

Syllabus

IN THE MATTER OF

HENRY J. TAYLOR, TRADING UNDER THE NAME AND
STYLE OF THE PACKAGE ADVERTISING CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5416. Complaint, Jan. 21, 1946—Decision, Nov. 15, 1949*

Where an individual who (1) was engaged in the manufacture of unpatented waxed-paper bands for advertising or informative use as printed inserts and outserts by bakers in connection with the wrapping of their bread and other bakery products; and in the interstate sale of said bands in competition with other manufacturers except as below set out, and under the trade-mark "Ad-Seal-It," which he had continuously owned or controlled since 1926 and which was registered in the United States Patent Office on January 23, 1945; and (2) formerly owned two patents, issued August 11, 1931, and March 15, 1932, which did not cover said unpatented bands, but respectively covered a method of applying an advertising medium to bakery products, and the resultant improved package "comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper incircling said loaf and said wrapper"—

- (a) Through threats of patent-infringement suits or the incentive of a higher, uniform, and maintained price structure on Ad-Seal-It bands, from time to time prior to January 1, 1939, coerced, persuaded or otherwise induced the principal manufacturers of waxed paper situated east of the Rocky Mountains to enter into agreements which, reciting that the corporation owned or controlled "certain inventions covering Ad-Seal-It and the method of its application and Letters Patent," purported to grant, on the part of his said predecessor corporation, to the particular manufacturer concerned, a nonexclusive license, for the life of the patents and all reissues thereof, etc., and for a specified portion of the United States, to make and sell Ad-Seal-It identification bands, the licensee obligating itself to sell said bands at prices and terms fixed by the corporation, to designate bands produced and sold by it by said trade-mark, and to pay a royalty ranging from 10 to 15 percent on its gross sales thereof, and the corporation having the right to inspect records and accounts relating to the sales of said bands;
- (b) Following the dissolution of his said predecessor corporation on or about December 29, 1938, entered into new agreements (to continue until March 15, 1949) with said manufacturers east of the Rockies, which—reciting that said individual's patents related to an improved bread package, that he was engaged in the business of making and selling to the baking trade certain legend-bearing bands to be used by the bakers in practicing his patents, and that he was then using the trade-mark Ad-Seal-It on the bands sold to bakers—purported also to grant nonexclusive licenses to such manufacturers to make and sell such outserts and inserts to the baking trade, together with the right to issue sublicenses to customers of the licensee, who undertook not to sell bands elsewhere than in the described territory; to cause

an individual, trading under the name and style of Package Advertising Co., hereinafter referred to as respondent, has 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. Bread as manufactured by most of the bakers in the United States is wrapped in printed waxed paper. However a

Syllabus

46 F. T. C.

all the bands made and sold by it to bear said trade-mark; to pay said individual a royalty of 10 percent of the invoice price of all bands made and sold by it under the agreement; to sell bands thus made at prices not less than those established by said individual, to furnish him duplicates of all invoices, and to open its records and accounts for his inspection; to have printed on bands made use of by it a patent notice and said trade-mark; and to pay to said individual by way of liquidated damages a specified sum in the event of failure to sell the bands at the price established by him, or to supply him with duplicate invoices;

- (c) Entered, through his said predecessor corporation, into an agreement dated September 22, 1931, with W, a California corporation, which, reciting that

Complaint

46 F. T. C.

bread in cellophane or clear waxed glassine wrappers without any printed design thereon. When bread is sold in such transparent wrappers it is necessary for the baker to wrap around the loaf either under (an insert) or over (an outsert) a printed waxed paper band varying in width from 2 to 4 inches of one or more colors to designate the kind of bread, the name of the baker, net weight, ingredients, and other advertising matter.

Respondent Henry J. Taylor, an individual, trading under the name and style of Package Advertising Co., with his office located at 230 Park Avenue, New York, N. Y., is now; and for more than 3 years last past, has been engaged in the manufacture and sale of waxed-paper bands known as "Ad-Seal-It," both inserts and outserts used as part of the wrapper or package for bread and cake. Said respondent is the owner of two patents, one of said patents covers the method of applying an advertising medium to bakers' products (Patent No. 1,818,923 issued August 11, 1931) which embodies a process of fusing a small strip or band of waxed paper to a larger sheet of wrapping material by means of heat "Simultaneously enveloping a bread loaf in the wrapping material." The other patent (Patent No. 1,849,774 issued March 15, 1932) is a combination patent covering the package resulting from the use of the said method patent. All of the claims for the said combination patent are for "an improved bread package herein described, comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper encircling said loaf."

Said respondent in the course and conduct of his said business for more than 3 years last past has advertised and sold his said bands to bakers for enveloping loaves of bread and cakes and the said bands were placed by said bakers around the loaves of bread or packages of cake either by hand or by automatic bread and cake wrapping machines, of which there are a number on the market equipped to make application of heat to bread and cake wrappers for sealing.

Said respondent is in competition with other manufacturers of printed bands used in wrapping bread and cake and selling the same in interstate commerce to bakers located throughout the several States of the United States.

PAR. 2. Said respondent in the course and conduct of his said business has entered into so-called license agreements with the principal manufacturers of waxed paper located throughout the several States of the United States as follows:

American Tissue Mills, Holyoke, Mass.
 Badger Paper Mills, Inc., Peshtigo, Wis.
 Central Waxed Paper Co., Chicago, Ill.
 Cleveland Wax Paper Co., Cleveland, Ohio.
 Detroit Wax Paper Co., River Rouge, Mich.
 Dixie Wax Paper Co., Dallas, Tex.
 Dixie Wax Paper Co., Memphis, Tenn.
 Forbes Lithograph Manufacturing Co., Boston, Mass.
 Henle Wax Paper Co., New York, N. Y.
 Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich.
 KVP Co. of Texas, Houston, Tex.
 Menasha Products Co., Menasha, Wis.
 Mid-West Wax Paper Co., Fort Madison, Iowa.
 Milprint Products Corp., Milwaukee, Wisc.
 Minerva Wax Paper Co., Minerva, Ohio.
 Nashua Gummed & Coated Paper Co., Nashua, N. H.
 Newark Paraffine & Parchment Paper Co., Newark, N. J.
 Ohio Wax Paper Co., Columbus, Ohio.
 Pittsburgh Wax Paper Co., Pittsburgh, Pa.
 Pollock Paper & Box Co., Dallas, Tex.
 Port Huron Sulphite & Paper Co., Port Huron, Mich.
 Rapinwax Paper Co., Chicago, Ill.
 Riegel Paper Corp., New York, N. Y.
 Rudolph, L. A. Waxed Paper Corp., New York, N. Y.
 Safetee Glassite Paper Co., Philadelphia, Pa.
 Saniwax Paper Co., Kalamazoo, Mich.
 Scuthearn Wax Paper Co., Atlanta, Ga.
 Specialty Papers Co., Dayton, Ohio.
 Waterproof Paper & Board Co., Cincinnati, Ohio.
 Wax Paper Products Co., Omaha, Nebr.
 Waxed Paper Co., Long Island City, N. Y.
 Waxide Paper Co., Kansas City, Mo.
 Waxide Paper Co., St. Louis, Mo.
 West Carrollton Parchment Co., West Carrollton, Ohio.
 Zimmer Paper Products Co., Indianapolis, Ind.

Said license agreements purport to grant the foregoing named waxed-paper manufacturers a nonexclusive license, until March 15, 1949, to make and sell under the aforesaid patents inserts and outserts to the baking trade to be used by the bakers and the manufacturers of bread packages and similar packages embodying, employing, and con-

taining the inventions disclosed in said patents throughout that part of the United States of America situated east and not including Montana; Wyoming; Denver, Colo.; Santa Fe, N. Mex.; and El Paso, Tex.

Said license agreements also purport to grant to said licensees the right to issue sublicenses to bakers purchasing said inserts and outserts to use the same in their plants located in that part of the United States covered by the license, in practicing the methods of said patent No. 1,818,923 and to produce packages of bread and similar products embodying the invention of patent 1,849,714.

Said license agreements also purport to grant the said licensees the right to use the trade-mark "Ad-Seal-It" in connection with their manufacturing and selling operations under the said license agreement and in a manner approved by said respondent, including the right to grant permission to any of its customers, purchasing the inserts and outserts manufactured and sold by said licensees under the said license agreement, to sell or otherwise distribute the packages bearing the said trade-mark and to use such trade-mark in their sales promotion as pointing to the package made under the said patents.

Under the terms of said license agreements said licensees were prohibited from selling said inserts and outserts manufactured by them under said license and adopted to be used in practicing the method of said patent No. 1,818,923 to produce the products covered by patent No. 1,849,774 at prices less than those established by said respondent and as set forth in price lists attached to the said license agreements.

It was also provided in the said license agreements that the said licensees should pay to the respondent by way of a royalty a sum equal to 10 percent of the invoice price of all inserts and outserts manufactured and sold by said licensee under the said license agreements.

It was also provided in said license agreements that in the event the licensees should fail to sell any of the said inserts or outserts under the provisions thereof at the prices currently established by said respondent said licensee shall pay to said respondent by way of liquidated damages on all such inserts or outserts so sold a sum equal to 20 percent of the sum that should have been paid for such inserts or outserts had they been sold at said respondent's established prices.

It was also provided in said license agreements that said respondent, with a view to facilitating its operations and the operations of its licensees, would carry in stock ready for immediate shipment to the customer, various ready-to-use rolls of "Ad-Seal-It" inserts and outserts and agree to maintain a stock of such rolls sufficient to meet the reasonable demands of its said licensees for small or emergency lots and to fill any orders from the licensee for items from such stock at

respondent's prevailing price allowing said licensee a selling commission of 15 percent of the invoice price for all rolls so ordered.

PAR. 3. On or about September 22, 1931, the "Ad-Seal-It" Corp., a New York corporation owned by respondent, entered into a so-called license agreement followed by an addendum dated October 23, 1931, with the Western Waxed Paper Co., a California corporation now a division of Crown Zellerbach Corp., of San Francisco, Calif., engaged in the business of manufacturing bread wrappers at Los Angeles and Oakland, Calif., and Portland, Oreg., purporting to grant unto said licensee the exclusive right to make, use, and sell in that portion of the United States situated west of Montana, Wyoming, Denver, Colo., Santa Fe, N. Mex., and El Paso, Tex., its "Adsealit" advertisements consisting of waxed paper bands used by bakers as inserts and outserts for wrapping bread according to said patents owned by said respondent. Pursuant to said agreement said licensor granted to said licensee permission to use and identify its activities by the use of the name "Adsealit" and all emblems and slogans and trade-mark characters used by said licensor in connection with its manufacture and sales promotion of "Adsealit" advertisements to the baking industry and to use copyrighted designs now owned or acquired from time to time by said licensor. Said licensor further agreed in said license agreement to refrain from operations in the territory described therein with reference to "Adsealit" advertisements.

Said license agreement remains in full force and effect for a period of 25 years from the date thereof or until at any time when the said licensee shall have sold less than \$25,000 worth of "Adsealit" advertisements during any one year. Said license agreement further provides that said licensee should pay the licensor as a royalty 10 percent of the gross value of each invoice wherein the price per pound is 12 cents or over; a royalty of 7½ percent of a gross value of each invoice wherein the price per pound is 11 to 12 cents per pound; and a royalty of 5 percent of a gross value of each invoice wherein the price is 10 cents per pound or under; and that invoices are to be rendered by said licensees to said licensor currently and said licensor shall have the right and privilege to inspect the manufacturing operations of said licensee, its records and accounts of sale.

PAR. 4. On or about April 13, 1936, the Package Advertising Corp., owned by respondent, entered into a so-called license agreement with the said Western Waxed Paper Co., division of Crown Zellerbach Corp. purporting to grant to said licensee a nonexclusive license for that portion of the United States situated east of Montana, Wyoming, Denver, Colo., Santa Fe, N. Mex., and El Paso, Tex., but not for Cook

prices, and competitors of the respondent and of its said licensees have been prevented from selling printed bands or inserts and outserts employed in conjunction with transparent bread wrappers in substantial quantities to said bakers and said respondent is thereby obtaining a monopoly in the interstate sale and distribution of printed waxed paper bands or inserts and outserts employed by bakers in conjunction with transparent bread wrappers.

PAR. 8. The acts and practices of the said respondent, as herein

Complaint

46 F. T. C.

County, Ill., to make and sell "Ad-Seal-It" and to license the purchasers to use said "Ad-Seal-It" bands. Under the terms of said license agreement said licensor proposed to grant to said licensee the right to use the name "Ad-Seal-It" upon advertising bands made and sold by said licensee expressly at the licensor's prices and terms. Said licensee agreed to compensate said licensor in the amount of 15 percent of each invoice up to and including 750 rolls of 3,000 feet, 12½ percent on each invoice up to and including 1,000 rolls of 3,000 feet, 10 percent on each invoice for more than 1,000 rolls of 3,000 feet.

Findings

46 F. T. C.

dangerous tendency to and have actually hindered or prevented competition in the sale of printed waxed-paper bands employed as inserts and outserts in conjunction with transparent bread wrappers in commerce, within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said product; have a dangerous tendency to create in respondent a monopoly in the sale of said product; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 21, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, Henry J. Taylor, an individual trading under the name and style of The Package Advertising Co., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of the respondent's answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners 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, the respondent's answer, testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Henry J. Taylor, is an individual, doing business under the name and style of The Package Advertising Co., with his office and principal place of business located at 230 Park Avenue, New York, N. Y., and is now, and for more than 3 years last past has been, engaged in the manufacture and sale of waxed-paper bands under the trade-mark "Ad-Seal-It" which are used as inserts

other bakery products. Respondent does not own, and has not owned, any patent rights to the bands manufactured and sold by him.

PAR. 2. Respondent, in the course and conduct of his aforesaid business, is in competition with other manufacturers of printed waxed-paper bands used as inserts and outserts by bakers in connection with the wrapping of bread and other bakery products, insofar as such competition has not been lessened or eliminated through respondent's agreements with various waxed paper manufacturers, and the acts and practices done and performed pursuant thereto, as hereinafter set out.

PAR. 3. Respondent has caused and now causes his products, when sold, to be shipped from the place of origin in New York to customers located in various States of the United States east of the Rocky Mountains, and has entered into agreements and understandings tending to fix, establish, and maintain the prices, terms, and conditions of sale at which, and to specify, designate, describe, and limit the territories in which, other manufacturers of printed waxed-paper bands have sold and now sell said products in interstate commerce, and is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent was the owner of two patents, one of which covered a method of applying an advertising medium to bakery products (Patent No. 1,818,923, issued August 11, 1931) and which embodied a process of fusing a small strip or band of waxed paper to a larger sheet of wrapping material by means of heat, "simultaneously enveloping a bread loaf in the wrapping material." The other patent (Patent No. 1,849,774, issued March 15, 1932) was a combination patent covering the package resulting from the use of the method patent for an improved bread package "comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper encircling said loaf and said wrapper."

PAR. 5. Respondent has continuously owned or controlled the trade-mark Ad-Seal-It since 1926, and said trade-mark was registered in the United States Patent Office as trade-mark No. 411,576, on January 23, 1945, "for adhesive and nonadhesive bands adapted to be used by the baker around bread and carrying identifying or advertising printed matter."

PAR. 6. There are more than 3,000 wholesale bakers in the United States using automatic bread wrapping machines and many smaller bakers using semiautomatic or hand-operated wrapping machines. Many bakers wrap their bread and other products in cellophane or transparent waxed-paper wrappers. In connection with these trans-

parent wrappers bakers sometimes use a printed waxed-paper band varying in width from 1½ to 4 inches, and occasionally wider, which is wrapped around the loaf of bread or other bakery product, either under the wrapper as an insert or over the wrapper as an outsert. This band is used as an advertising medium to designate the product wrapped, the name of the baker, or to furnish other informative or advertising matter to buyers and prospective buyers. Printed waxed-paper bands such as Ad-Seal-It bands are used in conjunction with the wrapping of bread by the automatic bread-wrapping machines by placing a roll of bands on a shaft or spindle in juxtaposition to a roll of wrapping paper. The band is fed into the machines along with the wrapping paper and simultaneously cut to the required length. The ends of the wrapper and the band are simultaneously heated and sealed by a heating device on the machine.

PAR. 7. Respondent acquired control of The Adsealit Corp., a New York corporation, in 1926. The name of The Adsealit Corp. was changed to The Package Advertising Corp. on or about August 8, 1933. From 1926 until its dissolution on or about December 29, 1938, respondent was president of, sole owner of, and dominating factor in the corporation. Upon dissolution of The Package Advertising Corp. respondent took over and assumed all of its rights and obligations, including the several agreements with waxed-paper manufacturers hereinafter described and all rights and interest in and to the trade-mark Ad-Seal-It and the good will of the business in which the trade-mark had been used.

PAR. 8. In the course and conduct of his business respondent from time to time entered into agreements with the following manufacturers of waxed paper, who constitute the principal manufacturers of such product located in that part of the United States situated east of the Rocky Mountains, purporting to grant to the waxed paper manufacturers the right to make and sell Ad-Seal-It bands:

- American Tissue Mills, Holyoke, Mass.
- Badger Paper Mills, Inc., Peshtigo, Wis.
- Central Waxed Paper Co., Chicago, Ill.
- Dixie Wax Paper Co., Dallas, Tex.
- Fabiricon Products, Inc. (formerly Detroit Wax Paper Co.), River Rouge, Mich.
- Fabiricon Products, Inc., of Ohio (formerly Cleveland Wax Paper Co.), Cleveland, Ohio.
- Fabiricon Products, Inc., of Pennsylvania (formerly Pittsburgh Wax Paper Co.), Pittsburgh, Pa.

Fabricon Products, Inc., of Pennsylvania (formerly Safetee Glassite Paper Co.), Philadelphia, Pa.
 Fabricon Products, Inc., of Connecticut (formerly Waxed Paper Co.), Bridgeport, Conn.
 Forbes Lithograph Manufacturing Co., Boston, Mass.
 Henle Wax Paper Co., New York, N. Y.
 Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich.
 K-V-P Co., of Texas, Houston, Tex.
 Marathon Corp., Menasha, Wis.
 Mid-West Wax Paper Co., Fort Madison, Iowa.
 Milprint Products Corp., Milwaukee, Wis.
 Minerva Wax Paper Co., Minerva, Ohio.
 Nashua Gummed & Coated Paper Co., Nashua, N. H.
 Newark Paraffin & Parchment Paper Co., Newark, N. J.
 Pollock Paper & Box Co., Dallas, Tex.
 Port Huron Sulphite & Paper Co., Port Huron, Mich.
 Rapinwax Paper Co., Minneapolis, Minn.
 Reigel Paper Corp., New York, N. Y.
 Saniwax Paper Co., Kalamazoo, Mich.
 Shellmar Products Co., Chicago, Ill.
 Southern Wax Paper Co., Atlanta, Ga.
 Specialty Papers Co., Dayton, Ohio.
 Traver Manufacturing Co., Chicago, Ill.
 Ohio Wax Paper Co., Columbus, Ohio.
 Waterproof Paper & Board Co. of Ohio, Cincinnati, Ohio.
 Wax Paper Products Co., Omaha, Nebr.
 Waxide Paper Co., Kansas City, Mo.
 West Carrollton Parchment Co., West Carrollton, Ohio.
 Zimmer Paper Products Co., Indianapolis, Ind.

PAR. 9. Said agreements between respondent's predecessor corporation and the several waxed-paper manufacturers, made prior to January 1939, recited that The Adsealit Corp. owned or controlled "certain inventions covering Adsealit and the method of its application and Letters Patent of the United States Nos. 1,818,923 and 1,849,774 thereon," and also owned trade-marks and/or other rights in the word "Adsealit" as applied to and used in connection with the sale of its materials and services, and provided, in part:

(a) That the licensee would have the right and nonexclusive license, for a specified portion of the United States, to make and sell Adsealit identification bands;

(b) That the licensee would have the right to use the name "Adsealit" upon the Adsealit identification bands made and sold by it

Findings

46 F. T. C.

under the agreement at Adsealit's prices and terms; and that the licensee would designate all such bands produced and sold by it by said trade-mark;

(c) That the licensee would pay a royalty ranging from 10 to 15 percent on its gross sales of Adsealit bands;

(d) That Adsealit would have the right to inspect records and accounts relating to the sales of Adsealit bands; and

(e) That the agreement would continue until the expiration of the last of the patents and of all re-issues, divisions, extensions, and continuations of either of the patents.

PAR. 10. Following the dissolution of respondent's predecessor corporation, respondent entered into new agreements with the principal waxed-paper manufacturers in that part of the United States situated east of the Rocky Mountains, which new agreements, while different from the earlier agreements in some respects, also purported to grant nonexclusive licenses to the waxed-paper manufacturers to make and sell outserts and inserts to the baking trade. Said new agreements recited that respondent's patents related to an improved bread package; that respondent was engaged in the business of manufacturing and selling to the baking trade certain legend-bearing bands to be used by the bakers in practicing respondent's patents; that respondent had previously adopted and used, and was then using, the trade-mark "Ad-Seal-It" on the bands sold by it to bakers; and provided, in part:

(a) That the agreement would continue in effect until March 15, 1949;

(b) That the licensee would have the nonexclusive right and license under respondent's patents to make and sell outserts and inserts to the baking trade in a specified portion of the United States, and that the licensee would not sell said bands elsewhere than in the described territory;

(c) That the licensee would have the right to issue sublicenses to its customers to use the bands in practicing the invention covered by respondent's patents;

(d) That the licensee would have the right to use the trade-mark "Ad-Seal-It" in connection with its manufacturing and selling operations under the agreement and that the licensee would cause all the bands manufactured and sold by it to bear said trade-mark;

(e) That the licensee would pay respondent a royalty of 10 percent of the invoice price of all bands manufactured and sold by it under the agreement;

(f) That the licensee would not sell bands manufactured under the agreement at prices less than those established by respondent;

(g) That the licensee would furnish respondent with duplicates of all invoices of its billings for bands and that respondent might cause an inspection of the licensee's records and accounts;

(h) That all packages employing or embodying the invention of respondent's patents having incorporated therein bands manufactured by the licensee would have printed thereon a patent notice and bear the trade-mark "Ad-Seal-It"; and

(i) That the licensee would pay to respondent by way of liquidated damages a specified sum in the event of failure to sell the bands at the prices established by respondent or of failure to supply respondent with duplicate invoices.

