Cleveland, Ohio.

Respondents, Arthur H. Raasch and Blanche C. Raasch, are individuals doing business as copartners under the name of Pettit Bedding Co. and/or Pettit Feather & Bedding Co., whose principal place of business is in Portland, Oreg.

Respondent, Rogers Manufacturing Co., is a Texas corporation whose principal place of business is in Houston, Tex.

Respondent, Schmitt & Henry Manufacturing Co., is an Iowa corporation whose principal place of business is in Des Moines, Iowa.

Respondent, R. H. Taylor Bedding Co., known also as Sealy Mattress Co. of Chicago, is an Illinois corporation with its principal place of business at Chicago, Ill.

Respondent, the Sealy Mattress Co. of Dallas, is a Texas corporation with its principal place of business at Dallas, Tex.

Respondent, Southwest Sealy Corp., known also as Sealy Mattress Co. of Kansas City, is a Missouri corporation with its principal place of business at Kansas City, Mo.

Respondent, R. W. Marquardt Co., known also as Sealy Mattress Co. of Milwaukee, is a Wisconsin corporation with its principal place of business at Milwaukee, Wis.

Respondents, Lucille Willens and Helen Solomon, are individuals doing business as copartners under the name of Sealy Mattress Co. of northern California, whose principal place of business is in Oakland, Calif.

Respondent, Seniel Ostrow, is an individual doing business under the name of Sealy Mattress Co. of southern California, whose principal place of business is in Los Angeles, Calif.

Respondent, U. S. Bedding Co., is a Georgia corporation whose principal place of business is in Memphis, Tenn.

Respondent, Zimmerman Manufacturing Co., is a Georgia corporation whose principal place of business is in East Point, Ga.

PAR. 2. The 23 respondent members of the Sealy group have been for many years last past, and still are engaged in the business of manufacturing, selling and distributing mattresses and most of them also manufacture, sell and distribute bedsprings and/or other related products, and they sell said products to large numbers of retailers in the various States of the United States, and in the District of Columbia, and cause said products, when sold, to be transported from the States in which they are manufactured to purchasers thereof in various other States of the United States, and in the District of Columbia, and at all times herein mentioned, have maintained a course of trade in their products in commerce among and between the various States of the United States and the District of Columbia. Said respondents, in the course of their said business, are in substantial competition with other corporations, partnerships, and individuals engaged in offering for sale and selling similar products in said commerce. Said respondents are also in competition with each other except as to Sealy products, hereinafter defined, as to which products competition had been completely restrained and prevented, as hereinafter more specifically alleged.

PAR. 3. Mattresses, bedsprings, and related products manufactured and sold by the 23 respondent members of the Sealy group pursuant to the terms of certain agreements and contracts entered into by each of said respondent Sealy group members with respondent Sealy, Inc., as hereinafter set forth, are called Sealy products, as distinguished from any such products as may be manufactured and sold by respondent members independently of such agreements and contracts, and which are called non-Sealy products.

The said respondent members of the Sealy group cover the entire United States in the sale and distribution of their products.

PAR. 4. Since August 1933, and continuing to and at the present time, respondents in the course of the said business of selling and distributing mattresses, bedsprings, and related products, have maintained and still maintain an unlawful combination and conspiracy to pursue, and they have accordingly pursued and still pursue an agreed and planned common course of action to completely restrain and prevent competition in the manufacture, sale, and distribution of Sealy products, and to prevent the manufacture and sale of certain non-Sealy products in competition with their competitors and in competition with Sealy products.

Pursuant to and in furtherance of said combination, conspiracy and agreed and planned common course of action, respondent Sealy, Inc., and respondent members of the Sealy group, agreed between and among themselves that each of the respondent members of the Sealy group should enter into, and each of them accordingly did enter into an agreement and contract with respondent Sealy, Inc. Under the terms of each of said contracts, it is, among other things, provided:

(a) That respondent, Sealy, Inc., shall allot to the contracting respondent member of the Sealy group an exclusive territory within which such member is confined for the manufacture, sale, and distribution of products manufactured under the terms and conditions of said contract, such provision providing a penalty if the respondent Sealy group member sells outside of said territory;

(b) That products manufactured and sold by the contracting Sealy group member under the terms of said contract shall be sold at the fixed, uniform, noncompetitive, and agreed prices, set out and established by all of said contracts, with the right reserved to respondent Sealy, Inc., to terminate such agreement or contract upon the failure of the respondent to observe such prices;

(c) That the said products shall be sold by the retailers who purchase them from the contracting respondent Sealy group member for resale, at the fixed, uniform, noncompetitive and agreed prices established by all of said contracts, with the duty devolving upon the respondent Sealy group members to enforce observance of such retail prices.

(d) That the contracting respondent member of the Sealy group shall not sell, ship, or deliver any of such products to any mail-order house without the written consent of respondent Sealy, Inc., such provision containing a penalty for its violation;

(e) That the contracting respondent member of the Sealy group shall not manufacture or sell any mattress, studio couch, box-spring, pillow, cushion, sofa bed, or other product which is of a kind or

bears a label, trade-name or trade-mark which is nationally advertised, or nearly so, in competition with Sealy products;

(f) That all advertising done by the respondent member of the Sealy group shall be subject to the approval of respondent, Sealy, Inc.;

(g) That the respondent member of the Sealy group shall co-operate with Sealy, Inc., in every way possible to carry out the provisions of the contract and to secure the best possible results in carrying out such and other similar contracts.

(h) That in case either party breaches any of the provisions of the contract, it may be terminated by the other party.

PAR. 5. As a result of said combination, conspiracy, planned common course of action, contracts and agreements, and the things done thereunder, competition in interstate commerce in the sale and distribution of Sealy products among and between respondent Sealy group members has been and is unlawfully and completely restrained and prevented; competition in said commerce between Sealy group members and their competitors has been and is unlawfully restrained; and price competition in said commerce among and between the retailers who purchase Sealy products from Sealy group members has been and is unlawfully restrained and prevented; the manufacture and sale in said commerce of certain non-Sealy products by Sealy group members in competition with their competitors who are not members of the Sealy group has been and is unlawfully and completely restrained and prevented; sales of Sealy products in said commerce by Sealy group members to mail-order houses are prohibited without the written consent of said Sealy, Inc. A further result of said acts and practices is to substantially enhance prices to the consuming public by maintaining such prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition and thereby to eliminate competition in said commerce and tend to create in respondents a monopoly in the sale of Sealy products.

PAR. 6. For many years last past in the course and conduct of their said business of manufacturing and selling Sealy products in interstate commerce as aforesaid, respondents have in combination among and between themselves as aforesaid agreed upon the character of advertising to be used in connection with the sale and distribution of Sealy products, and in that behalf and for the purpose of inducing the purchase of their said products, have caused to be published by means of newspapers of general circulation, and in magazines having a Nation-wide circulation, and by other means, advertisements containing the following and similar representations:

Prize-Winner Healthized Mattress

Regular \$29.50 Value

This sale only—\$19.95

Through the use of the foregoing statements, respondents represent that their Prize Winner mattress is customarily sold by retail dealers in the usual course of business for a higher price than \$19.95, to wit, the marked-up price of \$29.50.

PAR. 7. Contrary to respondents' said representation, however, respondents' Prize Winner mattress had not up to the time said representation was made ever been sold at a higher price than \$19.95 by retail dealers in the usual course of business. Such fictitious mark-up price was not thereafter established as the usual and customary selling price of said mattress at retail, but the so-called sale price of \$19.95 was and continued to be the usual and customary retail price charged for such mattresses in the usual and normal course of business.

PAR. 8. As a result of the practice alleged in paragraph 6 hereof, respondents are enabled to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representation is true, and the said public is thereby induced to purchase substantial quantities of respondent's Prize Winner mattresses, thereby unfairly diverting trade in said commerce to respondents from their competitors to the injury of said competitors and of the public.

Dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon the amended and supplemental complaint of the Commission, answers thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, and the briefs and oral argument of counsel.

Ten of the manufacturing respondents herein are stockholders in and, in the aggregate, own more than three-fourths of the shares of stock of Sealy, Inc., now outstanding, and they and the 13 other manufacturing respondents have contractual relations with Sealy, Inc., but are each otherwise separately and independently engaged in the manufacture and sale of bedding products. The complaint charges this "Sealy group" with a number of practices in restraint of trade alleged to result from acts done pursuant to the aforesaid relationships among them. Respondents are further charged with false and misleading advertising as to the usual and customary price of certain mattresses.

Having considered the allegations of the complaint in the light of the evidence of record, and being of the opinion that the allegations respecting restraint of trade have not been sustained by the greater weight of the evidence, and being further of the opinion that, inasmuch as the advertising challenged in the complaint was discontinued a number of years ago with no apparent likelihood of resumption thereof, there is no present public interest warranting the issuance of an order with respect thereto.

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should circumstances warrant such action.

Commissioner Ayres dissenting.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Karl E. Steinhauer for the Commission.

Nichols, Wood, Marx & Ginter, of Cincinnati, Ohio, and *Mr. Herbert J. Haas*, of Atlanta, Ga., for respondents.

IRA A. CAMPBELL ET AL. TRADING AS MODERN WATERPROOFING PAINT Co. Complaint, August 10, 1945. Order, November 24, 1948. (Docket 5364.)

CHARGE: Advertising falsely or misleadingly and assuming or using misleading trade or corporate name as to qualities, properties, or results of product; in connection with the sale of a paint recommended as a waterproofing agent for concrete, cement, brick, cinder blocks, and other masonry surfaces, designated as "Aquella."

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 Ira A. Campbell, Leandro W. Tomarkin, Wanda Tomarkin, Zella Fay Campbell, and Zella Clarke, copartners, trading as Modern Waterproofing Paint Co., hereinafter referred to as respondents, have violated the provisions of the 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. The respondents, Ira A. Campbell, Leandro W. Tomarkin, Wanda Tomarkin, Zella Fay Campbell, and Zella Clarke, are copartners doing business under the name of Modern Waterproofing Paint Co., with their principal office and place of business located at 1270 Broadway, New York, N. Y.

PAR. 2. The respondents are now, and for more than 1 year last past, have been engaged in offering for sale and in the sale and distribution of a paint recommended by them as a waterproofing agent for concrete, cement, brick, cinder blocks, and other masonry surfaces, which is designated by them as "Aquella."

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

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

PAR. 3. In connection with the promotion of the sale and the sale of said products in commerce among and between the various States of the United States, and as an inducement to cause the purchase thereof, the respondents make many misleading statements and representations respecting the results to be obtained through the use of their said product by means of circulars, pamphlets, advertisements inserted in magazines and newspapers, and other advertising literature distributed among prospective purchasers in the various States of the United States and in the District of Columbia. Among and typical of such misleading statements and representations circulated as aforesaid, concerning their product "Aquilla," are the following:

AQUELLA
A COLD WATER PAINT
THAT WATERPROOFS AND DAMPPROOFS

- concrete surfaces
- stone concrete blocks
- cinder concrete blocks
- lightweight concrete blocks
- cement blocks
- fiber cement
- brick masonry
- any porous masonry surfaces

Aquilla applied to concrete walls of basements and brick walls of houses subject to water infiltration, dampness or moisture, due to rain or other causes, renders them WATERPROOF * * * becomes a permanent part of the wall surface.

The manufacturer GUARANTEES that if applied according to instruction, on wet, unpainted BRICK, CONCRETE, and CINDER BLOCK walls, AQUELLA will permanently stop seepage of water and dampness through the walls.

PAR. 4. Through the use of the foregoing statements and representations, and through other statements not set out herein, and through the use of the word "waterproofing" in their trade name, the respondents represent, directly and by implication, that their said paint product is an effective waterproofing material or compound, and that when applied as a coating to concrete, cement blocks, brick, cinder blocks, or other masonry walls, it will make such walls permanently waterproof and dampproof and impervious to water and moisture; that said product unites with and becomes a permanent part of wall surfaces to which it is applied.

PAR. 5. The foregoing statements and representations made by the respondents in connection with the promotion of sale and sale of their said products are false, misleading, and deceptive.

In truth and in fact such product is not an effective waterproofing material or compound when applied to concrete, cement blocks, brick,

cinder blocks, or other masonry surfaces. It will not make masonry walls impervious to water or moisture, nor effectively protect the structures to which it is applied against the elements of water and dampness. It does not unite with or become a permanent part of the object to which it is applied.

While "Aquella" may, when applied under some conditions, aid in preventing water and moisture infiltration through masonry structures, such effectiveness is limited to varying periods of time, and is not permanent under any condition of use.

PAR. 6. The use by the respondents of the foregoing false and misleading statements and representations and the use of the word "waterproofing" in said trade name, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the public to purchase substantial quantities of respondents' products as result of such belief.

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

Dismiss without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint, filed by respondents on November 29, 1946, the answer and supplemental answer thereto, filed May 20, 1947, and September 3, 1948, respectively, by which said motion is not opposed.

The complaint herein, issued August 10, 1945, charges the respondents, as individuals and as copartners, with unfair and deceptive acts and practices in commerce in the sale and distribution of a paint designated "Aquella" and recommended by them as a waterproofing agent for concrete, cement, brick, cinder blocks, and other masonry surfaces through the use of advertising by which they have represented that said product is an effective waterproofing material or compound, that when applied as a coating to concrete, cement blocks, brick, cinder blocks, or other masonry walls it will make such walls permanently dampproof and impervious to water and moisture, and that said product unites with and becomes a permanent part of wall surfaces to which it is applied.

It appears that respondent, as individuals and as copartners trading as Modern Waterproofing Paint Co., on January 18, 1946, sold the assets and business of this firm to Aquella Products, Inc., a New York corporation in which the individual respondents together own 900 of the 1,000 shares of authorized and issued capital stock. The re-

spondents, as copartners and as individuals acting through the partnership, thereupon ceased the production, sale, distribution, and advertising of the produce "Aquelia," and said product has since been manufactured by Aquella Products, Inc.

Since said copartnership has ceased to exist and the individual respondents are no longer engaged in the business of manufacturing, selling, distributing, or advertising the product involved in the complaint through and by means of said partnership, the Commission is of the opinion that the public interest does not require further corrective action with regard thereto at this time.

It is therefore ordered, That the complaint be, and it hereby is, dismissed without prejudice to the right of the Commission to reopen it or take such further action at any time as may be warranted by the circumstances.

Mr. S. F. Rose, Mr. Edward L. Smith and Mr. George M. Martin for the Commission.

Mr. Robert E. Kline, Jr., of Washington, D. C., and Kirlin, Campbell, Hickox & Keating, of New York City, for respondents.

PARK & TILFORD. Complaint, June 21, 1946. Order, November 30, 1948. (Docket 5447.)

CHARGE: Advertising falsely or misleadingly as to unique nature, qualities, properties or results, and comparative merits and prices; in connection with the sale of "Tintex" textile dyes, designated and manufactured for household use.

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 Park & Tilford, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Park & Tilford, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 485 Fifth Avenue, in the city and States of New York.

PAR. 2. Respondent is now and has been for more than 2 years last past engaged in the sale and distribution in commerce between and among the various States of the United States of textile dyes, designed and manufactured for household use. Respondent, in the course and conduct of its business has caused and does now cause said dyes to be transported from its said place of business to its customers

located in States other than the State of New York and in the District of Columbia.

PAR. 3. There has been and is now at all times mentioned herein, a course of trade in said household dyes in said commerce.

PAR. 4. In connection with the offering for sale and the sale of its said household dyes, respondent, by means of advertisements in newspapers and magazines, radio continuities, circulars, and other advertising media has made and is making statements and representations which are false, exaggerated, and misleading. Typical of said representations are the following:

Tintex is no ordinary dye; it dyes every fabric WITHOUT EXCEPTION—to PERFECTION.

. . . It's the best buy in dye too! Costs no more than ordinary dyes—only 10¢ and 15¢.

This Package is for *DYEING* Cotton, Silk, Linen, Wool and Rayon. It is sufficient to dye a dress of light-weight materials. (For heavier material, use more dye) . . .

TINTEX is the ONLY *ALL-FABRIC* Dye at 10¢

(15¢ for the Large Size) Why Pay More?

INSIST ON TINTEX

because it is

G U A R A N T E E D

by Park & Tilford

to dye *ALL*-fabrics including CELANESE, NYLON & MIXTURES

Comes in a *SINGLE* box for *ALL* fabrics

World's largest selling Tints and Dyes because best value—best quality!

Yes—insist on Tintex! With Tintex you needn't pay any more than 10 or 15 cents to get a dye in a *SINGLE* box that dyes *ALL* fabrics. Ends fabric confusion forever and brings you the best value, the quality in dye history! Use *ALL-FABRIC* Tintex with confidence on even your finest things. It's easy, quick, perfect! These are the reasons why millions prefer Tintex, America's *ALL-FABRIC, ALL-PERFECT* dyes! At drug, department and dime stores. * * *

To get *ALL-FABRIC* Tintex, buy exactly the same gray box you've always bought. It will dye all fabrics.

Over 50 Smart, Fashion-right colors for Celanese * All other Rayons * Sharkskins * Nylons * Mixtures * Silks * Wools * Cottons * Linens * Velvets * All other Fabrics.

PAR. 5. By means of the foregoing statements and representations and others of like tenor and effect, not herein specifically set out, respondent represents and implies that its product, Tintex, is not an ordinary dye, being substantially different from competitive products offered for the same purpose; that it dyes all fabrics perfectly regardless of composition, including acetate and viscose rayons, nylons, silks,

wools, linen, cotton, sharkskins, velvet, or any mixture or combination of said fabric materials; that its dyes are available in over 50 colors and that regardless of the color selected, every dye job can be done easily, quickly, and perfectly by the consumer; that one box of Tintex is sufficient to dye an average lightweight dress, regardless of material or the color desired; that the price of 10 and 15 cents per box is less than the price of some competitive dyes and no higher than others; that Tintex is superior in quality and price to all competitive dyes, and is the only all-fabric dye giving the best value and quality; and that it is not necessary to pay more than 10 or 15 cents in order to do a satisfactory dye job.

PAR. 6. In truth and in fact all of said statements and representations and others of similar meaning are false, deceptive, and misleading. Respondent's product is not materially different from other competitive household dyes; perfect dye jobs cannot be obtained with Tintex regardless of the fabric to be dyed or the colors selected, nor is it possible to do dyeing work at home in all instances easily, quickly, and perfectly. On the contrary, certain rayons and specially acetate rayons can be dyed only with difficulty and frequently require the services of professional dyers. It may be possible in some cases to dye lightweight dresses satisfactorily with one package of Tintex, but whether it can be done depends upon the material and the color in which said dress is proposed to be dyed. Dresses manufactured from acetate rayon, wool, and other combination fabrics require more than one package of Tintex and if the darker colors are selected a substantially larger quantity of Tintex is required in order to dye the dress in the desired darker color, and it may in fact be necessary to use 5 or 10 times the amount of dye for darker colors than is required for the light colors. The expense of dyeing a garment the color desired in many instances is greater than is required for a similar dye job with competitive products. Respondent's representation that it is not necessary to pay more than 10 cents or fifteen cents for a satisfactory dye job, coupled with the statement that Tintex comes in a single box for all fabrics, is grossly misleading.

PAR. 7. The aforesaid false, deceptive, and misleading representations so made by respondent have had and now have the tendency and capacity to and do mislead and deceive a substantial portion of the consuming public into the belief that perfect dye jobs may be obtained with respondent's product regardless of the material or fabrics to be dyed or the colors desired, and that said work may be done for the same price or less than is required with competitive dyes, and that all dyeing may be done safely, quickly, and to perfection by the consumer.

PAR. 8. The aforesaid acts and practices of respondent are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon the respondent's motion for dismissal of the complaint herein, and the answer to such motion, filed by counsel in support of the complaint, which did not oppose the relief requested; and

It appearing from said motion, and from the record as a whole, that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act have been voluntarily discontinued and that a substantial number of such practices were discontinued prior to the issuance of the complaint; and

It further appearing that since the date of the issuance of the complaint the Commission on, to wit, May 29, 1947, approved and promulgated Trade Practice Rules for the Household Fabric Dye Industry and that the respondent has now furnished the Commission with proof of its full compliance with said rules and with adequate reason to believe that it will continue to comply therewith; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent, or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. William L. Pencke for the Commission.

Gale, Bernays, Falk & Eisner, of New York City, and *Mason, Spalding & McAtee*, of Washington, D. C., for respondent.

CARLISLE ROWNTREE trading as EXPORT FINDERS BUREAU. Complaint, June 14, 1946. Order, December 20, 1948. (Docket 5444.)

Charge: Advertising falsely or misleadingly as to prompt delivery and select clientel; in connection with the sale of food products, textiles, chemicals and pharmaceuticals, steel products, and machinery, along with various other commodities.

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 Carlisle Rowntree, an individual, trading as Export Finders Bureau, hereinafter referred to as respondent, has violated said act, and it appear-

ing 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. Carlisle Rowntree is an individual trading as Export Finders Bureau and has his office and principal place of business at 8 Bridge Street, New York, N. Y. Since December 1941, respondent has been engaged in the sale and distribution of food products, textiles, chemicals and pharmaceuticals, steel products, and machinery, along with various other commodities.

PAR. 2. Respondent at all times mentioned herein has been and is now in substantial competition with other individuals and with partnerships, firms and corporations who are also engaged in the sale and distribution of like products in commerce, among and between the various States of the United States and various foreign nations.

PAR. 3 Respondent causes and has caused said products when sold to be transported from the State of New York into various other States of the United States, or from various points in other States of the United States into States of the United States other than the State of origin of said shipments, and from points in the several States of the United States to purchasers located in foreign nations, and from points in various foreign nations into the State of New York and various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in commerce among and between the various States of the United States and with foreign nations.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said commodities, respondent by means of advertising circulars, letters, catalogs, and other advertising media circulated generally through the United States and in various foreign nations, has made many representations concerning the nature and character of respondent's business and commodities. Among such representations are the following:

"WANTS" and "OFFERS"

(Export—Import—Domestic)

Here are a few items from our Depts. of Food Products; Notions; Textiles; Chemicals and Pharmaceuticals; Steel products; Machinery; and Miscellaneous. We can make prompt deliveries on almost all items listed herein.

"OFFERS"

FOOD PRODUCTS: * * * Apple Sauce; Argentine Corn Beef (in bond); * * *; Beef Extract; * * *; Canned Pineapple; Canned Pimientos; * * *; Hams Canned Cooked (in bond); Hams Salted Cured (in bond); * * *; Sardines; * * *.

TEXTILES: * * *; Cotton Duck; Gabardine; * * *.

CHEMICALS AND PHARMACEUTICALS: Acids; Acetic, Acetonilide, * * *, Phosphoric, Sulphuric; Alcohol (denatured); * * *; Ammonium Carbonate; * * *; Balata; Barium Chloride; Barium Hydrate; Benzaldehyde; * * * Dyes (various); * * *; Liquid Fire Extinguisher; * * *; Manganese; * * * Oxides; Zinc and Iron; * * *; Rosin; Sodium: * * *; Hypochloride, * * *, Sulphate, * * *. Chlorate, * * *; Tri Calcium Phosphate; * * *.

STEEL PRODUCTS: Angles; Black and Galvanized Steel Sheets; Bolts and Nuts; Corrugated Sheets; * * *; Gas and Water Pipes; Hot and Cold Rolled Bars; Nails; Reinforced Concrete Rods; Saws; Screws; Shovels; Structural Steel; Tees; (Tin Cans for Export); Tin Plate; Washers; Wire.

MACHINERY: Boreers; Bulldozers; Cranes, Diesel Engines; Draglines; Grinders; Lathes; Millers; Printing Presses; Road Rollers; Screw Machines; Shovels; Shapers; Textiles; Tool Machinery; Tractors; Trucks; Woodworking; * * *.

MISCELLANEOUS: Auto Radios; * * *: Cigarette Paper; * * *; Fire Extinguishers; Kraft Paper; * * *; Manila Woven Hemp; * * *; Oak Barrels; Paper (all type); Printing Inks; * * *; Rope; * * *; Synthetic Rubber Goods; * * *; Wire Bound Crates (22000).

