

IN THE MATTER OF

WALSH REFRACTORIES CORP.

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

Docket 5269. Complaint, June 7, 1945¹—Decision, July 19, 1945²

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of refractory products, including its "Walsh Ref. Corp. Mullitex" firebrick; in circulars disseminated throughout the United States—
Represented directly and by implication through use of the term "Super Refractory" that its said firebrick possessed the qualities of a product known in the refractory industry as "super-refractory"; when in fact its said product was not a super-refractory, as now understood in the industry, but was a "super-duty refractory";

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representation was true and to induce a substantial number thereof to purchase its said "Mullitex" fire brick:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Andrew B. Duvall* and *Mr. Randolph Preston*, trial examiners.

Mr. Clark Nichols for the Commission.

Mr. T. M. Pierce, Mr. A. M. Menzi and *Bruninga & Sutherland*, of St. Louis, Mo., for respondent.

¹ Amended.

² The Commission on November 26, 1948, issued an order granting in part motion to dismiss complaint, as follows:

"This matter came on to be heard in regular course upon respondent's motion of February 19, 1948, for leave to file petition for reconsideration; said petition for reconsideration by the Commission of its order of January 15, 1948; the answer to said petition filed on March 3, 1948, by counsel supporting the complaint; brief in support of the petition for reconsideration filed July 22, 1948, pursuant to leave granted; and memorandum reply brief filed August 23, 1948, by counsel supporting the complaint.

"Respondent's major contention is that the Commission erred in sustaining the view of the trial examiner that a *prima facie* case had been made out in support of the charge of the complaint that the designation 'Mullitex' as applied to respondent's firebrick was false and misleading. This point has been briefed by respondent in detail. After consideration of all the testimony and other evidence taken in the proceeding, it appears that there is no established or generally recognized standard of mullite content for 'mullite' or 'mullite type' brick, and that the brick designated by respondent as 'Mullitex' contain substantial proportions of mullite (the record indicates a theoretical maximum of slightly more than 55 percent mullite and a practical probability of approximately 45 percent). There is no showing that 'Mullitex,' when not joined with the term 'super-refractory' or other word or term of similar meaning, is likely to mislead or deceive. In these circumstances, and upon reconsideration of respondent's motion to dismiss the complaint:

"*It is ordered*, That the charge in the complaint in this proceeding respecting the term 'Mullitex' as applied to respondent's firebrick be, and the same hereby is, dismissed."

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 the Walsh Refractories Corp., 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 interest of the public, 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 Missouri, with its office and principal place of business located at 4070 North First Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of refractory products, among which is a firebrick branded "Walsh Ref. Corp. Mullitex," and a high-temperature mortar labeled "Walsh Mullitex High Temperature Cement." Respondent causes said products, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various States other than the State of Missouri and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said firebrick 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, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of manufacturing and selling firebrick and other refractory products, 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 aforesaid business, and for the purpose of promoting the sale of said refractory products, respondent has made false, misleading, and deceptive representations by means of pamphlets, circulars, and other advertising literature, disseminated through the United States mails. Among and typical of the representations made by the respondent as to the Walsh Ref. Corp. Mullitex Brick are the following:

MULLITEX—A Super Refractory, Non-Shrinking, Non-Spalling Fire Brick, manufactured by Dry Press Process. Highly resistant to certain slags and other

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fluxing agents . . . Will not shrink or spall due to extreme heat or rapid temperature changes. Recommended for Electric Furnaces . . . Boiler Furnace Side Walls and Arches . . . Forge Furnaces . . . Oil Burning Locomotive Fire Boxes . . . Enameling Furnaces . . . Ceramic Kilns . . . Silicate of Soda Furnaces . . . Tunnel-Kilns . . . Glass Furnace Ports . . . Regenerator Checkers . . . and wherever extreme heat and sudden changes in temperature are encountered.

and as to Walsh Mullitex High Temperature Cement, as follows:

A super-duty quality mixture of perfectly blended refractory minerals noted for their resistance to extreme temperatures and other severe conditions. Recommended for services where ordinary cement and mortars do not assure a bond or joint that will withstand unusually high temperatures and where highly corrosive slags and destructive furnace gases are encountered.