PAR. 11. Respondents' predecessor corporation, The Adsealit Corp., entered into an agreement with Western Waxed Paper Co., a California corporation which is now a division of Crown-Zellerbach Corp. of San Francisco, dated September 22, 1931. Said agreement recited that respondent "owns or controls certain inventions covering the said Adsealit advertising and the method of its application, and Letters Patent of the United States No. 1,818,923 issued August 11, 1931, thereon" and "owns trade-mark and/or other priority rights in the word 'Adsealit'"; and provided, in part:

(a) That Western would have the exclusive right to make, use, and sell Adsealit advertisements in the States of California, Oregon, Washington, Idaho, Utah, Nevada, Arizona, and Montana;

(b) That Western would have the right to use the name "Adsealit" upon the Adsealit advertisements manufactured and/or used and/or sold by Western pursuant to the agreement;

(c) That Adsealit would refrain from operations in the above-named States with reference to Adsealit advertisements;

(d) That Western would pay to Adsealit $16\frac{3}{4}$ percent of its gross sales of Adsealit advertisements;

(e) That Western would supply Adsealit with duplicate invoices of all sales of Adsealit advertisements and that Adsealit would have the right to inspect the manufacturing operations of Western concerning Adsealit advertising and its records and accounts relating to same; and

(f) That the agreement was to continue for a period of 25 years from the date thereof unless terminated as provided therein.

By an addendum dated October 23, 1931, to the aforesaid agreement, the territory in which Western was granted the exclusive right

to make, use, and sell Adsealit advertisements was expanded and the basis for calculating the royalty payments was changed.

PAR. 12. Respondent's predecessor corporation, The Package Advertising Corp., entered into an agreement with Western Waxed Paper Co., dated September 23, 1936, supplemental to the aforesaid agreement dated September 22, 1931, which provided among other things that The Package Advertising Corp. would protect Western Waxed Paper Co. from invasion of its exclusive territory by any other manufacturer of said "patented bands," whether made by another licensee of respondent or otherwise. It was agreed that in the event of discovery by Western of the presence of any of said "patented bands," other than those sold by Western, in its exclusive territory and if, after giving notice to respondent, the matter was not cleared up, Western could impound all royalties due respondent until respondent eliminated all "outlaw bands" from Western's exclusive territory.

PAR. 13. Respondent's predecessor corporation, The Package Advertising Corp., entered into an agreement with Western Waxed Paper Co. on April 13, 1936, purporting to grant to Western a non-exclusive license to make and sell Ad-Seal-It bands in that territory of the United States situated east of the Rocky Mountains and to sublicense the purchasers thereof to use said bands. The terms of this agreement were substantially the same as those of the other non-exclusive license agreements between respondent and the various waxed-paper manufacturers hereinbefore described.

PAR. 14. Under the provisions of the aforesaid license agreements, licensees of respondents were required to, and did generally, have printed on bands manufactured by them respondent's trade-mark "Ad-Seal-It," the numbers of respondent's patents, and the name of the manufacturer. For example, bands manufactured by Waxide Paper Co. bore the following:

"AD-SEAL-IT"—Patented (1,818,923 & 1,849,774) Mfd. by Waxide Paper Co., St. Louis, Mo."

PAR. 15. Respondent, in the course and conduct of his said business and in accordance with the provisions of the agreements hereinbefore described, established uniform delivered prices at which his nonexclusive licensees were required to sell, and did sell, printed waxed-paper bands to bakers. That part of the United States in which the so-called nonexclusive licensees were engaged in selling Ad-Seal-It bands was divided into three zones, which were referred to as zones 1, 2, and 2-A, respectively. These zones were the same in geographical scope as those used in the waxed-paper industry. Zone 1 comprised that ter-

ritory located within the Northeastern section of the United States extending west and including both banks of the Mississippi River and bounded on the south by the northern line of the State of Kentucky and the southern line of the State of Virginia. Zone 2 consisted of the States of North Carolina and Tennessee and included also that area located north of the States of Arkansas and Oklahoma and west of the Mississippi River to the western boundaries of the States of South Dakota and Nebraska and then on a direct line extending south through the State of Colorado to its southern boundaries. Zone 2-A comprised all those States east of the Rocky Mountains not included in zones 1 and 2.

The remainder of the United States was the exclusive territory of Western Waxed Paper Co. pursuant to the agreements between respondent and Western hereinbefore described. Respondent, however, did not fix or establish the prices at which the said Western sold Ad-Seal-It bands in its exclusive territory.

PAR. 16. The provisions of the nonexclusive license agreements which required that the licensees sell Ad-Seal-It bands at prices not lower than those established and fixed by respondent were enforced. Instances of variations between the prices quoted and charged by any licensee and the prices established by respondent were immediately brought to the attention of the licensee involved. Such instances were generally due to mistakes in billing which were subsequently corrected by the licensee involved, with appropriate adjustments thereafter being made. There were occasions when some licensees established additional quantity brackets for Ad-Seal-It bands, but the prices applicable thereto were higher than those established by respondent for the next largest quantity bracket.

PAR. 17. In accordance with the provisions of the agreements hereinbefore described, the licensees under the agreements were required to and did furnish respondent with duplicates of invoices covering sales of Ad-Seal-It bands. Also, said licensees were required to and did furnish to respondent a monthly statement of their sales of Ad-Seal-It bands, and remitted monthly payments to respondent to cover the amount of royalties due. Respondent employed auditors to check the records of the various licensees from time to time to determine whether the amounts of royalties reported and paid by the licensees were correct.

From the year 1931 through 1945 the licensees of respondent paid in the aggregate approximately \$1,300,000 in royalties pursuant to the provisions of the license agreements.

PAR. 18. In accordance with the provisions of the exclusive license agreement with Western Waxed Paper Co., respondent endeavored to prevent, and did prevent, invasion of Western's exclusive territory upon being advised of the shipments by others of bands into such territory. In 1936 respondent began litigation against the Ohio Wax Paper Co. for breach of its license agreement by having made shipments of bands into Western's exclusive territory. In 1937 a consent decree was entered by which Ohio Wax Paper Co. was enjoined from shipping bands outside the territory defined in the agreement. The Specialty Papers Co., in 1937, also discontinued the shipment of printed waxed-paper bands into the exclusive territory granted to Western at the insistence of respondent and made a payment to cover royalties due upon the sale of such bands which had been shipped to the Langendorf United Bakeries, Inc. The bands sold and shipped by Ohio Wax Paper Co. and Specialty Papers Co. to the Langendorf United Bakeries, Inc., were not referred to as Ad-Seal-It bands but were used for the same purposes as Ad-Seal-It bands and were identical with such bands with the exception that they did not bear the trade-mark "Ad-Seal-It."

Other instances of the sale and shipment of printed waxed-paper bands into the exclusive territory of Western were brought to respondent's attention for corrective action. For example, the Pacific Waxed Paper Co., Seattle, Wash., manufactured printed waxed paper bands for sale to bakers located in the exclusive territory granted to Western. Bakers who were customers of the Pacific Waxed Paper Co. were contacted by respondent and advised that they were infringing upon respondent's patent rights by using bands purchased from unlicensed sources. In March 1936, Pacific Waxed Paper Co., after being advised by bakers of respondent's warnings, entered into an agreement with Western Waxed Paper Co. which provided that Western would grant to Pacific the right to make, use, and sell Ad-Seal-It bands in Western's exclusive territory at prices established by Western.

PAR. 19. The prices fixed and established by respondent at which nonexclusive licensees were required to sell, and did sell, printed waxed-paper bands to bakers were substantially higher than the prices charged by waxed-paper manufacturers who were not licensees of respondent for bands sold to bakers and used for similar purposes as Ad-Seal-It bands.

The American Bread Wrapper Co. began producing and selling printed waxed-paper bands about 1921 and continued until about 1938, when its operations ceased. The bands manufactured and

sold by American Bread Wrapper Co. were used for similar purposes as the bands known as Ad-Seal-It bands. The American Bread Wrapper Co. never entered into a license agreement under respondent's patents although such a license was offered to the company. Among the customers of American Bread Wrapper Co. who bought printed waxed-paper bands was Ward Baking Co. The prices at which American Bread Wrapper Co. sold bands to Ward Baking Co. were lower than the prices established by respondent for Ad-Seal-It bands.

The General Waxed Papers, Inc., of Chicago, manufactured and sold narrow printed waxed bands which it referred to as "narrow bread wrappers" in competition with Ad-Seal-It bands. This company never entered into a license agreement with respondent, although such a license was offered to the company by respondent with the assurance that uniform prices would be maintained. General Wax priced and sold its narrow bread wrappers on a hundredweight basis in the same manner as wide bread wrappers. The prices at which General Wax sold its narrow bread wrappers were substantially less than the prices established by respondent for Ad-Seal-It bands.

PAR. 20. The Waxide Paper Co., St. Louis, Mo., a licensee of respondent, sold printed waxed paper bands to Petersen Baking Co., Omaha, Nebr., as early as 1929. Prior to about 1939 or 1940, the bands sold by Waxide to Petersen Baking Co. were sold on a hundred-weight basis. Such bands were not called Ad-Seal-It bands but were used for the same purpose as Ad-Seal-It bands. In 1939 or 1940, Waxide began selling bands to Petersen Baking Co. at the prices established by respondent, which prices were substantially higher than those previously charged by Waxide on a hundredweight basis.

PAR. 21. The Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich., entered into a license agreement with respondent on May 17, 1933. The company had been manufacturing and selling printed waxed-paper bands prior to entering into the aforesaid agreement with respondent. Such bands were used by bakers for the same purposes as Ad-Seal-It bands, although they were not called Ad-Seal-It bands. After becoming a licensee of respondent, Kalamazoo began selling Ad-Seal-It bands at the prices established by respondent, which were from 5 to 24 cents per pound or from 33 to 131 percent more than those charged prior to becoming a licensee.

PAR. 22. Some manufacturers of printed waxed-paper bands entered into the aforesaid agreements with respondent as a result of threats of patent-infringement suits. Others of such manufacturers entered into the said agreements with respondent because of induce-

ments in the form of a higher and uniform price structure on Ad-Seal-It bands. The Ohio Wax Paper Co., for example, was informed by respondent that it could not make and sell printed waxed-paper bands without infringing upon respondent's patents and Ohio Wax Paper Co. was offered a license to make and sell such bands. Ohio Wax Paper Co. at first refused but later entered into a license agreement with respondent after some of its competitors had suggested that it do so because respondent was going to maintain a good price on the bands. Respondent's promise of price uniformity and price maintenance was the main reason why Ohio Wax Paper Co. entered into the agreement with respondent.

The Detroit Wax Paper Co. became a licensee of respondent on December 1, 1931, after having been informed by respondent of the existence of his patents and of the necessity of the company becoming a licensee so as to avoid liability for infringement. Subsequently, certain differences arose between Detroit Wax and respondent and Detroit refrained from paying royalties to respondent, contending that the patents on which the royalty payments were based were invalid. Detroit Wax Paper Co. continued manufacturing and selling printed waxed-paper bands during a period of about 2 years. On May 15, 1939, respondent and Detroit Wax Paper Co. entered into a new license agreement. In July 1939 a mutual release was executed between respondent and Detroit Wax in full satisfaction of all differences between the parties, but Detroit Wax refused to pay any royalties on the bands manufactured during the aforesaid 2-year period. Detroit Wax considered it more economical to enter into the license agreement and execute the release than to further challenge respondent's patents.

PAR. 23. None of the licensees under the aforesaid agreements have ever used the methods covered by respondent's patents, nor have any of such licensees ever granted an oral or written sublicense to anyone to use such methods in the packaging of bread and other bakery products. The licensees were generally aware of the existence of respondent's patents but were unfamiliar with the nature of the patents.

PAR. 24. As a result of the uniform minimum prices, terms, and conditions of sale established and maintained by respondent, as aforesaid, price competition among and between respondent and other manufacturers of printed waxed paper bands has been substantially eliminated, and as a result of the territorial restrictions imposed by respondent upon his licensees, as aforesaid, manufacturers of printed waxed-paper bands have been prevented from selling said product in

the exclusive territory of Western Waxed Paper Co., the consequence of all of which is to tend to create a monopoly in respondent in the interstate sale and distribution of unpatented printed waxed-paper bands.

PAR. 25. The Commission finds that the acts and practices of respondent of coercing, persuading, inducing, or otherwise causing other manufacturers of printed waxed-paper bands, an unpatented product, to enter into the aforesaid license agreements purporting to grant to said other manufacturers of printed waxed-paper bands a license to make and sell printed waxed-paper bands to be used in practicing respondent's invention and the right to use respondent's trade-mark "Ad-Seal-It," and the acts and practices of respondent done and performed in furtherance of and pursuant to said license agreements of fixing, establishing, and maintaining the prices, terms, and conditions of sale at which, and of designating, limiting, and controlling the territories in which, said other manufacturers of printed waxed-paper bands might sell same, all have a tendency and capacity to restrain, restrict, suppress, and eliminate competition in the interstate sale and distribution of said product.

CONCLUSION

The aforesaid acts and practices of respondent constitute unfair methods of competition 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, answer of the respondent, 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, recommended decision of the trial examiner and exceptions filed thereto, briefs, and oral argument of counsel, 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, Henry J. Taylor, individually, and trading under the name and style of The Package Advertising Co., or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of printed waxed-paper bands, or any similar product, to be used as inserts or outserts in connection

Order

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with the wrapping of bread or other bakery products, do forthwith cease and desist from coercing, persuading, inducing, or otherwise causing other manufacturers, or distributors of printed waxed-paper bands to enter into, continue, cooperate in, or carry out, any agreement or understanding with respondent, whether or not based upon respondent's patents and trade-mark, for the purpose, or with the effect, of fixing, establishing, or maintaining the price or terms or conditions of sale at which, or designating, limiting or controlling the territory the territory within which, sales of printed waxed-paper bands not manufactured or sold by respondent shall be made.

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

HOOD RUBBER Co., INC. Complaint, May 28, 1943. Order, July 8, 1949. (Docket 4971.)

Charge: Discriminating in price between different purchasers of respondent's rubber and canvas footwear of like grade and quality by selling said products to some of its customers at higher prices than it sells such products to other of its customers, in violation of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

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

PARAGRAPH 1. Respondent, Hood Rubber Co., Inc., is a wholly owned subsidiary of the Goodrich Tire & Rubber Co., of Akron, Ohio, and is a Massachusetts corporation with its principal office and place of business located at Watertown, Mass.

PAR. 2. Respondent is now, and has been since June 19, 1936, principally engaged in the manufacture and sale of rubber and canvas footwear which it sells to jobbers or wholesalers, national retail chain organizations, mail-order houses, and other retail customers, located in States other than the State of Massachusetts.

Respondent causes said rubber and canvas footwear, when sold, to be transported from the place of manufacture within said State of Massachusetts to the purchasers thereof located in States other than the State of Massachusetts, and there is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factory or warehouses and the purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid respondent is now, and during the time herein mentioned has been, in substantial competition with other corporations engaged in the business of manufacturing and selling rubber and canvas footwear in commerce between and among the various States of the United States and in the District of Columbia.

Respondent has annual dollar sales of rubber and canvas footwear of approximately \$16,500,000, sells approximately 8,250,000 units of rubber footwear and 6,250,000 units of canvas footwear annually, and is the second largest factor in the rubber and canvas footwear industry. Respondent in the maintenance of its national distribution of said products maintains 21 stocking points and 11 branch sales headquarters, located throughout the various States of the United States.

Many of respondent's retail customers are competitively engaged with each other and with the customers of the respondent's competitors in the resale of said products within the several trade areas in which the respondent's said customers, respectively, offer for sale and sell the said products purchased from respondent.

Respondent's first-grade rubber and canvas footwear is made up of its nationally advertised Hood and Goodrich brands, its unadvertised Shawmut brand, and private brands or special specification products privately branded or carrying no brand. Respondent's nationally advertised brands are sold principally to small retailers, although its Hood brand is sold by its branches to department stores and small local chains designated as "House Accounts." Moreover, some Hood brand canvas footwear is sold to large chains and mail-order houses designated as "National Accounts," but no Hood brand rubber footwear is so sold to such accounts. Respondent's Shawmut brand and private brand or special specification products are sold exclusively to large retail chains and mail-order houses. All of said first grade rubber and canvas rubber footwear of respondent, regardless of the various brand names as above described, are of like grade and quality. Large retailers and small local chain customers of respondent designated by it as "House Accounts" and mail-order houses and large chain customers designated by it as "National Accounts" which purchase rubber and canvas footwear of respondent, under the Shawmut brand or private brands or no brands, resell such products in many parts of the United States in competition with other retail customers of respondent selling respondent's regular advertised brands. Such private brands or special specification products are of like grade and quality to respondent's nationally advertised brands, Hood and Good-

rich, sold by respondent's small retail customers in competition with said private brands or special specification products.

Respondent's second-grade rubber and canvas footwear is sold by it to the same classes of retailers as are its first-grade products, and under various brand names. Such second-grade rubber and canvas footwear, regardless of the brand name under which same is sold, and regardless of the class or type of retailer to whom such products are sold, is of like grade and quality, and the various classes of respondent's customer-purchasers resell said products in competition with each other in many parts of the United States.

PAR. 4. Respondent in the course and conduct of its business, as hereinbefore set forth, has been since June 19, 1936, and is now, discriminating in price between different purchasers of its rubber and canvas footwear of like grade and quality by selling said products to some of its customers at higher prices than it sells such products of like grade and quality to other of its customers who are competitively engaged one with the other in the resale of said products within the United States.

PAR. 5. The discriminations in price referred to in paragraph 4 hereof have been effectuated through the use by respondent in its pricing plan of a schedule of discounts from list prices, described in general terms as follows:

Discounts allowed by respondent on sales of its advertised Goodrich and Hood brands of both canvas and rubber footwear to small retailers are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory	
		Stock	Make-up
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
(1) Less than 144 pairs.....	None	None	None
(2) 145-479 pairs.....	3	3	3
(3) 480 pairs or more.....	3	3	8

Thus, a differential of 3 percent is allowed on single shipments in excess of 144 pairs, packed in standard case lots, and an extra 5 percent differential for make-up orders if shipped in lots of 480 pairs or more. "Make-up" orders are those placed far enough in advance to allow for orderly manufacture and shipment from factory to customers.

To the extent that respondent's advertised brands of rubber and canvas footwear are sold by its branches to department stores and

small local chains designated as "House Accounts" and to large chains and mail-order houses designated as "National Accounts" the discounts received by said accounts on such advertised brands are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
(1) Less than 144 pairs.....	5	5	5	5	5
(2) 145-479 pairs.....	8	8	8	8	8
(3) 480 pairs or more.....	8	8	13	8	13

Discounts allowed by respondent to its "House" and "National Accounts" on its unadvertised Shawmut brand or rubber and canvas footwear of like grade and quality to its advertised brands aforesaid, and which the small retailers are not accorded the privilege of purchasing, are—

On single shipments of—	Branch sales and shipments	Branch sales shipped by factory		Factory sales and shipments	
		Stock	Make-up	Stock	Make-up
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
(1) Less than 144 pairs.....	10	10	10	10	10
(2) 147-479 pairs.....	13	13	13	13	13
(3) 480 pairs or more.....	13	13	18	13	(1) (2)

¹ 18 percent on canvas.

² 18 and 5 percent on rubber (maximum to "House" accounts is 18 percent; the extra 5 percent is allowed only to "National" accounts.)

The Shawmut brand of footwear is sold by respondent subject to the above-described discounts under either that brand name or under the private brand of the purchaser or under no brand and is of like grade and quality to its first grade advertised brands, Goodrich and Hood.

Discounts allowed by respondent to small retailers on sale of its second-grade rubber and canvas footwear are the same as allowed on its first grade advertised products above set-out. However, on second-grade footwear, the large retailers designated as "House" and "National" accounts are accorded larger discounts, varying somewhat from those allowed them on first-grade footwear, and are as follows:

Discounts allowed on second-grade canvas footwear sold to "House" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	8	8	8
480 pairs or more.....	8	8	13	8	13

¹ (Not sold by factory.)

Discounts allowed on second-grade canvas footwear sold to "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	5	8	8
480 pairs or more.....	8	8	18	8	18

Discounts allowed on second-grade rubber footwear sold to "House" and "National" accounts

On single shipments of—	Branch sales and shipments—stock	Branch sales shipped by factory		Factory sales and shipments ¹	
		Stock	Make-up	Stock	Make-up
	Percent	Percent	Percent	Percent	Percent
Less than 144 pairs.....	5	5	5	5	5
144-479 pairs.....	8	8	8	8	8
480 pairs or more.....	8	8	17.2	8	17.2

¹ (Not sold by factory.)

The discounts from list prices above described in general terms are more fully set forth in respondent's sales policies for the year 1937 which were published and circulated by respondent to its retail trade under the following titles: "1937 Waterproof Sales Policy (Revised) Hood and Goodrich"; "1937 Waterproof Sales Policy Old Colony, Massachusetts and Stafford Brands"; and "1937 Canvas Sales Policy." The pricing policies of respondent, as above described in general terms, and as more particularly described in respondent's published sales policies above referred to, have been continued in force by respondent, with minor variations, to date and such discounts as therein more particularly described and/or as later modified, constitute the means by which respondent has discriminated in price as alleged in paragraph 4 hereof. The discounts above described do not include certain cash and early-order discounts likewise allowed by respondent, but said trade discounts are in addition thereto.

PAR. 6. The effect of such discriminations in price as set forth in Paragraphs Four and Five hereof has been or may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged and may be to injure, destroy, or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive the same benefits.

in the various States of the United States other than the State of Utah, and in the District of Columbia.

Respondents sell and distribute their said products largely through jobbers and chain stores, the jobbers selling in turn to retailers, and in order to facilitate their sales and deliveries respondents maintain warehouses in various large cities of the Midwestern and Southwestern parts of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their 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 their said business and in connection with the sale of their said product, "Sunshine Foam," respondents have made various false and misleading statements and representations to purchasers and prospective purchasers of said product by means of advertisements inserted in newspapers, magazines, and periodicals, by radio continuities, in circulars, leaflets and pamphlets, and through other advertising media, all of general circulation.

Among and typical of the said statements and representations so made but not all-inclusive are the following:

* * * * *

The marvelous FOAM in this new scientific cleaner does all the work. The millions of small bubbles penetrate through the rug and upholstery to the very base, cleaning, purifying, and mothproofing.

* * * * *

Kills and removes larvae, eggs, moth worms, and other pests.

* * * * *

SUNSHINE FOAM MOTH PROOFS AS IT CLEANS curtains, cushions, shades, drapes, sofas, daybeds, divans, ottomans, chairs, and fabrics are made noneatable by moth or carpet beetles. Kills and removes forever larvae, eggs, moth worms, and other pests.

PAR. 4. By and through the use of the foregoing statements and representations and others similar thereto but not specifically set out herein, respondents represent and have represented that their said product has distinct practical value as a mothproofing agent; that it will make treated fabrics noneatable by moths and carpet beetles and will remove forever the danger of reinfestation by larvae eggs, moth worms, and other insects; that Sunshine Foam is both a mothproofing and larvae-killing agency and that it can even be depended upon to kill all insects within upholstering materials, serving as a contact insecticide, killing and destroying all moths or moth larvae, eggs or worms, or other insects present in the padding or filling of cushions, sofas, day beds, divans, ottomans, overstuffed chairs or other articles of furniture by penetrating throughout the flax, straw, cotton, moss, hair, feathers, or other materials employed in the construction of stuffed or upholstered furniture or similar articles.