Many Primary Sources—Many Bargains—Many Other Listings

Send Us Your "Wants" and "Offers"

ANNOUNCEMENT

The purpose of Export Finders Bureau is to perform a present needed function in the trade. We are finders. We try to find for you reliable sellers of your requirements and reliable buyers for your surplus products and offerings. We try to find the original source of supply and the ultimate user, or their authorized representatives. The service will be helpful in eliminating many middle-men and the resultant confusion, loss of time and needless increase in price.

Export Finders Bureau proposes to promote direct dealing between a selected list of buyers and consumers on the one hand, and a selected list of sellers and producers on the other. All recipients of this announcement are on one or both of these lists.

Respondent in the conduct of the said business, in the manner aforesaid, makes various other statements and representations of similar import and meaning concerning his said business and products sold by him.

PAR. 5. In the manner aforesaid the respondent represents and has represented that he is in a position to make prompt deliveries of almost all items listed under his said "offers"; that all persons receiving respondent's circulars and literature are in a select group based upon reputation for reliability.

PAR. 6. In truth and in fact respondent cannot make prompt delivery on almost all items listed under his said list of "offers," and

at the time of the issuance and dissemination of his said list respondent did not have a commitment or contract from any source of supply covering "almost all items" or even a majority of items listed thereon. In truth and in fact, the major portion of the items listed by respondent on said list of "offers" are items which at the time of the issuance and dissemination of said list were under strict priority and allocations and were governed by regulations of the War Production Board, Office of Price Administration, or other governmental agencies. In truth and in fact respondent will send his list to any person or firm that he believes he can make a sale to or purchase from, irrespective of the standing and reliability of the person or firm in the business world, and respondent's select list of purchasers and buyers is not a list compiled on a basis of reliability. Furthermore, even should the items listed on respondent's said "offers" be available on the market, respondent still would be unable to make "prompt" delivery because the governmental regulations relative to allocations and priorities necessitate delay.

PAR. 7. The aforesaid representations have the capacity and tendency to mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true; and have the capacity and tendency to, and do, induce the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products, thereby unfairly diverting trade in both domestic and foreign commerce to the respondent from those of his competitors who do not in any manner misrepresent their products or the status of their business, to their injury and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public 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.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto filed by counsel in support of the complaint, and written briefs (oral argument not having been requested); and

The Commission being of the opinion that the allegations of the complaint have not been sustained:

It is ordered, That the complaint herein be, and it hereby is, dismissed.

Before *Mr. Frank Hier*, trial examiner.

Mr. Charles S. Cox for the Commission.

SIDNEY H. WILCOX, AND WALTER G. LOHR AND ENOCH L. HARLAN, doing business as TELEPHONE ANSWERING SERVICE. Complaint, November 10, 1943. Order, January 7, 1949. (Docket 5079.)

CHARGE: Misrepresenting business status, advantages or connections and assuming or using misleading trade or corporate names and furnishing means and instrumentalities of misrepresentation and deception as to government connection, and respondents being an endowed organization or institution devoted to research and the advancement of the general welfare, and that its work included research in the matter of employment; in connection with the sale of reply postcards, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

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 Sidney H. Wilcox, an individual, and Walter G. Lohr and Enoch L. Harlan, individually and doing business under the name Telephone Answering Service, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sidney H. Wilcox, is an individual, doing business under the names "Board of Employment Research," "Division of Employment Research," "The Toledo Foundation, Division of Employment Research," "Bureau of Statistics, Division of Employment," "National Tracing Bureau," and "Creditors Tracing Bureau." Said respondent has no fixed place of abode or business, but has at various times within the year last past used as business addresses; General Delivery, Detroit, Mich.; 538 Erie Street, Toledo, Ohio; Room 1830, Standard Building, Cleveland, Ohio; Room 703 Albee Building, Washington, D. C., and 9001 Cicero Avenue, Oakland, Ill.

Respondents Walter G. Lohr and Enoch L. Harlan, are individuals doing business under the name "Telephone Answering Service," with an office and principal place of business at Room 1605, Court Square Building, Baltimore, Md., and with other offices located at 703, Albee Building, Washington, D. C., 538 Erie Street, Toledo, Ohio, and elsewhere.

PAR. 2. Respondent Sidney H. Wilcox is now, and has been for more than 6 months last past, engaged in the business of selling and distributing reply postcards, designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Said respondent has caused the said cards to be transported from his various locations to purchasers thereof in various other States of the United States and in the District of Columbia. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cards in commerce between and among the various States of the United States and in the District of Columbia. Many of the purchasers of said cards cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained, courses of trade in such goods and property in commerce between and among the various States of the United States.

In his business of selling and distributing said cards respondent has traded and done business under the names set forth in Paragraph One hereof.

PAR. 3. The said cards were sold and distributed by respondent Wilcox when using the name "Board of Employment Research," are substantially in the form exemplified by a photostatic copy of the said card, marked Exhibit A; when using the name "Division of Employment Research" are substantially in the form exemplified by a photostatic copy of the said card, marked "Exhibit B," and when using the name "The Toledo Foundation, Bureau of Employment Research" are substantially in the form exemplified by a photostatic copy of said card, marked "Exhibit C."

The said Exhibits A, B, and C are attached hereto, and by this reference incorporated herein and made a part hereof.

When using the name "Bureau of Statistics, Division of Employment" respondent Wilcox used a card generally resembling and in many respects identical with the cards exemplified by Exhibit A and B.

Upon the said cards when they were delivered to purchasers thereof, respondent Wilcox placed numbers which were his code numbers and identified his customers to him.

Purchasers of the "Toledo Foundation" cards addressed them to the persons concerning whom information was sought at their last known addresses, attached the postage as indicated thereon, enclosed 5-cent pieces in the envelopes attached to the cards, and stapled the two parts of the cards together. They then caused the said cards to be delivered to a representative of respondents Lohr and Harlan at 538 Erie Street, Toledo, Ohio, who deposited the individual cards in the United States mail. Such of the return cards as were filled out and mailed were received by the said representative at Toledo, Ohio,

who caused them to be delivered there, or elsewhere, to respondent Wilcox, who, having identified the customers by the code numbers, sent the cards to the appropriate customers.

The procedure with respect to the other cards mentioned herein was substantially the same, except that such of the return cards as were filled out and mailed were received at Washington, D. C., by a representative of respondents, Lohr and Harlan and by him forwarded to respondent Wilcox.

PAR. 4. Through the use of "The Toledo Foundation" cards referred to above, respondent Wilcox has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the said cards were sent, that the desired information was sought by an endowed organization or institution devoted to research and the advancement of general welfare, for the purpose of a survey of matters connected with employment.

PAR. 5. Through the use of the "Division of Employment Research" cards, referred to above, respondent Wilcox has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the said cards were sent, that the desired information was sought by an organization connected in some fashion with the government of the United States, and with employment, for the purposes of a survey of certain matters connected with employment.

PAR. 6. Through the use of the "Bureau of Statistics, Division of Employment" cards, referred to above, respondent Wilcox has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the said cards were sent, that the desired information was sought by an organization connected in some fashion with the Government of the United States and with employment.

PAR. 7. Through the use of the "Board of Employment Research" cards referred to above, respondent Wilcox has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, that the desired information was sought by an organization connected in some fashion with the United States Government and with employment, for the purposes of a survey preliminary to formulating a plan for the stabilization of labor conditions and placing persons in the most desirable positions consistent with their abilities.

PAR. 8. Through the use of the names "Division of Employment Research," "Bureau of Statistics, Division of Employment," and "Board of Employment Research" respondent Wilcox has falsely represented,

and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the cards on which those names appear, that said concern were connected in some fashion with the government of the United States, and with employment.

Through the use of the name "The Toledo Foundation, Division of Employment Research" respondent Wilcox has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, that the said organization or institution was endowed, and devoted to research and the advancement of the general welfare, and that its work included research in the matter of employment.

PAR. 9. The said representations and names were false and misleading. In truth and in fact respondent was not engaged in making any survey of any matter relating to employment. He does not conduct any endowed organization or institution. He is not connected with the Government of the United States nor does he, so far as the recipients of said cards are concerned, have anything to do with employment of others. The said cards were sent only for the purpose of obtaining information concerning the recipients for the sole purpose of facilitating the collection of allegedly delinquent accounts, and the schemes were merely attempts to obtain the information by deceit and subterfuge. The names used by respondent Wilcox were merely disguises for the true nature of his business.

PAR. 10. Respondents Lohr and Harlan, through their agents and representatives, by mailing the said cards, as set forth herein, to the persons concerning whom information is sought, further the making of the false and misleading representations hereinabove set forth, and by returning the said reply cards to respondent Wilcox, assist in the fruition of the purposes for which the said false and misleading representations were made by respondent Wilcox and his customers.

PAR. 11. The use by respondents, as hereinabove set forth, of the foregoing false and misleading representations and designations, has had the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said cards were sent into the erroneous and mistaken belief that the said representations and designations were true and correct and by reason thereof to give information which they otherwise would not have supplied.

PAR. 12. 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 within the intent and meaning of the Federal Trade Commission Act.

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STAMP
HERE

EXHIBIT 29
OBTAINED 4/25/83
BY J. W. Sullivan
ATTORNEY

FILE NO. 26-2

BOARD OF EMPLOYMENT RESEARCH

ROOM 703

ALBEE BUILDING

WASHINGTON, D. C.

Washington, D. C.

The Board of Employment Research is making a survey preliminary to formulating a plan designed to stabilize labor conditions and assist workers obtain the most desirable type of employment suited to their individual attainments.

Please furnish us with the information requested on the attached card. Although this information is not required by the government or any of its branches, the inclusion of your qualifications in our files will assist us in our work and may be of value to you.

Questionnaire

Name
Print or Type

Now Living at:

Street City State

Age..... Married..... Dependents.....

Education:
High School ☐ Grammar School ☐

Trade.....

Present Employer

Address:

Street City State

Nature of present work

Monthly Earnings \$.....

Home Owner ☐ Yes ☐ No
Auto Owner ☐ Yes ☐ No
Bank Account ☐ Yes ☐ No

Are you satisfied with present work

Board of
Employment Research
Room 703
Albee Building
Washington, D. C.

PLACE
1c
STAMP
HERE

No 8912

Date.....					
NR	1	2	3	4	INF
Do not write in this space.					

PLACE
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STAMP
HERE

DIVISION OF EMPLOYMENT RESEARCH

ROOM 703

ALBEE BUILDING

WASHINGTON, D. C.

Washington, D. C.

The Division of Employment Research is making a survey of certain matters connected with employment. It is necessary to obtain the very latest data on the points covered by our questionnaire. This information is not desired by the government or any of its branches. The inclusion of your answers in our files will add to the value of the research.

Please fill out the attached card and return it as quickly as possible.

Division of
Employment Research
Room 703
Albee Building
Washington, D. C.

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HERE

Form 1037-B-48

Do not write in this space.				
NR	1	2	3	4
INF				

Date

No 13929

Name
Now Living at:
Street
City
State
Age.....
Married.....
Dependents.....
Education: High School ☐ Grammar School ☐
Present Employer
Address:
Street
City
State
Nature of present work
Monthly Earnings \$
Home Owner ☐ Yes ☐ No
Auto Owner ☐ Yes ☐ No
Bank Account ☐ Yes ☐ No
Are you satisfied with present work

Form 1027-F-43

Do not write in this space.

NR	1	2	3	4	INF
----	---	---	---	---	-----

Date _____

No 16603

Place
3c
Stamp
Here

Are you satisfied with present work _____

Monthly Earnings \$ _____

Home Owner ☐ Yes ☐ No

Auto Owner ☐ Yes ☐ No

Bank Account ☐ Yes ☐ No

Street _____ City _____ State _____

Nature of present work _____

Address: _____

Present Employer _____

Education: High School ☐ Grammar School ☐

Age _____ Married _____ Dependents _____

Street _____ City _____ State _____

Now Living at: _____

Name _____ Print or Type _____

PLACE
1c STAMP
HERE

THE TOLEDO FOUNDATION

Division of Employment Research

538 Erie Street

Toledo, Ohio

Room 203

THE TOLEDO FOUNDATION

538 Erie Street

Toledo, Ohio

Toledo, Ohio

The Toledo Foundation is interested in the study of human relations. Its Division of Employment Research is now making a survey of certain matters connected with Employment, and it is necessary to obtain the very latest information on the points covered by the accompanying questionnaire.

You will find the price of a good five cent cigar or a package of gum in the envelope. Accept the same with our compliments and assist us in our work by filling out and returning the reply card as quickly as possible.

GEORGE A. STEPHENS,
Managing Director

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion of September 16, 1948, by counsel supporting the complaint to dismiss said complaint without prejudice, to which respondents Walter G. Lohr and Enoch L. Harlan, individually and doing business under the name Telephone Answering Service, filed an answer on September 27, 1948, by which said motion is not opposed, and to which no answer has been filed by Sidney H. Wilcox in his individual capacity or doing business as Telephone Answering Service.

The complaint herein, issued on November 10, 1943, charges respondents with unfair and deceptive acts and practices in commerce in the sale and distribution of reply post cards designed and intended to be used by creditors and collection agencies in obtaining information concerning creditors, through the use of which it is alleged that respondents falsely represented that they operated an endowed organization or institution devoted to the research and advancement of general welfare for the purpose of a survey of matters connected with employment or that the information sought by said cards was desired by an organization connected in some fashion with the Government of the United States and with employment.

It appears to the Commission that respondents Walter G. Lohr and Enoch L. Harlan severed all connection with respondent Sidney H. Wilcox on December 1, 1943, and since that date it does not appear that they have engaged in any of the acts and practices charged in the complaint. The present whereabouts of the respondent Sidney H. Wilcox are unknown, and the Commission is at present in possession of no information by which it is able to determine if there has been a continuance of any of the acts and practices charged in the complaint and has no reason to believe that they have been continued. The Commission is therefore of the opinion that the public interest does not require further corrective action in this matter at this time.

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

Mr. Randolph W. Branch for the Commission.

Mullikin, Stockbridge & Waters, of Baltimore, Md., for Walter G. Lohr and Enoch L. Harlan.

DAVID ROSENTHAL AND BENJAMIN PEISACHOW, TRADING AS UNITED STATES FORWARDING SYSTEM, ET AL. Complaint, June 26, 1943. Order, January 11, 1949. (Docket 4985.)

CHARGE: Misrepresenting business status, advantages, or connections and assuming or using misleading trade or corporate name as to nature of business and collection agency being in some capacity connected with the movement and transportation of goods and their delivery to the proper consignee; in connection with the sale of double postal card questionnaires designed and intended to be used in obtaining information concerning alleged debtors of the customers to whom the said postal card questionnaires are sold and delivered.

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 David Rosenthal and Benjamin Peisachow, individually and trading as United States Forwarding System, Samuel Rosenthal, an individual, The Basch Co., Inc., a corporation, Air-Way Electric Appliance Corp., William Taylor Sons & Co., a corporation, Lawrie Bros. Furniture Co., a corporation, American National Finance Corp., a corporation trading under the name Industrial Loan Society, Inc., J. M. Wildman Co., Inc., a corporation, Rochester Peoples Outfitting Co., Inc., a corporation, Zorrie Gais, Leon Sturman, and Samuel Sturman, individually and trading as The Outlet, The Ross Co., Inc., a corporation, Harry Greenebaum and Norman Greene, individually and trading under the name M. Greenebaum & Sons, Swope Jewelry Co., a corporation, The Kay Jewelry Store, a Florida corporation, The Kay Jewelry Store, an Indiana corporation, The Kay Jewelry Store, a Tennessee corporation, The Kay Jewelry Store, a Maryland corporation, The Kay Jewelry Store, a California corporation, Commercial Credit Co., Inc., a Delaware corporation, and Commercial Credit Co., Inc., a Maryland corporation, 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. Respondents David Rosenthal and Benjamin Peisachow are individuals trading as United States Forwarding System, with an office and place of business formerly located at 367 Ellicott Street, Buffalo, N. Y., where the said Benjamin Peisachow is still located. The mailing address of United States Forwarding System has been recently changed to Prudential Building, Buffalo, N. Y., and the present address of the respondent David Rosenthal is 66 Monroe Parkway, Rochester, N. Y.

Respondent Samuel Rosenthal is an individual, the brother of respondent David Rosenthal, and has, from time to time, been the active manager of the "United States Forwarding System."

Respondent The Basch Co., Inc., is an Ohio corporation, with its office and principal place of business at 731 Euclid Avenue, Cleveland, Ohio.

Respondent Air-Way Electric Appliance Corp. is an Ohio corporation, with its office and principal place of business at 2101 Auburn Street, Toledo, Ohio.

Respondent William Taylor Sons & Co. is an Ohio corporation, with its office and principal place of business at 630 Euclid Avenue, Cleveland, Ohio.

Respondent Lawrie Bros. Furniture Co. is an Ohio corporation with its office and principal place of business at 1207 State Street, Erie, Pa.

Respondent American National Finance Corp. is a New Jersey corporation, with its office and principal place of business at 11 Hill Street, Newark, N. J., and operating many branches under various trade names in the States of Pennsylvania, New Jersey, Delaware, Virginia, Massachusetts, Maryland, and in the District of Columbia, among which is a branch operated in the name of Industrial Loan Society, Inc., at 913 State Street, Erie, Pa.

Respondent J. M. Wildman Co., Inc., is a New York corporation with its office and principal place of business at 412 Main Street, Rochester, N. Y.

Respondent Rochester Peoples Outfitting Co., Inc., is a New York corporation with its office and principal place of business at Central Avenue and Armand Street, Rochester, N. Y.

Respondent Zorrie Gais, Leon Sturman, and Samuel Sturman are individuals trading under the name The Outlet, with a principal place of business at 105 Clinton Avenue, South Rochester, N. Y.

Respondent The Ross Co., Inc., is a corporation of the District of Columbia, with places of business at 702 Seventh Street NW., and 1331 F Street NW., Washington, D. C.

Respondents Harry Greenebaum and Norman Greene are individuals trading under the name of M. Greenebaum & Sons, with a principal place of business at 2200 East Monument Street, Baltimore, Md.

Respondent Swope Jewelry Co. is a Delaware corporation, with a principal place of business at 1114 F Street NW., Washington, D. C.

Respondent The Kay Jewelry Store, a Florida corporation, has a principal place of business at 56 West Adams Street, Jacksonville, Fla.

Respondent The Kay Jewelry Store, an Indiana corporation, has a principal place of business at 327 Main Street, Evansville, Ind.

Respondent The Kay Jewelry Store, a Tennessee corporation, has a principal place of business at 630 Market Street, Chattanooga, Tenn.

Respondent The Kay Jewelry Store, a Maryland corporation, has a principal place of business located at 7 West Lexington Street, Baltimore, Md.

Respondent The Kay Jewelry Store, a California corporation, has places of business located at 319 Pine Avenue, Long Beach, Calif., and 1308 Broadway, Oakland, Calif.

Respondent Commercial Credit Co., Inc., a Delaware corporation, has its principal office in the First National Bank Building, Redwood and Light Streets, Baltimore, Md.

Respondent Commercial Credit Co., Inc., a Maryland corporation, has its principal office in the First National Bank Building, Redwood and Light Streets, Baltimore, Md.

PARAGRAPH 2. Respondents David Rosenthal and Samuel Rosenthal are now, and for several years last past have been, and respondent Benjamin Peisachow was for several years prior to August 1942, engaged in the business of selling and delivering to the other respondents named herein, and to others not named herein, United States double postal card questionnaires, in the form exemplified by a copy thereof marked "Exhibit A," attached hereto and by this reference incorporated herein and made a part hereof, designed and intended to be used, as hereinafter set forth, in obtaining information concerning alleged debtors of the customers to whom the said postal card questionnaires are sold and delivered. Respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow have caused the said postal card questionnaires to be transported from their aforesaid place of business in the State of New York to the other respondents named herein and to other customers not named herein, at their respective places of business in various States of the United States other than the State of New York and in the District of Columbia. The respondents David Rosenthal and Samuel Rosenthal maintain, and have maintained, and Benjamin Peisachow maintained, at the various times mentioned herein, a course of trade in said postal card questionnaires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents The Basch Co., Inc., Air-Way Electric Appliance Corp., William Taylor Sons & Co., Lawrie Bros. Furniture Co., J. M. Wildman Co., Inc., Rochester Peoples Outfitting Co., Inc., Zorrie Gais, Leon Sturman, and Samuel Sturman, individuals trading as The Outlet, The Ross Co., Inc., Harry Greenebaum and Norman Greene, individuals trading under the name M. Greenebaum & Sons, Swope Jewelry Co., The Kay Jewelry Store, a Florida corporation, The Kay Jewelry Store, an Indiana corporation, The Kay Jewelry Store, a Tennessee corporation, The Kay Jewelry Store, a Maryland

corporation, The Kay Jewelry Store, a California corporation, are now, and for some time last past have been, engaged in selling goods to and extending credit to persons located in States other than States in which said respondents are located, and in the District of Columbia. Many of the said respondents' debtors fail to meet their obligations when due, and said respondents, in the course of their efforts to collect, frequently desire to ascertain the current locations and addresses of many of such debtors. For the purpose of doing so said respondents use the postal card questionnaires acquired from respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow, as hereinabove stated, in the manner hereinafter set out.

Respondents American National Finance Corp. and Commercial Credit Co., Inc., a Delaware corporation, are now, and for some time last past have been, engaged in the business of lending money. Commercial Credit Co., a Delaware corporation, operates through a number of other corporations organized under the laws of various States, including respondent Commercial Credit Co., Inc., a Maryland corporation, whose stock is wholly owned by and all of which are controlled by the said Delaware corporation. The various other subsidiary companies send the names of their delinquent debtors concerning whose whereabouts they desire information to the said Maryland corporation, which buys and uses the cards mentioned herein in the manner hereinafter set forth. American National Finance Corp. buys and uses the said cards for the purposes and in the manner set out herein.

PAR. 4. The respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow sell and deliver their said postal card questionnaires to their said customers, who address the cards to their alleged delinquent debtors at their last known addresses and return them to respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow, who mail said cards in Buffalo, N. Y., and send all replies received from the alleged delinquent debtors, containing the desired information, to the appropriate purchasers, charging 50 cents for each reply card. The respondents selling the cards are able to identify those who purchased them by means of code numbers which they cause to be placed on said cards, opposite "Package Reference No.," before said cards are delivered to the purchasers thereof. The respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow send to those individuals returning said postal card questionnaires small packages of soap approximately 1 cent.

PAR. 5. By means of the aforesaid postal card questionnaires and their usage as aforesaid, the respondents have falsely represented to the addressees of said cards, and placed in the hands of their customers

the means of representing, directly and by implication, that United States Forwarding System was holding packages of value for said alleged debtors, that delivery could not be affected because of defective addresses and lack of proper identification, that the information sought by means of said postal card questionnaires was for the purpose of identifying and locating the consignees thereof, so that the package thus held could be delivered to said consignees, that the packages were in the hands of United States Forwarding System in the usual course of its business, and that transportation charges which were involved had been prepaid.

The said representations were false and misleading. In truth and in fact respondents David Rosenthal, Samuel Rosenthal, and Benjamin Peisachow do not have, and have not had, when the cards were mailed, any packages for or addressed to said alleged delinquent debtors, and the only packages which said respondents have ever sent to persons responding to said inquiries are packages of soap of inconsequential value which they themselves made up. The information sought by the use of said postal card questionnaires was not desired for the purpose of identifying and locating those to whom they were sent in order to transmit packages to them, but was sought solely for the purpose of assisting the respective creditors of said persons to collect their said alleged delinquent accounts. The whole scheme was merely an attempt to obtain information by subterfuge.

PAR. 6. Through the use of the name "United States Forwarding System" on said postal card questionnaires, sent through the mails in the manner aforesaid, respondents have represented, directly and by implication, that said concern is in some capacity connected with the movement and transportation of goods and their delivery to the proper consignees. This representation is false and misleading. In truth and in fact the business of this concern has nothing whatever to do with the movement or transportation of goods or their delivery to the proper consignees.

PAR. 7. The use of the said false and misleading statements, representations, and designation has had the tendency and capacity to, and has, misled and deceived many persons, to whom the said postal card questionnaires were sent, into the erroneous and mistaken belief that said statements and representations were true, and by reason thereof to give information which they would not otherwise have supplied.