Especially adapted for port arches and port side wall construction in glass furnaces, open hearths, electric metal melting furnaces, boiler furnace arches and setting and all other types of furnace where a slag resistant, non-spalling, non-shrinking mortar with tremendous bonding strength is essential for long and economical refractory life.

MULLITEX ingredients differ entirely from those used in ordinary cements—it is truly a superior, super-duty high temperature cement for unusual furnace conditions.

PAR. 5. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set forth herein, especially the words "Mullitex" and "super-refractory," all of which purport to be descriptive of the super-refractory qualities of said products, respondent represents, directly and by implication, that its said firebrick and mortar possess the super-heat resisting qualities of mullite, which is a combination of aluminum oxide and silicon oxide blended by extreme heat in a ratio of approximately 72 percent aluminum oxide and 28 percent silicon oxide.

PAR. 6. The aforesaid representations and the implications arising therefrom are false and misleading. In truth and in fact respondent's products, sold under the trade name "Mullitex," are what are known as fire-clay products, and are made from fire clay mined in the State of Missouri, which clay does not contain the minerals known as mullite, andalusite, kyanite, and sillimanite. In the heating process necessary in manufacturing said firebrick from the original clay materials, mullite crystals are developed by a combination of the alumina and silica in said clay, thereby giving such fire-clay brick a mullite content of from 30 to 40 percent. In the refractory products trade the use of the word "mullite" indicates a product having super-refractory qualities and a percentage content of mullite of at least 75, which will give a measure of refractory performance of pyrometric cone equivalent 38, indicating a fusion point of 3,335° F. or 1,835° C. The use of either

the word "super-refractory" or "mullite" as descriptive of firebrick products in the firebrick trade indicates a "cone" of 38. The maximum pyrometric cone equivalent attained by respondent's Mullitex firebrick and refractory products is 33-34, which means that the fusion point of such products is between 3,173° and 3,200° F. or 1,745° and 1,760° C. In other words, respondent's products, sold under the trade name "Mullitex," are what are known in the trade as firebricks while the products properly described as mullite are known in the trade as super-refractory.

Refractory products known in the trade as mullite or super-refractory are very expensive, selling from \$400 to \$1,000 per 1,000, while the fire-clay brick and fire clay brick products of respondents, sold under the trade name "Mullitex" and others of similar ingredients, are comparatively inexpensive, selling from \$50 to \$65 per 1,000.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations 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 are true, and that said firebrick and cement possess the refractory qualities usually attributed to products properly described as mullite, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said firebrick and cement.

PAR. 8. The 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 and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 27, 1945, issued and subsequently served on respondent, Walsh Refractories Corp., its complaint charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On March 31, 1945, respondent filed its answer to said complaint denying in part and admitting in part the allegations thereof. On June 7, 1945, pursuant to stipulation of counsel supporting the complaint and counsel for respondent, the Commission issued its amended complaint and respondent's answer of record was permitted to stand as its

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answer to the complaint as amended. Thereafter, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, and after certain charges of the amended complaint were disposed of by orders of the Commission duly entered herein, counsel in support of the complaint and counsel for respondent filed with the trial examiner their joint proposed findings and conclusion and proposed order to cease and desist, which were adopted by the trial examiner as his recommended decision herein. Thereafter, the proceeding came on for final consideration by the Commission upon the record, including the amended complaint, answer, testimony and other evidence, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business located at 4070 North First Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of refractory products, among which is a firebrick branded "Walsh Ref. Corp. Mullitex." Respondent causes said product, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various States other than the State of Missouri, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said firebrick 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, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of manufacturing and selling firebrick and other refractory products, 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 aforesaid business, and for the purpose of promoting the sale of said refractory products, re-

spondent has made representations by means of a circular disseminated through the mails and otherwise throughout the United States, containing the following statement:

MULLITEX—A Super Refractory, Non-Shrinking, Non-Spalling Fire Brick, manufactured by Dry-Press Process. Highly resistant to certain slags and other fluxing agents . . . Will not shrink or spall due to extreme heat or rapid temperature changes. Recommended for Electric Furnaces . . . Boiler Furnace Side Walls and Arches . . . Forge Furnaces . . . Oil Burning Locomotive Fire Boxes . . . Enameling Furnaces . . . Ceramic Kilns . . . Silicate of Soda Furnaces . . . Tunnel-Kilns . . . Glass Furnace Ports . . . Regenerator Checkers . . . and wherever extreme heat and sudden changes in temperature are encountered.