PAR. 5. In truth and in fact, respondents' said product has no practical value and is not dependable as a mothproofing agency; it does not make treated fabrics noneatable by moths and carpet beetles, and does not remove forever the danger of reinfestation by larvae, eggs, moth worms, and other insects, and in the case of cushions, sofas, day beds, divans, ottomans, and chairs containing upholstering materials such as moss, hair, and feathers, the thorough application of "foam" to the fabric cover will not kill insects within the upholstering materials.

While the said solution might kill fabric pests thoroughly wet with the product at the time of application, in doing this it would do no more than would be done by any so-called "contact" insecticide, and the application of "Sunshine Foam" to the fabric cover of cushions, sofas, day beds, ottomans, and chairs or other articles or furniture containing upholstering materials will not kill insects within the upholstering materials for the reason that such application cannot wet the interior sufficiently to allow the "foam" to act as a contact insecticide throughout the flax, straw, cotton, moss, hair, feathers, or other material used as upholstering in the construction of the furniture or other upholstered articles.

PAR. 6. The use by respondents of the said false and misleading statements and representations in connection with the sale of their aforesaid product has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said product into the erroneous and mistaken belief that such statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said product. By these means respondents have further placed in the hands of their dealers, agents, and distributors an instrument by means of which the latter mislead and deceive and have misled and deceived members of the consuming public.

PAR. 7. The aforesaid acts and practices of said respondents, as alleged herein, 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 without prejudice, dated January 17, 1949, filed by counsel in support of the complaint, in which said motion counsel for respondents waive notice thereof and consent that it be granted.

The complaint herein, issued July 9, 1946, charges respondents with unfair and deceptive acts and practices in commerce in the sale and distribution of "Sunshine Foam," a preparation designed and in-

tended for use as a mothproofing agent, through the use and dissemination of certain statements and representations relating to its effectiveness, which are alleged to be false and misleading, and made or caused to be made and disseminated for the purpose of inducing the purchase of said preparation.

On June 25, 1947, subsequent to the issuance of the aforesaid complaint, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the preparation involved in this proceeding is an "economic poison" within the meaning of said act and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over certain claims, statements, and representations with regard to its effectiveness.

In view of the foregoing, the Commission is of the opinion that under its policy of cooperating 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 statements and representations.

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that in the circumstances the 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.

Mr. William L. Pencke for the Commission.

Pugsley, Hayes & Rampton, of Salt Lake City, Utah, for Sunshine Household Products Co., Inc., Carl Nicewander, Sadie Rees, Judy Brant, Theo. Fink, and Archie I. Bess.

Cheny, Jensen, Marr & Wilkins, of Salt Lake City, Utah, for David W. Evans.

NORTHWEST DRIED FRUIT ASSOCIATION, ITS OFFICERS, DIRECTORS, AND MEMBERS. Complaint, April 28, 1945. Opinion and order, August 10, 1949. (Docket 5311.)

Charge: Entering into and carrying out understandings and combinations to suppress competition in the sale of dried prunes among respondent members through concerted (1) fixing the percentage of deliveries to their future contract customers, on the basis of estimated crop failures, and so delivering, and (2) selling and delivering at enhanced prices the remaining surplus; with effect of unduly and unlawfully restricting and restraining trade in commerce in said products, substantially enhancing prices to the direct purchasers and to the consuming public, and otherwise depriving the public of the benefits

and advantages that would flow from normal competition between respondents; and of eliminating competition in said products, and with tendency so to do and to create a monopoly in the sale thereof in interstate commerce.

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 Northwest Dried Fruit Association, its officers, directors or members 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 Northwest Dried Fruit Association is a nonprofit membership corporation sometimes hereinafter referred to as respondent Association organized and existing under the laws of the State of Oregon, with its principal office at 305 Title and Trust Building, Portland, Oreg., composed of trade associations and their members, and other corporations, partnerships, and individuals, and whose said members are variously engaged in the business of growing fruit and drying, packing, selling, and/or shipping, such fruits, among which fruit are prunes, and comprises practically the whole of that industry, the same being principally located in the States of Washington, Oregon, Idaho, and California. The respondent association was organized for the purpose of promoting the interests of, and to secure friendly relations and cooperation between and among, the various growers, packers, and shippers of dried prunes for their mutual benefit and advantage.

The following named individuals are or have been officers of said respondent association, and as such, and individually, are designated as respondents herein:

H. H. Hallauer, president.

Sam N. Petersen, vice president.

John F. White, treasurer.

Mrs. V. K. Denny, secretary.

The following named individuals in addition to the foregoing named officers are, or have been, members of the board of directors of respondent association, and as such, and individually, are named as respondents herein:

L. M. Jones,

J. C. Tracy,

W. S. LeVan,

Ira D. Cardiff.

PAR. 2. The following corporations are or were at the time of the happening hereinafter referred to members of respondent associations; to wit:

(1) Respondent, Oregon Prune Exchange, is a nonprofit corporation, organized, existing, and doing business under the laws of the State

of Oregon, with its principal office and place of business at 309 Southwest Third Avenue, Portland, Oreg., and is a selling agent for a number of fruit-growers' associations.

The following persons are or have been officers of respondent exchange, and as such, and individually, are named as respondents herein:

M. H. King, president.

R. P. Parsons, vice president.

John F. White, manager and secretary-treasurer.

The following persons are or have been directors of said exchange, and as such, and individually, are named as respondents herein:

C. A. Ratcliff,

M. H. Middleburg,

George S. Zimmerman,

and the above-named officers.

(2) Respondent Washington Growers Packing Corp. is a cooperative organization, organized, existing, and doing business under the laws of the State of Washington, with its principal office and place of business at 507 $\frac{1}{4}$ Main Street, Vancouver, Wash., and is a packing and sales agent of a large number of producers of prunes in the State of Washington.

The following persons are or have been officers of said respondent corporation, and as such, and individually, are named as respondents herein:

John Scholl, president.

Frank Erickson, vice president.

Walter Cebula, treasurer.

Edward J. Boddy, secretary.

The following persons are or have been directors of said respondent corporation, and as such, and individually, are named as respondents herein:

C. M. Gibbons,

Floyd Kingen,

D. C. McCain,

Hugh E. Engler,

C. A. Mills,

J. G. Strong,

and the above-named officers.

(3) Respondent Rosenberg Bros. & Co., is a corporation, organized, existing, and doing business under the laws of the State of California, with its principal office and place of business at 334 California Street, San Francisco, Calif., and is engaged in the buying, packing, and selling of dried fruits, including prunes.

The following named persons are or have been officers of said respondent Rosenberg Bros. of California and as such, and individually are named as respondents herein:

Arthur C. Oppenheimer, president.

Robert S. Geen, vice president and secretary.

H. P. Higgins, vice president.

Rosa L. Selene, treasurer.

The following named persons, are or have been members of the board of directors of said respondent Rosenberg Bros. & Co. of California and as such, and individually are named as respondents herein:

Arthur C. Oppenheimer.

Robert S. Geen.

Harry R. Higgins.

Alice J. Rosenberg.

Louise R. Bransten.

(4) Respondent Rosenberg Bros. & Co. is a corporation, organized, existing, and doing business under the laws of the State of Oregon, with its office and principal place of business at 2211 Northwest Front Avenue, Portland, Oreg., and is engaged in the buying, packing, and selling of, amongst other dried fruits, prunes.

The following named persons are or have been officers of said respondent, Rosenberg Bros. & Co. of Oregon, and as such, and individually, are named as respondents herein:

Samuel N. Petersen, president.

Dwight K. Grady, vice president.

G. R. Wilson, secretary and treasurer.

The memberships of the above-named respondent association and corporate respondents change from time to time by the addition and withdrawal of members, so that all of the members of said association and member corporations at any given time cannot be specifically named as respondents herein, without considerable inconvenience and delay; therefore, the above-named respondent member corporations, their officers and directors hereinbefore named as respondents, as such officers and directors are also made respondents as being representatives of all the members of respondent Northwest Dried Fruit Association and the members of the respective respondent member corporations named herein.

PAR. 3. The packer and shipper members of respondent Northwest Dried Fruit Association and the members of the respective respondent member corporations named herein, in the regular course and conduct of their business, ship and deliver their said products, when sold, to their respective customers in the various States of the United States other than the States in which they, the said members, are located, and in the District of Columbia, and are engaged in interstate commerce.

PAR. 4. The respondent member corporations and their members, growers, packers, and shippers, or their agents or representatives, in the purchase and sale or negotiation for the purchase and sale of prunes, customarily and as a general practice, enter into future contracts, generally uniform in character, terms and conditions, the same being known as Northwestern Dried Fruit Contracts, promulgated by respondent association usually several months before the time of harvesting or before they are ready for market. Said contracts generally

provide for the contingency of a crop failure, making uniform percentage arrangements for settlements of damages, the applicable part thereof being as follows:

In the event of destruction or serious damage to crops after April 15 of the year in which this sale is made and subsequent to the date of this contract, Seller may reduce quantity twenty-five (25%) percent without penalty. If less than seventy-five percent (75%) is tendered, Seller shall pay as damages ten percent (10%) of net contract price of shortage below estimated amounts only, and owing to the uncertainty of climatic conditions in Oregon, Washington and Idaho, just previous to and at the ripening period, should severe damage occur at that time, reducing Growers' and Packers' crop estimates, this delivery, both as to size and quantity, may be reduced proportionately without penalty to the Seller * * *.

PAR. 5. In 1941, a prune crop failure was anticipated on account of the excessive rains and storms, and the said respondent member corporations and their members and respondent association, acting together, estimated the ratio or percentage of the prospective crop losses, but, however, upon the harvesting or gathering of the crop, it developed that the same was larger than estimated, at least in respect to some grades of prunes and said respondents entered into the following understandings, agreements, combinations, and conspiracies and carried out an agreed common course of action in the sale of dried prunes to hinder or suppress competition between respondent members or between their respective members and cooperatively and concertedly performed the following acts to wit:

1. Fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis;

2. Sold and delivered at enhanced prices, or cooperated in the sale and delivery at enhanced prices, of surplus dried prunes remaining after the filling of orders on an agreed yield percentage or pro-rata basis, in execution of their future delivery contracts.

PAR. 6. Said understandings, agreements, combinations and conspiracies, and the things done thereunder, and pursuant thereto, as hereinabove alleged, have had and have, the direct effect of unduly and unlawfully restricting and restraining trade, in commerce, in said products, between and among the several States of the United States, and in the District of Columbia; all substantially enhancing prices to the direct purchasers and to the consuming public and otherwise depriving the public of the benefits and advantages that would flow from normal competition among and between respondent member corporations and between their respective members; all tending to eliminate, and eliminating, competition, and all tending to create a monopoly in the sale of dried prunes in interstate commerce.

PAR. 7. The acts and practices and methods of the respondents, as herein alleged, are all to the prejudice of the public; have a danger-

ous tendency to, and have actually hindered competition between and among respondents in the sale of dried prunes, in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have tended to create in respondents a monopoly in the sale of said product, in interstate commerce; have unreasonably restrained interstate commerce in said product, 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.

OPINION OF THE COMMISSION

AYRES, *Commissioner*.

Respondents are charged with conspiracy in restraint of trade in violation of section 5 of the Federal Trade Commission Act. The members of respondent association are variously engaged in growing, drying, packing, and selling dried prunes, and comprise practically the whole of the prune industry in Washington, Oregon, and Idaho. The prunes grown in these States are the tart Italian type, distinctly different in flavor from the sweet French type grown in California. Their production does not exceed 5 percent of the dried prunes produced in the Pacific coast area, but they represent substantially the entire production in this country of Italian type prunes.

The complaint relates to certain activities by the respondents in the crop year 1941-42. Such activities were based upon the provisions of uniform future sales contracts developed by respondent association in 1919 which have since been in general use by members of the association. Insofar as pertinent to the consideration involved here, the future sales contracts contain the following provision designed to protect respondent sellers against delivery obligations in the event of unusual damage to the crop resulting from climatic conditions:

* * * It is further agreed by the parties hereto that inasmuch as this sale is made against Grower's contracts for estimated amounts only, and owing to the uncertainty of climatic conditions in Oregon, Washington, and Idaho just previous to and at the ripening period, should severe damage occur at that time reducing Growers' and Packers' crop estimates, this delivery, both as to sizes and quantity, may be reduced proportionately, without penalty to the Seller. Unless a particular district is specified, the crop of the variety of fruit named produced in Oregon, Washington, and Idaho shall be taken into consideration in determining what is a fair delivery, any dispute as to the extent of crop damage in any of such States to be left to the decision of its State Board of Horticulture or if no Board of Horticulture exists in such State, its State Department of Agriculture.

The complaint alleges that in 1941 a crop failure was anticipated because of excessive rains, that the respondents, acting together, estimated the percentage of the prospective crop loss, and that by concerted action they—

1. Fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis;
2. Sold and delivered at enhanced prices, or cooperated in the sale and delivery at enhanced prices, of surplus dried prunes remaining after the filling of orders on an agreed yield percentage or pro-rata basis, in execution of their future delivery contracts.

The latter allegation was not sustained by the record and does not require further consideration. The only remaining substantial issue is whether or not by conspiracy the respondents "fixed the percentage of deliveries to their respective future-contract customers on the basis of such estimated crop failure, and made deliveries upon such basis."

The record discloses that about the first of September 1941, when the prunes were ripe and ready for harvest, severe rains occurred and continued for several days in the producing areas, causing great damage to the prune crop. Immediately following the rain damage, the prune packing members of the respondent association conferred concerning the extent of damage and the proportionate delivery which should be made to buyers under the terms of the future sales contracts. At their request the Chief of the Division of Plant Industry of the State of Oregon made a limited inquiry and on the basis of his inquiry estimated a 62 percent crop loss. The respondents were not satisfied with that estimate, and decided to wait for the report of the Federal Crop Reporting Service in the State of Oregon, a branch of the United States Department of Agriculture, which was better equipped to make an estimate. Shortly thereafter, that service made a public report which showed that before the rain damage the estimated dried prune crop was approximately 24,670 tons and that the rain damage had reduced the estimated crop to 6,400 tons, of which 25 percent was substandard. This meant an estimated crop damage of 80.8 percent, or an estimated crop salvage of 19.2 percent. The actual dried prune production as later determined by the Federal Crop Reporting Service after the entire crop had been harvested was 400 tons in excess of its early estimate. The prune packing members of the respondent association accepted the estimate of the Federal Crop Reporting Service as a basis for determining the percentage of their commitments which they should deliver under their future sales contracts. That estimate did not indicate the proportion of the various sizes of prunes involved in the salvage estimate. The respondents, however, agreed among themselves upon the percentage of the various sizes which should be delivered under their contracts.

Only part of the crop is ordinarily sold under future sales contracts, the remainder being sold in spot transactions at prices then prevailing. Following the rain damage, the prices of dried prunes advanced to the extent that the prices prevailing in the fall of 1942 were about double those prevailing in the fall of 1941. After the

respondents had discharged their contract obligations for deliveries on the contract price basis, they were free to buy and sell prunes in spot transactions at the increased prices, and they did so to a substantial extent. The financial advantages accruing to them as result of the reduction of delivery obligations under their future sales contracts are readily apparent.

The complaint here does not challenge the legality of the agreement by which the respondents adopted the uniform future sales contracts in 1919, and have since used them. It challenges only the things which the respondents did pursuant to those contracts. Because the scope of the complaint is thus limited, any order to cease and desist which could be issued in this proceeding could prohibit the respondents only from concertedly fixing the percentage of deliveries under their future contracts, but could not require them to discontinue using the contracts themselves. Under such an order, the respondents would be left free individually to adhere to percentages determined under the provisions of their uniform contracts. By that process, they could, without further concerted action, achieve substantial uniformity in determining their delivery obligations without violating the provisions of such an order.

The complaint does not reach the agreement by which the respondents adopted the uniform contract provisions upon which the acts charged were based; and it does not appear that the public interest would be materially served by requiring respondents to cease and desist from these overt acts while leaving them free to accomplish substantially the same results by individual action under the contracts. It is the opinion of the Commission, therefore, that the proceeding under this complaint should be dismissed.

The uniform contract provisions out of which this situation developed have been in effect since about 1919. They were not invoked by the respondents until 1941, and there is nothing in the record to indicate that they have been invoked since that time. There is no assurance that these provisions will not be applied with greater frequency in the future. On the basis of this history, however, there is little to indicate that it would be in the public interest to institute further proceedings at this time to challenge the legality of the agreement by which the respondents adopted the uniform future sales contracts in 1919. If future developments disclose the need for corrective action with respect to these contracts, consideration can be given at the proper time to an appropriate type of proceeding based on the then existing circumstances.

Complaint dismissed by the following order:

This proceeding came on to be heard by the Commission on the complaint, answers of respondents, testimony and other evidence, recom-

mended decision of the trial examiner and exceptions thereto, and the briefs of counsel.

The Commission having duly considered the matter and being now fully advised in the premises:

It Is Ordered, For the reasons stated in the accompanying opinion of the Commission, that the complaint in this proceeding be, and the same hereby is, dismissed.

Before *Mr. John W. Addison*, trial examiner.

Mr. George W. Williams for the Commission.

King & Wood, Portland, Oreg., for Northwest Dried Fruit Association, Oregon Prune Exchange, Washington Growers Packing Corp., and the officers and board of directors thereof.

Mr. Norman A. Eisner, of San Francisco, Calif., for Rosenberg Bros. & Co. of California, Rosenberg Bros. & Co. of Oregon, and various officers and board of directors thereof.

Mr. Wesley W. Kergan, of Carmel, Calif., for Elizabeth M. Higgins, executrix for H. P. Higgins.

AMERICAN NICKELOID CO. Complaint, February 20, 1942. Opinion and order, August 19, 1949. (Docket 4713.)

Charge: Advertising falsely or misleadingly and using misleading product names or title, and furnishing means and instrumentalities of misrepresentation and deception, as to nature of product; in connection with the manufacture and sale of prefinished plated metals designated Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin.

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 American Nickeloid 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. Respondent, American Nickeloid Co., is a corporation organized under the laws of the State of Illinois with its principal place of business located in the city of Peru, Ill.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the manufacture of prefinished plated metals in varying quality, style, form, gage, and finish (suitable for decorative purposes and for use by metal fabricators in the manufacture of innumerable articles) and in the sale and distribution thereof in com-

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

Respondent sells its prefinished plated metals to distributors, decorators, and metal fabricators located in the various States of the United States and causes said metals, when sold, to be transported from its place of business located in the State of Illinois to 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 prefinished plated metals in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the furtherance of the sale and distribution of its prefinished plated metals, as aforesaid, respondent has been and is now engaged in falsely representing the nature, texture, quality, composition, and character of its aforesaid metals through false, deceptive, and misleading representations disseminated by advertisements inserted in newspapers, periodicals, trade journals, circulars, cards, pamphlets, folders, and other advertising media.

Among and typical of such false, deceptive, and misleading representations are the trade names given by respondent to its prefinished plated metals. Respondent uses such trade names as Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to by respondent as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin to designate its various plated metal products.

PAR. 4. Through the use of the names of familiar and well known alloys such as Copper Steel, Copper Tin, Chrome Steel, Nickel Brass, Nickel Copper, and Nickel Steel, and others similar thereto but not specifically set out herein, as the trade names for and to designate certain of its prefinished plated metals, each of which purport to be descriptive of the nature, texture, quality, composition, and character of the prefinished plated metals so designated respondent represents directly that the prefinished plated metals respectively so designated are alloys.

The names Brass Steel, Brass Tin, Chromaloid (sometimes referred to as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel, Silver, Chrome Tin, and Nickel Tin used by respondent are not the names of any familiar or well known alloys but, due to the manner of grouping the names of the constituent metals, and in the case of the trade name Chromaloid by reason of the suffix "aloid" which phonetically is like the word "alloyed," these names have the tendency and capacity to suggest and imply alloys. Through the use of these trade names to designate certain of its prefinished

plated metals, and others similar thereto but not specifically set out herein, each of which purport to be descriptive of the nature, texture, quality, composition, and character of the prefinished plated metals so designated, respondent represents indirectly and by implication that the prefinished plated metals respectively so designated are alloys.

PAR. 5. The foregoing trade names, and others similar thereto but not specifically set out herein, are all false and misleading.

Respondent's prefinished plated metals designated Brass Steel, Brass Tin, Copper Tin, Copper Steel, Chromaloid (sometimes referred to by respondent as Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome Tin, Chrome Steel, Nickel Brass, Nickel Copper, Nickel Steel, and Nickel Tin are not produced by the fusion of the metals named and are not alloys as the names represent or imply. They are all "electroplated metals."

PAR. 6. In the field of metallurgy science has developed a process whereby one metal is by fusion combined with one or more other metals or with a nonmetallic element. During this process chemical and physical changes take place resulting in a new class of metals well known and familiar to industry and the arts as "alloys."

Science has also developed a process known as "electrodeposition," or more specifically known as "electroplating," whereby a coating of one or more different metals may be separately or simultaneously deposited upon another pure metal or alloy commonly known as the base metal. During this process there are no profound or important changes in the physical or chemical characteristics of the constituent metals, except possibly at the immediate interfacing. This process has not resulted in a new class of metals but has produced a product well known and familiar to industry and the arts as "electroplated metals."

The two products "alloys" and "electroplated metals" have physical and chemical characteristics that are widely different as to nature, texture, quality, and composition. For example, the pure metals copper and zinc can be combined by fusion to produce a new and different metal well known to industry and art as brass, which is one of the oldest known alloys. It is also possible, by the process of "electrodeposition" to deposit a coating of the metal copper upon the metal zinc, resulting in a product that may have useful applications, but it is not an alloy of copper and zinc. It is not brass, it is still copper and zinc and could not properly be designated brass, but such product is known to industry and art as "copperplated zinc."

The metal iron can be combined by fusion with the nonmetallic element carbon resulting in a product well known to industry and art as steel. The alloyed metal steel can be combined by fusion with other metals such as, for example, nickel or chromium. The result of this process is a new alloy well known to industry and the arts as

nickel steel or chromium steel (chrome steel), as the case may be. It is possible, by the process of "electrodeposition" to deposit a coating of the pure metal nickel or the pure metal chromium on the base alloy metal steel resulting in products that may have useful applications, but such products are not alloys of the metals used. The product is not nickel steel in the one instance or chrome steel in the other, and could not properly be, respectively, so designated. The products are steel plated with nickel and steel plated with chromium and are familiar and well known to industry and the arts as nickel-plated steel and chrome-plated steel, respectively.

Alloys are frequently designated by grouping together or using the names of the constituent metals or elements, such as for example: The alloy of nickel and steel is usually designated nickel steel. This manner of designating alloys is a familiar and well known custom to science, industry and the arts.