PAR. 8. 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 in violation of the Federal Trade Commission Act.

FORM NO. 1007

FINAL NOTICE

We have a PREPAID package for the person whose name is written on the back of the attached card. On account of a difference in address and lack of identification we cannot make delivery.

To help make delivery give us the correct full name, address and other information requested. Be sure to fill in all the blank spaces provided.

UNITED STATES FORWARDING SYSTEM

UNCLAIMED PACKAGE DEPT.

367 Ellicott St. Buffalo, N. Y.

No postage necessary on the attached reply card. Please answer promptly.

POSTMASTER-IMPORTANT
Please Forward If Necessary

RETURN POSTAGE GUARANTEED
UNITED STATES FORWARDING SYSTEM
DISTRIBUTION DEPARTMENT
367 ELlicOTT STREET
BUFFALO, N. Y.

THIS SIDE OF CARD IS FOR ADDRESS

REPLY CARD
THIS SIDE OF CARD IS FOR ADDRESS

UNITED STATES FORWARDING SYSTEM
UNCLAIMED PACKAGE DEPARTMENT

367 Ellicott Street
BUFFALO, N. Y.

REPLY TO FINAL NOTICE
UNITED STATES FORWARDING SYSTEM
367 ELlicOTT ST., BUFFALO, N. Y.

PACKAGE REFERENCE	NO.	NAME AND ADDRESS
DATE	UNCLAIMED PACKAGE	DEPARTMENT

Please send this package (Fully PREPAID WITH NO CHARGES) to the above named person, whose correct identification is as follows:

Name	Residence	City	Employer	Address	Bank
SIGN FULL NAME					
STREET ADDRESS IS NECESSARY					
NAME OF DEPOSITION					
Address					
No Postage or Addressing necessary					

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion for dismissal of the complaint herein without prejudice, filed by counsel in support of the complaint, no answer to such motion having been filed on behalf of the respondents; and

It appearing from the motion that the respondents Benjamin Peisachow, David Rosenthal, and Samuel Rosenthal were the parties who were active at various times and in varying degrees in the business of selling the skip trace devices to which the complaint relates, and that the other respondents named in the complaint were merely purchasers and users of said devices; and

It further appearing that the business of selling these devices has now been discontinued and that the active parties named above have agreed with the United States Attorney's Office not to reengage in said business; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time;

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against the respondents, or any of them, or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Halpern & Friedman, of Buffalo, N. Y., for David Rosenthal and Benjamin Peisachow.

Welles, Kelsey, Cobourn & Harrington, of Toledo, Ohio, for Air-Way Electric Appliance Corp.

Mooney, Hahn, Loeser, Keough & Freedheim, of Cleveland, Ohio, for William Taylor Sons & Co.

Mr. William W. Knox, of Erie, Pa., for Lawrie Bros. Furniture Co.

Hines, Rearick, Dorr & Hammond, of New York City, for American National Finance Corp.

Mr. William B. Rosenberg, of Rochester, N. Y., for J. M. Wildman Co., Inc. and Rochester Peoples Outfitting Co., Inc.

Allers & Cochran, of Baltimore, Md., for M. Greenebaum and Sons.

Mr. Simon Hirshman, of Washington, D. C., for The Ross Co., Inc., Swope Jewelry Co., The Kay Jewelry Store, a Florida corporation, The Kay Jewelry Store, an Indiana corporation, The Kay Jewelry Store, a Tennessee corporation, The Kay Jewelry Store, a Maryland corporation, and The Kay Jewelry Store, a California corporation.

POMPEIAN OLIVE OIL CORP. Complaint, March 16, 1945. Order, January 11, 1949. (Docket 5294.)

CHARGE: Advertising falsely or misleadingly, assuming or using misleading trade or corporate name, misbranding or mislabeling and using misleading product name or title as to source or origin in that domestic product is imported; in connection with the sale of a food product, now designated as "Pompeian Virgin Pure Olive Oil," and formerly designated as "Pompeian Brand Virgin Pure Imported Olive Oil."

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 Pompeian Olive Oil Corp., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pompeian Olive Oil Corp. is a corporation organized, existing and doing business by virtue of the laws of the State of Maryland with its office and principal place of business located at 4201 Pulaska Highway, in the city of Baltimore, State of Maryland.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of a food product, now designated as "Pompeian Virgin Pure Olive Oil," and formerly designated as "Pompeian Brand Virgin Pure Imported Olive Oil," in commerce, between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said product, when sold, to be shipped from its place of business in the State of Maryland 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 product, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now and at all times mentioned herein has been substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of both imported and domestic, and blends of domestic and imported olive oil, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business the respondent has disseminated and is now disseminating, and has caused

and is now causing the dissemination of false advertisements concerning its said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined by the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations disseminated and caused to be disseminated by means of advertisements inserted in newspapers and periodicals, on letterheads and in pamphlets, and other advertising literature are the following:

Be sure to get Pompeian Olive Oil—the virgin pure, first press of hand-picked and sun mellowed Mediterranean olives.

Still the same pure imported golden virgin quality * * * We use only the genuine olive oil. Use the imported virgin olive oil.

(Picturization of foreigners in a foreign scene transporting olives on burros.)

Since earliest times, pure virgin olive oil has been known and used by people of the civilized world. For more than 30 years, Pompeian Olive Oil has set the standard in America.

Pompeian is first-press, virgin quality . . . the pure unadulterated oil extracted from properly ripened olives, hand-picked from selected trees growing in the finest Mediterranean olive-producing areas. Many of these trees are more than 2,000 years old. The first-pressing, produces only 25% of the oil from an olive, but that is all which is good enough to bear the Pompeian label!

PAR. 5. By and through the use of the foregoing statements, representations, and depictions and others of the same import and meaning but not specifically set out herein, respondent represents that is said olive oil is produced in, and imported to this country from, the Mediterranean olive oil producing areas.

PAR. 6. The aforesaid statements and representations and depictions, are false, misleading, and deceptive. In truth and in fact, respondent's olive oil is not made in or imported from the Mediterranean area. On the contrary, said product is a blend of domestic and imported olive oils.

PAR. 7. Respondent in the past has placed on the labels of the containers for its product shipped in commerce and consisting of a blend of domestic and imported olive oils, the following legend.

Pompeian Brand
Virgin Pure Imported
Olive Oil.

Since about 1943 the label has carried the following legend:

Pompeian Brand
Virgin Pure
Olive Oil

and with the exception of the omission of the word "imported" is otherwise in all respects, the same as that theretofore used.

The use of the word "imported" on said labels served as a representation that the product is composed entirely of imported olive oil, which is contrary to the fact. For a period of about 30 years and up to about 1942 the respondent's "Pompeian Brand" olive oil was imported from the Mediterranean area. Over this period of time this brand name and the corporate name both containing the word "Pompeian" became firmly associated in the public mind with a high grade imported oil and as a company which dealt only in imported olive oil. The continued use of the brand name "Pompeian" and the corporate name containing the word "Pompeian" has the tendency and capacity to cause the public to erroneously understand and believe that the product now sold by respondent is the same product as was formerly sold under such brand and corporate name, that is, imported olive oil. The deceptive character in the use of respondent's present label is enhanced by the fact that it is identical in all respects with the label formerly used for its imported product with the exception of the use of the word "Imported" thereon.

PAR. 8. There is a preference on the part of a substantial portion of the purchasing public for imported olive oil and particularly that produced in the Mediterranean area and imported to and sold in the United States.

PAR. 9. The use by the respondent of the aforesaid statements, representations, and depictions in its advertising matter, on the labels of its product and the implication involved in its corporate name, are calculated to, and have the tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that its said product is an imported product and originates in the Mediterranean area and into the purchase of substantial amounts of said product because of such belief. As a result trade has been unfairly diverted to respondent from its competitors who actually advertise and sell imported olive oil, as well as those who advertise and sell domestic olive oil and blends of domestic and imported olive oils in commerce, and substantial injury has been done and is now being done to such competition, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 10. The acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and respondent's competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon the respondent's motion for dismissal of the complaint herein, and the answer to such motion filed by counsel in support of the complaint; and

It appearing from said motion and from the record that the respondent's practices of representing blended domestic and imported olive oils as imported products were inadvertent, and, in any event, have not been engaged in since January 1945; and

It further appearing that there is good reason to believe that none of such practices will be resumed; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time.

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. William M. King for the Commission.

Cummings, Stanley, Truit & Cross, of Washington, D. C., for respondent.

OVELMO CO. AND J. C. HUTZELL. Complaint, July 7, 1944. Order, February 2, 1949. (Docket 5186.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of product and scientific or relevant facts, and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of medicinal preparations described as Ovelmo Treatment which include individual preparations designated Ovelmo Cream, Ovelmo Germicidal Soap, Ovelmo Tonic Tablets, Ovelmo Antacid Laxative Tablets, and Ovelmo Elimivative Tablets.

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 Ovelmo Co., a corporation, and J. C. Hutzell individually and as an officer of Ovelmo Co., a corporation, hereinafter referred to as respondents,

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

PARAGRAPH 1. Respondent Ovelmo Co. is a corporation organized and doing business under and by virtue of the laws of the State of Indiana, with its principal office located in Fort Wayne, Ind. Respondent J. C. Hutzell, an individual, is president of the Ovelmo Co. and is in control of and directly responsible for the acts and practices of said respondent corporation. The business address of both respondents is 1404 West Main Street, Fort Wayne, Ind.

PAR. 2. Respondents are now and for several years last past have been engaged in offering for sale, sale and distribution of medicinal preparations described as Ovelmo Treatment. The individual preparations comprising said treatment are designated Ovelmo Cream, Ovelmo Germicidal Soap, Ovelmo Tonic Tablets, Ovelmo Antacid Laxative Tablets, and Ovelmo Elimivative Tablets. Respondents cause said preparations, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia and, in so doing, maintain a course of trade in said medical preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said Ovelmo Treatment and their preparations by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said Treatment and preparations by various means, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of their said Treatment and preparations in commerce as "commerce" is defined by 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 by the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars and other advertising media are the following:

Representations with respect to Ovelmo Treatments:

My little girl's skin is all cleared up now * * * Since using Ovelmo she is now able for the first time to wear a party dress without showing arms broken out with a terrible skin irritation.

It has been a long time since I wrote you. In 1922, I used your Ovelmo Cream and Ovelmo Tablets for a bad eczemic irritation. I not only got relief, but have never been bothered since.

Ovelmo is the best medicine I ever used. It soothed the skin soon after the first application. I had almost given up hope, but thanks to Ovelmo the itching was relieved and the red places and other skin symptoms are no more to be seen.

Skin is now smooth, shows no symptoms.

There is no doubt in my mind but that the internal preparations had a lot to do with the relief obtained.

Representations with respect to Ovelmo Cream.

Among other valuable ingredients, it (Ovelmo Cream) contains natural vitamins A and D from Cod Liver Oil. These vitamins were added to our already effective product because newer developments in medical science indicated that these vitamins tend to check bacterial growth and accelerate healing (not to supplement body vitamins).

Representations with respect to Ovelmo Eliminative tablets:

A noted authority on skin irritations says that faulty elimination is one of the most common contributory causes of skin irritation in both children and adults.

This mild and effective laxative acts to help stimulate the liver and promote bile flow, to thus assist in the prompt and pleasant elimination of body waste.

Representations with respect to Ovelmo Tonic Tablets:

Used as directed, this splendid preparation usually provides dependable assistance in improving the haemoglobin (red coloring) quality of the blood through stimulating the appetite and digestion.

According to many authorities, excess stomach acidity and conditions indicating the need of an effective tonic are among the very common contributory causes of eczemic irritations.

PAR. 5. By and through the use of the foregoing statements and others of similar import and meaning but not specifically set out herein, respondents represent, directly and by implication, that their Ovelmo Treatment, consisting of Ovelmo Cream and various preparations for internal use constitute a competent and effective treatment for eczema and various skin irritations and similar conditions and that their use will cure eczema and skin irritations; that the vitamin A and D contained in its Ovelmo Cream checks bacterial growth on the skin and thereby accelerates healing; that faulty elimination is one of the most common contributory causes of skin irritation and the laxative properties of their Eliminative Tables is of significant value in preventing or treating such irritations and that these tablets stimulate the liver and promote the flow of bile; that excess stomach acidity and conditions indicating the need of a tonic are among the common contributory causes of eczemic irritations and that Ovelmo Tonic Tablets and Ovelmo Antacid Tablets by their tonic and antiaacid properties and the ability of the Tonic Tablets to stimulate digestion are effective in preventing or treating such irritations.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the various preparations comprising the Ovelmo Treatment used together, separately, or in any combination do not constitute a competent or effective treatment for eczema and various other irritations of the skin of a similar nature. Eczema and similar conditions are of constitutional origin and neither the Ovelmo Cream nor the preparations for internal use have any therapeutic value in the treatment thereof in excess of temporary relief from itching afforded by the Ovelmo Cream. The vitamins A and D in Ovelmo Cream will not check bacterial growth and will provide no beneficial effect for skin irritations. Faulty elimination is not recognized as being a causative factor of skin irritations and the laxative effect of respondents' Eliminative Tablets will have no therapeutic value in either preventing or treating skin irritations. The amount of bile salts in these tablets is not sufficient so that, when taken as directed, they will stimulate the liver or significantly promote the flow of bile. Excess stomach acidity or conditions such as may indicate the need of a tonic are not contributory causes of eczemic irritation and the Ovelmo Tonic Tablets by their tonic action and the antacid properties of the Ovelmo Antacid Tablets are not effective in either preventing or treating eczemic irritations. In truth and in fact the sole therapeutic value of the Ovelmo Treatment and the various preparations of which it is composed, insofar as eczema and various skin irritations are concerned, is the ability of the Ovelmo Cream to temporarily relieve the burning and itching caused by such irritations.

PAR. 7. Respondents' advertisements disseminated as aforesaid with respect to Ovelmo Eliminative Tablets constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to the consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said treatment and preparations has had and now 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 and representations were true and that the Ovelmo Eliminative Tablets may be taken under all conditions without ill effects, and into the purchase of substantial quantities of respondents' said treatments and preparations, because of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices, 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.

Record closed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, for an order closing this case without prejudice, no answer to such motion having been filed by the respondents; and

It appearing from said motion and from the record that the trial and disposition of this proceeding has been unavoidably delayed since the early part of 1945; and

It further appearing that the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act were discontinued in 1944 and have not been resumed; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in the matter at this time:

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. George Biddle*, trial examiner.

Mr. R. A. McQuat and *Mr. B. G. Wilson* for the Commission.

Townsend & Hilgemann, of Fort Wayne, Ind., for respondents.

JOE LOWE CORP. Complaint, June 30, 1948. Order, February 3, 1949. (Docket 5573.)

Charge: Advertising falsely or misleadingly as to business history and patent rights; and misrepresenting and using such rights improperly and unfairly through licensing patent equipment restrictively; in connection with the manufacture and sale of variegated ice cream, and the purchase of the various flavoring sirups, concentrates, chopped nuts, ground nuts, and other ingredients therefor.

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 Joe Lowe Corp., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joe Lowe Corp., is a corporation chartered by the State of Delaware, having its principal place of business at 601 West Twenty-second Street, New York, N. Y. Besides its principal place of business, it also maintains branch offices in several States of the United States.

PAR. 2. Respondent is now and has been for several years last past engaged in the business of manufacturing, distributing, and selling throughout the United States bakers', confectioners', and ice cream manufacturers' supplies, including the apparatus, sirups, flavoring materials, and the various other ingredients used in the production of variegated ice cream.

PAR. 3. Said respondent, in the course of said business, cause the said products which it manufactures, distributes, and sells, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains, and has for several years last past maintained, a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. Variegated ice cream is an admixture of different ice-cream ingredients, each with a different flavor and in which each of the flavors so admixed in the ice cream retains its distinctiveness and color in the form of a streak or in some other design or arrangement.

In the course and conduct of its business as aforesaid, and in furtherance of the sale and distribution of its products in the aforesaid commerce, respondent has made false and misleading statements and representations to purchasers and prospective purchasers of machinery, supplies, and the various ingredients for the making of various variegated ice creams, by means of brochures, circulars, pamphlets, and letters, circulated among prospective purchasers throughout the United States by the United States mails and by other means and methods in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of said false and misleading statements so made by respondent, but not all-inclusive, is the following:

No commercially successful product could have had a more humble beginning than variegated ice cream. Ice cream industry history was really made on the day that the officers of the Joe Lowe Corporation were assembled around an ordinary ice cream cone filled with plain cotton and stained with iodine to simulate ice cream threaded with ribbons of flavoring of contrasting color in a helter-skelter arrangement.

The novelty and great possibilities of this idea were immediately recognized, but as yet no process for practical production of this product was known. Many months, in fact nearly two years, were required to develop this product from

this crude beginning—to a point where its actual commercial production was possible, practical and foolproof.

Realizing the nationwide industry benefits and profits that this novel bulk ice cream could make possible for all of us, and aware of the unusual marketing advantages of intelligent national sponsorship, "Jo-Lo" proceeded with the necessary legal steps to protect this idea and safeguard its use for the ice cream industry. We were confident that the industry would prefer the direction of this new idea to be in the hands friendly to the industry and wide open for common sense cooperation with it.

* * * *

After many hearings before the several original and appeal tribunals of the Patent Office, including many individual petitions to the Commissioner of Patents in person, the ultimate decision was that the "Jo-Lo" inventors were the first and original inventors of variegated ice cream and therefore entitled to the basic patents thereon. This decision was unanimously concurred in by all the authorities in the U. S. Patent Office.

Not being satisfied with the concurring decisions in these interferences, some of these same parties then petitioned to institute public use proceedings against the already allowed "Jo-Lo" applications.

* * * *

After termination of all this preliminary legal procedure, basic patents covering both the process of manufacture and the finished product were issued.

To make possible merchandising on a national scale, variegated ice cream was trade marked under the name "Revel." Our program provides however, that individual plants may produce "Jo-Lo variegated ice cream under their own special names or brands. The collective national advertising value, however, of the "Revel" trade mark makes its adoption a wise choice for the individual plant.

PAR. 5. By and through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, respondent represents and has represented that it was the first to create variegated ice cream and is the owner of the basic patents covering such ice cream both as to the product itself and method of manufacturing same; that respondent's rights under all of the various processes and product patents were adjudicated in the respondent's favor in the Patent Office and in the courts.

PAR. 6. In truth and in fact, respondent was not the first to create a variegated ice cream. While respondent might rightfully have been entitled to a basic patent for a process for making variegated ice cream, nevertheless before this patent was issued variegated ice cream had been made for many years by other processes and likewise many patents had been issued for products also known as variegated ice cream. The proceedings in the Patent Office to which respondent refers in the above-quoted statement refers merely to a single variegated ice cream product and not to respondent's rights under all patents pertaining to the process of making variegated ice cream and to variegated ice cream as a product.

PAR. 7. In the course and conduct of its aforesaid business, respondent issued and still issues license agreements to manufacturers of variegated ice cream to whom it leases equipment for the manufacture of variegated ice cream, on which equipment respondent holds a patent. When said variegated ice cream equipment is thus leased, respondent causes same to be transported in interstate commerce in the manner aforesaid described.

By such license agreements the licensees are bound, in the manufacture and sale of variegated ice cream under the trade name of "Revel," the trademark which respondent owns, to purchase all of the flavoring sirups, concentrates, chopped fruits, ground nuts, and other ingredients of variegated ice cream from respondent. That is, such a license agreement requires each licensee, first, to become a lessee of respondent's ice cream freezing machine designed to produce variegated ice cream; and second, in the manufacture of such ice cream under the trade name of "Revel" to use only ingredients purchased from the respondent.

PAR. 8. Respondent's patented machine for making variegated ice cream is in no wise required for the manufacture of variegated ice cream. By the addition of certain plumbing, various styles of ice cream making apparatus can be converted very easily to include the extruding unit required for making variegated ice cream. As a matter of fact, patent No. 2,042,940 which covers the apparatus respondent makes merely covers a continuous ice-cream freezer having an extrusion nozzle secured at one end and a filler nozzle terminating adjacent to the extrusion nozzle.

PAR. 9. While supposedly under such license agreements licensees are required to purchase the various ingredients for making variegated ice cream from the respondent only when they use the equipment leased to manufacture "Revel" variegated ice cream, the actual effect of the leasing of the machine and of such license agreements, taken in connection with and as an adjunct to respondent's aforesaid false representation that it is the first to manufacture variegated ice cream, is to falsely represent to the licensees of respondent, who generally are small concerns, that they are required to purchase all of the necessary ingredients for making any type of variegated ice cream from the respondent, regardless of the name under which it may be sold.

PAR. 10. There are other corporations, firms, and individual competitors of respondent who sell and seek to sell in interstate commerce equipment for making variegated ice cream, and these as well as other competitors of respondent sell and seek to sell in such commerce the ingredients for making variegated ice cream, which ingredients can be, and are frequently, used in the patented machines leased by re-

spondent as well as, and as effectively as, ingredients sold by respondent; furthermore, the ingredients sold by said competitors can be, and have been, used in the patented machines leased by respondent to manufacture variegated ice cream, which the said lessees have sold under the name of "Revel."

PAR. 11. The use by respondent of the aforesaid false and misleading statements and representations in connection therewith, in the sale and offering for sale of the various ingredients used in making variegated ice cream, in the leasing of its patented machines and the entering into licenses made in connection with the said leasing, has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's products used in making variegated ice cream, and prospective users of machines from making variegated ice cream, into the mistaken belief that such representations are true, and to cause such purchasers and prospective purchasers to purchase substantial quantities of respondent's products used in making variegated ice cream and to enter into leases for the variegated ice-cream machinery of respondent, and in connection therewith also to enter into the aforesaid license agreements. In consequence of all the foregoing, trade has been diverted unfairly to the respondent from its competitors in said commerce.

PAR. 12. The aforesaid acts and practices of said respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed, without prejudice, by the following order:

It appearing to the Commission that the respondent in this proceeding has executed and tendered a stipulation as to the facts and agreement to cease and desist covering substantially all of the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act; and

It further appearing from the record herein that the respondent was not extended an opportunity to dispose of this matter by the execution of a stipulation and agreement to cease and desist prior to service of the complaint, in accordance with the Commission's policy in such cases; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at the present time:

It is ordered, That the stipulation as to the facts and agreement to cease and desist executed by the respondent on November 29, 1948, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

It is further ordered, That the memorandum, dated December 15, 1948, submitted by Daniel J. Murphy, Chief of the Commission's Division of Deceptive Practices Trials, and assented to by counsel for the respondent, and the stipulation as to the facts and agreement to cease and desist, on the basis of which this proceeding is being disposed of, be included in and made a part of the formal record herein.

Mr. Fletcher G. Cohn for the Commission.

Posner, Berge, Fox & Arent, of Washington, D. C., and *Mr. Daniel G. Albert*, of New York City, for respondent.

DEARBORN SUPPLY CO. Complaint, September 17, 1938. Original findings and order, August 15, 1939. 29 F. T. C. 648. (Docket 3593.) Supplemental findings and order, July 14, 1943. 37 F. T. C. 75. Second supplemental findings and order, January 9, 1946. 42 F. T. C. 1. Order vacating and setting aside the second supplemental order to cease and desist, February 14, 1949.

Charge: Advertising falsely or misleadingly and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the compounding and sale of a cosmetic preparation designated "Mercolized Wax" or "Mercolized Wax Cream."

Order vacating and setting aside the second supplemental order to cease and desist, follows:

Acting upon motion filed July 16, 1948, by counsel supporting the complaint and the answer thereto, filed July 28, 1948, the Commission, by order of September 13, 1948, reopened this proceeding solely for the purpose of taking such further testimony and other evidence as would determine to what extent, if any, changed conditions of fact or public interest, or both, require modification of the supplemental and second supplemental findings as to the facts and the second supplemental order to cease and desist.

Pursuant to said order, on October 27, 1948, a stipulation of facts was entered into by and between counsel in support of the complaint and counsel for respondent, which stipulation, among other things, waives the introduction of testimony and other evidence and provides that the Commission, upon approval of said stipulation, may act upon said motion and answer on the basis of the facts stated therein. Said stipulation of facts, which was duly filed in the office of the Commission, appears to supply sufficient basis for a proper determination of

the issues raised by the motion and answer. Accordingly, it is hereby accepted and approved.