PAR. 5. Through the use in the above statement of the term "Super Refractory" respondent represents directly and by implication that its said fire brick possesses the qualities of a product known in the refractory industry as "super-refractory."

PAR. 6. The American Society for Testing Materials in its tentative classification of fire clay refractories issued in 1940 shows the following minimum pyrometric cone equivalents for super duty, high-heat duty, intermediate heat duty, and low heat duty fire-clay brick:

Super Duty Fireclay Brick, not lower than cone No. 33.

High Heat Duty Fireclay Brick, not lower than cone No. 31-32.

Intermediate Heat Duty Fireclay Brick, not lower than cone No. 29.

Low Heat Duty Fireclay Brick, not lower than cone No. 19.

PAR. 7. Neither the American Society for Testing Materials in its aforesaid classification nor the Navy Department in Specification 32R1b issued January 2, 1942, states the maximum cone value of super-duty fireclay refractories. Nor do said publications classify or define a grade of refractories as super-refractories. Walsh Refractories Corp.'s test data fixes the pyrometric cone equivalent of "Mullitex" firebrick at No. 34, and the Mellon Institute of Industrial Research fixes the cone equivalent of "Mullitex" firebrick at Nos. 33-34. Respondent's "Mullitex" firebrick is made entirely from native Missouri fire clay.

PAR. 8. A witness familiar with the refractory industry testified that alumina diaspore firebrick having a pyrometric cone equivalent not lower than 34, 35, or 36, depending upon the alumina content, are generally called "super-refractories" and that "super-refractory" firebrick connoted "a highly refractory material which presumably could stand very special conditions of service," but which does not necessarily contain any mullite or any alumina or any great amount of silica. Another witness engaged in the refractory business testified that the

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minimum pyrometric cone equivalent for super-refractories should not be below cone 36.

PAR. 9. Respondent's product "Mullitex" firebrick is a superduty refractory. Respondent admits that it is not a super-refractory product as the expression is now understood in the industry.

PAR. 10. The Commission finds, therefore, that the representation made by respondent through the use of the term "Super-Refractory" as descriptive of its product "Mullitex" firebrick as aforesaid is misleading and deceptive.

PAR. 11. The use by respondent of the aforesaid misleading and deceptive representation has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the representation is true and to induce a substantial number thereof to purchase respondent's "Mullitex" firebrick.

CONCLUSION

The acts and practices of the respondent, Walsh Refractories Corp., 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 amended complaint of the Commission, the answer of respondent, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Walsh Refractories Corp., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of refractory fire-clay products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that its product "Mullitex" firebrick is a super-refractory product.

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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.

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IN THE MATTER OF

OPPENHEIMER CASING CO., INC., NATURAL CASING
INSTITUTE, INC., AND CHARLES SILVER, ALLEN S.
BECKER, AND B. R. SOLOMON, TRADING AS CHARLES
SILVER & CO.

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

Docket 5148. Complaint, Apr. 8, 1944—Decision, July 21, 1949

Where a corporation engaged in the manufacture or processing and in the competitive interstate sale and distribution of casings made from the intestines of animals for frankfurters, wieners, and sausages, as distinguished from artificial or cellulose casings; an incorporated trade association, the principal activity of which consisted in advertising and in otherwise promoting the sale of such "natural" casings and products thereof; and three partners, advertising agents, who advised said corporation and trade association as to their advertising and prepared and placed copy; through newspaper and periodical advertisements, circulars and other advertising media—

Falsely represented that meat products, such as wieners and frankfurters, encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, are richer in proteins and vitamin B., and have better keeping qualities than meat products produced by the use of cellulose casings;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect to the characteristics of meat products encased in animal casings and thereby to cause its purchase of such products; and with the result of placing in the hands of packers using natural casings, and dealers selling products thus encased, a means of so misleading the purchasing public:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Taggart for the Commission.

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 Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, trading as Charles Silver & Co., 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, Oppenheimer Casing Co., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located at 1016 West Thirty-sixth Street, Chicago, Ill.