The names Copper Steel, Copper Tin, Chrome Steel, Nickel Brass, Nickel Copper, and Nickel Steel are all names commonly used in the science of metallurgy and familiar and well known to the industry and arts as names designating certain well known alloyed metals or alloys, produced by the process of fusion. The names Brass Steel, Brass Tin, Chromaloid (sometimes designated Chrome Zinc), Chrome Brass, Chrome Copper, Chromium Copper, Chrome Nickel Silver, Chrome, Tin, and Nickel Tin are not familiar or well known names to the science of metallurgy or industry or the arts as names designating alloyed metals or alloys. In fact, there are no known alloys so designated or produced by the fusion of the metals so grouped, however, the metals are grouped together to form a name in the same manner usually used to designate the name of an alloy.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive trade names, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the prefinished plated metals bearing such trade names are alloys and places in the hands of distributors, decorators, and fabricators a means and instrumentality by which said distributors, decorators, and fabricators may mislead and deceive the purchasing public as to the actual kind of metal used for decorative purposes or used in the finished product; and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's aforesaid prefinished plated metals.

PAR. 8. 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 in commerce, within the intent and meaning of the Federal Trade Commission Act.

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed January 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondent.

The complaint herein, issued February 20, 1942, charges respondent with unfair and deceptive acts and practices in commerce in the sale and distribution of prefinished plated metal products of varying quality, style, form, gage, and finish through the use of trade names and other descriptive designations in advertising disseminated by it and placed in the hands of others for use and dissemination in connection therewith, and alleged to be false, deceptive, and misleading for the reason that said trade names and descriptive designations convey the erroneous impression that said metals are alloys, when, in fact, they are not alloys but "electroplated" metals. The complaint alleges that respondent sells said products to distributors, decorators, and metal fabricators, to be resold for use or used in the manufacture of innumerable finished products and decorative articles, and that respondent, by the use of the aforesaid trade names and descriptive designations for its products disseminated to said distributors, decorators, and metal fabricators, places in their hands a means and instrumentality by which they may mislead and deceive the purchasing public as to the actual kind of metal used in finished products and for decorative purposes.

From the motion to close this proceeding, it appears that at the time complaint issued respondent was distributing catalogs, circulars, and other advertising material depicting and describing its plated metal products and was also supplying its distributor-customers with advertising material for their use in reselling such products. Some of said advertising material described the method by which the plated metal products of respondent were manufactured and clearly indicated that such products were plated and therefore not alloys, while other of such advertising failed to describe the manufacturing processes. It further appears from said motion that subsequent to the end of World War II, respondent has advertised its products solely by means of two booklets distributed only to its direct customers, who are fabricators, and to its wholesale distributors, which said booklets clearly state that the metal products sold by respondent are plated and are not alloys, and by which said customers are not misled or deceived. The manufacturers of products consisting in part of respondent's plated metals do not describe, designate, or refer to such products by the name or names used by respondent or by any simulation thereof, except in the instance of one manufacturer, with regard to whom the Commission dismissed its complaint charging false, misleading, and deceptive advertising through the use of the word "Chromsteel."

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER CLOSING CASE WITHOUT PREJUDICE

It is ordered, That this case be, and it is hereby, 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. Edward L. Smith and *Mr. George M. Martin* for the Commission.

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for respondent.

BARJAY PRODUCTS, INC., BENJAMIN RUBIN, JULES JOSEPH, ALEX RUBIN AND CHARLES STRAUB. Complaint, September 24, 1948. Order, September 19, 1949. (Docket 5584.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and scientific or relevant facts; in connection with the sale of a drug preparation designated "Trymm 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 Barjay Products, Inc., a corporation, and Benjamin Rubin, Jules Joseph, Alex Rubin and Charles Straub, individually and as officers and directors of said corporation, 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 Barjay Products, 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 located at 165 Broadway, New York, N. Y.

PAR. 2. Respondents Benjamin Rubin, Jules Joseph, Alex Rubin and Charles Straub, are, respectively, president, vice president, secretary and treasurer, and manage, direct, and control the business and affairs of respondent corporation, Barjay Products, Inc.

Respondent Benjamin Rubin's address is 2465 Cheltenham Road, Toledo, Ohio.

Respondent Jules Joseph resides at Hotel Fort Meigs, Toledo, Ohio.

Respondent Alex Rubin has his principal place of business with respondent Barjay Products, Inc., 165 Broadway, New York, N. Y.

Respondent Charles Straub resides at 2086 Starr Avenue, Toledo, Ohio.

PAR. 3. Respondents are now, and have been for several years last past, engaged in the business of selling and distributing a drug preparation, as "drug" is defined in the Federal Trade Commission Act.

The designation used by said respondents for their said preparation and the formula and directions for its use are as follows:

Designation: Trymm Tablets.

Formula: Each tablet contains:

Vitamin B₁ (Thiamin Chloride): 0.333 mgm.

Vitamin B₂ (Riboflavin): 0.666 mgm.

Vitamin D: 133.33 units.

Calcium Pyrophosphate: 1,024 mgm.

Niacinamide: 1.67 mgm.

Iron Pyrophosphate: 13.53 mgm.

Sodium Chloride: 0.026 gr.

Coumarin: Filler and Flavoring.

Vanillin: Filler and Flavoring.

Saccharin: Filler and Flavoring.

Chocolate: Filler and Flavoring.

(Phosphorous—256 mgm.—derived from Calcium Pyrophosphate and Iron Pyrophosphate).

Directions: Take one tablet and chew well before each meal with glass of water—three times daily.

The said respondents cause their said preparation when sold to be transported from their place of business in the State of New York to dealers for resale and to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and have caused the dissemination of certain advertisements concerning their 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 have caused the dissemination of 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 their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid by the United States mails, by advertisements in newspapers and periodicals, and by circulars and other advertising literature are the following:

Reduce. Trymm off the fat that hides your charming self.

Trymm—the new way to reduce.

Helps you eat less.

Three Trymm tablets daily take the place of a lot of food. Easy to diet—you don't get so hungry.

Easy to diet because you don't get hungry.

It is easy to diet down to the weight you want with Trymm.

With Trymm adequate nutrition is assured.

What the body really demands by the sensation of hunger is the life-giving vitamins and minerals.

Overeating and excessive weight may be caused, not by gluttony of the individual, but by the incessant clamor for the life-giving elements which are lacking in the food * * * you do not want so much to eat because your body is not starved for these essential elements.

Trymm provides your daily minimum requirement of the necessary vitamins and minerals.

Three Trymm tablets supply 100% or full amount of the minimum daily food vitamins and mineral requirement of the average adult.

PAR. 6. Through the use of the advertisements containing the afore-said statements and representations and others of similar import and meaning not specifically set out herein, respondents represented that Trymm Tablets have weight-reducing properties; that their use prevents a person from becoming hungry and as a result, less food is consumed, thereby causing a reduction in weight; that it is easy to adhere to a weight-reducing diet by using said tablets; that Trymm Tablets are an adequate substitute for food that is ordinarily consumed; that hunger results from a lack of vitamins and minerals; that adequate nutrition is assured by the use of these tablets and that their use as directed supplies the full amount of the necessary vitamins and minerals required by the average adult.

PAR. 7. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, Trymm Tablets have no weight-reducing properties. Their use will not prevent a person from becoming hungry and will not result in any appreciable reduction in the amount of food consumed or any appreciable reduction in weight. When overweight is due to the consumption of excess amounts of food, the only method by which weight may be reduced is limiting the intake of food to the extent necessary to bring about a weight reduction. The necessity for such a regimen is not mentioned in the newspaper and periodical advertising. While a reducing diet is referred to in a pamphlet insert in the package, the necessity of following a carefully restricted diet is not pointed out. It is extremely unlikely that a person uninformed as to caloric values would select a diet sufficiently restrictive so as to cause, if followed, a weight reduction. This is particularly true in view of the fact that respondents represent in their general advertisements that it is easy to diet in connection with the use of Trymm Tablets. In case a severely restricted diet should be followed in connection with the use of said tablets, any reduction in weight would be due to the restricted diet and not to the

use of the tablets. The use of these tablets will not make it easy to adhere to a weight-reducing diet. Trymm Tablets are not an adequate substitute for food which is ordinarily consumed. Lack of vitamins or minerals in the diet does not produce hunger. Adequate nutrition is not assured by the use of said tablets. Their use as directed or otherwise will not provide the necessary vitamins and minerals required by the average adult since they do not contain Vitamin A or C and several other vitamins and minerals which are essential to human nutrition.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to its said product disseminated as aforesaid, has had and now has a capacity and tendency to, 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 to induce a portion of the purchasing public, because of such erroneous belief, to purchase respondents' said product.

PAR. 9. The foregoing 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 came on to be heard by the Commission upon motion to close the case filed on December 1, 1948, by counsel for respondents, affidavits in support thereof, and answer thereto filed on June 14, 1949, by counsel supporting the complaint, which makes no objection to closing the case without prejudice to the right of the Commission to reopen same and to resume trial thereof in accordance with its regular procedure.

The complaint herein, issued on September 24, 1948, charges respondents with the dissemination of false advertisements in connection with the offering for sale, sale, and distribution of their drug preparation designated as "Trymm Tablets."

Having duly considered the motion and the record herein, and it appearing to the Commission that respondents discontinued advertising the drug preparation to which this proceeding relates prior to the issuance of the complaint herein and have discontinued the manufacture of said preparation, with no apparent likelihood of a resumption thereof; that respondent corporation is in the process of dissolution; and 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 reopen the same and resume trial thereof should future facts warrant.

Commissioner Davis absent.

Mr. Carrel F. Rhodes for the Commission.

Reiman & Reiman, of New York City, for respondents.

NEW ENGLAND CONFECTIONERY Co. Complaint, October 28, 1948. Opinion and order dismissing complaint without prejudice, September 23, 1949. (Docket 5605.)

Charge: Discriminating in price in violation of section 2 (a) of the Clayton Act, in connection with the sale and distribution to vending machine operators and lessors, wholesalers and candy jobbers, chain and syndicate stores, and to various other retail outlets, of respondent's candy and confectionery products, including principally candy bars and items sold in wrappers bearing the names "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses" and other named candy items made by it, which generally retailed for 5 cents, through selling and distributing its said products in commerce "to certain of its customers, small businessmen at higher prices" than it had been selling said products of like grade and quality in commerce to other larger competing customers, said favored customers to whom it sold substantial quantities of its said bars at discriminatory prices including those who sold through the medium of automatic vending machines in factories, theaters, office buildings, newsstands, restaurants, oil stations, etc., and including specifically the Automatic Canteen Co. of America of Chicago; through selling its said products, etc., at different prices during the same periods of time to competing classifications of customers and to certain favored customers within a classification competing with each other in the same trade areas in the sale of its said products; and through the use of free deals, premium offers, discount deals, rebates, or allowances which were made available to some, but not all of its customers and purchasers who competed in the resale of its products (Count I);

Discriminating "in favor of certain of its customers and purchasers, certain jobbers and vending machine customers, including the Automatic Canteen Co. of America of Chicago, Ill., but not necessarily limited thereto, and against certain of its other customers and purchasers in respect to the sale and purchase" of its said products, in violation of section 2 (d) of said act, by allowing, etc., "anything of value, rebates, or discounts from the price paid, in the course of such commerce, as compensation or in consideration for services, or facilities furnished, or benefits conferred by or through said favored customers" in connection with the processing, etc., of its said products, without making available on proportionally equal terms or any similar terms whatsoever the privilege of securing such payments, etc., including,

as typical, the allowance to favored customers and purchasers of an amount alleged to be equal to that saved in eliminating its smaller 24-count package size and the substitution of certain larger sizes, with regular printing or display advertising omitted; allowance as aforesaid as a discount from the price paid of an amount alleged to be equal to that saved in eliminating its regular salesman's commission or other merchandising or administrative costs on orders sent to its home office; allowance, etc., as aforesaid, as a discount of an amount alleged to be equal to that saved in eliminating delivery of its products, or a standardized delivery cost, through purchase on an f. o. b. basis; allowance, etc., as a discount of an amount alleged to be equal to that saved in eliminating return for damaged, stale, or unsalable candy and confectionery products through the elimination of such returns; allowance, etc., as a discount of an amount alleged to be equal to that saved by eliminating free deals, premium offers or other promotional aids; and allowance, etc., of "something of value," to certain of its customers, such as free deals, premiums, and offers of various kinds and types "either without or in consideration of benefits conferred or services or facilities furnished" by or through such customers, without making said privileges available to all other customers, etc. (Cout II);

Discriminating in favor of certain of its customers, etc., including said Automatic Canteen Co., etc., and certain of its other customers, etc., in the sale and purchase of its said products, in violation of section 2 (e) of said act, by contracting to give, etc., or by giving, etc., certain services, or facilities in connection with the sale or offer of its said products so purchased by said favored customers, etc., not accorded or made available "on proportionally equal terms or on any similar terms whatsoever to all other customers or purchasers competing in the distribution" of its said products, including, as typical, the furnishing, etc., to certain of its customers, etc., of its said candy and bars, packed in the 100-count, 110-count, or the larger package sizes, with regular printing or display advertising omitted, without according on proportionally equal terms or otherwise, said privilege, to other purchasers or customers competing in the distribution of its products; the furnishing, etc., of special printing free of charge on its candy wrappers containing advertising, identification marks, or the name of the purchaser or customer, without according said privilege, etc., to other purchasers, etc., as above set out; the furnishing, etc., of its candy and bars in different shaped and smaller weights at a lesser price without according, etc., said privilege, etc., to all other purchasers, etc., as above set out; and the furnishing, etc., to certain of its said customers, etc., such as said Automatic Canteen Co., of "certain services, facilities, and other things of value, or the privilege" of rendering certain other services and facilities for respondent or of conferring certain benefits on it in connection with the sale or resale

of its products, in order that said favored purchasers, etc., may secure certain alleged equivalent payments or discounts from the standard price, as hereinbefore pleaded, without according or making available on proportionally equal terms or any terms, said service, etc., to all other purchasers competing in the distribution of its products, etc. (Count III); and

Paying or granting, directly or indirectly, to certain buyers, customers and purchasers in various other States, and to other chain, syndicate, and vending-machine customers engaged in commerce, and including said Automatic Canteen Co., brokerage or other compensation or allowance or discounts in lieu thereof, on their own purchases, in violation of section 2 (c) of the aforesaid act (Count IV); all as in detail set out in the complaint below, to wit:

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

COUNT I

PARAGRAPH 1. The respondent, New England Confectionery Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its offices and principal place of business located at 254 Massachusetts Avenue, Cambridge, Mass.

PAR. 2. The respondent is now, and since June 19, 1936, has been, engaged in the manufacture, sale, and distribution of many kinds of candy and other confectionery products in commerce to vending machine operators and lessors, wholesalers and candy jobbers, chain and syndicate stores and to various other retail outlets. Respondent causes said products, when sold, to be transported and shipped from its principal place of business in the State of Massachusetts across State lines to its respective customers and purchasers thereof located in each of the other several 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 products in commerce among and between the various States of the United States and the District of Columbia. Among the principal candy and confectionery products manufactured, offered for sale, and sold by the respondent were candy bars and items sold in wrappers bearing the names "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses," and other named candy items that generally retailed for 5 cents. Regardless of how a bar was wrapped or packaged, it was of like grade and quality as all other bars of the respondent bearing the same name.

of \$0.0240 to \$0.0270 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of \$0.0244 and \$0.0267 per bar or unit (f. o. b.) factory to \$0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(f) The respondent sold to the Automatic Canteen Co. of America during the year 1944 in the 100-count package its "Sky Bar," "Bolster," "Necco Wafers," "Chase & Canada Mints," "Orange Slices," "Brer Rabbit Molasses" and other named candy items at the rates of \$0.0235 to \$0.0260 per bar or unit (f. o. b. factory), while the respondent sold during the same year (1944) the same "Sky Bar" and other identically named candy items in the 100-count package to its "syndicate" and certain other customers at the rates of \$0.0262 to \$0.0269 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of \$0.0267 per bar or unit (f. o. b. factory) to \$0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(g) The respondent sold to the Automatic Canteen Co. of America during the year 1945 in the 100-count package its "Sky Bar," "Bolster," "Peppermints," "Chase & Canada Mints," "Orange Slices," "Hub Jellies," and other named candy items at the rates of \$0.0239 to \$0.0260 per bar or unit (f. o. b. factory), and in the 96-count package its "Orange Slices" at the rate of \$0.0259 per bar or unit (f. o. b. factory), while the respondent sold during the same year (1945) the same "Sky Bar" and other identically named candy products in the 100-count package to its "syndicate" and certain other customers at the rates of \$0.0262 to \$0.0269 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy products in the 24-count package to its "jobber" and other customers at the rates of \$0.0267 per bar or unit (f. o. b. factory) to \$0.0283 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(h) The respondent sold to the Automatic Canteen Co. of America during the year 1946 in the 100-count package its "Sky Bar," "Bolster," "Peppermints," "Chase & Canada Mints," and "Chase & Canada Wintergreen" at the rates of \$0.0239 to \$0.0260 per bar or unit (f. o. b. factory) and at the rates of \$0.0262 to \$0.0285 per bar or unit (delivered), and in the 100-count package its "Sky Bar" at the rate of \$0.0285 per bar or unit (delivered), while the respondent sold during the same year (1946) the same "Sky Bar" and other identically named candy items in the 100-count package to its "syndicate" and certain

other customers at the rates of \$0.0262 to \$0.0314 per bar or unit (delivered) and sold the same "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of \$0.0267 per bar or unit (f. o. b. factory) to \$0.0313 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

(i) The respondent sold to the Automatic Canteen Co. of America during January and February 1947 in the 100-count package its "Bolster" bar, "Peppermints," "Chase Mints" and "Chase Wintergreen" at the rate of \$0.0295 per bar or unit (delivered), and in the 110-count package its "Bolster" bar and "Sky Bar" at the rate of \$0.0295 per bar or unit (delivered) while the respondent sold during the same period of time (1947) the same "Bolster" bar and other identically named candy items in the 100-count package to its "syndicate" and certain other customers at the rate of \$0.0295 per bar or unit (delivered) and in the 110-count package its "Bolster" bar and "Sky Bar" at the rate of \$0.0295 per bar or unit (delivered), and sold the same "Bolster" bar, "Sky Bar" and other identically named candy items in the 24-count package to its "jobber" and other customers at the rates of \$0.0323 per bar or unit (f. o. b. factory) to \$0.0333 per bar or unit (delivered)—all of whom competed with each other in the same trade areas in the resale of the respondent's said candy bars and items.

PAR. 7. In the course and conduct of its business in commerce, as described in paragraphs 2 and 3 hereof, the respondent, since June 19, 1936, has discriminated, directly or indirectly, in price in connection with the sale of its various candy bars through the use of free deals, premium offers, discount deals, rebates or allowances which were made available to some, but not all of its customers and purchasers who competed in the resale of the respondent's products. Such free deals and discount offers constituted direct and indirect discriminations in price made to competing customers and purchasers of the respondent's products in that:

(a) Such deals were only offered and made available to certain trade classifications of customers (and purchasers) and only to certain customers (and purchasers) within a trade classification and were not offered or made available to all other customers (and purchasers) in other competing trade classifications or to all other competing customers (and purchasers) within a trade classification;

(b) Such deals were offered and made available to certain customers (and purchasers) located in certain cities, States, parts of States, or sections of the United States and were not offered or made available to all other customers (and purchasers) located in other

cities, States, parts of States, or sections of the United States who competed across these arbitrary lines in the resale of the respondent's products;

(c) Said deals and offers were not only discriminatory in offering and availability but were intrinsically discriminatory in that each deal or offer varied as to its net discount or value, the duration of time such deals were offered or available, and differed as to the number or quantities permitted to be purchased;

(d) Some of such free deals, premiums, discounts or allowances were for the alleged benefit of the respondent's direct-buying customers, while others were to benefit the respondent's indirect-buying customers, their purchasers or the consumer. Such free goods offers included the giving away of so many candy bars with the purchase of so many of the respondent's bars.

Respondent is unable to show that the differentials, described above in paragraphs 6 and 7, make only due allowance for differences in the cost of manufacture, sale, or delivery or otherwise resulting from the differing methods or quantities in which such products are to such purchasers sold or delivered.

PAR. 8. The effect of the discriminations in price (as alleged in paragraphs 6 and 7 herein) has been and may be to substantially lessen competition and to tend to create a monopoly in the line of commerce in which the respondent and other manufacturers were and are engaged pertaining to the manufacture and sale of candy and confectionery products (as set forth in pars. 2 and 3 herein) and in the lines of commerce in which the respondent's customers and purchasers were and are engaged (as set forth in pars. 4 and 5 herein). A further effect of the above-mentioned discriminations in price has been and may be to injure, destroy, or prevent competition between the respondent and its said competitors (as set forth in par. 3 herein) and to injure, destroy, and prevent competition between certain customers of the respondent and purchasers of its products who, directly or indirectly, received the benefits of said discriminations (as set forth in pars. 4 and 5 herein) and competing customers and purchasers of said products, who did not receive said benefits or who did not have the opportunity to participate in the receipt of said benefits.

A further effect of the above-mentioned discriminations in price has been and may be to injure, destroy, and to substantially lessen competition or tend to create a monopoly in the lines of commerce pertaining to the development, acquisition, manufacture, ownership, sale, operation, or leasing of coin-operated vending machines, as described in paragraph 4 herein. For example, the favored prices granted to the Automatic Canteen Co. of America by the respondent, as described in paragraph 6 herein, materially aided this favored customer and/or its distributors to expand and increase its and their operations, as

described in paragraph 4 herein, to the detriment and injury of all nonfavored competing customers or purchasers of the respondent's products, causing a lessening of competition and a tendency to create a monopoly in the lines of commerce described. Those who received the benefit of the respondent's direct or indirect price discriminations have obtained and may obtain substantial competitive advantages such as that of:

- (a) Favored vending-machine lessors, operators, and distributor customers and purchasers over their competitors;
- (b) Favored jobber purchasers and their customers over nonfavored jobber purchasers and their customers;
- (c) Favored retail customers and purchasers of respondent's products over nonfavored retail customers and purchasers of the respondent's products;
- (d) Other favored customers and purchasers of the respondent's products over other nonfavored customers and purchasers.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form hereinabove set forth are in violation of provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT II

And the Federal Trade Commission, as and for a further and Second Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, 6, and 7 of Count I are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce, the respondent is now, and since June 19, 1936, has been discriminating in favor of certain of its customers and purchasers, certain jobber and vending-machine customers, including the Automatic Canteen Co. of America, of Chicago, Ill., but not necessarily limited thereto, and against certain of its other customers and purchasers in respect to the sale and purchase of respondent's candy and confectionery products by contracting to pay and allow or by paying or allowing, directly or indirectly, anything of value, rebates, or discounts from the price paid, in the course of such commerce, as compensation or in consideration for services, or facilities furnished, or benefits conferred by or through said favored customers in connection with the processing, handling, sale or offering for sale of the candy and confectionery products manufactured, sold, and offered for sale by the respondent with-

out making available on proportionately equal terms or on any similar terms whatsoever the privilege of securing such payments, rebates, or discounts from the price paid, or the opportunity to perform the necessary services, facilities or to confer benefits to all other customers competing with such favored customer or customers in the distribution of respondent's candy and confectionery products.