By the supplemental and second supplemental findings as to the facts, which were issued on July 14, 1943, and January 9, 1946, respectively, the Commission found from the evidence of record that the respondent's preparation "Mercolized Wax," now designated "Mercolized Wax Cream," when first put on the market in 1926 contained 8.75 percent ammoniated mercury, which was reduced to 6 percent in August 1933, to 3.1 percent in July 1936, to 3.007 percent in January 1940, and to 1.5 percent on September 1, 1942. The Commission further found that the external application to the human skin of a preparation containing 3 to 5 percent of said ammoniated mercury produced harmful results under certain specified conditions.

The directions for the use of "Mercolized Wax Cream" as found by the second supplemental findings as to the facts are as follows:

DO NOT RUB IN

DIRECTIONS

for using

MERCOLIZED WAX CREAM

as a

BLEACH AND SKIN BEAUTIFIER

Before you retire for the night, wash the face with warm water and soap. Rinse well and pat dry with a soft towel. Then apply a thin film of Mercolized Wax Cream, smoothing it on evenly. Do not rub it in the skin or get it near the eyes or cuts. The next morning wash it off with soap and water. Continue nightly applications for 30 days. After a few applications the outer, darker, duller skin begins to flake off, which lasts for a few days, exposing a lighter, younger, fairer skin. Bleaching activity follows and continues with the application of Mercolized Wax Cream.

If irritation or redness of the skin appears after a few applications, discontinue using Mercolized Wax Cream for a day or two and apply Parker Belmont Beauty Cream or any good cold cream. Then reapply Mercolized Wax Cream.

CAUTION

Mercolized Wax Cream is different from ordinary cold creams, cleansing creams, etc. It is for adults and is medicated. It should not be used recklessly or applied on an area of the body larger than face and neck at one time. Use it according to the above directions. Continued use for a prolonged period of time may cause local irritation or inflammation. One jar usually gives a sufficient bleaching effect to last for a period of 2 months. Therefore the complete treatment should not be repeated oftener than every 3 months. Where nephritis exists this product should not be used.

HYPERSENSITIVITY (ALLERGY)

Some people are hypersensitive to one or more substances such as foods, pollens, chemicals, etc. To determine sensitivity to Mercolized Wax Cream before using as a bleach or freckle lightener—apply a thin layer to the unbroken skin at the elbow crease or side of neck, covering an area the size of a 25-cent piece, 24 hours before you intend to use Mercolized Wax Cream. If following this test there appears at the site of the application redness, burning, itching, or small blisters within 24 hours, you are sensitive to the ingredients of Mercolized Wax Cream and should not use it.

The second supplemental order to cease and desist, based upon these findings as to the facts, prohibits respondent from disseminating or causing to be disseminated in commerce any advertisement which fails to reveal the harmful effect resulting from the use of said preparation containing ammoniated mercury unless the content thereof is substantially less than 3 percent, and further provides that such advertisements need contain only the statement "CAUTION: USE ONLY AS DIRECTED," if and when the directions for use, wherever they appear, contain warnings as to such harmful results as are specifically set out in said second supplemental order.

The Commission on December 11, 1946, promulgated a statement of policy, amended on March 2, 1947, which is in pertinent part as follows:

In the case of advertisements of food, drugs, cosmetics, or devices which are false because of failure to reveal facts material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resultant dangers may be serious or the public health may be impaired and in such cases to require that an appropriate disclosure of the facts be made in the advertising.

Subsequently, and in conformity with the foregoing policy, the Commission has administratively determined that it will not be its policy to require disclosures or revelations in advertising of preparations containing not in excess of 5 percent of ammoniated mercury because of the presence of that ingredient when such preparations are compounded and used under such conditions as are customary or usual or under appropriate directions for their use.

It appears from the stipulation of facts entered into on October 27, 1948, and referred to above, that the respondent's preparation "Mercolized Wax Cream" now has an ammoniated-mercury content of 5 percent or less, and it appears from the supplemental and second supplemental findings as to the facts that the ammoniated-mercury content of said preparation has not been in excess of 5 percent since July 1936. In view of the policy statement and administrative determination referred to above and in view of the directions for use of said preparation, it is the opinion of the Commission that the public

interest does not require disclosures or revelations in advertising concerning dangers which may result from the use of the said preparation.

It is therefore ordered, That the second supplemental order to cease and desist be, and the same hereby is, vacated and set aside.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox, *Mr. Donovan R. Divet*, and *Mr. B. G. Wilson* for the Commission.

Rogers, Hoge & Hills and *Mr. L. B. Stoughton*, of New York City, and *Rogers, Woodson & Rogers*, of Chicago, Ill., for respondent.

STANDARD CLOAK AND SUIT CO. Complaint, May 10, 1945. Order, March 15, 1949. (Docket 5315.)

Charge: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of product in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction and manufacture for introduction and sale of articles of wearing apparel such as women's coats and suits.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Standard Cloak and Suit Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that 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 Standard Cloak and Suit Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business at 2013 Fourth Avenue, Seattle 1, Wash.

PAR. 2. The respondent is engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondent has violated the provisions of said act and said rules and regulations in

the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported, and distributed in said commerce as aforesaid, were articles of wearing apparel such as women's coats and suits. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid garments in violation of the provisions of said act and said rules and regulations by failing to affix to said garments a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the percentage in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 4. The aforesaid acts, practices and methods of the respondent as alleged were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and supplemental report, written briefs and oral argument of counsel; and

The Commission being of the opinion that the allegations of the complaint have not been sustained:

It is ordered, That the complaint herein be, and it hereby is, dismissed.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Brethorst, Holman, Fowler & Dewar, of Seattle, Wash., for respondent.

HIRAM JOHNSON, TRADING AS WASHINGTON INSTITUTE, INC. Complaint, December 6, 1946. Order, March 16, 1949. (Docket 5473.)

Charge: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives as to Government and Civil Service Commission connection; guaranteed Civil Service position to students completing the course; as to special advantages as to advance notice of examinations, etc.; as to scientific or relevant facts; as to the examinations, opportunities, and positions; and as to courses offered; failing to make material disclosure as to opportunities and conditions; and assuming and using misleading trade or corporate name as to nature of business, personnel and connections or arrangements with others; in connection with the sale of correspondence courses of study and instruction to prepare students for Civil Service examinations.

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 Hiram Johnson trading as Washington Institute, Inc., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Hiram Johnson is an individual trading and doing business under the firm name and style of Washington Institute, Inc., with its principal office and place of business at 5602 Old Third Street in the city of Louisville, State of Kentucky.

PAR. 2. Respondent is now, and for more than 2 years last past, has been engaged in the sale and distribution in commerce, between and among the various States of the United States, of courses of study and instruction intended for preparing students thereof for examinations for certain civil-service positions under the United States Government, which certain courses are pursued by correspondence through the medium of the United States mail. The respondent, in the course and conduct of the said business during the time aforesaid, caused and does now cause his said course of study and instruction, including written copies of lessons, examination questions, and other pamphlets and documents to be transported from his said place of business in the State of Kentucky to purchasers thereof located in the several States of the United States other than the State of Kentucky.

PAR. 3. In the sale of said course of study and instruction respondent makes use of printed advertising matter mailed or distributed to prospective students in various States of the United States and in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations are those which represent or imply that there are positions under the United States Government which can be secured by taking respondent's courses. Among and typical of such representatives, but not all inclusive, are the following:

IMPORTANT

Mail the attached card at once, and we will notify you of the examinations as they are announced. No postage necessary.

Special notice to young men and women, age 17-45, **STOP!** Consider for a moment how many of the important things in life hinge on your job!

YOUR DAILY BREAD!

YOUR SOCIAL POSITION!

YOUR AMBITIONS!

THE WELFARE OF YOUR FAMILY!

Almost everything you expect to be; almost everything you expect to have, is decided for or against you by the accomplishment of your job.

Why not give this important matter serious thought? Most people know that Government positions offer greater security. Salaries range from \$105 to \$175 a month during the first year, with opportunities for advancement and permanent future. **STOP!** Think this over! Prepare yourself now. Remember the Washington Institute offers a very efficient Home Study course at normal prices in these various fields. Try the next examinations. Fill out the attached card and mail it today. No postage is required for the desired information. **ACT NOW!** This will not obligate you in any way.

ARE YOU SATISFIED WITH YOUR PRESENT POSITION?

Does it Offer a Permanent Future?

Are you Earning a Good Living?

Are Your Hours Long?

Will You Have Two Weeks Vacation With Pay This Year?

Can You Retire After Years of Service With a Pension?

How many of these questions can you answer to your advantage? **OVER 500,000** people now employed with the Government can. So can the many thousands more to be employed this year. Perhaps your friends enjoy the privileges of working for Uncle Sam. Ask them how they like it.

You, too, may find employment with the Government and enjoy the short hours and comfortable earnings of Government jobs.

PREPARE YOURSELF NOW.

Below are Some of the Positions Offered by the Government:

Railway Mail Clerk

Rural Mail Clerk

City Carrier

Post Office Clerk

Postmaster

Storekeeper Gauger

General Clerk

Clerks for Washington, D. C.
Junior Legal Assistant
Immigrant Inspector
Clerk-Typist
Multigraph Operator
Stenographer, Senior
Junior Stenographer
Typist
Bookkeeper, Senior
Assistant
Junior Bookkeeper
Internal Revenue Department
Inspector of Customs
Meat Inspector
Inspectors
Jr. Investigator

Don't wait. Fill out attached card (no postage required) and return to us for information as how to obtain a Government position for yourself.

PAR. 4. By means of statements and representations made by the respondent, his agents and representatives who are designated advisors and who call on prospective students, the respondent represents to such prospective students that he is connected or associated with the United States Government and is authorized by the United States Civil Service Commission to qualify applicants for Government positions; that a civil-service position is guaranteed to students completing such course of instruction; that he has advance notice of tests or examinations to be conducted by the United States Civil Service Commission, including the time and place of such examinations and advance and confidential information covering the subject matter or questions contained in forthcoming civil-service examinations; that anyone passing the examinations given by the respondent in his course of instruction could pass a civil-service examination; that students or graduates of said course of instruction are assured of civil-service appointments or of receiving employment by an agency of the United States Government; that civil-service positions can be depended upon to be permanent; that various courses of study and instruction are sold for different civil-service positions; that vacancies exist in certain branches of the United States Government and will be filled immediately after an applicant has passed respondent's examination for such positions.

PAR. 5. All of such statements and representations are false, misleading, and deceptive. In truth and in fact respondent has no connection or association with the United States Government or any branch thereof and is not authorized by United States Civil Service Commission to qualify applicants for Government positions and therefore cannot guarantee positions or appointments for persons who have passed the examinations given in his courses of study and instruction.

Respondent does not have advance notice or information with respect to the places at which, or the dates when, examinations will be held by the Civil Service Commission. Respondent does not have advance and confidential information concerning the subject matter or questions contained in forthcoming civil-service examinations. Persons taking respondent's course of instruction cannot truthfully be assured that they will be able to, or will pass an examination given by the Civil Service Commission, or that students or graduates of said course of instruction will receive appointments or employments by an agency of the United States Government. Although the respondent pretends to offer various courses of study and instruction, all his courses are in fact the same regardless of the civil-service examination for which respondent's students wish to prepare. All of the material used in connection with said course of study and instruction is purchased by respondent from publishers. In instances where respondent or his agents have represented that vacancies exist, such positions have either been abolished by the Civil Service Commission or no examinations have been announced therefor or will be announced for some time to come.

In addition to his affirmative misrepresentation hereinbefore alleged, the respondent has misled his prospective students by failing to disclose to them that examinations for the designated positions may not be offered for several years; that if a student takes and passes an examination for such positions his name may not be reached upon the eligibility list for a number of years; that there is no assurance that an appointment will be made although such student may have received a rating of eligibility, and there is no assurance that civil-service positions are permanent.

PAR. 6. The name Washington Institute, Inc., under which respondent conducts his business is misleading in that it represents or implies to prospective students that respondent conducts an institution of learning with a staff of competent experienced and qualified educators and that his school is an extensive institution offering training and instruction in philosophy, art, science, and other learned subjects, and has contracts or connections at the Capital City of the Nation. In truth and in fact, respondent offers only one course of study, which is the same regardless of the civil-service examination for which the said students wish to prepare. Respondent in the conduct of the said business does not offer training or instruction in philosophy, art, science, or other learned subjects. No basic or thorough instruction is given in any subject of learning and said school is not an institution of learning in the accepted sense of that term, and has no contacts and connections at the Capital City of the Nation. There is no faculty of learned persons engaged in teaching either resident students or students by

correspondence and no books are used. In fact, the method of instruction consists in the mailing of pamphlets and sheets of questions to the students. The answers to these questions are graded by employees of the respondent.

PAR. 7. The representations of respondent as aforesaid have had, and now have, the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such representations are true and to induce a substantial number thereof to purchase respondent's course of study and instrument and pursue the same on account thereof.

PAR. 8. 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.

Complaint dismissed by the following order:

It appearing from a memorandum to the Commission dated October 7, 1948, from F. C. Baggarly, Director of the Bureau of Trial Examiners, and the documents attached thereto, that Hiram Johnson, the respondent in this proceeding, died on September 3, 1948; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in the matter:

It is ordered, That the complaint herein be, and it hereby, is dismissed.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. Jesse D. Kash for the Commission.

ILLINOIS BAKING CORP., AND JOHN CAROBUS TRADING AS SIBERT CO. Complaint, March 12, 1947.¹ Order, March 22, 1949. (Docket 5362.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to Nation-wide survey, comparative merits and free product; in connection with the manufacture and sale of ice-cream cones designated "Safe-T-Cones."

AMENDED COMPLAINT: Pursuant to 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 Illinois Baking Corp., a corporation, and John Carobus, individually and trading as Sibert Co., 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Illinois Baking Corp., is a corporation organized, existing and doing business under the laws of the State of

¹ Amended.

Illinois, with its offices and principal place of business located at 2230 South Union Avenue, Chicago, Ill. Said respondent corporation was organized in 1930.

PAR. 2. Respondent John Carobus is an individual trading as Sibert Co., with his principal place of business located at 2230 South Union Avenue, Chicago, Ill. Said respondent is engaged in the business of advertising, publicizing and featuring Safe-T-Cones for respondent Illinois Baking Corp. and publishes and distributes said advertising matter to the trade and purchasing public. Respondent John Carobus, trading as Sibert Co. and respondent Illinois Baking Corp. have acted during all the time mentioned individually, together and in conjunction and cooperation with one another in performing the acts herein alleged.

PAR. 3. The respondent Illinois Baking Corp. has been for several years last past and is now engaged in the business of manufacturing, offering for sale and sale of ice-cream cones designated "Safe-T-Cones" and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said product, when sold, to be shipped and transported in commerce from its place of business in Illinois to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of Illinois, and in the District of Columbia.

PAR. 4. In the course and conduct of the business as aforesaid and for the purpose of inducing the purchase of said Safe-T-Cone products, the respondents now make and have made and have placed in the hands of others the means whereby are made many false and misleading statements and representations by means of advertisements inserted in newspapers, pamphlets, circulars, letters and other media circulated and distributed through the United States mails and otherwise, and by tags and labels affixed to containers in which said product is packed when shipped in interstate commerce. Among and typical, but not all-inclusive of such representations so made and published, are the following:

A Nation-Wide survey of all Ice Cream Manufacturers, Drug Houses and other Wholesalers conducted by an Advertising Agency reported facts that we would like to call to the attention of your sales organization and all those interested.

51.2%

of all who answered chose SAFE-T Cones as the most popular cones in their section . . . the next highest received only 7.7% of the total!

54.6%

of all who answered chose Illinois Baking Corporation—(SAFE-T Cones) as the Company who has done most to popularize Ice Cream Cones. The next highest received only 8.7% of the total!

The remarkable thing was that the name SAFE-T Cones and Illinois Baking Corporation had to be written in!

We thank the Nation's Ice Cream Manufacturers and other Wholesalers for this remarkable tribute.

"There must be a reason for this popularity. Safe-T-Cones, America's most popular Ice Cream Cones.

FREE
TO YOUR RETAIL CUSTOMERS
WITH EVERY
3 CASE DEAL
of SAFE-T Cones
A GUARANTEED \$2.00 VALUE!
8" x 10" GORGEOUSLY HAND COLORED
... photo enlargement ...

The data on which the above-quoted representations were made is based on material compiled by respondents, in collaboration and cooperation with each other from a survey made by respondent John Carobus, operating as the Sibert Co.

PAR. 5. By and through the use of the statements and representations hereinabove set out and others of similar import, but not specifically set out herein, respondents represent directly and by implication that a Nation-wide survey of all ice-cream manufacturers, drug houses, and other wholesale dealers made by an advertising agency shows that respondent Illinois Baking Corporation's Safe-T-Cones are the most popular ice-cream cones on the market and that respondent's Safe-T-Cones rate 52.2 percent of the total popularity compared to 7.7 percent for the highest competitor's product; that respondent Illinois Baking Corp. is the most popular ice-cream cone manufacturer in the trade and rates 54.6 percent as having done most to popularize ice-cream cones compared to the next highest competitor's rating of 8.7 percent popularity; and that respondents give to every purchaser of three cases of their Safe-T-Cones a gorgeously hand-colored photo enlargement 8 x 10 inches "free" and without charge.

PAR. 6. In truth and in fact, no Nation-wide survey has ever been made of the ice-cream-cone industry and the survey referred to by respondents was made by John Carobus, trading as Sibert Co., in cooperation with respondent Illinois Baking Corp., and said survey is not a complete and accurate survey of all manufacturers, druggists, wholesalers, and dealers in ice cream and ice-cream cones, and does not truthfully represent the sentiment of the industry or the popular rating of ice-cream cones and does not correctly state the comparative ratings of the Nation's ice-cream-cone manufacturers. Respondents' Safe-T-Cones do not rate 51.2 percent of the most popular ice-cream cones by comparison with other makes of ice-cream cones and respondent Illinois Baking Corp. does not rate 54.6 percent in popularizing ice-cream cones.

In truth and in fact, respondents do not give away hand painted photo enlargements "free" with the purchase of its Safe-T-Cones, as

the price of the so-called "free photo enlargements" is included in the price of the three cases of Safe-T-Cones. The respondents can, and do, in connection with the so-called free offer of the photo enlargement, mark up the prices of the Safe-T-Cones required to be purchased so as to include the cost of the photo enlargement which they represent the purchaser is to receive "free." By means of their practice of having no standard mark-up and maintaining fictitious prices, the respondent can readily, and without the knowledge of the purchaser or prospective purchaser, include the cost of the so-called "free" photo enlargement in the sales price of the three cases of Safe-T-Cones required to be purchased. As a result, the price paid by the purchaser is the regular price which would be paid for the merchandise including the so-called "free" photo enlargement.

Furthermore, this offer of free goods is one of long standing and constitutes respondents' permanent method of doing business, and the price of the "free goods" is included in the price of the Safe-T-Cones which must be purchased to obtain the so-called "free" photo enlargement.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of respondents' said product as a result of such erroneous belief.

PAR. 8. 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 intent and meaning of the Federal Trade Commission Act.

Record closed without prejudice by the following order:

This matter coming before the Commission upon its own motion; and

It appearing to the Commission that the advertising representations charged in the amended complaint as having been false and misleading were disseminated by the respondents in only one mail-order campaign, and that said representations have not been made since 1943; and

It further appearing that the respondents have submitted an affidavit executed by the individual respondent and the president of the corporate respondent to the effect that they will not again disseminate said advertising representations; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the case growing out of the amended complaint herein be, and the same hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel and *Mr. Charles S. Cox* for the Commission.

Mr. Seymour C. Graham, of Chicago, Ill., for respondents.

PANTHER OIL & GREASE MANUFACTURING CO., SOUTHWESTERN PETROLEUM CO., INC., CARL WOLLNER, E. H. BEALL AND A. M. PATE. Complaint, January 25, 1945. Order, March 23, 1949. (Docket 5266.)

Charge: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives that respondents are manufacturers and operate a refinery, and as to composition, scientific or relevant facts, comparative merits, qualities, properties or results, sample conformance, amount and weight shipped and salesmen's earnings; shipping, for payment demand, goods in excess of order; misbranding as to quantity; and using misleading corporate name as to manufacturing status; in connection with the blending, packing, warehousing and sale of commercial lubricants, including oil and grease.

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 Panther Oil & Grease Manufacturing Co., a corporation; Southwestern Petroleum Co., Inc., a corporation; Carl Wollner, individually and as president of Panther Oil & Grease Manufacturing Co., and director and principal stockholder of Panther Oil & Grease Manufacturing Co. and Southwestern Petroleum Co., Inc.; E. H. Beall, individually, and as an officer, director and principal stockholder of Southwestern Petroleum Co., Inc., and Panther Oil & Grease Manufacturing Co.; and A. M. Pate, individually, and as vice president of Panther Oil & Grease Manufacturing Co., and a director and principal stockholder of Panther Oil & Grease Manufacturing Co. and Southwestern Petroleum Co., Inc., have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Panther Oil & Grease Manufacturing Co., hereinafter on occasion referred to as "Panther," is a corporation, organized and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 840 North Main Street, Fort Worth, Tex.

Respondent Southwestern Petroleum Co., Inc., hereinafter on occasion referred to as "Southwestern," is a corporation organized and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 917 North Main Street, Fort Worth, Tex.

Individual respondent Carl Wollner, residing at 2315 Mistletoe Boulevard, Fort Worth, Tex., is president of Panther Oil & Grease Manufacturing Co., and a director and principal stockholder of Panther Oil & Grease Manufacturing Co., and Southwestern Petroleum Co., Inc.

Individual respondent E. H. Beall, residing at 2416 Milford Court, Fort Worth, Tex., is president of Southwestern Petroleum Co., Inc., vice president of Panther Oil & Grease Manufacturing Co., and a director and principal stockholder of Panther Oil & Grease Manufacturing Co. and Southwestern Petroleum Co., Inc.

Individual respondent A. M. Pate, residing at Oak Hill Farms, Fort Worth, Tex., is vice president of Panther Oil & Grease Manufacturing Co., and a director and principal stockholder of Panther Oil & Grease Manufacturing Co. and Southwestern Petroleum Co., Inc.

Acting in their respective official capacities and in conjunction with each other, and further by virtue of their owning collectively a large majority of the capital stock of both "Panther" and "Southwestern," said individual respondents formulate, direct and control the respective acts, policies, and business affairs of said corporate respondents "Panther" and "Southwestern."

PAR. 2. For more than four years last past, corporate respondents Panther Oil & Grease Manufacturing Co. and Southwestern Petroleum Co., Inc., have been engaged, and are now engaged, in the sale and distribution to members of the consuming public, of lubricants for tractors, trucks, automobiles, and other machinery and of other products. In the course and conduct of their said business operations, corporate respondents have caused, and now cause, said lubricants and other products when sold, to be transported from their respective places of business in the State of Texas to purchasers thereof located in various other States of the United States, and in the District of Columbia. Corporate respondents heretofore, and all times mentioned herein, have maintained and now maintain a course of trade in said lubricants and other products among and between the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the sale and distribution of their said lubricants and other products, respondents have operated as inter-

related parts of a single enterprise and as divisions and departments of the same business.

(1) Corporate respondent, Panther Oil & Grease Manufacturing Co., is and has been engaged primarily in the blending, packing, warehousing, sale and distribution of commercial lubricants, including oil and grease. Said respondent is also engaged in the sale and distribution of roof coating, paint products and floor maintenance products. All sales by "Panther" are made direct to the consumer, principally in rural communities. No sales are made by "Panther" to jobbers, wholesalers or middlemen. "Panther's" said sales are effected through the medium of a large force of salesmen working on a commission basis. Respondent "Panther" maintains an office with a sales department, facilities for storing lubricants and other products purchased by it, a place and facilities for mixing and blending such lubricants, and a place and facilities for packaging and shipping lubricants and other products.