This respondent is now, and for several years last past has been, engaged in the manufacture or processing of casings made from the intestines of animals and used as containers for meat products, including frankfurters, weiners, and sausages, and known and described as natural casings. This respondent causes its said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. This 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. 2. The Natural Casing Institute, Inc., is a corporation organized under the laws of the State of New York, with its office at 4710 South Ada Street, Chicago, Ill. This respondent is a trade association and its principal activity consists in advertising and in other ways promoting the sale of natural casings and the products for which natural casings are used.

PAR. 3. Respondents, Charles Silver, Allan S. Becker, and B. R. Solomon, are individuals doing business as a partnership under the name of Charles Silver & Co., with their office located at 737 North Michigan Avenue, Chicago, Ill. These respondents operate an advertising agency and as such are engaged in formulating, editing, and placing advertising for their clients. These respondents are or have been the advertising agents for the respondents, Oppenheimer Casing Co., Inc., and Natural Casing Institute, Inc., and have advised said respondents and prepared and placed advertising matter used by said respondents in promoting the sale of natural casings and products for which natural casings are used, including the advertising matter hereinafter referred to.

PAR. 4. All of the respondents act and have acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter set out and alleged.

PAR. 5. The casings used in the production or manufacture of wieners and kindred products are of two kinds; that variety sold by

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respondent, Oppenheimer Casing Co., Inc., known as natural casings, and those manufactured by certain competitors of this respondent made from cellulose. The natural casing remains on the meat products when sold to the consumer, while the cellulose variety is detached before sale.

PAR. 6. Respondent, Oppenheimer Casing Co., Inc., is now and for several years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of casings used in the packing of meat products and particularly those manufactured from cellulose; and various packers using the natural casings for their meat products, sold by this respondent, are in substantial competition, in commerce, with packers using the cellulose casing manufactured and sold by this respondent's competitors. Furthermore, dealers selling meat products encased in natural casings are in substantial competition, in commerce, with dealers selling meat products in which other types of casings are used.

PAR. 7. 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 products known as natural casings and sold by respondent, Oppenheimer Casing Co., Inc., and the value and desirability of meat products which make use of said product, 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 also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said product, as aforesaid, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product and the meat products making use thereof, 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 advertisements disseminated and cause to be disseminated by respondents, as herein set forth by the United States mails, by advertisements inserted in newspapers and periodicals, by means of circulars and other advertising media, are the following:

A BASIC SUPERIORITY . . . CONFIRMED BY SCIENCE "22% Juicier"

The proof of the pudding may be in the eating, but the American public prefers to have its sense of taste backed up by scientific findings. It is, therefore, of highest importance to America's millions of weiner-lovers that scientific tests

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by an independent, nationally recognized laboratory have definitely proved that Weiners in Natural Casings are 22% juicier!

This and other basic superiorities of Natural Sheep Casings, enhanced by strict adherence to the highest quality standards, have formed the foundation upon which our business has been built. Our many friends have come to know, over a period of more than a quarter of a century, that this company is a dependable source of supply of their casing needs, with a background rich in technical achievements and sound business practice.

WEINERS in
NATURAL CASINGS
The Skin Keeps the Flavor in!
NATURAL CASINGS FRANKFURTS
Richer in
Vitamins and Proteins!
Proved by Scientific Laboratory Tests!

Recent important tests by independent laboratories, conducted on both fresh and canned frankfurts, PROVE that frankfurts in Natural Sheep Casings have definitely greater protein content, and higher Vitamin B-1 content! In addition to these greater nutritional advantages, other tests show that Natural Casing Frankfurts show less loss of weight in cooking . . . and the protection of Natural casings means better keeping qualities!

WATCH "NATURAL CASINGS" GO PLACES

We salute the new advertising campaign driving home the PROVED FACTS that weiners in NATURAL CASINGS are 22% JUICIER.

Oppenheimer Casing Co.

PAR. 8. Through the use of the aforesaid statements and representation and others of similar import not specifically set-out herein, respondents represent and have represented, that meat products, such as weiners and frankfurters encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, and richer in proteins, particularly vitamin B₁, and have better keeping qualities than meat products encased in cellulose casings.