Among and typical of the practices pursued by the respondent, but not necessarily limited thereto, were the practices of paying and allowing rebates and discounts from the price paid for alleged services and facilities rendered or benefits conferred by certain of its said customers and purchasers, including the Automatic Canteen Co. of America, but not necessarily limited thereto, in connection with the sale or the offering for sale of the respondent's candy and confectionery products, as follows:

(a) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products an amount alleged to be equal to that saved in eliminating the smaller 24-count package size and the substitution or the supplying of the 100-count, the 110-count, or larger package sizes, with the regular printing or display advertising omitted on the larger count packages without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for the elimination of the smaller 24-count package size or the unwanted printed display advertising.

(b) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products, an amount alleged to be equal to that saved in eliminating the respondent's regular salesman's commission or other merchandising or administrative costs on orders for products sent direct to the respondent's home office, without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's product on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such salesman's commission or other merchandising or administrative costs.

(c) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products, an amount

alleged to be equal to that saved in eliminating delivery of the respondent's products or a standardized delivery cost, without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such delivery of the respondent's products or a standardized delivery cost by buying on an f. o. b. basis.

(d) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's product, an amount alleged to be equal to that saved in eliminating returns for damaged, stale, or unsalable candy and confectionery products without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms, or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such returns for damaged, stale, or unsalable candy and confectionery products.

(e) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay or by paying or allowing, directly or indirectly, as a discount from the price paid for respondent's products an amount alleged to be equal to that saved by eliminating free deals, premiums, offers or other promotional aids without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same alleged equivalent payment or discount from the standard price paid for eliminating such so-called free deals, premiums, offers or other promotional aids.

(f) Respondent has been favoring certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to pay anything of value or by paying or allowing, or giving something of value, to certain of its customers and purchasers, as aforesaid, such as free deals, premiums, and offers of various kinds and types either without or in consideration of benefits conferred or services or facilities furnished by or through these certain customers or purchasers without making available (or according) to all other customers (or purchasers) competing in the distribution of the respondent's products on proportionally equal terms or on any similar terms whatsoever, the privilege of securing the same identical thing of value, free deal, premium, offer or its equivalent value.

PAR. 3. The above-described acts and practices of the respondent, as set forth in paragraph 2 of this count, are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT III

And the Federal Trade Commission, as and for a further and Third Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs 1, 2, 3, 4, 5, and 6 of Count I and paragraph 2 of County II are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce, the respondent is now, and since June 19, 1936, has been discriminating in favor of certain of its customers and purchasers, including the Automatic Canteen Co. of America of Chicago, Ill., but not necessarily limited thereto, and against certain of its other customers and purchasers in the sale and purchase of respondent's candy and confectionery products by contracting to give or furnish or by giving or furnishing, or by contributing, directly or indirectly, to the giving or the furnishing of certain services or facilities in connection with the sale or the offering for sale of said candy and confectionery products so purchased by these said favored customers and purchasers for resale which were not accorded to or made available on proportionally equal terms or on any similar terms whatsoever to all other customers or purchasers competing in the distribution of the respondent's products. Among and typical of the practices pursued by the respondent, but not necessarily limited thereto, are the following acts and practices of the respondent in giving and furnishing, or contributing to the giving or the furnishing of services or facilities to certain of its customers and purchasers, including the Automatic Canteen Co. of America, of Chicago, Ill., but not necessarily limited thereto, in connection with the sale or the offering for sale of its candy and confectionery products:

(a) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contributing to the furnishing, or by furnishing, directly or indirectly, candy and confectionery bars, packed in the 100-count, the 110-count, or in the larger package sizes (with the elimination of the regular printing or display advertising on said boxes) without according (or making available) on proportionally equal terms or upon any similar terms whatsoever the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*b*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contracting to give or furnish, or by giving or furnishing, or by contributing, directly or indirectly, to the giving or the furnishing of special printing free of charge on its candy wrappers containing advertising, identification marks or the name of the purchaser (or the customer) of the respondent without according (or making available), on proportionally equal terms, or upon any similar terms whatsoever, the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*c*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, as aforesaid, by contributing to the furnishing, or by furnishing, directly or indirectly, candy and confectionery bars in different shaped and smaller weight bars at a lesser price without according (or making available), on proportionally equal terms or upon any similar terms whatsoever, the same privilege, service or facility to all other purchasers (or customers) competing in the distribution of the respondent's products.

(*d*) Respondent has been discriminating in favor of certain of its customers and purchasers of its candy and confectionery products, such as the Automatic Canteen Co. of America, and against its other customers and purchasers, by contracting to furnish or grant or by directly or indirectly contributing to the furnishing or the granting of certain services, facilities and other things of value, or the privilege, service or facility of rendering certain other services and facilities for the respondent or to confer certain benefits on the respondent in connection with the sale or the resale of these products (in order that these favored purchasers or customers may secure certain alleged equivalent payments or discounts from the standard price, as set forth in subparagraph (*a*) to (*e*), inclusive, or paragraph 2 of Count II herein), without according or making available on proportionally equal terms or upon any similar terms whatsoever either the same service, facility and thing of value, to all other purchasers (or customers) competing in the distribution of the respondent's products, or the privilege to render certain other services, facilities or benefits (in order to secure like deductions from the standard price paid).

PAR. 3. The above-described acts and practices of the respondent as set forth in paragraph 2 of this count are in violation of subsection (*e*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

COUNT IV

And the Federal Trade Commission, as and for a further and Fourth Count of this complaint, states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraph 1, 2, 3, 4, 5, and 6 of Count I are hereby adopted and made a part of this count to the same extent and effect as though herein set forth verbatim.

PAR. 2. In the course and conduct of its business in commerce the respondent, since June 19, 1936, has sold its candy and confectionery products to certain buyers, customers and purchasers located in the various States of the United States other than the State where respondent is established and to other chain, syndicate and vending machine customers engaged in commerce, including the Automatic Canteen Co. of America, but not necessarily limited thereto, and has been and is now paying or granting or has paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowance or discounts in lieu thereof to such buyers, customers and purchasers of its candy and confectionery products.

PAR. 3. The paying and granting by the respondent, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to its buyers, customers, and purchasers of its candy and confectionery products, on their own purchases, and the acts and practices of the respondent in promoting sales of candy and confectionery products by paying to buyers, customers and purchasers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth in paragraph 2 of this Count, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

OPINION AND ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon the motion filed by respondent on March 7, 1949, to dismiss the complaint in its entirety for alleged want of jurisdiction and memorandum brief and affidavit in support thereof, and upon the motion filed by respondent on January 18, 1949, to dismiss Counts II, III, and IV of the complaint or, alternatively, to strike certain matters incorporated in these counts, and memorandum briefs in support of and in opposition to such motion.

The complaint in this proceeding alleges violations of section 2 of the Clayton Act, as amended. This complaint is drawn in four counts which, in numerical order, charge violations of sections 2 (a), 2 (d), 2 (e), and 2 (c), respectively, of said act.

The motion to dismiss the complaint in its entirety for alleged lack of jurisdiction is upon the ground that respondent, in selling its products to purchasers in States other than the State in which the goods are manufactured or other than that in which the warehouse

from which shipment may be made is located, title passes to the purchaser upon delivery of the goods by respondent to the common carrier and subsequent movements in interstate commerce are under the control of the purchaser. The allegations of the complaint with respect to commerce, even when qualified by the matters set out in the motion, disclose a situation which the Commission views as so clearly within its jurisdiction under the Clayton Act as not to require discussion.

The other motion challenges the sufficiency of Counts II, III, and IV. In Count II it is charged in subparagraphs (a) to (e), inclusive, of paragraph 2 that in granting to some purchasers a rebate or discount in price said to equal the savings in cost attributed to different procedures followed in packing, selling, or delivering its products, respondent is compensating such purchasers for services or facilities performed by them. These rebates or discounts are alleged to be unlawful under section 2 (d) of the act because like privilege of receiving payments for services or benefits conferred is not accorded on proportionally equal terms to other purchasers competing in the distribution of respondent's products. The Commission is of the view that the matters thus alleged, consisting of the acceptance by purchasers of a discount in price in lieu of respondent following its usual procedures in packing, selling, or delivering its products to them, all in connection with the original sale, do not charge the performance by the customer of a service or facility within the meaning of section 2 (d).

It is alleged in subparagraph (f) of paragraph 2 that respondent has contracted to pay something of value or has allowed free deals, premiums, and offers of various kinds, either in consideration of benefits conferred or services or facilities furnished, or, in the alternative, without exacting from buyers any benefits, services, or facilities, and has not made these available on proportionally equal terms to competing customers. The charge that respondent has contracted to pay something of value, such as a promotional deal, without exacting benefits, services, or facilities in return is not cognizable under section 2 (d) of the statute for the reason that the benefit conferred by the seller is not in consideration of services or facilities rendered. In respect to the alternative allegation that such payment was "in consideration of benefits conferred or services or facilities furnished," no description of the service or facility is set forth. It is inferred that the alleged benefit conferred on respondent flows only from the buyer's acceptance of the deal itself, and the Commission is of the view that mere acceptance by a purchaser of a promotional offer intended to facilitate the original sale, does not constitute the rendering of a service or facility by the purchaser within the meaning of section 2 (d).

In subparagraphs (a), (b), and (c) of paragraph 2 of Count III of the complaint discriminations among competing purchasers in fur-

nishing respondent's products packaged in containers of particular sizes, furnishing products marked with the name of the customer, and the supplying of respondent's products in different shapes and sizes are alleged as violations of section 2 (e) of the act. As a matter of law these may be services or facilities furnished by the respondent in connection with the resale of its goods.

In subparagraph (d) of paragraph 2 of Count III the same matters charged as violations of section 2 (d) in subparagraphs (a) to (e), inclusive, of paragraph 2 of Count II are charged as violations of section 2 (e). Apparently these charges are based upon the theory that the discounts granted were contributions to services or facilities not granted to competing purchasers upon proportionally equal terms. Under such a construction substantially any price difference, including those which Congress clearly intended to be considered under section 2 (a) of the act, might be charged under section 2 (e) and the standard of proportionally equal terms applied instead of the standards established in section 2 (a).

Paragraph 1 of Count II adopts and makes a part of that count paragraphs 1 through 7 of Count I, and Counts III and IV similarly adopt paragraphs 1 through 6 of Count I as a part of each of those counts. Paragraphs 1 and 2 of Count I identify the respondent and contain the jurisdictional plea. The matters charged as violations of law in Counts II, III, and IV, respectively, are set out in each count, and none of the paragraphs of Count I included by adoption is alleged to set out any violation of the counts of which it is adopted as a part.

In the complaint here a given practice is, in instance after instance, within the scope of the charges of two or more counts of the complaint. For instance, the matter of discounts in price allegedly based upon savings in cost resulting from elimination of salesmen's commissions on orders sent direct to the factory is separately pleaded in Counts II and III, is apparently the basis for Count IV, and is involved in the discriminations charged in Count I. With minor exceptions, every practice challenged by the complaint appears in or is within the scope of at least two and in most instances three counts of the complaint.

There are instances in which a given act may violate more than one provision of law, and in order to secure a fully effective remedy it may be necessary to plead the same act as violating separate provisions of law. There are also instances in which a pleader cannot be sure whether his proof will show a violation of one or the other of different provisions of law, and it may therefore be desirable to plead both. Such considerations do not explain the multiple charges here. The Commission is of the view that the surplusage in the complaint, and the multiplicity of charges applicable to the same practice with no

apparent necessity therefor, can only result in unreasonably complicating the proceeding and prolonging the trial, and will militate against orderly hearing and disposition of the matter. It is therefore believed that it would be in the public interest to dismiss the present complaint without prejudice to the issuance of a new complaint based in whole or in part upon the same factual situation.

ORDER

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Commissioner Davis absent.

The Commission, on September 23, 1949, also dismissed without prejudice 32 other substantially similar complaints, in which the Commission charged manufacturers of candies and confections with violating sections 2 (a), 2 (d), and 2 (e), and, with some exceptions, 2 (c) of the Clayton Act as amended by the Robinson-Patman Act. In said cases the same principles were involved as in the New England Confectionery case above, which was the first to come before the Commission for consideration, and in which motions to dismiss were filed.

The decision in the New England Confectionery case was accordingly controlling in the dismissal of the other 32, as set forth in the following language taken from the "order dismissing amended complaint without prejudice" in the first of this group of cases, namely, Wayne Candies, Inc., Docket 5544.

Said order, after reciting the status of the case as before the Commission, and that the Commission had considered a motion which challenged the sufficiency as a matter of law of Counts II, III, and IV, and incorporation into reference of such counts of certain paragraphs from Count I of the complaint, as "filed by the respondent in the matter of "New England Confectionery Co., Docket 5605" states:

The complaint in that matter is based on the same legal theory and is similar in form to the amended complaint in this proceeding. The motion to dismiss this proceeding is based on other grounds, but the principles involved in the New England Confectionery matter are controlling here, and for the reasons expressed in the opinion accompanying the order of dismissal without prejudice in that case like action upon the Commission's motion is required here.

Similar language was employed in dismissing the various proceedings in the other cases, irrespective of whether or not a motion to dismiss was before the Commission in the particular matter.

The orders of dismissal heretofore referred to, as made without prejudice, were entered in the following cases, those in which violation of section 2 (c) was also charged being indicated by an asterisk.

*Wayne Candies, Inc., Fort Wayne, Ind.; Frosty Nougat, Buns, Chop Suey, Triple Hit, and Flip candy bars. (5544)

- *Melster Candies, Inc., Cambridge, Wis.; Cherrie Bar, Swiss Lunch, Brown Beauty, Club House, Ripley Log, Hot Scotch, Sunny Jim, Nut Lunch, Melster Nougat, and special candy bars. (5545)
- *Luden's Inc., Reading, Pa.; 5th Avenue Bar, Krimpy-Nut Bar, Bristol Hard Candies and Luden's Cough Drops. (5546)
- *D. L. Clark Co., Pittsburgh; Clark Bar, Zag Nut Bar, Honest Square Bar, and Winkler Bar. (5547)
- *The Williamson Candy Co., Chicago, wholly-owned subsidiary of General Candy Corp., also of Chicago; Oh Henry, Amos N' Andy. (5548)
- *Bunte Bros., Inc., Chicago; Tango, Creamy Cakes, Milk Blocks, Tartines, Two Timers, Maltese, and Blizzard candy bars. (5549)
- The Sperry Candy Co., Milwaukee; Chicken Dinner, Denver Sandwich, and Hot Turkey candy bars. (5550)
- *The Queen Anne Candy Co., Hammond, Ill.; Cream-O-Nut, Fruit & Nut, Nutty Mello, Aristocrat, Almond Toffee, King Nut Roll, Kernel Nut, Queen Ann, Refresh Bar, and Nut Rolls candy bars. (5551)
- *The Switzer's Licorice Co., St. Louis; Switzer's Old Fashioned Licorice Twist. (5552)
- William Wrigley, Jr., Co., Chicago; chewing gum. (5553)
- *Clayton A. Minter and Ira W. Minter, doing business as Minter Brothers, Philadelphia; Cadet, Glace Brazil, Dutch Maid Fudge, Oriental Cocoanut, Logan Squares, City Blocks, and Toasted MM Square. (5596)
- *Town Talk, Inc., Phoenixville, Pa.; Old Fashioned Cookies, Peanut Buttered Scotties, Vanilla Creams, Chocolate Fudge, Shortbreads, Cream Filled Sandwiches, Peanut Buttered Cheese Sandwiches, and Peanut Buttered Crisp Sandwiches. (5597)
- *D. Goldenberg, Inc., Philadelphia; Peanut Chew, Zil, Sweet Sue, Walnut Chew, Nickle Andy, Juliets, Whippet, Valley Fudge, Creole, and Kreem Maid Fudge. (5598)
- *The Euclid Candy Co., Inc., Brooklyn; Jumbo, Dolly Dimple, Cow Boy, Nu Bites, and Four Star. (5600)
- *Mason, Au and Magenheimer Confectionery Mfg. Co., Brooklyn; Peaks, Mints, Rumors, Silver Wings, Please, Brazils, Mol and Coe, Clusters, Eclipse, Rings, Cherry Bombs, Queens, Dots, and Crows. (5601)
- *Sweets Co. of America, Inc., Hoboken, N. J.; Tootsie Roll and Tootsie Caramel. (5602)
- *Kerr's Butterscotch, Inc., Jamesburg, N. J.; Kerr's Butterscotch, Kerr's Coffee Scotch, and Kerr's Rum and Butter Toffee. (5603)
- *Delicia Chocolate and Candy Manufacturing Co. and its sole distributing agent, United Distributors, Inc., Bronx, N. Y.; Delicia Crushed Almond, Coffee Cream, and Delicia Filberts. (5604)
- *Charles N. Miller Co. and John Mackintosh & Sons, Ltd., Inc., Boston; Rollo, Toff-O-Luxe, Dearo, Old Fashioned Molasses, and Mary Jane. (5606)
- *F. B. Washburn Candy Corp., Brockton, Mass.; Cocoanut, Dandy Dan, and Peanut Bar. (5607)
- American Chicle Co., Long Island City, N. Y.; Chiclets, Dentyne, Adams Pepsin, Black Jack, Adams Clove, Beeman's Pepsin, and Tempters. (5608)
- *Planters Nut and Chocolate Co., Wilkes-Barre, Pa.; Jumbo Block, Chocolate Crunch, Salted Peanuts, Cocktail Salted Peanuts, and Coco Peanut. (5609)
- *George Ziegler Co., Milwaukee; Big Swing, Giant, Mounties, Fruit Salad, and Frappe. (5610)

*The Euclid Candy Co. of Illinois, Inc., Chicago; Jumbo, Four Star, Love Nest, Melt Away, Chock Full O' Almonds, Red Cap, Best Pal, First Mate, Dolly Dimple, Cowboy, Peco, Big Game, Double Header, Rusty, Skipper, and Victory. (5611)

*Dante Candy Co., Chicago; Doctor's Orders, Plum Good, and Challenger. (5612)

*Fred W. Amend Co., Danville, Ill.; Chuckles, Orange Slices, and Assorted Jellies. (5613)

*Shotwell Mfg. Co., Chicago; Roasty Toasty, Nut Nougat, Caramel Sunday, Toasted M. M., Co-Co Figmellow, and Hi Mac. (5614)

*The Kimbell Candy Co., Chicago; Chocolate Pecan Krunch, Chocolate Nips, Speedways, Pineapple Toasties, Kimbell Bar, Macaroons, Almond Tea Cakes, Almond Krunch, Smacks, Krunchies, Chocolate Flavor Coconut, and Y-USA-Y. (5615)

M. J. Holloway & Co., Chicago; A to Z, Trade Wind, and Milk Duds. (5616)

*Universal Match Corp. (Schutter Candy Division), St. Louis and Chicago; Old Nick, Bit-O-Honey, Golden Harvest, Gold, Nut Chews, and Chocolate Ices. (5617)

Hollywood Brands, Inc., Centralia, Ill.; Payday, Milk Shake, Tuesdae, Hail, Zero, Smooth Sailin, Almond Bar, and Butternut. (5618)

*Paul F. Beich Co., Bloomington, Ill.; Pecan Pete, Whiz, and Dipsy Doodle. (5619)

Appearances in the foregoing group of cases were as follows:

Mr. Austin H. Forkner for the Commission; respondents being represented by counsel in the various cases as follows:

Wayne Candies, Inc., D. 5544, *Mr. Paul E. Congdon*, of Fort Wayne, Ind.

Melster Candies, Inc., D. 5545, *Roberts, Roe & Boardman*, of Madison, Wis.

Luden's, Inc., D. 5546, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C.

D. L. Clark Co., D. 5547, *Mr. A. M. Simon*, of Pittsburgh, Pa., and *Mr. John Wattawa*, of Washington, D. C.

Williamson Candy Co. et al., D. 5548, *Moses, Bachrach & Kennedy*, of Chicago, Ill.

Bunte Brothers, Inc., D. 5549, *Mr. Henry Junge*, of Chicago, Ill.

Sperry Candy Co., D. 5550, *Seher & Seher*, of Milwaukee, Wis.

Queen Anne Candy Co., D. 5551, *Beach, Fathchild & Scofield*, of Chicago, Ill.

Switzer's Licorice Co., D. 5552, *Fahey & Switzer*, of St. Louis, Mo.

William Wrigley, Jr., Co., D. 5553, *Winston, Strawn & Shaw*, of Chicago, Ill.

Clayton A. Minter et al., D. 5596, *Mr. David H. Kinley*, of Philadelphia, Pa.

Town Talk, Inc., D. 5597.

D. Goldenberg, Inc., D. 5598, *Denny & Denny*, of Philadelphia, Pa.

Euclid Candy Co., Inc., D. 5600, *Tenzer, Greenblatt, Fallon & Kaplan*, of New York City, before *Mr. Webster Ballinger*, trial examiner.

Mason, Au & Magenheimer Confectionery Mfg. Co., D. 5601, *Rogers, Hoge & Hills*, of New York City, before *Mr. Webster Ballinger*, trial examiner.

Sweets Co. of America, Inc., D. 5602, *Becker, Ross & Stone*, of New York City, and *Mr. Gordon Pickett Peyton*, of Washington, D. C.

Kerr's Butter Scotch, Inc., D. 5603, *Gross & Gross*, of Brooklyn, N. Y., and *Barnes & Hill*, of Washington, D. C.

Delicia Chocolate & Candy Mfg. Co., et al., D. 5604, *Baer & Marks*, of New York City.

New England Confectionery Co., D. 5605, *Choate, Hall & Stewart*, of Boston, Mass., before *Mr. Clyde M. Hadley*, trial examiner.

Charles N. Miller Co., et al., D. 5606, *Mr. Francis T. Leahy*, of Boston, Mass., before *Mr. Clyde M. Hadley*, trial examiner.

F. B. Washburn Candy Corp., D. 5607, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., before *Mr. Clyde M. Hadley*, trial examiner.

American Chicle Co., D. 5608, *Covington, Burling, Rublee & Shorb*, of Washington, D. C., before *Mr. Webster Ballinger*, trial examiner.

Planters Nut & Chocolate Co., D. 5609, *Daniel & Bernard Jacobson*, of New York City.

George Ziegler Co., D. 5610, *Wood, Warner, Tyrrell & Bruce*, of Milwaukee, Wis.

Euclid Candy Co. of Illinois, Inc., D. 5611, *Tenzer, Greenblatt, Fallon & Kaplan*, of New York City, before *Mr. Earl J. Kolb*, trial examiner.

Dante Candy Co., D. 5612, *Mr. John H. Galgano*, of Chicago, Ill.

Fred W. Amend Co., D. 5613, *Campbell, Clithero & Fischer*, of Chicago, Ill.