(2) Corporate respondent "Southwestern's" products, like those of respondent "Panther," are sold direct to the consumer, principally to farmers, contractors and county commissioners. Sales are made by salesmen employed on a commission basis, and nearly all sales effected on behalf of either corporate respondent are made on a credit basis. Respondent "Southwestern" maintains only an office with a sales department, and has no storage, mixing, blending or shipping place or facilities. All products sold by "Southwestern" are purchased by it directly from "Panther," "Panther" being "Southwestern's" sole source of supply. "Panther's" operating plant is located only fifty yards from the office of "Southwestern." "Southwestern" sends its orders, shipping pads and labels to "Panther," and the latter ships to "Southwestern's" customers in containers furnished by "Southwestern," the products sold for the account of "Southwestern."

(3) In filling the orders obtained by respondent "Southwestern," respondent "Panther" uses lubricants and other products of the same type, grade and quality that it uses during the course of its business in filling orders for like lubricants and other products obtained by its salesmen. After said lubricants are thus shipped, the purchasers are billed for the purchase price thereof by the corporate respondent obtaining the particular order.

(4) Both respondents "Panther" and "Southwestern" use a large number of traveling salesmen. Each recruits such salesmen by means of advertisements placed by it in newspapers of general circulation, and by other means. Such salesmen are used by corporate respondents to call upon consumers of lubricants and other products sold by the respondents, and to display, demonstrate, show samples of, sell and obtain orders for said lubricants and other products. Respondent

"Panther" furnishes quantities of its lubricants and other products to its salesmen and to respondent "Southwestern" and its salesmen, to be used for display and demonstration purposes and as samples of lubricants and other products that are, and will be, shipped by respondent "Panther" to fill the orders obtained by said salesmen.

(5) Both corporate respondents have their salesmen employ the various trade names used by respondents in the sale of certain products acquired by respondent "Panther." The lubricants sold and offered for sale by respondent "Southwestern" are identical with those sold and offered for sale by respondent "Panther." Lubricants sold by respondent "Panther" bear its corporate name, "Panther Oil & Grease Mfg. Co.," the trade name "Panther," and the brand names "Suresta," "Shure-Stay" "Sure" and "Panco." Respondent "Southwestern," in connection with the sale of products handled by it, employs as trade names, its corporate name, also the name "Southwestern Petroleum Co." and the brand names "Cactus" and "Cactus Brands." Among identical lubricants sold by corporate respondents are those for bronze bushings on tractor rollers, those for roller bearings on tractors, those for transmissions and final drives on tractors, trucks and automobiles, those for fittings on chassis of tractors, trucks and automobiles, those for front wheel bearings on tractors, trucks and automobiles and those for automobile springs and lubricants for other purposes.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their said lubricants and other products by members of the consuming public, each of said corporate respondents, acting in cooperation and conjunction with the other, and under the direction, control and supervision of individual respondents Carl Wollner, E. H. Beal and A. M. Pate has made and now makes various representations with respect to itself, the character of its business, and of the lubricants and other products sold by it. Said representations have been made and are made through the medium of personal solicitations and sales demonstrations by salesmen of corporate respondents, by means of letters and circulars disseminated by their respective sales representatives, and by other means. Among and typical of the said representations made by each of said corporate respondents herein as aforesaid, but not all-inclusive, are the following:

1. That it is a manufacturer of lubricants and operates a refinery.
2. That its lubricants contain 98 percent of pure petroleum oil; that no fillers, no foreign matter and no soap are used.
3. That other similar competing lubricants are inferior to those lubricants last referred to, in that they contain less than 98 percent petroleum oil and contain fillers, foreign matter, and soap.

4. That its lubricants are of such quality that they resist heat and will not run off the bearings on which they are placed when heated, while being used for the purposes for which they are sold, and are superior to similar competing lubricants.

5. That said lubricants are superior to other similar competing lubricants in their clinging ability, tackiness and cohesiveness, and when placed on an object and subjected to heat will not run off bearings during use, but become stringy, and are superior to other similar competing lubricants in such respects.

6. That the lubricants shipped by it to purchasers are of the same quality, identical with, are taken from, the same containers and batches, and made at the same time, as the samples displayed by salesmen to purchasers.

7. That the amount and weight of lubricants shipped by it are correctly stated on containers, and are equal to the amount and weight marked on such containers and on the invoices and shipping papers pertaining thereto.

8. That its salesmen can and do earn commissions in excess of those actually earned, typical of such stated earnings being commissions ranging from \$400 to \$1,000 earned each month by salesmen.

PAR. 5. Through the use of the said representations, acts and practices hereinbefore related, respondents represent and have represented to customers and to prospective customers, expressly and by implication, that they manufacture the lubricants sold by them, and own and operate factories and refineries in such connection; that their lubricants are of the finest petroleum content, containing no deleterious substances or adulterants; that soap is not a proper ingredient for inclusion in a lubricant; that their said lubricants will meet the highest heat-resistant operational tests and are superior in quality and performance to similar lubricants sold by others; and that the lubricants sold by respondents are of the same character and quality as those employed by respondents' salesmen in effecting sales of respondents' said products.

In truth and in fact, the lubricants sold by respondents contain considerably less than 98 percent of petroleum oil, and they do contain fillers, foreign matter and a considerable amount of soap, soap being a proper ingredient of some lubricants when used in correct amount. Respondents' said lubricants will and do run off bearings that are heated from use, are not superior in this respect, or in their ability to resist heat, to similar competing lubricants, nor superior in their clinging ability, tackiness and cohesiveness. The lubricants employed by corporate respondents' salesmen in making sales demonstrations to customers and prospective customers are not of the same grade, char-

acter and quality as those subsequently shipped to customers, nor are they made at the same time or in the same lot. Respondents' sales agents in giving demonstrations to show the effect of heat on respondents' said lubricants have resorted to and now employ the unfair and deceptive practice of using for such demonstrations lubricants especially suitable therefor, and not lubricants of the inferior grade, character and quality subsequently shipped to purchasers. Representations made by respondents on containers for their products and in invoices and shipping papers, as to the amounts and weights of lubricants sold and shipped, are false, containers in many instances containing less than the amount and weight marked on them, and less than the amounts and weights specified in invoices and on shipping papers covering the shipments. Respondents' said salesmen do not earn regularly each month commissions ranging from \$400 to \$1,000 nor any commissions approximating such sums. In truth and in fact, respondents' salesmen generally make much less each month than the amounts represented by respondents as their regular monthly earnings, and the amounts set out as monthly earnings in respondents' advertising for sales agents have only been earned by certain individual agents during certain months, and do not represent the commissions regularly earned by respondents' salesmen in the normal course of business.

PAR. 6. Respondents further in connection with the sale and distribution of their said products in commerce, have resorted to and engaged in the deceptive and misleading practice of raising and increasing the quantities of lubricants ordered by customers and the sales price to be paid therefor. It is and has been the practice of various of the salesmen of respondents to raise and increase the amount of orders given by customers from time to time without having the customer verify the order as correct, and it has been the practice and custom of respondents to charge customers for the full amount of such raised orders, and to insist upon payment of the same. As a result of such practice many purchasers of respondents said lubricant have received from respondents and paid respondents for more lubricants than said purchasers had ordered, and more than were necessary to meet their requirements.

PAR. 7. The use by respondents of the aforesaid representations, acts, practices, and methods in connection with the offering for sale and sale of their said products in commerce, has had and now has the tendency and capacity to, and does mislead and deceive the purchasing public regarding the actual character of the business operations conducted by said respondents, and regarding the grade, character, quality and quantity of said products sold by respondents, and has led, and does lead purchasers erroneously to believe that said representations

and implications so made, used and employed by respondent are and were true, and causes and has caused a substantial number of the purchasing public, by reason of the erroneous beliefs so engendered, to purchase substantial quantities of said products.

PAR. 8. The use by corporate respondent, Panther Oil & Grease Manufacturing Company in its corporate name of the word "manufacturing" and the use of the term "manufacturer" by corporate respondents "Panther" and "Southwestern" to induce the sale of their said products, is a representation to customers that corporate respondents manufacture and produce the products they sell. In truth and in fact, neither respondent manufactures any of the products sold by it, respondent "Panther" merely possessing facilities for blending, packing and warehousing the products handled by it, and corporate respondent "Southwestern" obtaining from "Panther" for sale, all of the products handled and sold by "Southwestern" to the consuming public. The use by corporate respondent "Panther" of the word "manufacturing" in its corporate name further constitutes within itself a false and misleading representation that said corporate respondent produces and sells in commerce the lubricants and other products sold by it, when such is not the fact.

PAR. 9. The aforementioned acts, practices, and methods 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 intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Commission upon motion to dismiss the complaint, and affidavit in support thereof, filed on June 21, 1948, by counsel for respondents, and answer thereto filed on July 6, 1948, by counsel in support of the complaint, which makes no objection to closing this case without prejudice to the right of the Commission to reopen the same and resume trial thereof if future conditions warrant.

The Commission has duly considered said motion, affidavit in support thereof, answer thereto, and the record herein. It appears that two of the individual respondents named in the complaint died after the date of issuance of the complaint and that thereafter the respondent corporations were recapitalized and reorganized. Coincident with such recapitalization and reorganization there was a complete change in corporate policies and practices. With the exception of the allegation as to the use of the word "Manufacturing" in the corporate name of one of the respondents, which use does not now appear to constitute a false and misleading representation,

the representations, acts, practices, and methods alleged in the complaint have been discontinued and abandoned and there is no reason to anticipate the resumption thereof. It further appears that there is insufficient public interest to warrant a continuation of this proceeding.

It is therefore ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. Joseph Callaway for the Commission.

Frank E. & Arthur Gettleman and Perlman, Goodman, Hecht & Chesler, of Chicago, Ill., for respondents.

CONGOLEUM-NAIRN, INC. Complaint, June 4, 1943.¹ Order, March 25, 1949. (Docket 4784.)

Charge: Advertising falsely or misleadingly as to qualities, manufacture, nature and composition of product and using misleading name in said respects; in connection with the manufacture and sale of an extensive line of hard-surface composition flooring, including a felt-backed floor covering called "Treadlite Rubber Cushion Inlaid Linoleum."

AMENDED 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 Congoleum-Nairn, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Congoleum-Nairn, Inc., is a New York corporation having its principal place of business located at Kearny, N. J.

PAR. 2. Respondent is now, and for a number of years last past has been engaged in the business of manufacturing an extensive line of hard-surface composition flooring, including a felt-backed floor covering called "Treadlite Rubber Cushion Inlaid Linoleum," and in the sale and distribution thereof in commerce between and among the various States of the United States. It causes and has caused said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers, including retail stores and others, located in various other States of the United States and the District of Columbia.

PAR. 3. Respondent is now, and has been for many years, in competition with other corporations, and with persons, firms and partner-

¹ Amended.

ships engaged in the sale and distribution of similar floor coverings in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business and for the purpose of inducing the sale and distribution of its product called "Treadlite Rubber Cushion Inlaid Linoleum" respondent has made many false, misleading and deceptive statements and representations with respect to its said product by means of catalogs distributed generally to the purchasing public and by insertion of advertisements in newspapers and magazines of national circulation, wherein said product is repeatedly designated and described under its trade name "Treadlite Rubber Cushion Inlaid Linoleum," and the so-called "Rubber Cushion" feature thereof emphasized and featured. Among and typical of such statements and representations are the following:

Treadlite Rubber Cushion Inlaid Linoleum.

Here's that new popular-priced Inlaid Linoleum with the Built-In Rubber Cushion.

Now we introduce Treadlite RUBBER CUSHION Inlaid Linoleum which is all that the name implies!

Treadlite RUBBER CUSHION Inlaid Linoleum incorporates well-known cushioning and sound-deadening qualities of rubber.

The amazing rubber cushion is an integral part of the product. Nairn Treadlite Linoleum has unusual resilience and shock-absorbing qualities.

Your feet feel the pleasant touch that comes from its resilience and shock-absorbing qualities. Imagine how foot-fatigue will be lightened when Nairn Treadlite Linoleum is actually in your home.

Your ears tell you why Nairn Treadlite Linoleum, with the build-in Rubber Cushion, is so quiet—so comfortable underfoot.

These are some of the reasons why thousands of women are so enthusiastic about this new, popular-priced inlaid linoleum.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent falsely represents and implies that its product is genuine linoleum manufactured through and by the process of inlaying as that art is practiced in the linoleum industry, and that it is an inlaid linoleum and possesses all the qualities and characteristics associated with genuine linoleum and with inlaid linoleum, and that said product contains rubber in such substantial quantity as to offer or afford appreciable cushioning qualities so as to increase the underfoot comfort, resilience, and shock-absorbing qualities of said product or noticeably lessen the noise levels thereof as compared to competitive floor coverings.

PAR. 6. In truth and in fact, respondent's product "Treadlite Rubber Cushion Inlaid Linoleum" cannot be represented, designated, or referred to properly as "linoleum" or "inlaid linoleum." The term "lino-

leum" is a coined word, formed from linum (flax) and oleum (oil), because the principal material used in making linoleum is linseed oil.

In 1863, one Frederick Walton obtained a patent in England and in 1869 in the United States, for a floor covering, the wearing surfaces of which are composed of oxidized linseed oil, resins, and gums, intimately mixed with ground cork or wood flour, or both, together with pigments, applied on a backing or foundation of woven material, such as burlap or canvas. Such products have outstanding qualities for long wear and durability and have long been accepted by the public as being superior products for floor covering. Through long usage and custom in the trade and by reason of many years of advertising, the purchasing public has become accustomed to consider and to purchase as "linoleum" the product advertised and sold under that name by the industry generally for more than 75 years, such product having been made according to the Walton patents and having a backing or foundation of burlap or other woven material.

PAR. 7. Respondent's product, "Treadlite Rubber Cushion Inlaid Linoleum," while having the general appearance of genuine linoleum and a wearing surface manufactured in accordance with the accepted standards, has a backing or foundation of felt saturated with asphaltum and is not the product manufactured and offered for sale and sold to the public as linoleum for more than 75 years. Respondent's said product, "Treadlite Rubber Cushion Inlaid Linoleum," is not "inlaid" as that term has been used in the floor covering industry and has been understood and accepted by the purchasing public for many years.

The term "inlaid," when applied to genuine linoleum or to floor coverings the wearing surface of which is of a "linoleum" composition, is used in the floor covering industry to designate, describe, and refer to products that are manufactured through a process by which individual areas of different color in the pattern are put in separately by hand or by machine. The different colors extend through the wearing surface. Respondent's product is not so made or manufactured by the process of inlaying, as that art is practiced in the floor-covering industry, but is made through a process whereby portions of the "linoleum" compositions are pigmented in different colors mixed to the extent desired and compressed into a single sheet, the several colors extending throughout the body of the sheet. Respondent's product, "Treadlite Rubber Cushion Inlaid Linoleum," is less expensive to manufacture than are floor coverings the wearing surface of which is composed of "linoleum" composition, and which is made or manufactured through the process of inlaying as hereinabove described.

Respondent's said product is less expensive to manufacture and is inferior in quality and durability to genuine linoleum or inlaid linoleum made by the process hereinabove described. Respondent's said product does not contain rubber in such substantial quantities or of such thickness as to afford appreciable cushioning qualities such as would either increase the underfoot comfort or resiliency thereof or noticeably lessen the noise levels thereof as compared to competitive floor coverings.

PAR. 8. The use by respondent of the foregoing false and misleading trade name, statements, advertisements, and representations has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase substantial quantities of respondent's said product. In consequence thereof, trade has been unfairly diverted to the respondent from its competitors and thereby substantial injury has been done and is being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public 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.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course on the amended complaint, respondent's answer thereto, testimony and other evidence, report of the trial examiner, and brief and oral argument of counsel in support of complaint, of counsel for respondent, and of counsel for intervenor.

The amended complaint herein charges respondent with unfair methods of competition and unfair and receptive acts and practices in commerce in the sale and distribution of its product called "Tread-lite Rubber Cushion Inlaid Linoleum," through the use of false, misleading and deceptive representations that said product is genuine linoleum manufactured through the processes of inlaying as that art is practiced in the linoleum industry, and that it is an inlaid linoleum and possesses all the qualities and characteristics associated with genuine linoleum and with inlaid linoleum, and that said product contains rubber in such substantial quantity as to offer or afford appreciable cushioning qualities so as to increase the underfoot com-

fort, resilience, and shock-absorbing qualities of said product or noticeably lessen the noise levels thereof as compared to competitive floor coverings.

It appearing to the Commission from the record in this proceeding that the public understanding and acceptance of the words "linoleum" and "inlaid" is such that the use by respondent of those words to designate or refer to a floor covering manufactured in accordance with the process employed by respondent in the production of its "Tread-lite Rubber Cushion Inlaid Linoleum" is not shown to be misleading or deceptive; and it further appearing that since respondent discontinued manufacturing its product containing a layer of plastic rubber and discontinued all representations as to the cushioning qualities of such product prior to the issuance of the complaint herein, there is insufficient public interest to warrant further proceedings on this phase of the matter; and having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. James W. Cassedy and *Mr. John V. Buffington* for the Commission.

Davies, Auerbach, Cornell & Hardy, of New York City, for respondent.

Fish, Richardson & Neave, of Boston, Mass., for Bird & Son, Inc., Armstrong Cork Co., Sloane-Blabon Corp., Paraffine Companies, Inc., and Bonafide Mills, Inc., intervenors.

FOLEY & CO. AND A. M. SALOMON doing business as LAUESEN & SALOMON. Complaint, October 8, 1946. Order, April 12, 1949. (Docket 5464.)

Charge: Advertising falsely or misleadingly and neglecting, unfairly or deceptively, to make material disclosure as to qualities, properties or results and safety of product; in connection with the sale of a drug preparation designated Foley's Pain Relief Tablets.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course upon motion to dismiss the complaint without prejudice filed on November 17, 1948, by counsel for respondents, the Trial Examiner's certification thereof, and answer thereto filed on December 2, 1948, by counsel in support of the complaint, which makes no objection to closing this case without prejudice.

The complaint herein, issued October 8, 1946, charges the respondents with the use of unfair and deceptive acts and practices in commerce in the sale and distribution of a drug preparation designated

"Foley's Pain Relief Tablets" through the dissemination of false advertisements as to the curative and remedial properties of said preparation and through failure to reveal facts material with respect to consequences which may result from the use of said preparation.

Having duly considered the motion, certification thereof, answer thereto, and the record herein, and it appearing to the Commission that the advertising and sale of said preparation were discontinued a number of years prior to the issuance of the complaint herein, with no apparent likelihood of a resumption thereof, and that there is insufficient public interest to warrant a continuation of this proceeding:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action.

Before *Mr. Randolph Preston* and *Mr. Frank Hier*, trial examiners.
Mr. D. C. Daniel and *Mr. Charles S. Cow* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondents.

THE TAILORED WOMAN, INC. Complaint, June 1, 1944.¹ Order, April 14, 1949. (Docket 5168.)

Charge: Advertising falsely or misleadingly as to composition, nature and regular price of product, and as to scientific or relevant facts with respect thereto; in connection with the sale of furs and fur garments described as "Black Persian Lamb".

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 Tailored Woman, 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Tailored Woman, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 742 Fifth Avenue, New York, N. Y. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of furs and fur garments.

Respondent causes and has caused said furs and fur garments when sold by it to be transported from its place of business in the State of

¹ The Commission on August 31, 1944, issued an order amending complaint, as follows:

This matter coming on to be heard by the Federal Trade Commission upon the motion of counsel for the Commission to amend the complaint in this case by substituting the name "The Tailored Woman, Inc." for the name "Tailored Woman," and the Commission having duly considered the said motion and the record herein, and being fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, amended by substituting the name "The Tailored Woman, Inc." for the name "Tailored Woman."

New York to various purchasers thereof at their respective points of location in the various 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 furs and fur garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said products, respondent advertised certain of its furs and fur garments in newspapers having a wide circulation, and in various other ways, describing said furs and fur garments as "Black Persian Lamb." Typical of the advertisements used as aforesaid is the following advertisement of ladies' coats:

"Invest Now and Feel Smart Next Winter!

BLACK PERSIAN LAMB

Made To-Order or Ready Made

\$295.00

Regular \$495.00 value."

PAR. 3. True or genuine Persian lamb products are manufactured from peltries obtained from the young of the full-blooded Karakul breed of sheep found in a comparatively small geographical area in west central Asia known as the Iranian Plateau. The area covers part or all of what was once Bokhara, now called Uzbekistan, Afghanistan, Iran and some adjacent territory. The unusual climatic and other conditions prevailing in this area has a pronounced bearing on the type and quality of fur found on the young of such sheep. Such fur is superior, generally, in appearance and quality to the fur produced by the young of the Karakul breed of sheep found elsewhere.

The peltries are taken from lambs of approximately three to ten days old and are noted for their silky, tightly curled fur which is used principally in the manufacture of ladies' coats and other fur garments.

Full-blooded Karakul sheep are to be found in other geographical areas but the peltries obtained from the young lambs of such sheep found in other geographical areas are not as desirable for making fur garments as a rule as are the young Karakul lambs grown in west central Asia. Fur garments made of young Karakul lamb peltries grown elsewhere than in west central Asia are not in fact Persian lamb garments.

PAR. 4. In truth and in fact, the products advertised as set forth above were not made of genuine Persian lamb peltries, and said coats never had a regular \$495 value or retail selling price.

PAR. 5. There is a demand on the part of a substantial portion of the purchasing public for genuine Persian lamb products, such demand

being based on a belief among said purchasing public that furs and fur garments made of genuine Persian lamb peltries are superior in quality and appearance to furs and fur garments manufactured from other types of lamb peltries, or peltries obtained from mixed breeds of sheep.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading representations with respect to the origin or kind of peltries used in respondent's furs and fur garments and the regular retail prices at which they are offered for sale and sold, disseminated as aforesaid, has had and now has the capacity and tendency to mislead, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and has induced a portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondent's said furs and fur garments.

PAR. 7. The aforesaid acts, practices, and methods of 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.

Complaint dismissed by the following order:

This proceeding has been heard by the Federal Trade Commission upon the complaint, answer of respondent, testimony, and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore designated by it, report of the trial examiner upon the evidence, together with his recommendations, exceptions to the trial examiner's report filed by respondent, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel.

The complaint alleges that climatic and other conditions prevailing on the Iranian Plateau in West Central Asia, comprising part of Uzbekistan, which is in the Soviet Union, Afghanistan, Iran, and some adjacent territory, have an important bearing on the type and quality of the fur produced there from the young of the Karakul breed of sheep and that peltries derived from full-blooded karakul lambs growing on the Iranian Plateau are generally superior to those produced elsewhere from karakul lambs. Garments made of peltries derived from other than full-blooded karakul sheep grown on the Iranian Plateau, the complaint further alleges, are not true Persian lamb garments.

The evidence indicates that Russia, Afghanistan, and southwest Africa are the principal areas exporting furs of this type. There are conditions in respect to climate, vegetation, and water favoring fur quality that are common to sections of both the Iranian Plateau and southwest Africa. Karakul lamb skins derived from the best flocks

of the Iranian Plateau vary in quality and there is a wide range in appearance and quality among the skins exported by each of the three areas. Witnesses testifying on behalf of the respondent in opposition to the allegations of the complaint state that the appearance, value, and durability of the southwest African furs on a grade for grade basis are substantially equivalent to the Persian lamb peltries received from the Iranian Plateau. The Commission is of the opinion, therefore, that the record fails to sustain the charge that peltries produced from the karakul flocks grown on the Iranian Plateau are generally superior to the peltries derived elsewhere from karakul lambs.

It further appears that the sheep found in the best karakul flocks of the Iranian Plateau also vary greatly in appearance and that the uniformity which characterizes the established breeds of domestic animals in this country is lacking there. The practice of crossing karakuls with other species of sheep has been extensively followed on the Plateau and continues in Afghanistan. There is substantial testimony to the effect that the peltries derived from such crossings which display curl formations generally characteristic of the Karakul breed likewise have been regarded and accepted as Persian lamb; and that the skins of like characteristics produced by the karakul industry of southwest Africa through grading up or successive crossings of the blood lines between karakuls from the Iranian Plateau and native sheep also are so considered and accepted. The Commission is of the opinion that the greater weight of the evidence fails to support the allegations of the complaint that true Persian lamb fur is derived solely from full-blooded lambs of the Karakul breed of sheep grown on the Iranian Plateau.