PAR. 9. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the casings used in the manufacture or production of wieners, frankfurters, and similar meat products have no significant effect upon the amount of juice, the flavor, the protein and vitamin content, or the keeping qualities of meat products. The amount of juice and the protein and vitamin content are entirely dependent upon the materials used by the packers and not upon the type of casing used. Meat products encased in

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natural casings do not have better keeping qualities than those prepared by the use of cellulose casings.

PAR. 10. By disseminating the aforesaid advertisements containing said false, misleading, and deceptive statements, respondents furnish and place in the hands of packers using natural casings and dealers selling products, encased in natural casings, a means and instrumentality by and through which the purchasing public may be misled and deceived as to the merits and advantages claimed to be derived through the use of natural casings.

PAR. 11. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to the natural casings sold and distributed by the respondent, Oppenheimer Casing Co., Inc., and the quality and characteristics of the meat products resulting from their use, unfairly disparages and defames the products of its competitors and the finished products resulting from their use and has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial number of packers to purchase the natural casings sold and distributed by respondent Oppenheimer Casing Co., Inc., and a substantial portion of the purchasing public to purchase meat products encased in natural casings in preference to such products encased in other casings, particularly cellulose casings. As a result, injury has been and is now being done to the competitors of the respondent, Oppenheimer Casing Co., Inc., and to competition between packers using natural casings and packers using other than natural casings, as well as between dealers selling meat products in which natural casings are used and dealers selling meat products where other than natural casings are used, all in commerce, among and between the several States of the United States and in the District of Columbia.

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 methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 8, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use

of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony, and other evidence, the trial examiner's recommended decision, to which no exceptions were filed, and brief filed by counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now duly advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Oppenheimer Casing Co., Inc., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located at 1016 West Thirty-sixth Street, Chicago, Ill.

This respondent is now, and for several years last past has been, engaged in the manufacture or processing of casings made from the intestines of animals and used as containers for meat products, including frankfurters, wieners, and sausages, and known and described as natural casings. Respondent causes its said products, when sold, to be transported from its place of business in the State of Illinois 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 among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, The Natural Casing Institute, Inc., is a corporation organized under the laws of the State of New York, with its office at 4710 South Ada Street, Chicago, Ill., and is a trade association whose principal activity consists in advertising and in other ways promoting the sale of natural casings and the products for which natural casings are used.

PAR. 3. Respondents, Charles Silver, Allan S. Becker, and B. R. Solomon, are individuals doing business as a partnership under the name of Charles Silver & Co., with their office located at 737 North

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Michigan Avenue, Chicago, Ill., at which address they operate an advertising agency engaged in formulating, editing, and placing advertising for their clients, among whom are or have been respondents, Oppenheimer Casing Co., Inc. and Natural Casing Institute, Inc., for whom respondents Silver, Becker, and Solomon have acted as advertising agents, advising said respondents as to their advertising, and preparing and placing advertising copy used by said respondents in promoting the sale of natural casings and products for which natural casings are used, including the advertising matter hereinafter set forth.

PAR. 4. Respondents, Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, individual copartners trading as Charles Silver & Co., have at all times mentioned herein acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter set forth.

PAR. 5. The casings used as containers for meat products, including frankfurters, wieners, sausages, and kindred products, are of two kinds; that variety manufactured and sold by respondent, Oppenheimer Casing Co., Inc., and others, known and described as natural or animal casings, made from the intestines of animals; and that variety manufactured and sold by certain competitors of this respondent, known and described as artificial or cellulose casings, made from cellulose and other substances. The natural casing remains on the meat products when sold to the consumer, while the artificial casing is detached before such sale.

PAR. 6. Respondent, Oppenheimer Casing Co., for several years last past has been in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of casings used in the packing of meat products, particularly those manufactured from cellulose; various packers using respondent's natural casings for their meat products are in substantial competition, in commerce, with packers using the cellulose casings manufactured and sold by respondent's competitors; and dealers selling meat products encased in natural casings are in substantial competition in commerce with dealers selling meat products produced by the use of artificial or cellulose casings.

PAR. 7. In the course and conduct of their aforesaid businesses, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning the products known as natural casings, sold by respondent, Oppenheimer Casing Co., Inc., and the value and desirability of meat

products using said product, by the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which said advertisements are disseminated for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of said natural casings and the meat products making use thereof, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated by respondents, as herein set forth, by the United States mails, by insertion in newspapers and periodicals, by means of circulars and other advertising media, are the following:

A BASIC SUPERIORITY . . . CONFIRMED BY SCIENCE "22% Juicier."