Shotwell Mfg. Co., D. 5614, *Sullivan, O'Toole & Sullivan*, of Chicago, Ill.

Kimbell Candy Co., D. 5615, *Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., before *Mr. Earl J. Kolb*, trial examiner.

M. J. Holloway & Co., D. 5616, *Mr. Henry Junge*, of Chicago, Ill.

Universal Match Corp., D. 5617, *Sievers & Reagan*, of St. Louis, Mo., before *Mr. Earl J. Kolb*, trial examiner.

Hollywood Brands, Inc., D. 5618, *Mr. Fred L. Wham, Jr.*, of Centralia, Ill.

Paul F. Beich Co., D. 5619, *Costigan, Wollrab & Yoder*, of Bloomington, Ill.

In addition to the foregoing group of cases a similar complaint was dismissed outright on the same date in the matter of Cream-O-Specialty Sales Co., Inc., D. 5599, involving sale of respondent's Cheese, Mac, Duplex, Shortbreads, Tasty, Sultana, Figs, Macaroons,

and other confections and candy, because respondent had discontinued business and been dissolved.

Appearances in said case were as follows:

Mr. Austin H. Forkner for the Commission.

Mr. A. Walter Socolow, of New York City, for respondent.

WARWICK MANUFACTURING CORP. Complaint, January 27, 1945.
Order, October 7, 1949. (Docket 5268.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, nature of manufacture, and prices of product; in connection with the manufacture, assembly and sale of radio receiving sets, radio tubes and like 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 Warwick Manufacturing 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 Warwick Manufacturing 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 at 1700 West Washington Street, Chicago, Ill. The respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing and assembling radio receiving sets, radio tubes and like products, and in selling and distributing said products to dealers for resale direct to the purchasing public.

PAR. 2. In the course and conduct of its business respondent corporation sells and distributes its radio receiving sets and products to dealers for resale and to members of the purchasing public throughout the United States and in the District of Columbia. Said respondent now causes, and for more than 5 years last past has caused, its said products, when sold either to dealers for resale or direct to the purchasing public, to be transported from its principal place of business in Chicago, Ill., to purchasers thereof at their several points of location in the State of Illinois and in the various States of the United States other than the State of Illinois, and in the District of Columbia.

There is now and has been at all times mentioned herein a course of trade in said products so sold and distributed by said respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, for the purpose of inducing the

purchase of respondent's radio receiving sets, radio tubes and like products, offered for sale and sold by it, the respondent has circulated and has caused dealers in its products to circulate among prospective purchasers throughout the United States, by mail and otherwise, advertisements in newspapers and magazines and by means of advertising folders, price lists, pamphlets, circulars, letters, and other literature, many statements and representations concerning its said radio receiving sets. By said means respondent has made and has caused dealers to make false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception, the number of active functioning tubes in said radio sets and the prices of said sets. Among such statements and representations so made and circulated by respondent and its dealers under its direction are the following:

Famous Make, 12 Tube, 3 Band, AC * *
* * *

Model 1012—List Price \$89.95
YOUR COST EACH, SPECIAL----- \$39.95.
Famous Make HOWARD Model 718
12 TUBE, 3 BAND AC De Luxe 1941 All-Walnut Console
Just Look at these Outstanding FEATURES!

* * *

A GREAT BUY AT THE REGULAR PRICE! A TREMENDOUS BARGAIN AT OUR SPECIAL PURCHASE SALE PRICE!

* * *

Original \$129.00 List Value! * * * \$51.88 Complete.
CHALLENGERS—Orioles New 1940 Super Value Sets!
Quality—Beauty—Performance, Surpassing Anything in Their Price Range!
8 TUBE * *

* * *

Model 3W-200 List \$34.95
YOUR COST, EACH----- \$22.95.
TROUBADOR Model LORAYNE

* * *

Seven latest type tubes—nine tube performance
6 Station Feather touch Push Button * * *
Connections for television, phonograph and
microphone. * * *

Model FARGO
6 full working tubes— * * *
Combination television, phonograph and microphone
plug * * *.

ORIOLE 7 TUBE AC-DC (Including Ballast)

* * *

WALNUT MODEL W3-102	LIST-----	\$17.95
YOUR COST EACH SPECIAL	-----	\$10.95
IVORY MODEL W3-100	LIST-----	\$19.95
YOUR COST EACH SPECIAL	-----	\$11.45

Model	Description	Cabinet & Color	Sug'd List	Dist. Net Cost
FAIR	7-Tube AC-DC Superhet. (incl. bal- last). Wired for television.	Walnut Plastic	\$17. 95	\$9. 45
FARGO		Ivory Plastic	18. 95	9. 95
GALA	7-Tube AC-DC Superhet. (incl. bal- last), wired for television.	Wood	24. 95	12. 95
JEWEL	8-Tube AC-DC Super. Wired for television * * *	Wood	34. 95	16. 95
KEN	6-Tube AC-DC Superhet. (incl. bal- last) * * Sensational leader.	Console	29. 95	14. 97
LINDY	7-Tube AC-DC Superhet. (incl. bal- last), wired for television * * *	Lobby Console	42. 95	20. 97

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's said radio receiving sets, the necessary number of functioning tubes and television attachment with which they are equipped, and the prices thereof, and serve as representations on the part of respondent to members of the purchasing public and to dealers that said radio receiving sets are equipped some with 6, some with 7, some with 8 and some with 12 active, fully functioning tubes and are wired or equipped for television, and the prices represented as "list prices" are the regular retail prices, and that the prices stated as "net cost" prices are special reduced prices for said sets.

A substantial number of the purchasing public believe that radio means the reception and transmission of sound waves and their audible reproduction and believe that the greater the number of actual fully functioning tubes in the radio receiving set the better the performance and the greater its power for detecting, amplifying and receiving sound waves, and believe that television means the reception and transmission of picture signals and their visual reproduction, and a substantial number of the purchasing public buy respondent's said radio receiving sets under such beliefs.

PAR. 4. In truth and in fact the foregoing statements and representations made by the respondent are false, deceptive and misleading. Respondent's aforesaid radio receiving sets are not equipped with 6, 7, 8 or 12 active, necessary, fully functioning tubes, respectively, but have installed therein one or two or more ballast, nonfunctioning or tuning beacon tubes or rectifying tubes. Such ballast or tuning beacon tubes or rectifier tubes, devices, and accessories do not serve as detecting, amplifying or oscillating tubes and do not perform any recognized, customary function of radio tubes in the detection, amplification, and reception of radio signals. Respondent's said radio receiving sets are not wired or equipped for television and are not capable of

receiving and reproducing, and do not receive and reproduce, picture signals in visual form; and the prices represented as "net cost" prices or "special" prices are the prices at which respondent sells its said radio receiving sets and authorizes its dealers to sell said sets in the usual and regular course of business, and are not special reduced prices; and said "list prices" are fictitious prices and are not the prices at which respondent sells its said products or at which it authorizes dealers to sell said products.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent, describing its said radio receiving sets, the number of tubes contained therein, and the capacity of said sets for television or the reception and reproduction of picture signals in visual form, and the prices thereof as hereinabove set out, were and are calculated to, and have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true. As a result of these erroneous and mistaken beliefs, a substantial number of the purchasing public have purchased a substantial volume of respondent's said radio receiving sets.

The aforesaid acts and practices of the respondent as herein alleged are all to the injury and 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.

Complaint dismissed without prejudice by the following order:

The respondent in this proceeding having heretofore, on May 13, 1948, filed a motion seeking dismissal of the complaint herein; and

The respondent having shown by said motion and the affidavit in support thereof that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act, except the practice of including rectifier tubes in representations that the respondent's radio receiving sets contain a designated number of tubes or are of a designated tube capacity, were discontinued as of January 27, 1945, with no intention on the part of the respondent that such practices would be resumed; and

The Commission, on January 7, 1949, having denied the aforesaid motion, without prejudice, however, to the respondent's right to renew the same upon the presentation of assurances satisfactory to the Commission that the respondent has also discontinued with no intention of resuming the practice of listing rectifier tubes among the tube complements of its radio receiving sets, even when the total tube counts are set forth; and

The respondent having subsequently, on May 20, 1949, renewed its motion for dismissal of the complaint and having submitted in support

of said renewal an additional affidavit, executed by its president, in which the assurances referred to in the Commission's order of January 7, 1949, were presented; and

Counsel in support of the complaint having filed an answer to the respondent's renewal of its motion in which he stated that he did not oppose said motion; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding:

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

Commissioner Davis absent.

Before *Mr. George Biddle*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Schapiro & Schiff, of Chicago, Ill., for respondent.

E. I. DU PONT DE NEMOURS & Co., INC. Complaint, January 9, 1948. Order, October 20, 1949. (Docket 5526.)

Charge: Discriminating in price through arbitrarily classifying a reseller customer as a consumer customer and selling to such customer at the higher consumer price, effect of which practice has been, or may be, to substantially lessen competition between favored customers and those thus arbitrarily and improperly classified as consumers, in the sale and distribution in interstate commerce of vapor metal degreasing solvents, and to substantially lessen competition in the line of commerce concerned, and to tend to create in the respondent and its favored customers a monopoly; in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

PARAGRAPH 1. Respondent E. I. du Pont de Nemours & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its main office and place of business being located in the city of Wilmington, Del.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged, among other activities, in the business of manufacturing, producing, selling, and delivering a chemical known as trichlorethylene,

hereinafter referred to as "the commodity." Said commodity is a clear liquid which is noninflammable at ordinary room temperatures. It is used as a vapor metal degreasing solvent, particularly in a specially designed degreasing apparatus; it is also used for spotting and dry cleaning, for the extraction of oils, fats, waxes, and alkaline, and as a freezing depressant for carbon tetrachloride fire extinguisher liquid.

When the commodity is sold for any of the above utilizations, it is stabilized before shipment by the addition of a chemical stabilizer in order to reduce its flash point and to protect it against rancidity. While the commodity with the addition of this stabilizer, which is thereafter then known as "regular trichlorethylene," and hereinafter referred to as "the regular commodity," can be used as a degreasing solvent, it is not very efficient for this purpose, so that when the regular commodity is expressly intended for this utilization, additional chemical stabilizers are added either by the purchasers themselves or by the supplier, such as respondent. When the supplier adds this additional special stabilizer in order to make the commodity usable as a vapor metal degreasing solvent, the supplier uses either his own special stabilizer or one furnished to him by the purchaser.

PAR. 3. The respondent manufactures or produces 95 percent of the total volume of the commodity produced in the United States, there being but one other company producing this commodity in the amount of 5 percent. This latter company, due to its limited productive capacity, has been forced to purchase part of its sales requirements of the commodity from respondent on a spot basis.

PAR. 4. In the course and conduct of its business, respondent sells and distributes the commodity, the regular commodity and the commodity stabilized for use as a metal vapor degreasing solvent to purchasers thereof located at various points in the several States of the United States other than the States in which the commodity is produced or manufactured, and causes said commodity, whether regular or especially stabilized, when sold, to be shipped from its manufacturing or producing plants across State lines to such purchasers.

PAR. 5. Respondent sells the regular commodity and the commodity stabilized for use as a metal vapor degreasing solvent directly to consumers for use in the latter's own plants and to wholesale distributors, called resellers, for resale to consumers.

PAR. 6. The same prices are charged by both the respondent and the other company producing or manufacturing the commodity, to their respective customers of a given class, for the commodity, whether it is the regular commodity or the commodity which has been especially stabilized for use as a metal vapor degreasing solvent. The differences in prices by both respondent and the other producer or manufacturer of the commodity to purchasers of the commodity of the same grade

and quality, whether regular or stabilized for the above purposes, are based first on whether the purchaser is a consumer or reseller, second, whether delivery is in drums, carloads, or less than carload lots, or tank cars, and whether delivery is to a customer located in one of the four zones into which the country is divided for delivery purposes.

The basic price differential as between sales of the commodity of the same grade and quality regardless of whether it is a regular commodity or the commodity especially stabilized for use as a metal vapor degreasing solvent, to consumers or resellers is approximately $1\frac{3}{4}$ cents per pound in favor of the resellers.

PAR. 7. For several years prior to 1945, but since June 19, 1936, there was among the purchasers of the commodity from the respondent, for the purposes of resale, one which added to the regular commodity, which it purchased from the respondent, a comparatively small amount of special stabilizer, before reselling the commodity as a vapor metal degreasing solvent under the different trade names of said purchaser.

PAR. 8. In making and attempting to make resales of the commodity thus stabilized, the said purchaser has been, and is, in competition with the respondent and distributors of respondent and other resellers, in interstate commerce, of similar products composed of the commodity and stabilizers which have been added in order to prepare the commodity for use as a vapor metal degreasing solvent.

PAR. 9. Although the respondent knew, or had reason to believe, that the said purchaser has been, and is, in fact a reseller of the commodity thus stabilized, nevertheless respondent sold it the commodity for the several years prior to March 1945 on a consumer price basis and thereby charged the said purchaser prices which were approximately $1\frac{3}{4}$ cents per pound higher than the prices at which it sold the commodity of like grade and quality to other resellers who compete in the resale, in interstate commerce, under various trade names, of the commodity stabilized as a metal vapor degreasing solvent.

PAR. 10. In 1945, because of the refusal of the respondent to sell the commodity to it except on a consumer price basis, the said purchaser, at least through the year 1946, purchased the commodity from the other producer or manufacturer of the commodity at the same prices at which that other producer or manufacturer sold the commodity to resellers; however, since this other producer's or manufacturer's supply of the commodity was very limited and it also sells to consumers metal vapor degreasing solvents similar to those sold by the said purchaser, the said purchaser has been unable to obtain a sufficient amount of the commodity to meet its requirements. The fact that the said purchasers, when it purchased the commodity from respondent had to do so on a consumer basis, and the further fact, which is a direct result of that condition, that when it purchased the commodity from the other producer or manufacturer of the commodity it was unable to obtain a sufficient

supply of same, have tended to prevent, and do tend to prevent, the said purchaser from selling vapor metal degreasing solvent in competition with the respondent, respondent's distributors, and others distributing metal vapor degreasing solvents similar to those sold by the said purchaser.

PAR. 11. The effect of the respondent's discriminating in price between different purchasers of commodities of like grade and quality through the practices of arbitrarily classifying some of its customers as consumers when in fact they are resellers, and then selling to such customers so classified at the prices at which it regularly sells said commodities to its consumers, has been, or may be, to substantially lessen competition between the favored customers and those of respondent's customers whom the respondent has thus arbitrarily and improperly classified as consumers, in the sale and distribution in interstate commerce of vapor metal degreasing solvents; and the effect also has been, or may be, to substantially lessen competition in the line of commerce in which the respondent is engaged, and to tend to create in the respondent and its favored customers a monopoly, in the sale and distribution in interstate commerce of vapor metal degreasing solvents.

PAR. 12. Such discriminations in price by the respondent between purchasers of commodities of like grade and quality in interstate commerce, in the manner and form aforesaid, are in violation of subsection (a) of section 2 of the act, described in the preamble hereof.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint in this proceeding without prejudice, filed March 22, 1949, by counsel in support of the complaint, and the consent answer thereto, filed March 30, 1949, by counsel for respondent.

As grounds for dismissal, counsel in support of the complaint in his motion asserts that the complaint herein involves issues relating more to a private controversy than to those affecting the public interest. He does not thereby provide a sufficient basis for dismissal of the complaint, which charges respondent with violation of section 2 (a) of the Clayton Act as amended. However, it is apparent from said motion that counsel in support of the complaint has now abandoned his previously asserted denial of respondent's contention that there is an absence of the requisite competitive effect to constitute a violation of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The complaint, issued January 9, 1948, charges respondent with discriminating in price in the sale of trichlorethylene in commerce; alleges that said discrimination occurred prior to 1945 and was confined primarily to a single purchaser. The record indicates that the alleged price discrimination occurred partially because of wartime controls imposed upon the production and price of the commodity in question;

that because of such conditions the competitive effects of the alleged price discrimination were negligible or nonexistent; and that the pricing practices of respondent which brought about said discrimination were discontinued on April 30, 1945, and are not likely to be resumed. Under these circumstances, the Commission is of the opinion that the reasonable possibility of competitive injury, if any ever existed, has now been terminated.

The Commission having duly considered the matter and being now fully advised in the premises:

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

Commissioner Davis absent.

Mr. Fletcher G. Cohn, Mr. James E. Corkey and Mr. Robert F. Quinn for the Commission.

Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondent.

BEACON MANUFACTURING Co. Complaint, August 1, 1944. Opinion and order, November 2, 1949. (Docket 5198.)

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 into commerce and in the sale of blankets and other articles.

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 Beacon Manufacturing 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 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, Beacon Manufacturing Co., is a Massachusetts corporation with its mill and principal office located at Swannanoa, N. C.

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 respondent's said products are composed in whole or in part of, or purport to contain, 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 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 blankets and other articles. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 products, exclusive of ornamentation not exceeding 5 per centum 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 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 percentages 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.

OPINION BY COMMISSIONER MASON CONCURRED IN BY COMMISSIONERS
FERGUSON AND AYRES

The respondent in this proceeding is engaged in the manufacture and in the interstate sale of blankets and other products composed in

whole or in part of wool. Said respondent was charged by the Commission's complaint with having misbranded certain of these products by failing to affix thereto stamps, tags, labels, or other means of identification, or substitutes therefor, showing the true percentages by weight of wool, reused wool, and other fibers contained in such products, as required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. Specifically, it was contended in support of the complaint that certain of the respondent's blankets which bore labels indicating their fiber contents to be 25 percent wool, 25 percent cotton, and 50 percent rayon, actually contained less than 25 percent wool and more than 25 percent cotton and 50 percent rayon. This was based on certain tests conducted by the Bureau of Standards which showed that swatches of blankets labeled 25 percent wool, 25 percent cotton, and 50 percent rayon, actually had wool contents varying from approximately 20 to about 23 percent in one case, a wool content of only 12 percent, in which latter case, however, it was shown that the variance was due to an isolated error on the part of an employee of the respondent in using a box of filling, during the process of manufacture, which was made and intended for another type of blanket. The record in the case consists of the complaint, the respondent's answer, testimony and other evidence introduced before a trial examiner of the Commission, the trial examiner's recommended decision, written briefs and oral arguments of counsel. In view of the nature of the problem involved, the Commission felt that its order dismissing the complaint should be accompanied by this separate opinion, explaining somewhat in detail the reasons for its action.

The record shows that the respondent is the largest manufacturer of blankets in the United States, and possibly the largest in the world, its total dollar volume of business being between 15 and 20 million dollars per year. It employs approximately 2,000 persons in its mills at Swannanoa, N. C., and produces each year more than 1,600,000 blankets which are made partly of wool.

As a result of numerous tests and checks made by and for the respondent over a period of many years, the respondent has found that in order to produce mixed fiber blankets composed of 25 percent wool, 25 percent cotton, and 50 percent rayon, it is necessary for the blend or mix from which such blankets are made to be composed of 38 percent wool and 62 percent rayon, and it is the respondent's practice, in preparing its mix for such blankets, to place therein wool and rayon fibers in these percentages. The actual mechanical process of manufacturing is fully set forth in the record. After the blend or mix goes through the mixing machines it then goes to the carding rooms, where the materials are further blended by mechanical processes, and thence to the spinning room. It is in the spinning room that the

cotton is added to the mix in the form of warp and core yarns. Later, the material goes to the burling room for the correction of imperfections, and thence to the finishing room, where, by a napping process, a layer of wool and rayon is raised giving the blanket smoothness. In the ordinary course of its business the respondent manufactures approximately 2,000 blankets from about 4,000 pounds of raw materials in each single batch or lot.

Through the use in the mix of the percentage of wool fibers above mentioned, the entire batch or lot of blankets produced will average 25 percent wool. The record shows, however, that, regardless of the care exercised or the precautions taken, individual blankets, or separate parts of individual blankets, in a lot made from such a mix may, in their wool content, vary somewhat, and that some of such blankets or parts thereof may contain slightly more than 25 percent wool and others may contain slightly less. This is due in part to mechanical difficulties encountered in the carding, spinning, weaving, and napping processes, making it impossible to distribute the wool fibers in the mix throughout the entire batch of material so evenly and uniformly that each and every blanket produced, and every part of every blanket, will have exactly the same percentage of wool as every other blanket, and in part to such variable factors as the possibility of errors made by employees and climatic conditions existing during the process of manufacture, which very materially affect the distribution of the fibers. Insofar as the latter named conditions are concerned, the evidence is that a manufacturer's control over them, or the effects of variations thereof, is strictly limited.

The record establishes that in the manufacture of its blankets the respondent uses substantially the same processes as those used by its competitors. It shows, further, that it is and for many years has been the respondent's policy to do everything possible and to take every precaution to see that its blankets contain the percentages of wool and other fibers claimed for them, and it appears that, insofar as this result can be obtained, the respondent has been successful in these efforts. It is true that, due to unavoidable variations in the mechanical manufacturing process, and despite the exercise of due care, swatches of some of the respondent's blankets have been found to contain slightly less than the percentages of wool fibers called for by the labels affixed to such blankets, but these variations apparently represent rare and isolated mistakes against which the respondent cannot reasonably be expected to guarantee, and, in the opinion of the Commission, they constitute the type of thing recognized as inevitable by the proviso of section 4 (a) (2) (A) of the Wool Products Labeling Act of 1939, as follows:

Provided, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall

not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements of such stamp, tag, label, or other means of identification.

For the reasons stated, it is the Commission's conclusion that the public interest does not require the issuance of an order to cease and desist in this matter, but that, in the circumstances, the complaint should be dismissed.

ORDER DISMISSING COMPLAINT

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 introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, written briefs, and oral arguments of counsel; and

For the reasons set forth in a separate opinion issued simultaneously herewith, the Commission being of the opinion that the respondent has not violated the provisions of the Wool Products Labeling Act of 1939 or the rules and regulations promulgated thereunder, as charged in the complaint:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

Commissioner Carson not participating.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. James F. Armstrong, of Providence, R. I., for respondent.

ARTRA COSMETICS, INC. Complaint, March 17, 1943. Original findings and order, May 26, 1948. 44 F. T. C. 883. (Docket 4930.) Opinion, and order vacating and setting aside, etc., November 8, 1949.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of products; in connection with the sale of two preparations, namely, "Irma" and "Sutra," respectively recommended for use as a depilatory, and as a protection against sunburn.

OPINION BY COMMISSIONER FERGUSON, CONCURRED IN BY COMMISSIONERS MASON, AYRES AND CARSON

This matter is again before the Commission upon the petition of respondent, Artra Cosmetics, Inc., filed July 7, 1948, that the order to cease and desist issued herein on May 26, 1948, be vacated and that the findings as to the facts and conclusions issued on the same date be modified in certain respects, and the answer thereto, filed July 19, 1948. Upon previous consideration of said motion and answer, the

Commission, on June 29, 1949, issued and served upon counsel for respondent and counsel supporting the complaint an order granting them 30 days within which to show cause, if any they had, why said findings and the order to cease and desist should not be modified in the particulars therein proposed. Counsel for respondent, on July 29, 1949, filed answer to said order, stating his reasons why no order to cease and desist should be issued, while no answer was filed by counsel supporting the complaint.