Another charge of the complaint is that respondent's coats priced at \$295 are not regular \$450 values as stated in respondent's advertising. There is testimony to the effect that the coats so advertised were not of high quality, and other testimony to the effect that they were of the value claimed; and it further appears that this was a special out-of-season offering through a single advertisement of a limited number of garments acquired at favorable prices. The Commission is of the view that the weight of the evidence fails to sustain the charge of the complaint in respect to this issue.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. George M. Martin* for the Commission.

Strauss, Reick & Boyer, of New York City, for respondent.

PROFESSIONAL PRODUCTS CORP., also trading as SEAL-SEEP SERVICE Co., NATIONAL SEAL-SEEP Co., SEAL-SEEP SERVICE DIVISION and PROFESSIONAL PRODUCTS Co., and GEORGE A. ROSENZWEIG. Complaint, October 11, 1944. Order, April 20, 1949. (Docket 5211.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, history, earnings or profits, comparative merits, and unique status or advantages; in connection with the sale of a compound for the treating of stone, concrete, cement, brick, and tile structures so as to make them more resistant to water, which is designated as "Seal-Seep."

Complaint dismissed by the following order:

This matter came on to be heard by the Commission upon motion to dismiss the complaint filed September 14, 1948, by counsel in support of the complaint, to which no answer has been filed.

The complaint herein, issued October 11, 1944, charges respondents with the use of unfair and deceptive acts and practices in commerce in the sale and distribution of a waterproofing compound designated "Seal-Seep," through false, misleading, and deceptive representations and statements as to the results to be obtained from the use of said compound.

Having duly considered the motion and the record herein, and it appearing to the Commission that respondent corporation, Professional Products Corp., was dissolved on April 14, 1942, and that individual respondent, George A. Rosenzweig, died in 1947, and it further appearing that there is insufficient public interest to warrant a continuation of this proceeding:

It is ordered, That the complaint herein be, and the same is hereby, dismissed.

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

Mr. S. F. Rose, *Mr. Edward L. Smith*, and *Mr. George M. Martin* for the Commission.

JAMES O. KEANE, NEW JERSEY SERVICE Co., INC., JOHN J. McCONOMY, KATHERINE M. HIGGINS, MARY A. KEANE and DOROTHY BOYDEN. Complaint, December 14, 1943. Order, April 21, 1949. (Docket 5099.)

Charge: Assuming or using misleading trade or corporate name, misrepresenting business status, advantages or connections, and offering deceptive inducements to purchase or deal through use of designations "Continental Inheritance Service" and "Inheritance Bureau Division" and false representations with respect to nature of operations thereof and thereunder in connection with the sending out of "skip tracer" letters in collecting accounts owed to others.

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 James O. Keane, an individual, New Jersey Service Co., Inc., a corporation, and John J. McConomy, Katherine M. Higgins, and Mary A. Keane, individually and as officers of New Jersey Service Co., Inc., and Dorothy Boyden, an individual, 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 the complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New Jersey Service Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey. Respondents John J. McConomy, Katherine M. Higgins, and Mary A. Keane are respectively president, vice president, and secretary-treasurer of said corporation. Respondent James O. Keane is the husband of respondent Mary A. Keane and was the immediate predecessor of the corporate respondent in the business which it now conducts. In conducting the said business respondent James O. Keane engaged in the acts and practices hereinafter set forth. The management, policies, and operation of the said corporation, particularly in respect to the acts and practices herein alleged, are controlled and dominated by the four individuals named above. All of the respondents have an office and principal place of business at 819 Cooper Street, Camden, N. J., and in the course and conduct of the business referred to herein have used the names "Continental Inheritance Service" and "Inheritance Bureau Division" in the manner set forth herein. Respondent Dorothy Boyden is an individual who does business under the name "Secretarial Service" with an office and principal place of business at 6 North Michigan Avenue, Chicago, Ill.

PAR. 2. Respondents, with the exception of respondent Dorothy Boyden, are now, and have been since on or about June 1, 1943, engaged in the business of collecting accounts owed to others. They have clients who are located both within and without the State of New Jersey for whom the collection of accounts has been undertaken. Many of the said clients cause goods and other property to be transported from their respective places of business to purchasers thereof in other States of the United States, and maintain, and at all times mentioned herein have maintained, courses of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of the said business by said respondents had involved intercourse of a com-

mercial and business nature between respondents and their clients, respondent Dorothy Boyden and persons concerning whom they sought information, who are located in States other than the State of New Jersey.

PAR. 3. In the course and conduct of the said collection business, respondents other than Dorothy Boyden have frequently desired to ascertain the current address and occupations of persons alleged to owe money due to their said clients, the names and addresses of the employers of such persons and of the banks in which such persons have money on deposit, and other information concerning them.

For this purpose said respondents have used certain form letters, substantially in the forms exemplified by photostatic copies thereof, marked "Exhibits A and B" attached hereto and by this reference incorporated herein and made a part hereof.

PAR. 4. Respondents other than respondent Dorothy Boyden cause the form letters exemplified by Exhibit A to be placed in envelopes addressed to the persons concerning whom information was sought, at their last known addresses, and the letters exemplified by Exhibit B to be placed in envelopes addressed to other persons believed to have information concerning them. Said envelopes bear in the upper left corner :

Inheritance Bureau Division
Suite 708
6 North Michigan Ave.
Chicago, Illinois."

Also enclosed in these envelopes are other envelopes, for the return of the said form letter, addressed to :

Inheritance Bureau Division
6 North Michigan Ave.
Suite 708 Chicago, Illinois..

Respondents caused the said envelopes and enclosures to be transported to the said Chicago address, where they were received by respondent Dorothy Boyden, who thereafter caused them to be placed in the United States mail. The said envelopes bore addresses of places located in various States of the United States.

Such of the form letters as were filled out and mailed by the recipients thereof were received by respondent Dorothy Boyden in Chicago, Illinois, who thereafter caused them to be transported to one S. Mortimer Hirshorn, at Camden, N. J., who in turn caused them to be delivered to respondents at their place of business. Respondents used the information so obtained in collecting, or attempting to collect, the accounts alleged to be due to the persons for whom they

have acted. The participation of respondent Dorothy Boyden aided in and was essential to the successful operation of the plan for obtaining the desired information.

PAR. 5. By means of the aforesaid form letters and envelopes, respondents have represented, directly and by implication to the persons to whom they were sent, that "Continental Inheritance Service" has correspondents in all principal cities of the world, acts as counsellor to those in charge of estates, is engaged in the business of locating heirs to estates or to interests therein, acts as examiner for title insurance companies, engages in genealogical research, actuarial work and searches of records, and that the persons concerning whom information is sought have or may have interests in estates or lands which will be of financial benefit to them.

The said representations were false and misleading, in truth and in fact respondents in conducting "Continental Inheritance Service" have not had correspondents in all the principal cities of the world. They have not acted as counsellors to those in charge of estates, nor engaged in the business of locating heirs to estates or interests therein. They have not engaged in making examinations for title insurance companies, or genealogical research, actuarial work, or searches of records. They have had no knowledge of any interest in estates or lands to which the persons concerning whom information was sought may be entitled.

PAR. 6. Through the use of the names "Continental Inheritance Service," and "Inheritance Bureau Division" respondents have represented directly and by implication, that the said business bears some relation to estates and to rights and interest of heirs thereof.

The said representation is false and misleading. In truth and in fact said business has nothing whatever to do with estates or the rights or interests of persons therein, and the said names are merely disguises for the true nature of the business.

PAR. 7. The use, as hereinabove set forth, of the foregoing false and misleading statements, representations, and designations has had the capacity and tendency to mislead and deceive, and has misled and deceived, many persons to whom the said form letters were sent, into the erroneous and mistaken belief that said statements, representations, and designations were true and correct, and by reason thereof to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith.

PAR. 8. 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 intent and meaning of the Federal Trade Commission Act.

EXHIBIT A

Examiners for Title Companies—Actuaries—Correspondents in All Principal Cities of the
World—Missing Heirs Located—Searchers of Records—Genealogists

CONTINENTAL INHERITANCE SERVICE

Established 1925

ESTATE COUNSELLORS

Inheritance Bureau Division, Suite 708, 6 North Michigan Avenue, Chicago, Illinois

All Replies Considered Confidential

Section-----
Checked By-----
Disbursed By-----
Date of Disbursement-----
Ok'd By-----
Date This Form Returned-----

Office Use Only

DEAR FRIEND: We have been endeavoring to communicate with a person of your name and our investigation now leads us to believe that you are the interested party. So that we may verify our belief in this direction, we ask that you give us the information requested on the reverse side of this sheet.

The information contained will be treated in the strictest of confidence, and used to our best advantage.

A great many people write to us asking that we give an explanation of our action in sending this form. This we cannot do, as you can readily understand that if valuable information were to get in the hands of the wrong party, it would react to the disadvantage of the proper one. Therefore, please do not ask us to break our standard rule as we cannot do so.

This is a matter of distinct importance to you if you are the individual in question and we ask that you mail this form back to us IMMEDIATELY. You will be communicated with in three or four weeks. If it does not check with our records, the form will be carefully indexed, and filed in the event something develops later that will again bring you into the possibility of being the correct party.

Do not send any money, the service is rendered to you without charge.

Yours very truly,

By-----
Examiner

This form will not bear the name and address of the person to whom it is sent. Your name immediately refers us to this investigation. This is done so as to devote more time to accomplish results in the actual examination.

EXHIBIT A

If Necessary, Use Separate Sheet for Additional Information

Date -----, 194---

Gentlemen:

I give you the following information with the distinct understanding that I am not obligated in any manner:

My Full Name -----

Present Address-----

City and State ----- Present Occupation-----

Place of Birth ----- Date -----

Do you have a son or father, who has the exact same name? -----

If so, state which ----- His age ----

Address _____ City and State _____
 (check) (✓) which _____ (Such as Italian, German, Jewish, etc.)
 Color: White _____ Negro _____ Race _____ Social Security No. _____

Previous address

1 year ago _____ City and State _____
 2 years ago _____ City and State _____
 3 years ago _____ City and State _____
 4 years ago _____ City and State _____
 5 years ago _____ City and State _____

History**MY PARENTS**

Father's Name _____
 Address _____
 Mother's Name _____
 Address _____
 Mother's Maiden Name _____

MY WIFE'S PARENTS

Father's Name _____
 Address _____
 Mother's Name _____
 Address _____
 (If it develops that it is your wife
 we are interested in, a separate
 form for her will follow.)

THE FOLLOWING PERSONS CAN IDENTIFY ME:

(To guard against imposters.)

Name _____ Address _____
 Name _____ Address _____
 Name _____ Address _____

I CAN ALSO BE IDENTIFIED BY THE FOLLOWING:

My present employer (name of firm) _____
 Address _____ My badge number _____
 My previous employer _____
 Address _____ My badge number _____
 Name of my banking institution _____
 Address _____ Is it a checking or savings account _____
 Does this institution have your signature on file _____

Other than my father and mother, the following relatives can vouch for me:

Name _____ Address _____
 Name _____ Address _____

My present wife's full name _____
 Her present address _____

She was borne at _____ Date _____

Cross reference

If wife is dead, give date and place _____
 She can be identified by her employer, who is _____
 Her employer's address _____ City and State _____

(If previously married, give first wife's full name) _____

Signed _____

(without obligation)

If you have reason to believe you have money coming to you, advise full details on separate sheet.

EXHIBIT B

Examiners for Title Companies—Actuaries—Correspondents in All Principal Cities of the World—Missing Heirs Located—Searchers of Records—Genealogists

CONTINENTAL INHERITANCE SERVICE

Established 1925

ESTATE COUNSELLORS

Inheritance Bureau Division, Suite 708, 6 North Michigan Ave., Chicago, Illinois

All Replies Considered Confidential

This is the person we are trying
to contact

DEAR FRIEND: We are trying to contact the above person and our records include your name as one who is a relative, friend or acquaintance.

Will you be kind enough to give us any or all the information that may lead us to such contact, as follows:

His (or her) last known address _____
City & State _____

It may be that his (her) employer has the proper address on file, therefore please advise name of employer.

Address _____

Name of Relative _____

Address _____

Any Other Suggestion _____

(Such as his bank or business house who may have an address on their books.)

If you haven't seen above mentioned party recently, kindly give name and address of person or persons that can supply the necessary information to help us in our important inquiry.

This may be of importance to said person. May we hear from you promptly by return mail in the enclosed envelope. We highly appreciate your courtesy.

Yours truly,

CONTINENTAL INHERITANCE SERVICE.

Record closed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, for an order closing this case without prejudice, no answer to such motion having been filed on behalf of the respondents; and

It appearing from the motion that respondent James O. Keane is the principal respondent in this proceeding, that he is the owner of all the capital stock of the respondent New Jersey Service Co., Inc., and the employer of the officers of said company, and that he is the person primarily responsible for the sale and use of the "skip tracer" letters to which the complaint relates; and

It further appearing that on April 6, 1945, an order was issued by the Post Office Department prohibiting the use of the United States mails to the said James O. Keane in the sale and distribution of his "skip tracer" letters, and that the respondents have now abandoned the sale and use of said letters with the stated intention of not resuming the same; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered. That the case growing out of the complaint herein be, and it hereby is, closed without prejudice to the right of the Commission at any time in the future to reopen the same or to take such further or other action against the respondents, or any of them, as may be warranted by the then existing circumstances.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Randolph W. Branch for the Commission.

JOHN F. HARTNETT and GEORGE MORROW trading as HARTNETT-MORROW MANUFACTURING Co., JOHN HENRY VAUGHN trading as JOHN HENRY & Co., CRAMER PRODUCTS, INC., GENERAL COMMODITIES, INC. ET AL. Complaint, December 5, 1947. Order, April 26, 1949. (Docket 5522.)

Charge: Advertising falsely or misleadingly as to nature, qualities, properties or results and safety of product and laboratory tested; in connection with the manufacture and sale of a solution designed to prevent freezing in automobile radiators designated as "Timber-Line," "Antifreeze" and "Cromax 5," and with a calcium chloride base.

Order dismissing complaint as to corporate respondents and closing case without prejudice as to individual respondents, follows:

This matter coming on to be heard by the Commission upon a joint memorandum, filed January 19, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, and counsel for the individual respondents herein, requesting that the complaint in this proceeding be dismissed as to the corporate respondents and the officers thereof, and that the case be closed without prejudice as to the individual respondents; and

It appearing from said memorandum that the respondents have not advertised or sold the antifreeze preparations to which the com-

plaint relates since December 1946, one year prior to the issuance of said complaint, and there is no indication that they will resume the advertising or sale of such preparations; and

It further appearing that the corporate respondents, Cramer Products, Inc., and General Commodities, Inc., are no longer in existence, their charters having been declared forfeited by the State of Missouri on January 1, 1948, by reason of their failure to file 1947 annual registration reports and anti-trusts affidavits; and

It further appearing that the individual respondents have executed and tendered to the Commission a stipulation as to the facts and agreement to cease and desist covering all of the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That as to the corporate respondents, Cramer Products, Inc., and General Commodities, Inc., and the respondents Harold W. Cramer, Carl Schliffke (named in the complaint as Carl Schiffke), Roy A. Cramer, John D. Armstrong, John W. Bowers and Ernest R. Beverly, as officers and directors of Cramer Products, Inc., and General Commodities, Inc., the complaint be, and it hereby is, dismissed.

It is further ordered, That as to the individual respondents, John F. Hartnett, George Morrow, John Henry Vaughn, Harold W. Cramer, Carl Schliffke, Roy A. Cramer, John D. Armstrong, John W. Bowers, and Ernest R. Beverly, the case growing out of the complaint be, and it hereby is, closed without prejudice to the right of the Commission to reopen the same or to take such further or other action against said respondents, or any of them, at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the joint memorandum filed January 19, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, and counsel for the individual respondents, and the stipulation as to the facts and agreement to cease and desist, executed by said individual respondents on October 27, 1948, on the basis of which this proceeding is being disposed of, be included in and made a part of the formal record herein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Jay L. Oldham, of Kansas City, Kans., for John F. Hartnett and George Morrow.

Fisher & Keys, of Kansas City, Kans., for Cramer Products, Inc. and General Commodities, Inc., and the officers thereof.

GEORGE COHEN. Complaint, September 30, 1948. Order, April 26, 1949. (Docket 5588.)

Charge: Misbranding or mislabeling as to composition of products in violation of the Federal Trade Commission Act and neglecting, unfairly or deceptively, to make required disclosure as to composition and origin or seller of product and misbranding thereby in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction and manufacture for introduction into commerce and in the sale of wearing apparel, such as suits, coats and other garments.

Record closed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a memorandum filed December 22, 1948, by Daniel J. Murphy, Chief of the Commission's Trial Division, recommending that this proceeding be closed without prejudice, which recommendation was assented to by both the respondent and his counsel; and

It appearing from said memorandum that the respondent's failure to properly label his garments in compliance with the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, as charged in the complaint, was the result of carelessness or incompetence on the part of certain of his employees; and

It further appearing that immediately after the respondent's attention was called to the improper labeling of said garments, and prior to the issuance of the complaint herein, the respondent took appropriate steps to bring his labeling practices into full conformity with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and

It further appearing that the respondent has now executed and tendered to the Commission a stipulation as to the facts and agreement to cease and desist covering all of the acts and practices referred to in the complaint; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered That the stipulation as to the facts and agreement to cease and desist submitted by the respondent on December 22, 1948, be, and it hereby is, approved and accepted.

It is further ordered, That the case growing out of the complaint in this proceeding be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the memorandum filed December 22, 1948, by Daniel J. Murphy, Chief of the Commission's Trial Division,

and assented to by the respondent and his counsel, and the stipulation as to the facts and agreement to cease and desist, on the basis of which this proceeding is being closed, be included in and made a part of the formal record herein.

Mr. DeWitt T. Puckett for the Commission.

Drechsler & Leff, of New York City, for respondent.

TRUSLOW POULTRY FARM, INC., doing business AS TOXITE LABORATORIES: and CAMPBELL-SANFORD ADVERTISING CO., INC. Complaint, June 20, 1944. Order, May 13, 1949. (Docket 5183.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results; in connection with the manufacture and sale of a poultry preparation, an insecticide and disinfectant, designated "Toxite."

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion filed February 17, 1949, by counsel in support of the complaint, seeking dismissal of the complaint in this proceeding, no answer to said motion having been filed on behalf of the respondents; and

It appearing from the motion that Truslow Poultry Farm, Inc., a corporation, the principal respondent, was dissolved on April 10, 1944, more than two months prior to issuance of the complaint; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Mr. John R. Phillips, Jr. and *Mr. Charles S. Cox* for the Commission.

EUCLID CHEMICAL CO. Complaint, April 22, 1948. Order, May 13, 1949. (Docket 5538.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, comparative merits and composition of products; in connection with the manufacture and sale of various compounds or materials represented as waterproofing agents for stone, brick, cement and other masonry structures designated as "Euco Iron Waterproofing," "Euco Integral Waterproofing" and "Euco Colorless Waterproofing."

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 Euclid

Chemical Company, 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 in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Ohio, with its offices and principal place of business located at 1534 Hayden Avenue, East Cleveland 12, Ohio. The respondent is now, and for more than one year last past has been, engaged in the manufacture and distribution of various compounds or materials represented as waterproofing agents for stone, brick, cement and other masonry structures. Said products are designated by respondent as "Euco Iron Waterproofing," "Euco Integral Waterproofing," and "Euco Colorless Waterproofing."

PAR. 2. Respondent causes said products when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned 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. Respondent's volume of business in said products in such trade has been substantial.

PAR. 3. In the course and conduct of the said business respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships and individuals likewise engaged in the sale and distribution of products used for the same purposes as those of respondent, in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the effectiveness of their products in reducing or eliminating the permeability of masonry to water, or the length of time for which such reduction or elimination will endure.

PAR. 4. In the course and conduct of its said business and for the purposes of inducing the purchase of its said products, respondent has made and caused to be made, since March 21, 1938, by means of advertising folders, pamphlets, circular letters, labels, and other advertising material, sent through the United States mail and otherwise to prospective purchasers in various States of the United States and in the District of Columbia, representations and claims with respect to the efficacy of said products. Among and typical of the claims and representations so made are the following:

Euco Iron Waterproofing

The most powerful treatment yet developed for waterproofing concrete, cement plaster, cement block, brick, tile, and all other masonry. For walls and floors new or old, above or below grade. Applied by brush to inside or outside surface. Absolutely permanent.

* * * With EUCO IRON WATERPROOFING it is easy to stop all penetration. * * * Application on a surface in contact with water such as the outside of a basement wall prevents all penetration. But even more important, application on a surface away from water such as the inside of a basement wall or the top of the basement floor, also stops all water even against severe pressures. Although this inside treatment is not possible with any other material or process, it is absolutely effective with EUCO IRON WATERPROOFING because the expansion of the iron particles takes place **INSIDE** the pores and its tremendous force drives the oxide deep into all their recesses and corners. The iron oxide plugs conform exactly to the irregularly shaped pores and are locked in so tightly that not even a severe pressure in back of the treated surface can dislodge them or force water through. In effect, they become self-expanding "inlays" that cannot possibly be squeezed out once they are set up and hardened. Naturally, this inside application greatly simplifies the treatment of existing basements. The trouble and expense of excavation are eliminated. Damage to landscaping, drives and walks is prevented. The total cost is only a small fraction of that involved with outside treatment. But best of all, the method is foolproof and no guesswork is involved.

Effective for waterproofing cracks and joints * * * A really impervious patch is created.

Treatment with EUCO IRON WATERPROOFING is absolutely permanent.

* * * Once a surface has been waterproofed with EUCO IRON WATERPROOFING, it is permanently waterproofed.

* * * All types of structures have been treated effectively and permanently with EUCO IRON WATERPROOFING. Every pound is fully guaranteed; is backed by our years of service since 1910.

EUCO INTEGRAL WATERPROOFING

For waterproofing concrete, mortar, stucco, and all Portland cement mixtures.

Generally speaking, EUCO INTEGRAL WATERPROOFING is used whenever it is desired to make a portland cement mixture impervious to water. It is used extensively in concrete for floors and walls, in brick mortar for both above and below grade work.

The combined results of these two reactions makes the finished work absolutely impervious to water. Porosity is greatly reduced which minimizes the possibility of water penetration. And the walls of the fewer remaining pores are made repellent or unwettable so that water can no longer creep through. In this way concrete walls and floors become proof against penetration.

An automatic foolproof treatment.

PERMANENCE. The results of EUCO INTEGRAL WATERPROOFING are permanent in every respect. The water-repellent lining formed in the pores is not affected by air, water, or even temperature changes so that it does not deteriorate even after years of exposure. And, of course, the reduced porosity of the mass is absolutely permanent.

Euco Colorless Waterproofing

For transparent treatment of concrete, stucco, natural stone, brick, cement block and all other forms of masonry. This material represents an entirely new approach to the problem of waterproofing above grade concrete and masonry without changing their color or appearance. It contains no wax, varnish, or other substances heretofore used in the manufacture of colorless waterproofing compound.

A new waterproofing ingredient. Research in the field of synthetic organic chemistry has lead to the discovery of a new substance which may be described roughly as an "insoluble metallic grease." As such it makes a colorless waterproofing agent that is more durable and lasting than those compounds heretofore available for the purpose.

Stops leakage. Because of this repellency, there can be no absorption, no penetration, and consequently, no leakage. In this way interior finishes are made absolutely safe against water damage.

Permanence.

Comparative weathering tests show that the new waterproofing ingredient adds from 2 to 5 years to the effective life of a treatment so that the protection to be had from the new formula can be stated conservatively at 7 to 15 years.