The proof of the pudding may be in the eating, but the American public prefers to have its sense of taste backed up by scientific findings. It is, therefore, of highest importance to America's millions of wiener-lovers that scientific tests by an independent, nationally recognized laboratory have definitely proved that Wieners in Natural Casings are 22% juicier]

This and other basic superiorities of Natural Sheep Casings, enhanced by strict adherence to the highest quality standards, have formed the foundation upon which our business has been built. Our many friends have come to know, over a period of more than a quarter of a century, that this company is a dependable source of supply of their casing needs, with a background rich in technical achievements and sound business practice.

WIENERS in
NATURAL CASINGS

They're 22% Juicier-
The *Skin* Keeps the Flavor *in*!

NATURAL CASING FRANKFURTS

Richer in
Vitamins and Proteins!
Proved by Scientific Laboratory Tests!

Recent important tests by independent laboratories, conducted on both fresh and canned frankfurts, PROVE that frankfurts in Natural Sheep Casings have definitely greater protein content, and higher Vitamin B-1 content! In addition to these greater nutritional advantages, other tests show that Natural Casing Frankfurts show less loss of weight in cooking . . . and the protection of Natural casings means better "keeping qualities"!

WATCH "NATURAL CASINGS" GO PLACES

We salute the new advertising campaign driving home the PROVED FACTS that wieners in NATURAL CASINGS ARE 22% JUICIER.

Oppenheimer Casing Co.

PAR. 8. Through the use of the aforesaid statements and representations and others of similar import not specifically set-out herein, respondents represent and have represented that meat products, such as wieners and frankfurters, encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, are richer in proteins and vitamin B₁, and have better keeping qualities than meat products produced by the use of cellulose casings.

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, meat products in natural casings are not substantially juicier, do not retain their flavor to a greater extent, are not richer in proteins and vitamin B₁ or nutritionally richer in any respect, and do not have better keeping qualities than the same meat products similarly processed in cellulose casings.

PAR. 10. The dissemination by respondents of these false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public with respect to the characteristics of meat products encased in animal casings, and the tendency and capacity to cause members of the public to purchase such products as a result of the mistaken beliefs so engendered. Such advertisements place in the hands of packers using natural casings, and dealers selling products so encased, a means and instrumentality of misleading and deceiving the purchasing public as to the merits and advantages of said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief by counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, individually and trading as Charles Silver & Co. or under any other name or designation, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of casings used as a cover for wieners and similar meat products, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that wieners or other meat products encased in natural casings contain or retain more juices, flavor, proteins, or vitamin B₁ than wieners or meat products produced by the use of cellulose casings, either when offered for sale at the packing house or when prepared for consumption, or that such products have superior keeping qualities or are superior nutritionally to meat products produced by the use of cellulose casings.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said casings in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

Complaint

46 F. T. C.

IN THE MATTER OF

ADOLPH GOTTSCHO, INC., ADOLPH GOTTSCHO, RAY GOTTSCHO, IRA S. GOTTSCHO, AND ADOLPH GOTTSCHO

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5517. Complaint, Nov. 21, 1947—Decision, Aug. 16, 1949

Where a corporation and its three officers and principal stockholders engaged in the processing and manufacture and competitive interstate sale and distribution of industrial marking devices, rubber stamps, metal stencils and accessories to dealers, usually retail stationers, and to consumers, principally manufacturing pharmaceutical firms, chain grocery stores, wholesale grocers, banks and industrial firms—

Discriminated in price between different consumer purchasers of their products of like grade and quality by selling to some at higher prices than to others; Effect of which discriminations in price had been and might be substantially to lessen, injure, destroy and prevent competition between them and their competitors in the sale and distribution of said products in commerce, and had been and might be to tend to create a monopoly in them in said line of commerce:

Held, That such acts and practices, under the circumstances set forth, violated section 2 (a) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Daniel Eisenberg, of New York City, for Adolph Gottscho, Inc., and Adolph Gottscho.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have been and are now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Adolph Gottscho, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 190 Duane Street, New York, N. Y. Respondent corporation also maintains a branch