Respondent, in its motion to vacate and in its answer to the order to show cause, contends that certain portions of the findings as to the facts are not supported by the greater weight of the evidence of record and that consequently no order should issue.

The order to cease and desist, in effect, prohibits respondent from disseminating or causing to be disseminated in commerce any advertisement which represents, directly or by implication, that its product "Irma," a depilatory, or any other product composed of substantially similar ingredients or possessing substantially similar properties, is safe for use or that the use of said product will not irritate a normal skin. Said order is based in part upon paragraph 6 of the findings of fact, wherein it was found that certain injuries resulted from the use of said product even though directions for its use were followed and the skin of the user was normal. Such a finding is based almost wholly upon the testimony of witnesses who used said product and who are not qualified, either by training or experience, to properly determine the cause of their stated injuries. Respondent supplies users of the product "Irma" with specific directions as to how it should be applied and warns them to use it only on a small test area whenever the skin appears to be sensitive and to refrain from its use if the skin is inflamed or sore. There is substantial expert medical testimony in the record to the effect that said product is reasonably and comparatively safe when used under said directions and that its use as aforesaid will have no adverse effect upon a normal skin.

Upon reconsideration of the entire record in this matter and for the reasons herein stated, the Commission is of the opinion that the evidence of record fails to give substantial support to that portion of the findings of fact upon which the cease and desist order is predicated and that respondent's motion to vacate said order should be granted and the order to cease and desist vacated and set aside.

The order which accompanies this opinion therefore grants said motion and vacates and sets aside the order to cease and desist hereinbefore issued.

ORDER VACATING AND SETTING ASIDE ORDER TO CEASE AND DESIST

This matter came on to be heard in regular course upon the petition of respondent, filed July 7, 1948, that the order to cease and desist

issued herein on May 26, 1948, be vacated and that the findings as to the facts and conclusion issued on the same date be modified in certain respects, and the answer thereto, filed July 19, 1948.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, For the reasons stated in the accompanying opinion by Commissioner Ferguson, concurred in by Commissioners Mason, Ayres and Carson, that respondent's motion to vacate the order to cease and desist issued May 26, 1948, be, and the same is, hereby granted and that said order to cease and desist be, and the same is, hereby vacated and set aside.

Before *Mr. John L. Horner* and *Mr. Randolph Preston*, trial examiners.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.
Klein, Alexander & Cooper, of New York City, for respondent.

MORRIS PAINT & VARNISH CO. (A NEBRASKA CORPORATION), ALFRED SOPHIR, AUDREY SOPHIR, AND LEO SOPHIR. Complaint, December 19, 1947. Opinion and order, November 8, 1949. (Docket 5523.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to dealer being manufacturer, history, unique nature, comparative merits, and qualities, properties or results of product; in connection with the sale of paints, varnishes, enamels, and like 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 Morris Paint & Varnish Co., a Nebraska corporation, and Alfred Sophir, Audrey Sophir, and Leo Sophir, individually, and as officers of the above-named corporation, hereinafter referred to collectively 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 Morris Paint & Varnish Co. is a corporation organized and existing under the laws of the State of Nebraska, having been incorporated in that State on or about December 29, 1945. Said corporate respondent, together with the individual respondents hereinafter named as its chief officers, have their principal offices and places of doing business at 1510 Capitol Avenue in the city of Omaha, Nebr.

PAR. 2. Respondent Leo Sophir is an individual residing at 7137 Princeton Street in University City, a suburb of St. Louis, Mo. Respondents Alfred Sophir and Audrey Sophir are individuals residing at 687 J. E. George Boulevard in the city of Omaha, Nebr. Said indi-

vidual respondents are the chief officers of said corporate respondent, and in their official capacities they have formulated, controlled, and directed the policies, acts, and practices of said corporate respondent from the time of its formation.

PAR. 3. Prior to the formation of said corporate respondent, respondents Alfred Sophir and Audrey Sophir were copartners trading as Morris Paint & Varnish Co. of Omaha, and likewise had their principal place of business at 1510 Capitol Avenue in the city of Omaha, Nebr. When said corporation was formed, said individual respondents transferred to it the assets and business of the partnership, and said corporation has continued said business.

PAR. 4. Respondents have been engaged in the sale and distribution of paints, varnishes, enamels, and like products to the purchasers and users thereof located in the various States of the United States other than the State of Nebraska, and in the District of Columbia.

Respondents have caused such products, when so sold, to be transported from their principal place of business in Omaha, Nebr., to the purchasers and users thereof located in the various States of the United States other than the State of Nebraska, and in the District of Columbia. There has been a course of trade and commerce by said respondents in such products between and among the States of the United States, and in the District of Columbia.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their paints, varnishes, enamels, and similar products, respondents have placed upon the labels affixed to the containers in which the particular product is sold and in advertising material circulated throughout the various States of the United States, statements of which the following are typical:

Morris gives you a genuine morlux product created with the aid of professional painters to make paint work easier, to make paints wear better.

In their development over a period of many years, these products have had the fortunate cooperation of master painters who have "proved up" each Paint item by "use" in practical experimental tests after exhaustive laboratory work. The process of attempted improvement is always continued. We constantly strive to meet and exceed all practical painter requirements in the development of these modern finishes—

ACCEPT NO SUBSTITUTES. There is only one genuine MORLUX PRODUCT—

This can contains a genuine "MORLUX PRODUCT" manufactured under the most scientific control for the finest finish for which it is intended.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that the particular product so advertised and sold in containers bearing such labels is a product that was created by respondents, and that they manufacture it according to a process developed exclusively by them.

PAR. 6. In truth and in fact, in many instances, the product so

advertised and sold in containers bearing such labels is not a product that was created by respondents or any of them; nor is it manufactured according to any process developed exclusively by respondents or any of them.

In some instances, said product was purchased by respondents from the manufacturer or seller thereof for resale to respondents' customers, and the same product is sold by the manufacturer or seller thereof to other purchasers and the general public under another trade or brand name.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their paint designated by the trade name "Seal-Kote," respondents have circulated among prospective customers throughout the various States of the United States, such statements as the following:

A PAINT MADE FOR SCHOOLS THAT CUTS COSTS IN HALF;
A PAINT MADE FOR SCHOOLS THAT DOES A BETTER JOB.

Also available in the new Charleston White.

5. One coat covers wall paper—.

Even the darkest colors.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that:

1. The paint sold by respondents under the trade name "Seal-Kote" has been made especially for painting school buildings.

2. The use of said paint for this purpose in lieu of other paint, can be expected to reduce the cost of painting any school building, or a part thereof by at least one-half.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will be sufficient to cover adequately the darkest colors.

PAR. 8. In truth and in fact, the foregoing representations and implications made by respondents are false, deceptive, and misleading in the following respects:

1. Respondents' paint designated by the trade name "Seal-Kote" has not been made, and is not made, especially for the painting of school buildings.

2. Its use for that purpose in lieu of the paints of competitors of the same type and comparable quality will not reduce the cost of painting any school building, or any part thereof, by one-half or by any substantial amount.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will not cover adequately the darkest colors of wall paper.

PAR. 9. The acts and practices of respondents in using the foregoing false, deceptive, and misleading statements and representations have had and now have the capacity and tendency to, and do, mislead

and deceive a substantial portion of the purchasing public by creating the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

OPINION AND ORDER CLOSING CASE WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed March 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondents.

The complaint herein, issued December 19, 1947, charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of paints, varnishes, enamels, and like products through the use of advertising alleged to be false, misleading, and deceptive, by which advertising said respondents represent that one of said products sold under the trade name "Morlux" is a product created by them and manufactured according to a process developed by them, that a paint product sold under the trade name "Seal-Kote" has been made especially for painting school buildings, that the use of said paint can be expected to reduce the cost of painting any school building or part thereof by at least one-half, and that one coat of white "Seal-Kote" will be sufficient to cover adequately the darkest colors.

From the motion to close this proceeding and from the evidence of record, it appears that on or about December 15, 1945, the individual respondents, Alfred Sophir, Audrey Sophir, and Leo Sophir, organized the respondent corporation, which said corporation succeeded to, and has since carried on, the business previously operated and carried on by the individual respondents Alfred Sophir and Audrey Sophir under the trade name "Morris Paint & Varnish Co.," and that said individual respondents, while carrying on said business, did in fact originate and develop the product "Morlux" and that said product was made by a process developed by them in cooperation with the manufacturer thereof. It further appears from said motion and evidence that while the representations alleged in the complaint with respect to the product "Seal-Kote" were used by the individual respondents Alfred Sophir and Audrey Sophir prior to the organiza-

tion of the corporate respondent, said representations have not since been made by either the individual or corporate respondents.

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER

It is ordered, That this case be, and it is hereby, 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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Gideon H. Schiller, of St. Louis, Mo., for respondents.

MORRIS PAINT & VARNISH CO. (A MISSOURI CORPORATION), LEO SOPHIR AND JACK JAY SOPHIR. Complaint, December 19, 1947. Opinion and order, November 8, 1949. (Docket 5524.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to dealer being manufacturer, history, unique nature, comparative merits, and qualities, properties or results of product; in connection with the sale of paints, varnishes, enamels, and like 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 Morris Paint & Varnish Co., a Missouri corporation, and Leo Sophir and Jack Jay Sophir, individually, and as officers of the above-named corporation, hereinafter referred to collectively 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 Morris Paint & Varnish Co. is a corporation organized and existing under the laws of the State of Missouri, having been incorporated in that State on or about December 15, 1945. Said corporate respondent, together with the individual respondents hereinafter named as its chief officers, have their principal offices and places of business at 1823 Washington Avenue in the city of St. Louis, Mo.

PAR. 2. Respondent Leo Sophir is an individual residing at 7137 Princeton Street in University City, a suburb of St. Louis, Mo. Respondent Jack Jay Sophir is an individual residing at 7045 Cornell

Street, likewise in said University City. Said individual respondents are the chief officers of said corporate respondent, and in their official capacities they have formulated, controlled, and directed the policies, acts, and practices of said corporate respondent from the time of its formation.

PAR. 3. Prior to the formation of said corporate respondent, respondents Leo Sophir and Jack Jay Sophir, together with Morris Sophir, Mary Sophir, Dorothy Sophir, and Nathan I. Krutchik, were copartners trading as Morris Paint & Varnish Co., and likewise had their principal place of business at 1823 Washington Avenue in the city of St. Louis, Mo. When said corporation was formed, said individual partners transferred to it the assets and business of the partnership, and said corporation has continued said business.

PAR. 4. Respondents have been engaged in the sale and distribution of paints, varnishes, enamels, and like products to the purchasers and users thereof located in the various States of the United States other than the State of Missouri, and in the District of Columbia.

Respondents have caused such products, when so sold, to be transported from their principal place of business in St. Louis, Mo., to the purchasers and users thereof located in the various States of the United States other than the State of Missouri, and in the District of Columbia. There has been a course of trade and commerce by said respondents in such products between and among the States of the United States, and in the District of Columbia.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of their paints, varnishes, enamels, and similar products, respondents have placed upon the labels affixed to the containers in which the particular product is sold and in advertising material circulated throughout the various States of the United State, statements of which the following are typical:

Morris gives you a genuine morlux product created with the aid of professional painters to make paints work easier, to make paints wear better.

In their development over a period of many years, these products have had the fortunate cooperation of master painters who have "proved up" each Paint item by "use" in practical experimental tests after exhaustive laboratory work. The process of attempted improvement is always continued. We constantly strive to meet and exceed all practical painters requirements in the development of these modern finishes—

ACCEPT NO SUBSTITUTES. There is only one genuine MORLUX PRODUCT—

This can contains a genuine "MORLUX PRODUCT" manufactured under the most scientific control for the finest finish for which it is intended.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that the particular product so advertised and sold in containers bearing such labels is a product that was created by respondents, and that they

manufacture it according to a process developed exclusively by them.

PAR. 6. In truth and in fact, in many instances, the product so advertised and sold in containers bearing such labels is not a product that was created by respondents or any of them; nor is it manufactured according to any process developed exclusively by respondents or any of them.

In some instances, said product was purchased by respondents from the manufacturer or seller thereof for resale to respondents' customers, and the same product is sold by the manufacturer or seller thereof to other purchasers and the general public under another trade or brand name.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their paint designated by the trade name "Seal-Kote," respondents have circulated among prospective customers throughout the various States of the United States, such statements as the following:

A PAINT MADE FOR SCHOOLS THAT CUTS COST IN HALF;

A PAINT MADE FOR SCHOOLS THAT DOES A BETTER JOB.

Also available in the new Charleston White.

5. One coat covers wall paper—.

Even the darkest colors.

Through the use of said statements and others similar thereto not specifically set forth herein, respondents represent and imply that:

1. The paint sold by respondents under the trade name "Seal-Kote" has been made especially for painting school buildings.

2. The use of said paint for this purpose in lieu of other paint, can be expected to reduce the cost of painting any school building, or a part thereof by at least one-half.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will be sufficient to cover adequately the darkest colors.

PAR. 8. In truth and in fact, the foregoing representations and implications made by respondents are false, deceptive, and misleading in the following respects:

1. Respondents' paint designated by the trade name "Seal-Kote" has not been made, and is not made, especially for the painting of school buildings.

2. Its use for that purpose in lieu of the paints of competitors of the same type and comparable quality will not reduce the cost of painting any school building, or any part thereof, by one-half or by any substantial amount.

3. The application of one coat of respondents' white paint designated by the trade name "Seal-Kote" will not cover adequately the darkest colors of wall paper.

PAR. 9. The acts and practices of respondents in using the foregoing, false, deceptive, and misleading statements and representations have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public by creating the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

OPINION AND ORDER CLOSING CASE WITHOUT PREJUDICE

OPINION OF THE COMMISSION

This matter came on to be heard in regular course upon motion, filed March 11, 1949, by counsel supporting the complaint, to close this case without prejudice, to which no answer has been filed by respondents.

The complaint herein, issued December 19, 1947, charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of paints, varnishes, enamels, and like products through the use of advertising alleged to be false, misleading, and deceptive, by which advertising said respondents represent that one of said products sold under the trade name "Morlux" is a product created by them and manufactured according to a process developed by them, that a paint product sold under the trade name "Seal-Kote" has been made especially for painting school buildings, that the use of said paint can be expected to reduce the cost of painting any school building or part thereof by at least one-half, and that one coat of white "Seal-Kote" will be sufficient to cover adequately the darkest colors.

From the motion to close this proceeding and from the evidence of record, it appears that on or about December 15, 1945, the individual respondents, Leo Sophir and Jack Jay Sophir, organized the respondent corporation, which said corporation succeeded to, and has since carried on, the business previously operated and carried on by the aforesaid individual respondents and other individuals under the trade name "Morris Paint & Varnish Co.," and that said individuals, while carrying on said business, did in fact originate and develop the product "Morlux" and that said product was made by a process developed by them in cooperation with the manufacturer thereof. It further appears from said motion and evidence that while the representations alleged in the complaint with respect to the product "Seal-

DISMISSALS—VAN CAMP SEA FOOD CO., INC.—COMPLAINT 1087

Kote" were used by the individual respondents prior to the organization of the corporate respondent, said representations have not since been made, either by the individual or corporate respondents.

The Commission is therefore of the opinion that under the foregoing circumstances the public interest does not require further corrective action in this matter at this time and that the motion to close this proceeding without prejudice should be granted.

ORDER

It is ordered, That this case be, and it is hereby, 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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Gideon H. Schiller, of St. Louis, Mo., for respondents.

VAN CAMP SEA FOOD CO., INC. Complaint, September 28, 1942.
Order, November 15, 1949. (Docket 4841.)

Charge: Discriminating in price between different purchasers of its products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers, effect of which practice has been, or may be, to substantially lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy, and prevent competition between respondent and its competitors and among the customers of respondent; and discriminating in favor of certain of its customers against other of its customers by contracting to furnish and by furnishing to the former certain services or facilities in violation of subsections 2 (a) and 2 (e) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; in connection with the packing and sale of certain types of canned fish including respondent's "Chicken of the Sea Select Blue Label Tuna."

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions 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 Van Camp Sea Food Co., Inc., is a corporation, organized under and existing by virtue of the laws of the State of California with its principal office and place of business located on Terminal Island, Calif.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of packing, offering for sale, selling, and distributing certain types of canned fish including tuna which constitutes the major part of respondent's business.

In the course and conduct of its said business, respondent sells and distributes the aforesaid products, in commerce, to purchasers thereof located in the various States of the United States, and causes said products, when sold, to be shipped and transported, by rail and boat, from its places of business in the State of California to the purchasers thereof who are located in the various States of the United States other than the State of origin of shipments. There is, and has been, at all times mentioned herein, a constant current of trade and commerce in said products, between respondent, located in the State of California, and its customers located in the various other States of the United States. Said products are sold and distributed principally to wholesale grocery dealers, super markets and chain stores for use and resale within and throughout the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has been, and is now, engaged in substantial competition, in commerce, with other packers, sellers, and distributors of tuna fish, who for many years prior hereto, have been and are now engaged in packing, selling, and distributing such products, in commerce, across State lines, to purchasers thereof located in the various States of the United States. Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the purchase and resale of such products within the several trade areas, in which respondent's said customers respectively offer for sale and sell such products purchased from the respondent.

PAR. 4. There are approximately 11 individuals, firms, or corporations, including the respondent, all located in the State of California, who pack, distribute, and sell practically all the domestic canned tuna and canned-tuna products in the United States. The total annual sales value of canned tuna and tuna products in the United States amount to several millions of dollars. The business, of the respondent, in packing, distributing, and selling such products, constitutes approximately 50 percent of the total of such business in the United States.

PAR. 5. The respondent packs, distributes, and sells different grades of tuna under designated brands and labels. Respondent's "Chicken of the Sea Select Blue Label Tuna" is the product chiefly involved in these proceedings.

PAR. 6. The Kroger Grocery & Baking Co. and its subsidiaries operate in excess of 4,000 retail grocery stores in approximately 1,514 cities located in approximately 18 States of the United States. The Kroger Grocery & Baking Co. is one of the largest retail distributors

of tuna and tuna products in the United States and it purchases from the respondent approximately 90 percent of such products, which it distributes.

PAR. 7. In the course and conduct of its business, as hereinabove described, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers of its products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers, many of whom are competitively engaged, one with the other, in the resale of such products within the United States.

Specifically, among such discriminations, the respondent has sold its Chicken of the Sea Select Blue Label Tuna to The Kroger Grocery & Baking Co. and its subsidiaries at a price, per case, substantially lower than the price, per case, which respondent has granted and allowed to other purchasers of such products, of like grade and quality, some of which other purchasers are engaged competitively with The Kroger Grocery & Baking Co. and its subsidiaries in the resale of such products.

Illustrations of the aforesaid discriminations in price are as follows:

(a) On January 23, 1937, respondent contracted to sell to The Kroger Grocery & Baking Co., 70,105 cases of tuna, as ordered to December 1, 1937, at a delivered price of \$5.50 per case (the case referred to herein consists of 48 one-half pound tins). On February 4, 1937, respondent increased, to the general trade, the case price of such product to \$5.50 f. o. b. Terminal Island, Calif., which would make a delivered price of \$5.75 per case in the territory where the Kroger company and many of its competitors do business. (For convenience respondent considers 25 cents as the approximate cost of shipping, i. e., when sales are made on a delivered-price basis, the price is 25 cents per case higher than the price f. o. b. plant.) When the Kroger company had purchased only 24,000 cases under said contract and when said contract had 7 months yet to run, the respondent entered into a new contract with the Kroger company on May 6, 1937, to remain in effect until May 1, 1938. The later contract provided for the purchase, by the Kroger company, of 69,396 cases of tuna at a delivered price (ex-warehouse) of \$5.50 per case. During the months of March, April, May, June, and July, 1937, the respondent contracted to sell and sold tuna, of a like grade and quality as above, to other purchasers, including competitors of the Kroger company, at prices of \$5.50 per case, f. o. b. Terminal Island (i. e., \$5.75 delivered), \$5.75 f. o. b. Terminal Island (i. e., \$6 delivered), and \$6 f. o. b. Terminals Island (i. e., \$6.25 delivered).

(b) The afore-mentioned contract, entered into on May 6, 1937, expired by its expressed terms on May 1, 1938. At said expiration

date there were several thousand cases of tuna, of the amount set forth in said contract, which had not been purchased by the Kroger company. For a period of over 4 months, to wit, from May 1938 to September 1938, the respondent continued to allow the Kroger company to purchase tuna at a delivered price of \$5.50 per case, the price set forth in said expired contract. During the said period of over 4 months the respondent sold tuna of like grade and quality to competitors of the Kroger company at prices from 50 to 75 cents per case higher than the price granted to the Kroger company.

(c) On several occasions during the year 1938 the Kroger company sold Chicken of the Sea Select Blue Label Tuna through its retail stores to the consuming public at a price of two ½-pound cans for 25 cents, or, computed on a case basis, at \$6 per case. At the same time the price, per case, for tuna, of like grade and quality, charged by respondent to wholesalers, was either \$6 or \$6.25 per case. On September 8, 1938, the Kroger company advertised, in Cincinnati, Ohio, Chicken of the Sea, two ½-pound cans for 25 cents. On September 1 and September 9, 1938, a competitor of the Kroger company in Cincinnati, Ohio, purchased tuna, of like grade and quality from respondent, at \$6.25 per case f. o. b. Cincinnati. The wholesale price to the Kroger company's competitor was 25 cents a case more than the retail price charged by the Kroger company to the consuming public.

PAR. 8. The effect of the aforesaid discrimination in price among such customers may be, has been, and is substantially to lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy, and prevent competition between respondent and its competitors and among the customers of respondent.

PAR. 9. In the course and conduct of its business, as aforesaid, and contrary to the provisions of subsection (e) of said section 2 of the Clayton Act (U. S. C., title 15, sec. 13), as amended by the Robinson-Patman Act, respondent is now and since June 19, 1936, has been discriminating in favor of certain of its customers against other of its customers by contracting to furnish and by furnishing to the former certain services or facilities in connection with the sale, or offering for sale, of their products so purchased by them upon terms not accorded to all their customers on proportionally equal terms.

Illustrations of the aforesaid discrimination in services or facilities are as follows:

(a) Respondent maintains consigned stocks of tuna in warehouses strategically located in several cities throughout the United States from which warehouses purchasers of less than carload quantities are supplied. When consigned stocks are held in such warehouses 1 month the price of the tuna is increased 5 cents per case; when such stocks are so held longer than 1 month, the said price is increased 10 cents a case. When the Kroger Grocery & Baking Co. or its subsidiaries were sup-

plied from any such consigned stocks the invoicing and billing are handled, not by the regular agents and representatives of the respondent, but exclusively by the executive officials of the respondent, and all such storage charges were omitted; whereas payment of such storage charges is required from competitors of the Kroger company.