PAR. 5. Through the use of the statements hereinabove set forth, and other similar thereto not specifically set out herein, respondent has represented directly and by implication that Euco Iron Waterproofing will render any concrete, cement plaster, cement block, brick, tile or other masonry surface to which it is applied impermeable to water throughout the life of the structure involved, regardless of the kind, porosity or condition of the surface to which it is applied, regardless of cracks or other structural failures resulting from ground movement, settlement or other cause arising subsequent to application, regardless of the location of the structure or of the water, moisture or atmospheric conditions which such structure may encounter, regardless of whether it is applied to external or internal surfaces of masonry, and regardless of whether it is applied above or below grade; that it is the most effective treatment yet developed for rendering concrete, cement plaster, cement block, brick, tile and all other masonry surfaces impermeable to water; that the method of treatment is foolproof; that it renders cracks and joints in masonry impervious or impenetrable to water, and that no other treatment for inside application is effective in rendering surfaces impermeable to water.

PAR. 6. The foregoing statements and representations are false, deceptive and misleading. In truth and in fact there are many masonry surfaces including concrete, cement plaster, cement block, brick and tile, which will not be rendered impermeable to water throughout the life of the structure involved, by the application of Euco Iron Waterproofing. Many masonry surfaces are of such a kind, of such porosity in such a condition, so located or exposed to such water,

moisture or atmospheric conditions that application of the product will not render them impermeable to water, or will not render them impermeable throughout the life of the structure, and this is true of surfaces both above and below grade and of application to internal or external surfaces. The application of the product on the surface of or in cracks or joints in masonry will not avert leakage through cracks and other structural failures resulting from ground movement, settlement or other cause subsequent to its application. Said product is not the most effective method of rendering masonry surfaces, including concrete, cement plaster, cement block, brick and tile, impermeable to water. The method of application is not foolproof. There are many conditions to which masonry surfaces are exposed under which cracks and joints will not be rendered impervious to water by the use of said product, and many others where the results of such use will not persist for the life of the structure. There are numerous other products available which, under the same conditions, are as effective as respondent's when applied to internal surfaces.

PAR. 7. Through the use of the statements set forth in Paragraph Four, and others similar thereto not specifically set forth herein, respondent has represented, directly and by implication that Euco Integral Waterproofing, when added to concrete, mortar, stucco or cement mixes, will render the product impermeable to water throughout the life of the structure in which the product is used, regardless of character of the mix, regardless of cracks or other structural failures resulting from ground movement, settlement or other causes, regardless of the location of the structure or of the water, moisture or atmospheric conditions which such structure may encounter, and regardless of whether the product is used above or below grade; that the method of using the respondent's material is foolproof.

PAR. 8. The foregoing statements and representations set forth in Paragraph Four and Six are false, deceptive and misleading. In truth and in fact there are many mixes of concrete, mortar, stucco and cement, which will not be rendered impermeable to water by the addition of the said product, or impermeable for the life of the structure in which such materials are used. Many structures in which concrete, mortar, stucco and cement mixtures are used are so located or exposed to such water, moisture or atmospheric conditions, that such mixtures to which respondent's product has been added will not be impermeable to water or impermeable throughout the life of the structure, and this is true whether such material is used above or below grade. The use of the product will not avert leakage through cracks resulting from ground movement, settlement or other causes. The method of using the respondent's product is not foolproof.

PAR. 9. Through the use of the statements set forth in Paragraph Four and others similar thereto not specifically set forth herein, respondent has represented directly and by implication that Euco Colorless Waterproofing will render any above-grade masonry surface, including concrete, stucco, stone, brick and cement block, to which it is applied impermeable to water for from seven to fifteen years, regardless of the kind, porosity or condition of the surface to which it is applied, regardless of cracks or other structural failures resulting from ground movement, settlement or other causes arising subsequent to its application, and regardless of the location of the structure or of the water, moisture or atmospheric conditions which the structure may encounter; that it does not contain any substance formerly used by others in the manufacture of colorless "waterproofing" compounds; and it contains a new ingredient, i. e., an "insoluble metallic grease"; that it is more durable and lasting than other similar compounds.

PAR. 10. The foregoing statements and representations set forth in Paragraph Four and Eight are false, deceptive and misleading. In truth and in fact there are many above-grade masonry surfaces, including concrete, stucco, stone, brick, cement and cement block, which will not be rendered impermeable to water for from seven to fifteen years by the application of Euco Colorless Waterproofing. Many masonry surfaces above grade are of such kind, of such porosity, in such a condition, so located or exposed to such water, moisture or atmospheric conditions that application of the product will not render them impermeable to water or will not render them impermeable for periods of seven to fifteen years. The application of the product to above-grade masonry surfaces will not avert leakage through cracks or other structural defects resulting from ground movement, settlement or other causes subsequent to its application. The product contains ingredients similar to those used in other colorless "waterproofing" compounds, including the allegedly new ingredient of "insoluble metallic grease." The product under like conditions is neither more durable or lasting than other compounds sold for the same purpose. Outdoor exposure for more than two years may reduce the effectiveness of the product by 50 percent or more.

PAR. 11. Through the use of the words "waterproof" and "waterproofing" as set forth in Paragraph Four in connection with said products, respondent has represented, directly and by implication that "Euco Iron Waterproofing" and "Euco Integral Waterproofing" will render any masonry on or in which they are used impermeable to, or proof against the passage of water and moisture throughout the life of the structure in which such masonry is incorporated and under all conditions of water or moisture contact or exposure, and that "Euco

Colorless Waterproofing" will have a like effect for from seven to fifteen years.

PAR. 12. The foregoing representations set forth in Paragraph Ten are false, deceptive and misleading for the reasons and in the particulars hereinbefore stated. Furthermore the said representations as to the periods of time which the claims of impermeability are not based upon actual experience in the use of the products under the various conditions which may be encountered or upon adequate and scientifically recognized tests made under specific conditions for the purpose of determining the length of time impermeability resulting from the use of such products will endure.

PAR. 13. The use by respondent of the foregoing false and deceptive representations with respect to its said products has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities thereof because of said erroneous and mistaken belief.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among various States of the United States and in the District of Columbia of products used for the same purposes, who do not misrepresent the effectiveness thereof. In consequence thereof, injury has been done by respondent to competition in commerce in such products among and between the various States of the United States and in the District of Columbia.

PAR. 14. The aforesaid acts and policies of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Record closed without prejudice by the following order:

This matter came on to be heard in regular course upon motion filed October 18, 1948, by counsel supporting the complaint to close the case without prejudice, to which no answer has been filed by respondent.

It appears from said motion and from the record as a whole that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act have been voluntarily discontinued by respondent upon its acceptance of Trade Practice Rules for the Masonry Waterproofing Industry, approved August 31, 1946, and that respondent has now furnished the Commission with proof of its

full compliance with said Rules and with adequate reason to believe that it will continue to comply therewith.

The Commission is of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time.

It is therefore ordered, That this case be, and it hereby is, closed without prejudice to the right of the Commission to reopen it or to take such action as future facts may warrant.

Mr. Jesse D. Kash for the Commission.

THE TRUSCON LABORATORIES, INC. Complaint, March 8, 1945. Order, June 2, 1949. (Docket 5290.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, comparative merits and composition of products; in connection with the manufacture and sale of various compounds or materials represented as waterproofing agents for the treatment of stone, brick and cement structures designated as "Truscon Zilicon Waterproofing Paste," "Truscon Super-Por-Seal," "Truscon Por-Lox," "Truscon Caulking Compound," and "Truscon Mortite."

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 Truscon Laboratories, 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Truscon Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Detroit, Mich.

PAR. 2. The respondent is now, and for more than 2 years last past, has been engaged in the manufacture and distribution of various compounds or materials for treating stone, brick, and cement structures so as to make them more resistant to water. Among such products are those designated as "Truscon Zilicon Waterproofing Paste," "Truscon Super-Por-Seal," "Truscon Por-Lox," "Truscon Caulking Compound," and "Truscon Mortite."

The respondent causes the said products when sold to be transported from its said place of business in the State of Michigan, and from warehouses located at various other points in other States of the United States, to purchasers thereof located at various points in the several States of the United States, and District of Columbia. Respondent maintains and at all times herein mentioned has maintained, a course

of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of its products, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States, by United States mails, by means of advertising folders, pamphlets, circular letters, labels, and other advertising material all of general circulation, many false statements and representations concerning its said products. Among and typical of such false statements and representations are the following:

Truscon Zilicon Waterproofing Paste

It increases compressive strength.

It reduces shrinkage with fixed water cement ratio which gives an increase of over 100% of slump.

Truscon Super-Por-Seal

There is no more effective way to permanently cure damp walls than by the application of an efficient waterproofing coating, such as Super-Por-Seal. The repellent elements in Super-Por-Seal are of an entirely different type.

* * * After six months' exposure to water, a Super-Por-Sealed block of stone absorbed only one-tenth the amount of moisture absorbed by the same type of stone coated with a wax type of dampproofing.

Truscon Por-Lox

Por-Lox is a "super" coated surface waterproofing which has uses in three well defined fields.

1. Strictly as a transparent waterproofing for use on very porous exterior brick, concrete and stucco. Very effective on highly porous building materials, such as cinder block. * * * Is very effective against penetrating rust and dampness. May be painted over.

The permanent surface waterproofing.

The only practical dampproofing for very porous masonry or concrete construction.

There are numerous transparent coatings on the market—all of which are for other purposes, but not adapted for permanency and sealing the hair checks and very porous concrete or brick.

Truscon Caulking Compound

Possesses permanent life and adhesiveness.

Truscon Mortite

For nonshrinking, waterproof mortar.

Reduces amount of water required by as much as 25%, with improved workability. Thereby reduces or eliminates possibility of normal mortar shrinkage or drying.

* * * Eliminates efflorescence on brick.

PAR. 4. Through the foregoing statements and representations hereinabove set forth and others similar thereto, but not specifically

set out herein, the respondent represents directly or by implication that its product "Truscon Zilicon Waterproofing Paste" increases the compressive strength of concrete in which it is used as an additive; that it materially reduces shrinkage in concrete and that its use with fixed water cement ratio gives a 100 percent increase of slump; that its product "Truscon Super-Por-Seal" is an effective waterproofing material or compound and when applied to damp walls or structures will protect such surfaces against the effects of water and dampness and cause them to become permanently waterproof and dampproof; that the elements or ingredients contained in said product are of an entirely different type than that used by others; that stone treated by it absorbs only one-tenth the amount of moisture as is absorbed by the same type of stone treated with wax types of dampproofing; that its product "Truscon Por-Lox" is a superior type of waterproofing compound and is effective for very porous exterior brick, concrete and stucco structures and highly porous building materials such as cinder blocks; that the use of said product creates a permanent waterproofing condition in the structure in which it is used; that its product "Truscon Caulking Compound" creates a permanent condition in the structures in which it is used; that its product "Truscon Caulking Compound" creates a permanent condition of waterproofing and adhesiveness; that its product "Truscon Mortite" when added to mortar renders the mortar waterproof and prevents shrinkage; that it reduces the amount of water required by as much as 25 percent, thereby reducing or eliminating normal shrinkage or drying; that said product eliminates efflorescence or lime stains on brick.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact respondent's product "Truscon Zilicon Waterproofing Paste" does not increase the compressive strength in concrete in which it is used as an additive. It does not materially reduce shrinkage in concrete and its use does not effect an increase of over 100 percent of slump.

Respondent's product "Super-Por-Seal" is not an effective waterproofing material or compound and when applied to damp walls of structures under all conditions of application and use will not protect such structures against the effects of water and dampness and cause them to become permanently waterproof and dampproof. The use of said product does not create a permanent condition but its effectiveness is definitely limited as to time. It is not effective in preventing moisture from entering highly permeable brick masonry walls or in sealing the cracks or interstices in brick masonry. The elements or ingredients contained in said product are not of an entirely different

type than that used by others. Stone treated by said product does not absorb only one-tenth the amount of moisture as is absorbed by the same type of stone treated with wax types of dampproofing. Other wax type products are comparable with respondent's said product as to water or moisture repellents.

Respondent's product "Truscon Por-Lox" will not effectively waterproof very porous exterior brick concrete and stucco structures, and is not effective in waterproofing highly porous building materials such as cinder block. The use of said product does not create a permanent waterproofing condition.

Respondent's product "Truscon Caulking Compound" does not possess permanent life and adhesiveness. The use of said product and the effect thereof does not create a permanent or everlasting condition.

Respondent's product "Truscon Mortite" when added to mortar does not render such mortar waterproof under all conditions of use, and does not reduce shrinkage and cannot be depended upon to eliminate efflorescence or lime stains on brick, and its use does not reduce the amount of water required by as much as 25 percent or any appreciable percentage.

While respondent's waterproofing and dampproofing compounds when expertly applied under certain limited conditions of use will effectively waterproof or dampproof such structures for varying periods of time the effectiveness is not permanent under any condition of use. They will not effectively waterproof, or dampproof, brick, concrete, cement, stucco or other masonry surfaces when such surfaces are subjected to water under pressure. There are other like products and materials when expertly applied under certain limited conditions of use that are as effective as respondent's said products. However, no products or materials have yet been developed which are capable of coping with all forms of seepage above and below grade.

PAR. 6. The use by the respondent of the foregoing statements and representations disseminated as aforesaid has had and now has the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and did induce and does induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's said products as a result of such belief.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the 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.

Record closed without prejudice by the following order:

This matter came on to be heard by the Commission upon motion filed on January 26, 1949, by counsel supporting the complaint, to close the case without prejudice, to which no answer has been filed by respondent.

The complaint herein, issued on March 8, 1945, charges respondent with the use of unfair and deceptive acts and practices in commerce in the sale and distribution of waterproofing and dampproofing compounds through false, misleading, and deceptive statements and representations as to the results to be obtained from the use of said compounds.

Having duly considered the motion and the record herein, and it appearing to the Commission that respondent has accepted the Trade Practice Rules for the Masonry Waterproofing Industry approved August 31, 1946; that all of the practices alleged in the complaint as being in violation of the Federal Trade Commission Act are covered by said Rules or were discontinued by respondent prior to the issuance of the complaint; that respondent has furnished the Commission with proof of its full compliance with said Rules and with adequate reason to believe it will continue to comply therewith; and it further appearing that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to institute such further proceedings as may be warranted by the facts.

Mr. Jesse D. Kash for the Commission.

Wickes, Riddell, Bloomer, Jacobi & McGuire, of New York City, for respondent.

CONSUMERS CO. AND MATERIAL SERVICE CORP. Complaint, January 29, 1946. Order, June 2, 1949. (Docket 5418.)

Charge: Combining and conspiring to suppress and restrict competition in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, building material, ice, and fuel in the North Central States, particularly in the States of Illinois, Indiana, and Wisconsin, through allocating and dividing production of crushed dolomite limestone, fluxing stone, and aggregate, and through collusive bidding practices and limitation of former competitive activities, by controlling and operating as bogus independent and continued competitor, former competitive concern, in violation of section 5 of the Federal Trade Commission Act; and acquiring stock of said competitive concern, in violation of section 7

of the Clayton Act, with result that effect of such acquisition might be to substantially lessen competition in interstate commerce between said concern and themselves, to restrain such commerce in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and other building material and fuels in certain sections and communities of the United States, particularly in the metropolitan area of Chicago, Ill., and in the States of Indiana, Illinois, and Wisconsin, and to tend to create a monopoly in said respondents in said territory in products concerned.

COMPLAINT

COUNT I

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 Consumers Co. and Material Service Corp., hereinafter referred to as respondents, have violated the provisions of section 5 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 Consumers Co. is a corporation organized February 1, 1937, as Consumers Co. of Illinois (name changed in 1940) and doing business under and by virtue of the laws of the State of Delaware, with its general office and principal place of business at 228 North LaSalle Street, Chicago, Ill. Said respondent is a reorganization of Consumers Co., which was organized under the laws of Illinois in 1913 as a consolidation of Knickerbocker Ice Co. and the City Fuel Co. In 1929, it acquired the assets of Wisconsin Lime & Cement Co. and the Central Lime & Cement Co. of Chicago, both engaged in the operation of quarries and in the sale of stone and other building materials.

Said respondent has outstanding capital stock amounting to approximately \$6,000,000; net assets amounting to approximately \$11,000,000. It is now, and for more than 3 years last past has been, engaged in the operation of stone quarries and gravel pits located in the States of Illinois and Wisconsin and in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel and building materials, ice and fuels, to consumers and users thereof located in the several North Central States, particularly in the States of Indiana, Illinois, and Wisconsin. Said respondent causes said products, when sold, to be transported from places of pro-

duction and manufacture in the States of Illinois, Indiana, and Wisconsin to the purchasers thereof located in other States of the United States, and there has been for more than 3 years last past a constant current of trade and commerce in said products between and among the said North Central States.

Said respondent in the course and conduct of its said business operates a substantial number of fuel and building material retail yards in and near the city of Chicago, through which it distributed the various products sold by it to the purchasers thereof. Said respondent, for a number of years, has been one of the largest producers of stone and vendors of building materials and fuels in the United States. The value of its total sales in 1944 was approximately \$16,000,000. During said period of time, said respondent has sold substantial quantities of stone and other products to the United States Government, the State of Illinois, the city of Chicago, and also large building and paving contractors, as well as numerous railroad companies and large industrial users, such as steel manufacturers.

PAR. 2. Respondent Material Service Corp. is an Illinois corporation, having been organized under the laws of that State in 1919, with its present office and principal place of business located at 33 North LaSalle Street, in the city of Chicago. Said respondent has outstanding capital stock amounting to approximately 80,000 shares, par value \$10 per share; total assets of approximate value of \$6,000,000. Said respondent owns and operates several stone quarries and sand and gravel pits, either directly or through wholly owned subsidiary corporations, near the city of Chicago, in the States of Indiana, Illinois, and Wisconsin. For more than 3 years last past, it has been engaged in the sale and distribution of dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and other building material and fuels to consumers thereof located in the States of Illinois, Indiana, and Wisconsin, causing said products when sold to be transported from the quarries, plants, and other places of production to and through distribution points to the purchasers thereof located in States other than the State of production. The volume of its net sales of such products in 1943 was of the approximate value of \$10,000,000. There is now, and has been for more than 3 years last past, a constant current of trade and commerce in said products between and among said States.

PAR. 3. Dolese & Shepard Co. is a corporation, organized in 1897, under the laws of the State of Illinois, with its principal place of business located at McCook, Ill., but with its business office located at 111 West Washington Street in the city of Chicago. Said cor-

poration has an outstanding capital stock of 17,000 shares, par value \$50 per share; assets of approximately \$1,000,000. Said corporation is engaged in the business of operating limestone quarries in the State of Illinois, and in the sale of dolomite crushed limestone, fluxing stone, building stone and aggregate to large users and consumers thereof, and also the wholesale dealers in building materials, including the respondents, located in the States of Indiana, Illinois, and Wisconsin. Said corporation, in the course and conduct of its said business, causes its said products to be transported from its place of production in the State of Illinois to the purchasers thereof located in States other than the State of Illinois. For a number of years prior to the year 1935, Dolese & Shepard Co. was the principal source of supply of crushed dolomite limestone and fluxing stone, as well as a competitor of respondents Consumers Co. (Illinois corporation) and Material Service Corp. For a number of years, it has been, and now is, the largest producer of crushed dolomite limestone and fluxing stone in the Chicago, Illinois area, where are located many large steel plants, the principal consumers of such products.

PAR. 4. Said respondents for more than 3 years last past have been engaged in an agreement, understanding, combination, and conspiracy between themselves and other corporations and individuals associated with them, and they have pursued, and still pursue, an agreed and planned common course of action, to suppress, stifle, and restrict competition in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, building material, ice, and fuel in the North Central States, particularly in the States of Illinois, Indiana, and Wisconsin. Pursuant to, and in furtherance of, said agreement, understanding, combination and conspiracy, and in order to effectuate the same and to carry out said planned common course of action, respondents adopted and engaged in the following acts, practices and methods, among others:

(1) Between the years 1935 and 1941, said respondents acquired, either directly or through other persons associated with them, a substantial number of shares of outstanding capital stock of said Dolese & Shepard Co., and thereby acquired control of the business of the said Dolese & Shepard Co., which said respondents have since operated ostensibly as a competitor, when in fact the stone from its quarries has been allocated, allotted, and divided between said respondents at prices fixed by them, and said stone has been resold by said respondents to various large purchasers, including steel companies, railroads, and purchasing agencies of different branches of the United States Government, the State of Illinois and the city of Chicago.

(2) Since on or about March 1, 1937, said respondents, by virtue of and through the ownership or control of, a substantial block of the capital stock of the said Dolese & Shepard Co., have caused the said Dolese & Shepard Co. to refrain from submitting bids on requirements of dolomite limestone, fluxing stone, and aggregate of various large purchasers in the Chicago area, such as steel companies, railroads, and various purchasing agencies of the United States Government, the State of Illinois and the city of Chicago; or to quote excessively high prices on said products, so that said respondents would receive the business without competition from said Dolese & Shepard Co.

(3) Said respondents, since on or about March 1, 1937, by virtue of and through the control of the business of said Dolese & Shepard Co., as hereinbefore set forth, have caused said Dolese & Shepard Co. to confine its activities to the quarrying of stone primarily as a source of supply of stone for said respondents and have prevented it from expanding its business in the sale and distribution of said gravel, cement, and other building materials in competition with said respondents.

(4) For more than 3 years last past, said respondents have allocated, allotted and divided the volume of crushed dolomite limestone, fluxing stone, and aggregate to be quarried and sold by them and fixed the prices thereof to various large purchasers, including steel companies, railroads and purchasing agencies of the United States Government, the State of Illinois, and the city of Chicago.

PAR. 5. The acts and practices of the respondents as hereinbefore alleged are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented price competition between respondents in the sale of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and other building material and fuel in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices of said products; have increased the prices of crushed dolomite limestone, fluxing stone, aggregate building stone, and other building materials paid by the purchasers thereof; have created in the respondents a monopoly in the sale of said products in such commerce; have unreasonably restrained such commerce in said products, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

COUNT II

The Federal Trade Commission, having reason to believe that Consumers Co. and Material Service Corp., herein called respondents, have violated and are now violating the provisions of section 7 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act) hereby issues its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint to the same extent and as though the allegations of said paragraph 1 of said count I were set out in full herein and said paragraph 1 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the allegations of said paragraph 2 of said count I were set out in full herein and said paragraph 2 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set out in full herein and said paragraph 3 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. Said respondents, beginning in the year 1935, and from time to time thereafter, acquired directly or indirectly through other individuals and corporations a substantial number of the outstanding shares of capital stock of the said Dolese & Shepard Co. and since the year 1937, said respondents have voted said capital stock and have gained and from time to time have exercised control over the business affairs of the said Dolese & Shepard Co.

PAR. 5. The acquisition by said respondents of the capital stock of the said Dolese & Shepard Co. as hereinbefore set out, was contrary to law in violation of section 7 of the said Clayton Act and the effect of such acquisition of such stock may be, has been and is—

(a) To substantially lessen competition in interstate commerce between said Dolese & Shepard Co. and said respondents;

(b) To restrain interstate commerce in the sale of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and

other building material and fuels in certain sections and communities of the United States, particularly in the metropolitan area of Chicago, Ill., in the States of Indiana, Illinois, and Wisconsin.

(c) To tend to create a monopoly in said respondents in said territory in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and other building material and fuels.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission, respondents' answers, the amended answer of respondent Consumers Co., testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision (no briefs having been filed by opposing counsel and oral argument not having been requested), and upon motions to dismiss count II of the complaint, entered by counsel for respondents on November 6, 1947, at the time counsel supporting the complaint rested its case.

Complaint was issued in this matter on January 29, 1946. Count I thereof charges respondents with entering into and carrying out an agreement, understanding, combination, and conspiracy between themselves and other corporations and individuals associated with them to suppress, stifle, and restrict competition in the sale and distribution of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, building material, ice, and fuel, in violation of section 5 of the Federal Trade Commission Act. It alleges that pursuant to, and in furtherance of, said agreement, understanding, combination, and conspiracy, respondents acquired a substantial number of shares of the capital stock of their competitor Dolese & Shepard Co., and afterwards operated it ostensibly as a competitor, when, in fact, the stone from its quarries was allocated and divided between them and sold at prices fixed by them; that respondents, by virtue of said stock ownership, caused Dolese & Shepard Co. to refrain from submitting bids or to submit excessively high bids to certain large customers for their requirements of dolomite limestone, fluxing stone, and aggregate, so that respondents would receive the business without competition from Dolese & Shepard Co. and caused said firm to confine its activities to the quarrying of stone for respondents and prevented it from expanding its business in the sale and distribution of gravel, cement, and other building material ordinarily sold in competition with respondents; and, further, that respondents allocated and divided the volume of crushed dolomite limestone, fluxing stone, and aggregate to be quarried and sold by them and fixed the prices thereof.

Count II of the complaint charges that respondents violated section 7 of the act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), by acquiring the capital stock of a competitor, Dolese & Shepard Co., and using the voting power thereof to substantially lessen competition between them and Dolese & Shepard Co., to restrain interstate commerce in the sale of crushed dolomite limestone, fluxing stone, building stone, aggregate, sand, gravel, and other building material and fuels in certain designated areas, and to tend to create a monopoly in said respondents in the sale and distribution of said products.

Counsel in support of the complaint, at a hearing held October 8, 1947, announced that he was no longer relying on count I of the complaint and that said count was then abandoned. Respondents moved to dismiss count II of the complaint on the basis that they had divested themselves of the capital stock of Dolese & Shepard Co. by sale and transfer of the same to purchasers thereof who have no direct or indirect interest in, or connection with, either of them. The evidence of record discloses that prior to November 6, 1947, each of the respondents herein had sold and transferred the capital stock which it formerly held in Dolese & Shepard Co. to persons or firms which have no direct or indirect connection with, or interest in, either of them.

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances respondents' motions to dismiss count II of the complaint should be granted and that count I should be dismissed because of abandonment:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Everett F. Haycraft, *Mr. Lewis F. Depro*, *Mr. Reuben J. Martin* and *Mr. Lynn C. Paulson* for the Commission.

Scott, MacLeish & Falk, of Chicago, Ill., for Consumers Co.

Schradzke & Gould, of Chicago, Ill., for Material Service Corp.

I. H. MARSHALL AND ROBERT E. DIETZ TRADING AS HOME SERVICE Co. Complaint, June 8, 1943.¹ Order, June 8, 1949. (Docket 4964.)

Charge: Advertising falsely or misleadingly as to patent rights and as to qualities, properties or results, guarantee and European acceptance; in connection with the sale of a solution for the treatment of fabrics against moths and carpet beetles designated H-S-C Immunizing Solution and a cleaning solution designated NuLife Foam.

AMENDED 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 I. H. Marshall, trading as Home Service Co., hereinafter referred to as the respondent, has 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, I. H. Marshall, is an individual trading as Home Service Co., with his office and principal place of business located in Deerfield, Ill.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in offering for sale and selling a certain solution for the treatment of fabrics against moths and carpet beetles designated H-S-C Immunizing Solution, and a certain cleaning solution designated NuLife Foam. Respondent causes his said products, when sold, to be transported 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.

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

PAR. 3. In the course and conduct of his business in connection with the sale of his said products, in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused and is now causing advertisements to be made in newspapers, magazines, and in other publications and advertising literature distributed to the purchasing public throughout the United States which contain many false and misleading statements and representations respecting the nature and effectiveness of his said products. Among and typical of the statements and representations so made and used with regard to his said products are the following:

This is the only process of this type issued a United States patent.

The patented immunizing solution is amazing.

¹ Amended.

The patent protected immunizing service—

Upholstery, rugs, drapes, furs, clothing, piano-felts, become immune to moths, beetles, mildew.

* * * is Guaranteed to make fabrics non-eatable to both (moths and carpet beetles).

Upholstery, carpets, furs, clothing, blankets, piano-felts, auto-interiors, made non-eatable by moths or carpet beetles * * *.

Upholstery, carpets, rugs, furs, clothing, blankets, piano-felts, etc., are protected.

Four-year Moth Immunizing Guarantee. The Home Service Company issues a Guarantee Certificate to your customers, assuring them that the H-S-C treatment fully protects their furniture, furs, clothing, piano-felts, rugs and other fabrics against becoming damaged by moths or carpet beetles for a period of 4 years.

Successful for 17 years in Europe * * *.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents directly or indirectly to purchasers and prospective purchasers that his foam cleaning process is patented; that his H-S-C Immunizing Solution is patented, and that his service in connection with this solution is patented; that his solution has an immunizing or protective effect against moths and carpet beetles; that his solution will render fabrics of any description uneatable by moths and carpet beetles; that he indemnifies customers for any damage or loss caused by moths or carpet beetles to fabrics which have been treated with his solution; and that his solution is used or sold in Europe.

PAR. 5. The statements and representations used and disseminated by the respondent in the manner above described are false, misleading, and deceptive. In truth and in fact his foam cleaning process is not patented; his H-S-C Immunizing Solution is not patented and his service in connection with this solution is not patented; his said solution has no immunizing or protective effect against moths or carpet beetles either permanently or temporarily; his said solution will not render fabrics of any description uneatable by moths or carpet beetles; he does not indemnify customers for any damage or loss caused by moths or carpet beetles to fabrics which have been treated with his solution; and respondent's solution is not used or sold in Europe.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now 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 all of such statements and representations are true, and induces a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's products, as aforesaid.

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.

Record closed without prejudice by the following order :

This matter coming on to be heard by the Commission upon a motion filed October 21, 1948, by counsel in support of the complaint, requesting that this proceeding be closed without prejudice, a letter from the respondent dated August 23, 1948, in which respondent does not oppose the request made in such motion, a subsequent motion requesting permission to withdraw the motion to close the case without prejudice, filed May 3, 1949, by counsel in support of the complaint, and a second letter from the respondent dated May 31, 1949; and

It appearing to the Commission that the preparations involved in the proceeding are "economic poisons" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, approved June 25, 1947, and that the respondent's advertising claims concerning the efficacy of such preparations against moths and carpet beetles have been considered and approved by the Secretary of Agriculture in connection with the registration of the preparations under the provisions of said act; and

The Commission being of the opinion that under its policy of co-operating with other Federal agencies in connection with practices and commodities concerning which such other Federal agencies also have jurisdiction, no further corrective action should be taken in this matter at this time with respect to the aforesaid claims; and

It further appearing that the other challenged advertising representations, including those the use of which was assigned as grounds for the motion for permission to withdraw the motion to close the case without prejudice, have now been discontinued by the respondent with the stated intention of not resuming the use of any of them, and the Commission being of the opinion that in the circumstances the public interest does not require further corrective action at this time with respect to these representations :

It is ordered, That the case growing out of the amended complaint in this proceeding be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same, or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the motion for permission to withdraw the motion to close the case without prejudice be, and it hereby is, denied.

Mr. Karl Stecher and Mr. Joseph Callaway for the Commission.

ANTI-HYDRO WATERPROOFING Co. Complaint, June 1, 1943. Order, June 21, 1949. (Docket 4975.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties or results of products and as to respondent being manufacturer of all its products; in connection with the manufacture and sale of compounds or materials for treating stone, brick, and cement structures so as to make them more resistant to water, which are designated by it as "Anti-Hydro" and "Aridclear," and sale of other compounds or materials which are manufactured for it to be used for similar purposes, which are designated by it as "Aridtite" and "Amurseal."

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 Anti-Hydro Waterproofing Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Anti-Hydro Waterproofing Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its office and principal place of business at 265-277 Badger Avenue, Newark, N. J.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the business of manufacturing and selling compounds or materials for treating stone, brick, and cement structures so as to make them more resistant to water, which are designated by it as "Anti-Hydro" and "Aridclear." Respondent sells other compounds or materials which are manufactured for it to be used for similar purposes, which are designated by it as "Aridtite" and "Amurseal."

The respondent causes its said products, when sold, to be transported from its said place of business in the State of New Jersey to purchasers thereof located at various points in the several States of the United States other than the State of New Jersey and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the promotion of the sale and the sale of said products in commerce among and between the various States of the United States, and as an inducement to cause the purchase thereof, the respondent makes many misleading statements and representation respecting the results to be obtained through the use of its said prod-

ucts through the means of circulars and form letters and other advertising literature distributed in the various States of the United States and in the District of Columbia. Respondent also places representations as to the effectiveness of its said products as waterproofing materials or compounds on the labels on containers in which the product is offered for sale and sold. Among and typical of such misleading statements and representations circulated as aforesaid concerning its product "Anti-Hydro" are the following:

"ANTI-HYDRO" hardens and waterproofs Concrete.

This integrally forms an insoluble mass which is permanently waterproof and hard through and through.

. . . renders the cement masonry impervious to water, moisture, . . .

. . . "ANTI-HYDRO" produces dustless, adamant floors that are permanent.

Makes All Masonry Impervious to Moisture and Gases.

These damp-proofing coats act as a permanent check to efflorescence. Last forever.

Among and typical of such misleading statements and representations circulated as aforesaid concerning its product "Aridclear" are the following:

Apply ARIDCLEAR, the transparent dampproofing, to all outside masonry walls.

Two good coats applied by brush or spray on successive days to clean, dry, well-pointed masonry produce a permanently dampproof surface.

The permanence of the treatment is accomplished by incorporating in Aridclear, materials which are unaffected by exposure to weather, or by the caustic lime always present in masonry and cement products.

Among and typical of such misleading statements and representations circulated as aforesaid concerning its product "Aridtite" and "Amurseal" are the following:

ARIDTITE. The Dampproof Plasterbond.

AMURSEAL. The Foundation Dampproofing.

These superior dampproofings are made by the makers of Anty-Hydro, for over 25 years the standard integral waterproofing and concrete hardener with guaranteed results.

PAR. 4. Through the foregoing statements and representations, and through other statements not set out herein, the respondent represents directly or by implication that its product "Anti-Hydro" is an effective waterproofing material or compound, and that when applied as a coating to all brick, concrete, stucco, or other masonry surfaces, under all conditions of use, will make such surfaces permanently waterproof and impervious to water, moisture and gases and will last forever.

Through said statements the respondent represents that its product designated "Aridclear," when applied to outside masonry walls, will render such walls permanently waterproof and dampproof.

Through the use of the foregoing statements concerning "Aridtite" and "Amurseal," the respondent represents that it manufactures said products and that, when applied to all outside masonry surfaces, they will render such surfaces permanently dampproof.

PAR. 5. The foregoing statements and representations made by the respondent in connection with the promotion of sale and sale of its said products are misleading. In truth and in fact none of such products is an effective waterproofing or dampproofing material or compound when applied to all brick, concrete, stucco, and other masonry surfaces under all conditions of application or use, nor will any of such products effectively protect all such surfaces against the effects of water and dampness.

While "Anti-Hydro" and "Aridclear" may, when applied under some conditions, effectively waterproof or dampproof structures for varying periods of time, their effectiveness is not permanent under any conditions of use. "Anti-Hydro," when applied to masonry walls, does not render such walls impervious to water nor will it last forever. The products "Aridtite" and "Amurseal" are not manufactured by the respondent in its factory or in any plant owned and operated by it.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true, and to induce, and does induce, the public to purchase substantial quantities of respondent's products as a result of such belief.

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

Order granting motion to close proceeding without prejudice follows:

This matter coming on for consideration by the Commission upon the motion of counsel supporting the complaint to close this proceeding without prejudice and the answer of counsel for respondent interposing no opposition thereto; and

It appearing from such motion that the practices charged in the complaint as being in violation of the Federal Trade Commission Act have been voluntarily discontinued and that there is adequate reason to believe that respondent is complying with the Trade Practice Rules for the Masonry Waterproofing Industry promulgated by the Com-

mission on August 31, 1946, subsequent to the issuance of the complaint herein; and

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the case growing out of the complaint herein issued on June 1, 1943, be, and the same hereby is, closed without prejudice to the right of the Commission to institute a new proceeding against respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Edward L. Smith and Mr. George M. Martin for the Commission.

Stern & Reubens, of New York City, for respondent.

CEL CURE WOOD PRESERVING CORP. Complaint, October 21, 1943. Order, June 21, 1949. (Docket 5067.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, government approval and tests, comparative merits and nature of manufacture; in connection with the sale of "Celcure," a preparation designed and intended to be applied to wood for its preservation against rot, termites, marine borers, and other destructive agencies, and lumber to which said preparation has been applied by respondent's treating process and described by respondent as "Celcure Processed (Impregnated) Lumber."

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 Celcure Wood Preserving Corp., 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Celcure Wood Preserving Corp. is a corporation organized under the laws of the State of Florida, with an office and principal place of business at 1040 East Eighth Street, Jacksonville, Fla., and wood-treating plants at Columbia, S. C.; Atlanta, Ga.; Miami and Jacksonville, Fla.

PAR. 2. Respondent is now, and has been for more than 5 years past, engaged in the business of selling and distributing "Celcure," a preparation designed and intended to be applied to wood for its preservation against rot, termites, marine borers and other destructive agencies, and lumber to which said preparation has been applied by respondent's treating process and described by respondent as "Cel-

cure Processed (Impregnated) Lumber." Respondent causes said product and lumber, when sold, to be transported from its various plants and places of business 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 the said product and lumber in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said product and lumber, respondent has made, and caused to be made, by means of advertisements in newspapers having a general circulation throughout the various States of the United States, and by means of advertising letters and circulars sent to prospective purchasers thereof and to architects and builders, representations and claims with respect to the qualities imparted by "Celcure" to lumber irrespective of the method of its application, and when applied by brush, spray or immersion, and with respect to "Celcure Processed (Impregnated) Lumber."

Among and typical of said representations and claims so made are the following:

Non-Inflammable—Celcure—Permanently protects against decay and termites and other wood-boring insects.

Prevent rot and termite attacks on wood forever with Celcure, the permanent wood preservative. Simply brush it on.

You simply brush or spray the liquid freely on the wood and let it soak in thoroughly.

Celcure is a time tested positive protection for any kind of wood against the ravages of rot, termites, boring larvae, beetles and other insects, and teredo and other marine organisms.

Permanent (Non-leachable) Celcure—does not leach out or evaporate by action of sun or water.

In fact, Celcure furnishes a perfect base coat for paint—It positively prevents mold growth, which unchecked, will ruin a paint job on wood.

Nails do not "draw" in Celcure Processed Lumber.

Wear-resisting. Laboratory tests and service show that when wood is treated with Celcure its ability to resist mechanical wear is increased.

Celcure is approved by FHA and proved superior to other leading wood preservatives by U. S. Tests.

High toxicity is avoided and instead of poisoning enemies as they consume it, the wood, by its changed chemical nature effectively and permanently averts their attacks.

Exhaustive tests have shown that although Celcure's Natural Vacuum process is far simpler and more economical than pressure-vacuum treatment, impregnation is just as thorough and net retention of dry chemicals per cubic foot of lumber is as great or greater than that obtained by costly pressure retorts.

PAR. 4. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein,

respondent has represented, directly and by implication, that Celcure, regardless of the manner of its application to any wood, and when applied by brush, spray or immersion, will render it noninflammable, and will permanently and positively protect it against decay, termites, and all other wood-boring insects including all marine organisms, wherever such wood is used; that it will not leach or evaporate from wood to which it is applied; that Celcure furnishes a base coat for paint and will prevent mold growth on paint; that nails do not "draw" in Celcure Processed Lumber; that wood is rendered more resistant to mechanical wear by treatment with Celcure; that Celcure has been approved by the Federal Housing Authority and that tests conducted by departments or agencies of the United States government have demonstrated its superiority to other leading wood preservatives; that it is of low toxicity; that in the preparation and treatment of lumber by respondent, which is sold by it as "Celcure Processed (Impregnated) Lumber" by its so-called "Natural Vacuum" process, a vacuum is used, and that this process is as effective or more effective than pressure treatments.

PAR. 5. The aforesaid claims and representations are false and misleading. In truth and in fact, the degree of effectiveness, and its duration obtained by any preservative treatment for wood against rot and insects depends upon many factors, including, among others, the nature of the preservative, the species of wood, the form and condition of the wood at the time of treatment, the amount of heart wood in the pieces treated, and the treating process insofar as it affects the extent to which the preservative penetrates into and is retained by the wood. Celcure, however applied, does not render wood noninflammable or significantly decrease its inflammability, nor permanently or positively protect it against decay, termites and other wood-boring insects, land and marine. Celcure will leach from wood to which it has been applied, although it is resistant to leaching. Celcure does not act as a "base coat" for paint, and it does not prevent the growth of mold on paint. The "drawing" or working of nails in wood depends upon moisture and temperature, and the swelling or shrinking of wood due to those causes, will not be eliminated by the use of Celcure. The use of Celcure does not significantly increase the resistance of wood to mechanical wear. Celcure has not been approved as a wood-preserving product by the Federal Housing Authority nor have tests conducted by any agency or department of the United States Government demonstrated its superiority to other wood preservatives. The ingredients of Celcure are highly toxic. Respondent's "Natural Vacuum" process of treatment does not employ a vacuum, whereas the "pressure treatments" which are generally recognized as providing

the most efficacious mode of treatment, do employ a vacuum. Respondent's process involves neither vacuum nor pressure beyond atmospheric, and its so-called "Natural Vacuum" process is merely the "hot and cold bath" process with a more impressive name, a process which is generally regarded as inferior in effectiveness to the pressure processes.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and claims with respect to its product and lumber, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims were true, and to induce a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's product and lumber.

PAR. 7. The aforesaid acts and practices of 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.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint, filed by counsel for respondent on October 6, 1948, the answer thereto, filed November 9, 1948, by which said motion is not opposed, the record herein, and the recommendation of the trial examiner.

The complaint herein, issued October 21, 1943, charges respondent with unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act in the sale and distribution of "Celcure," a preparation designed and intended to be applied to wood for its preservation against rot, termites, marine borers, and other destructive agents, and in the sale and distribution of lumber treated therewith, through the use of certain stated claims and representations in connection therewith alleged to be false and misleading and made or caused to be made for the purpose of inducing the purchase of said preparation and lumber.

From the evidence of record and from information recited in the affidavit filed in support of respondent's motion, it appears that the claims and representations challenged in the complaint were last published by respondent and its predecessor corporation in 1940 and 1941; that their circulation and use were discontinued prior to April 10, 1942, several months before the complaint was issued; and that there is adequate reason to believe that their use will not be resumed.

During the period of World War II, respondent utilized its plant facilities exclusively for the production of material for the United States Government, at the termination of which a reorganization was effected, whereby its management, as well as its sales and advertising policies, underwent a complete change. An examination of current advertising of respondent fails to disclose the use of any of the claims and representations challenged in the complaint. The Commission is therefore of the opinion that in these circumstances the public interest does not require further corrective action in this matter at this time.

The Commission having duly considered the matter and being now fully advised in the premises and being of the opinion that in the circumstances respondent's motion to dismiss the complaint should be granted:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Randolph W. Branch and *Mr. William L. Pencke* for the Commission.

Paul & Paul, of Philadelphia, Pa., for respondent.

MILTON L. LIEBERMAN, TRADING AS JAXON PRODUCTS AND ELGEE PRODUCTS, MFRS. Complaint, February 11, 1949. Order, June 21, 1949. (Docket 5637.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the manufacture and sale of an electric water heater designated as "Heet Master, Jr."

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade Commission having reason to believe that Milton L. Lieberman, an individual, trading as Jaxon Products and Elgee Products, Mfrs., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Milton L. Lieberman, is an individual doing business under and by virtue of the laws of the State of Illinois with his principal place of business located at 4730 Sheridan Road in the city of Chicago, State of Illinois.

PAR. 2. Said respondent is now and for several years last past has been engaged in the manufacture and sale of an electric water heater designated as "Heet Master, Jr." Respondent formerly purchased said hot water heating device from the Autonator Laboratories Co., but discontinued his purchases in the summer of 1947 when he began the manufacture, sale, and distribution thereof under his various trade names.

Said "Heet Master, Jr." is an immersion electrode type appliance in which the heating element is exposed and in direct contact with the water or liquid. It consists of a chrome-nickel coil wire heating element mounted on an asbestos core and encased in two aluminum shells.

PAR. 3. Respondent causes and has caused said "Heet Master, Jr." when sold to be shipped from his place of business in the State of Illinois to wholesalers, distributors, retailers, and the general public located in various other States of the United States and in the District of Columbia. Said wholesalers, distributors, and retailers in turn sell said hot water heater to the general public or to retailers for sale to the general public. Respondent also conducts a mail order business by means of which he sells directly to consumers. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said hot water heater in commerce, between and among the various States of the United States and in the District of Columbia. His volume of business in said hot water heater in such commerce is substantial.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the sale of his said product, in commerce, respondent, since 1945 has made certain statements and representations concerning said product by means of advertisements inserted in newspapers and circulars both of which were circulated among the purchasing public. Among and typical of the statements and representations contained in said advertisements and circulars are the following:

**HOT WATER IN A JIFFY
HOT WATER INSTANTLY WITH THIS FAST
WORKING ELECTRIC HOT WATER HEATER**

With this handy device water can be heated anywhere in a hurry by simply plugging the cord into the light socket.

PAR. 5. Through the use of the advertisements and circulars hereinabove set forth and others of the same import but not specifically set out herein, the respondent has represented that his "Heet Master, Jr." will produce hot boiling water in a jiffy and that hot water will be ready for use instantly after plugging the electric cord into the light socket.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, said water heater will not produce "Hot water in a jiffy" nor will it produce "Hot water instantly upon plugging the electric cord into a light socket"; but to the contrary, it requires considerable time in its heating action, depending upon the amount of water heated.

PAR. 7. Respondent's product, under some conditions of ordinary use, constitutes a serious electrical hazard in that intolerably large currents of electricity may flow through portions of the human body, in fact under some conditions of ordinary use electrocution is possible. By failing to reveal these facts respondent impliedly represents, contrary to the facts, that said product is harmless under all conditions of ordinary use. Said advertisements are further misleading and deceptive in that they fail to reveal the dangerous consequences which may result from the use of said product in some conditions of ordinary use.

PAR. 8. The use by the respondent of the aforesaid statements and representations disseminated as aforesaid has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that said product is harmless under all ordinary conditions of use and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase said "Heet Master, Jr."

PAR. 9. The aforesaid acts and practices of 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.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission upon motion filed on April 18, 1949, by counsel supporting the complaint, to dismiss the complaint herein without prejudice, to which respondent has assented.

The complaint herein, issued February 11, 1949, charges respondent with the use of unfair and deceptive acts and practices in commerce in the sale and distribution of an electric water heater device designated as "Heet Master, Jr." through false, misleading, and deceptive statements and representations as to results to be obtained from the use of said device and through failure to reveal the dangerous consequences which may result from the use of said device in some conditions of ordinary use.

Having duly considered said motion and the record herein, and it appearing to the Commission that respondent discontinued the busi-

ness of manufacturing and selling said device prior to the issuance of the complaint herein, with no apparent likelihood of a resumption thereof, and that there is insufficient public interest to warrant a continuation of this proceeding:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action.

Before *Mr. Frank Hier*, trial examiner.

Mr. Morton Nesmith for the Commission.

NOTE

JOSEPH CAMPBELL Co. Complaint, September 23, 1919. Order, December 11, 1924. (Docket 429.)

Charge: Guaranteeing jobbers in the wholesale grocery trade against decline in list prices, through compensating them by rebates equal to the difference between the price paid and the lower list price subsequently announced; in connection with the manufacture and sale of Campbell soups.

Dismissed by the following order:

The above-entitled proceeding coming on for final determination by the Commission, and the Commission having considered the record, and being now fully advised in the premises,

It is ordered, That the above-entitled proceeding be, and the same is hereby, dismissed upon the ground that the respondent corporation has been dissolved.

JAMES McCORD Co., ET AL. Complaint, January 5, 1924. Order, December 13, 1924. (Docket 1109.)

Charge: Conspiring to cut off competitors' supplies, and coercing and intimidating suppliers, by boycotts and threats thereof and other species of intimidation, into refusing to sell to competitors, on the part of respondent wholesale food dealers; in connection with the sale of tobacco and tobacco products.

Dismissed by the following order:

This matter coming on for final determination, and the Commission being now fully advised in the premises,

It is ordered, That the complaint in the above proceeding be and the same is hereby dismissed, for the reason that while it appears that there was certain evidence in the case to warrant the belief that there was concerted action on the part of the respondents as alleged, the Commission deems the evidence submitted in support of the complaint insufficient in law to warrant the issuance of an order to cease and desist.