(b) When the Kroger company or its subsidiaries receive tuna from the consigned stocks, as described above, the Kroger company is permitted by respondent to remit once each month for such goods; whereas competitors of the Kroger company are required by the respondent to pay for such goods at the time of delivery.

PAR. 10. The foregoing alleged acts and practices of said respondent, as set forth in paragraphs 7 and 9, respectively, constitute violations of subsections 2 (a) and 2 (e) of section 2 of the said act of Congress approved October 15, 1941, as amended by said act of Congress approved June 19, 1936.

Complaint dismissed without prejudice by the following order:

This matter came on for final hearing before the Commission upon complaint of the Commission, the answer of respondent, testimony and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs and oral argument in support of and in opposition to the complaint.

The complaint, issued September 28, 1942, charges that since June 19, 1936, respondent, in the sale in commerce of canned tuna fish has been, and is now, discriminating in price between different purchasers of said products of like grade and quality by selling such products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers competitively engaged in the resale of said products within the United States, in violation of subsection (a) of section 2 of the Clayton Act as amended. Respondent is also charged with a violation of subsection (e) of section 2 of said act by discriminating in favor of certain of its customers against other of its customers by contracting to furnish, and by furnishing, to the former, certain services or facilities in connection with the sale or offering for sale of its said canned tuna-fish products so purchased by them upon terms not accorded to all of its customers on proportionally equal terms.

The evidence adduced discloses that respondent packs, sells, and ships annually from 40 to 50 percent of the tuna used in the United States. On January 23 and May 6, 1937, respectively, respondent entered into contracts with Kroger Grocery & Baking Co., under which it agreed to sell tuna at a price therein stated and to deliver said product over a period therein specified. Both during the period of the respective contracts and after the date of their expiration, respondent sold and delivered tuna to Kroger Grocery & Baking Co.

at prices ranging from 25 cents to \$1.25 per case of forty-eight 7-ounce cans below the prices charged competing customers for said products of like grade and quality. Additionally, respondent maintained certain warehouse stocks, from which Kroger could, and did, obtain delivery without charge, while other customers were required to pay 5 or 10 cents per case on delivery from the same warehouses. Respondent permitted Kroger a period of time in excess of that granted other customers in which to receive the benefit of a cash discount of 1½ percent.

It now appears that the discriminatory practices set forth above were discontinued about March 1939, at which time respondent terminated deliveries of tuna under the aforesaid contracts and that said practices are not likely to be resumed. Under these circumstances, the Commission is of the opinion that no useful purpose will be served by proceeding further in this matter at this time and having duly considered the matter and being now fully advised in the premises:

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

Commissioner Ayres dissenting.

Before *Mr. Andrew B. Duvall* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Daniel J. Murphy for the Commission.

Michelet & Michelet, of Washington, D. C., for respondent.

ELMER R. HASLETT and PRISCILLA HASLETT, trading as THE FACTORY OF THE GOLDEN GATE FARM, ALKALI-TRAP MANUFACTURING CO., ETC. Complaint, April 24, 1942. Order, December 14, 1949. (Docket 4752.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties, or results of product; in connection with the sale of four different water softeners, which operate on the zeolite principle, under the trade names Alkali-Trap, Lux Eau, Junior, Senior, and Jumbo.

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 Elmer R. Haslett and Priscilla Haslett, doing business as The Factory of The Golden Gate Farm, Alkali-Trap Co., Alkali-Trap Manufacturing Co., and Golden Gate Factory, 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. The respondents, Elmer R. Haslett and Priscilla Haslett, are doing business as The Factory of The Golden Gate Farm, Alkali-Trap Company, Alkali-Trap Manufacturing Co., and Golden Gate Factory. Their last known business address was Box D, Sausalito, Calif. Their present residence address is 33-27 Eightieth Street, Jackson Heights, Queens, New York, N. Y. For several years last past, respondents have been engaged in selling and distributing water softeners which operate on the zeolite principle. Respondents sell four different models of water softeners, all of which operate on the same principle, under the trade names Alkali-Trap, Lux Eau, Junior, Lux Eau, Senior, and Jumbo. Said water softeners are cylindrical containers packed with zeolite and are so constructed that they can be attached to a water faucet. Zeolite has the property of softening water which is passed through it.

In the course and conduct of their business as aforesaid, the respondents cause and for several years last past have caused their said water softeners, when sold, to be transported from their said place of business in Sausalito, Calif., to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and all times mentioned herein have maintained, a course of trade in said water softeners in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said water softeners, respondents have made certain false, deceptive, and misleading statements and representations with respect to the qualities and characteristics of different types of water and the results that can be obtained from the use of their said water softeners. Said statements and representations were made in advertisements which appeared in magazines, newspapers, circulars and pamphlets circulated generally among the purchasing public, and in various other ways. Among and typical of the statements and representations used and circulated by respondents as aforesaid are the following:

The only difference between Soft and Hard Water is Insoluble Alkali. Alkali-Trap removes it instantaneously, And, Thus, (without use of chemicals) Hard Water becomes Soft Water, direct from faucet.

Alkali-Trap actually traps and removes the insoluble alkali and hardness instantly.

Madam, THIS is the new water CLEANER that you may have read about in the magazine. Science has found that all domestic water has so much unsuspected dirt in the form of Alkali,— * * *.

Hard water injures or destroys everything it contacts.

A COMMON THIEF—STEALING * * * YOUR HEALTH—IS ALKALI.
Your FAUCET is the DOOR by which it enters, and ALKALI-TRAP is the
LOCK that KEEPS IT OUT.

At this time it is well to bring in the observation that if the alkali can destroy even soap that fast, it is difficult to realize what it does to the delicate lining of the stomach, kidneys and gall bladder. When you touch a person's interest in their health and the health of their family, the few dollars required to correct the water situation fades into insignificance immediately.

IMMEDIATE HEALTH RESULTS!

The principal features of most drinking waters and health waters are SOFTNESS and SOLUBLE ALKALINITY. Therefore, if you paid a dollar a bottle, we doubt if you could secure a better drinking water than that so generously produced by the ALKALI-TRAP.

Various authorities suggest that the constant drinking of the insoluble alkali (so-called hard water) constitutes an unwarranted and unnecessary strain on the kidneys and digestive organs. Some even suggest it as a contributing factor in the formation of calcareous deposits such as gallstones and kidney stones.

Aid's skin's health—prevents clogged pores in bathing.

Unsurpassed for healthful drinking water, cooking and coffee.

These coffee tests were conducted under Professor Samuel Prescott—requiring over a year. The first finding was that soft water brings out the true flavor, requiring less coffee—that hard water neutralizes the coffee acid and it loses its "tang."

* * * cuts soap bill in half * * *

Hard water causes 50 to 90% soap waste.

Doubles life of lingerie and silk hose.

Actual tests show 35% longer wear on linens and cottons.

PAR. 3. Through the use of the aforesaid statements and representations, and others of similar import, the respondents have represented, among other things, that hardness of water is caused by the presence therein of "insoluble alkali" and that their said water softeners will trap or remove such substances from the water which passes through them, thereby converting hard water into soft water; that hard water is injurious to the consumer's health, more particularly the stomach, kidneys and gall bladder, and that its use is a factor in the formation of gall and kidney stones; that the consumption of soft water produces immediate beneficial healthful results; that hard water clogs the pores of the skin and is otherwise injurious to the skin and hair; that a minimum saving of 50 percent in the amount of soap ordinarily used can be effected through the use of respondents' water softeners irrespective of the locality or type of water used; that silk clothing will last twice as long and cotton and linen materials will last 35 percent longer if washed in water which passes through said water softeners; and that the use of soft water in making coffee will lessen the amount of the ground coffee bean otherwise necessary to produce a given amount and desired strength of the beverage.

PAR. 4. In truth and in fact, hardness of water is not caused by "insoluble alkali" and respondents' said water softeners will not trap or

remove alkaline substances contained in water nor will they affect the alkaline character of water passed through them to any appreciable extent. Hard water exerts no extraordinary physical strain on the system. Hard water does not constitute a strain on, nor will it injure, the kidneys or digestive organs and it is not a factor in the formation of gall or kidney stones. The consumption of water which has been treated with zeolite does not produce any unusual or immediate effect upon the body nor will it result in an unusual or extraordinary health improvement. Hard water will not, ordinarily, irritate or otherwise injuriously affect the skin nor will it clog the pores of the skin. The use of soft water in making coffee will not lessen the amount of the ground coffee bean necessary to produce a given amount and strength of the beverage. Respondents' water softeners will not effect a 50 percent saving in the amount of soap used irrespective of the locality or type of water used nor will its use prolong the life of silk clothing 50 percent and cotton and linen material 35 percent.

PAR. 5. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the qualities and characteristics of hard water and soft water and the results that can be achieved through the use of their said water softeners and to induce the purchase of a substantial quantity of said water softeners as a result of the erroneous and mistaken belief so engendered.

PAR. 6. 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.

Complaint dismissed without prejudice by the following order :

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, written briefs and oral argument of counsel; and

It appearing to the Commission that the complaint charges the respondents with the use of certain false and misleading statements and representations in advertising in connection with the sale and distribution of water softening devices manufactured by them; and

It further appearing from the record that the respondents are not now and since March 1939 have not been engaged in the manufacture or in the sale or advertisement of water softening devices; and

The Commission having no reason to believe that the acts and practices shown to have been in violation of the Federal Trade Commission Act will ever be resumed :

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 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. John P. Bramhall, Mr. L. C. Russell, Mr. Miles J. Furnas and Mr. Arthur F. Thomas*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

SOLOMON G. SPRING, MIRON SPRING and RUDOLPH SPRING, trading as SPRING WHOLESALE CIGAR Co. Complaint, May 18, 1948. Order, December 14, 1949. (Docket 5541.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 Solomon G. Spring, Miron Spring, and Rudolph Spring, individuals trading and doing business as Spring Wholesale Cigar 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 regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondents, Solomon G. Spring, Miron Spring, and Rudolph Spring are individuals and copartners trading as Spring Wholesale Cigar Co., with their office and principal place of business located at 2024 Fifth Avenue in the city of Seattle, Wash. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push card and punchboards, and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their points of location in the various States of the United States, the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said

push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in Paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

Count II

PARAGRAPH 1. Respondents, Solomon G. Spring, Miron Spring, and Rudolph Spring are individuals and copartners trading as Spring Wholesale Cigar Co., with their office and principal place of business located at 2024 Fifth Avenue in the city of Seattle, Wash. Respond-

ents are now and for more than 3 years last past have been engaged in the sale and distribution of cigars, cigarettes, dolls, candy, peanuts, novelties, and other merchandise and have caused said merchandise when sold to be transported from their place of business in the city of Seattle, Wash., to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises, or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans

above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair 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 a memorandum, filed June 1, 1949, by Daniel J. Murphy, chief of the Commission's Trial Division, recommending that this proceeding be closed without prejudice, which recommendation is concurred in by counsel for respondents.

It appears from said memorandum and from the record herein that respondents in this proceeding, on June 23, 1949, 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. It further appears from the record that respondents were not extended an opportunity to dispose of this matter by the execution of a stipulation and agreement to cease and desist prior to the service of the complaint in accordance with the Commission's policy in such cases.

Having duly considered the matter and being now fully advised in the premises, and 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 executed by respondents on June 23, 1949, be, and it is, hereby approved and accepted.

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

It is further ordered, That the memorandum, dated June 1, 1949, submitted by Daniel J. Murphy, chief of the Commission's Trial Division, and concurred in by counsel for respondents, 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. J. W. Brookfield, Jr. for the Commission.

Monheimer, Schermer & Mifflin, of Seattle, Wash., and *Mulliner, Prince & Mulliner*, of Salt Lake City, Utah, for respondents.

ROBERT R. SANDERS, trading as GENERAL SALES Co. Complaint, July 1, 1949. Order, December 14, 1949. (Docket 5674.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 Robert R. Sanders, an individual trading and doing business as General Sales 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 regard thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Count I

PARAGRAPH 1. Respondent Robert R. Sanders is an individual trading and doing business as General Sales Co. with his office and principal place of business located in the Presbyterian Building, 150 Fourth Avenue North, in the city of Nashville, Tenn. Respondent is now and has been for more than 3 years last past engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia and to dealers in various articles of merchandise in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of Tennessee to purchasers thereof at their points of location in the various States of

the United States, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards, and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disc or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitled purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

Count II

PARAGRAPH 1. Respondent Robert R. Sanders is an individual trading and doing business as General Sales Co. with his office and principal place of business located in the Presbyterian Building, 150 Fourth Avenue North, in the city of Nashville, Tenn. Respondent is now and for more than 3 years last past has been engaged in the sale of watches, knives, novelties, and other articles of merchandise, and has caused said merchandise when sold to be transported from their place of business in the city of Nashville, Tenn., to purchasers thereof at their respective points of location in the various States of the United States other than Tennessee and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in Paragraph One hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punchboard. The punchboard has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punchboards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punchboard and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by a lot or chance.

Respondent has sold and distributed numerous assortments of merchandise and punchboards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of

said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 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 for consideration before the Commission upon the motion filed by respondent on July 27, 1949, to dismiss the complaint in this proceeding, answer in opposition thereto filed by counsel supporting the complaint, and amendment to such motion to dismiss, together with certain documents, filed on behalf of respondent on September 22, 1949, and October 4, 1949, to which no answer has been filed by counsel supporting the complaint; and

It appearing to the Commission that the business operated by respondent was discontinued prior to the institution of this proceeding and that there is adequate reason to believe that use of the acts and practices which are alleged in the complaint to be unlawful will not be resumed; 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 the same hereby is, dismissed 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. J. W. Brookfield, Jr. for the Commission.

Mr. Louis Ferguson, of Nashville, Tenn., for respondent.

GEORGE W. COOK AND FLOYD HANSEN, doing business as NORTH COAST SALES Co. Complaint, June 25, 1948. Order, January 10, 1950. (Docket 5568.)

Charge: Selling and using lottery devices and schemes in merchandising.

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 George W. Cook and Floyd Hansen, individuals and copartners trading as North Coast Sales 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:

Count I

PARAGRAPH 1. Respondents George W. Cook and Floyd Hansen are individuals and copartners trading as North Coast Sales Co. with their office and principal place of business located at 805 Union Street, in the city of Seattle, Wash. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution of devices commonly known as push cards and punch boards, and in the sale and distribution of said devices to dealers in various articles of merchandise in commerce between and among the various States of the United States, in the Territory of Alaska and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their points of location in the various States of the United States, in the Territory of Alaska, and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, in the Territory of Alaska, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punch

boards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of push cards and punch boards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punch boards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punch boards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the punch board or push card, and when a push or punch is made a disk or printed slip is separated from the push card or punch board and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designate articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punch board devices have no instructions or legends thereon but have blank spaces provided therefor. On those punch cards and punch boards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punch board devices first hereinabove described. The only use to be made of said push card and punch board devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States, the Territory of Alaska, and in the District of Columbia, purchase and have purchased respondents' said push card and punch board devices, and pack and assemble, and have packed and assembled, assortments

comprised of various articles of merchandise together with said push cards and punch board devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punch boards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punch boards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punch board devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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

Count II

PARAGRAPH 1. Respondents George W. Cook and Floyd Hansen are individuals and copartners trading as North Coast Sales Co. with their office and principal place of business located at 805 Union Street, in the city of Seattle, Wash. Respondents are now and for more than three years last past have been engaged in the sale and distribution of dolls, fountain pens, knives, compacts, fishing tackle, and other articles of

merchandise, and have caused said merchandise when sold to be transported from their place of business in the city of Seattle, Washington, to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the Territory of Alaska and in the District of Columbia. There is now and has been for more than three years last past a course of trade by respondents in such merchandise in commerce between and among the various States of the United States, the Territory of Alaska and the District of Columbia.

PAR. 2. In the course and conduct of their business as described in Paragraph One hereof, respondents sell and have sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprises or lottery schemes when said merchandise is sold and distributed to the purchasing public.

Said assortments include a number of articles of merchandise and a punch board. The punch board has printed on the face thereof a legend or instructions that explain the manner in which the said device is to be used or may be used in the sale or distribution of the various specified articles of merchandise. The prices of the sales of punches on said punch boards vary in accordance with the individual device. Each purchase entitles the purchaser to one punch from the board and when a punch is made a printed slip is separated from the punch board and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the punch completed. Certain specified numbers entitle the purchaser thereof to receive a designated article of merchandise. Persons punching a lucky or winning number receive an article of merchandise at a price much less than the normal retail price of said article. Persons who do not punch a lucky or winning number receive nothing for their money other than the privilege of making a punch from said board. The articles of merchandise are thus distributed to the consuming or purchasing public solely by lot or chance.

Respondents have sold and distributed numerous assortments of merchandise and punch boards, all of which are distributed by the dealer to the purchasing public as above described and such assortments vary only in detail as to the individual items of merchandise, the number of punches on the board and the price of each punch, the plans of all of said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondents' punch boards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the

sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair 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 memoranda, filed June 28, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, recommending that this proceeding be closed without prejudice, which recommendation is concurred in by respondents.

It appears from said memoranda and from the record herein that respondents in this proceeding 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. It further appears from the record that respondents were not extended an opportunity to dispose of this matter by the execution of a stipulation and agreement to cease and desist prior to the service of the complaint in accordance with the Commission's policy in such cases.

Having duly considered the matter and being now fully advised in the premises, and 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 executed by respondents be, and it is, hereby approved and accepted.

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

It is further ordered, That the memoranda filed June 28, 1949, by Daniel J. Murphy, Chief of the Commission's Trial Division, and concurred in by respondents, 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. J. W. Brookfield, Jr. for the Commission.

MERCK & CO., INC., AND AMUNO, INC. Complaint, December 1, 1944. Order, January 12, 1950. (Docket 5256.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the licensing and sale of a patented product designated Amuno, intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers, to prevent damage to such materials from moths and beetles.

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 Merck & Co., Inc., a corporation, and Amuno, Inc., 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 in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Merck & Co., Inc., and Amuno, Inc., are two separate corporations organized under and existing by virtue of the laws of the State of New Jersey, both having their principal places of business in Rahway, N. J. Respondent Amuno, Inc., is a wholly owned and controlled subsidiary of respondent Merck & Co., Inc.

PAR. 2. Respondents are now and have been for more than 2 years last past jointly and cooperatively engaged in the sale and distribution of a patented product designated as Amuno. Said product is intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers, to prevent damage to such materials from moths and beetles. The use of said product is authorized by respondent Amuno, Inc., in license agreements with various licensees who may be either mills or retailers. Control over advertising fabrics or merchandise as having been treated with Amuno is retained by respondent Amuno, Inc., in said license agreements. The retailer-licensees are authorized to license a particular mill to process fabrics or materials with Amuno. Sales of Amuno pursuant to said license agreements are made by respondent Merck & Co., Inc.

In the course and conduct of their business, the respondents cause said product, when sold, to be transported from Rahway, N. J., to the 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, 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. 3. In the course and conduct of their business and for the purpose of inducing the purchase of said product in commerce, respondents have made, and are now making, certain false, deceptive and misleading statements and representations regarding the value of said product and the results to be obtained from its use, by means of statements in said license agreements, advertisements inserted in trade publications, booklets, circulars and leaflets distributed to mills and retailers and in various other ways. Said false, deceptive and misleading statements and representations in said license agreements and in advertisements distributed to mills and retailers are designed and intended to be used and are used by mills and retailers as means to induce the purchase by the ultimate consumers of fabrics and merchandise which have been treated with Amuno. Typical representations are as follows:

It (Amuno) is designed for the treatment of goods or merchandise composed wholly or partly of wool or other animal fibers to protect such goods against attack of certain insects commonly known as clothes moths and carpet beetles. * * *

AMUNO—A chemical compound developed to protect fabrics or merchandise composed wholly or partially of wool or other animal fibers against damage by clothes moths or carpet beetles.

AMUNO-treated fabrics or merchandise will withstand moth attack even after repeated dry cleanings; and will withstand moth attack under home conditions after five wet dry cleanings or washings.

AMERICANS PAY over \$200,000,000 a year to feed clothes moths and carpet beetles (buffalo moths). These pests invade thousands of homes and do irreparable damage.

But "it can't happen here." Blankets treated with AMUNO will resist voracious attacks by moths or carpet beetles. * * * starvation confronts moths hatched on materials treated with AMUNO.

Respondents' customer trade was advised in a circular as follows:

With regard to statements, claims or guarantees made in advertisements or catalogues and on labels or tags in connection with merchandise treated with AMUNO it is believed that phraseology along the following lines would be constructive and effective:

We guarantee that this blanket (or other properly designated types of merchandise) has been treated with AMUNO to prevent moth damage. In our opinion this treatment provides the best available protection against attack by moths or carpet beetles. In the event of moth or beetle damage within ----- years (or prior to ----- washings or ----- dry cleanings) adjustment will be made on the following basis: -----

PAR. 4. Through the use of the foregoing statements and representations and others of the same import and meaning, the respondents have represented, and are now representing, that Amuno, as a treatment for materials containing wool or other animal fibers, renders such materials moth resistant and immune to attack by moths and carpet beetles; that it insures complete protection of the treated materials against damage by moths or beetles for several years, during which time the treated materials may be subjected to repeated dry cleanings or as many as five wet dry cleanings or washings.

PAR. 5. The foregoing representations are false, deceptive, and misleading. Amuno treatment of materials containing wool or other animal fibers does not render such materials moth resistant or immune to attack by moths or beetles. It does not insure complete protection of the treated materials against damage by moths or beetles for any period of time or after dry cleaning or wet dry cleaning or washing.

PAR. 6. Respondents by their statements in license agreements, advertisements in trade publications, and by the distribution of booklets, circulars, and leaflets as aforesaid, and in various otherways, supply to and place in the hands of retailers and mill operators means and instrumentalities designed to cause, and capable of causing, and which have caused, said retailers and mill operators to mislead and deceive the ultimate purchasers of merchandise containing wool or other animal fibers, as to the value of and the results to be obtained by the treatment of such merchandise with Amuno.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid in connection with the offering for sale and sale of their said product in commerce 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 such statements and representations are true, and into the purchase of substantial quantities of merchandise treated with Amuno because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents 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 to close this case without prejudice filed April 8, 1949, by counsel in support of the complaint, to which no answer has been filed.

The complaint herein, issued December 1, 1944, charges respondents with unfair and deceptive acts and practices in commerce in the offering for sale, sale, and distribution of "Amuno," a preparation

designated, designed, and intended for use as a treatment by mills manufacturing fabrics and other merchandise composed wholly or partly of wool or other animal fibers to prevent damage to such materials from moths and beetles, through the use and dissemination of certain statements and representations relating to its effectiveness which are alleged to be false, deceptive, and misleading and made, or caused to be made, and disseminated and placed in the hands of retailers and mill operators for their use and dissemination for the purpose of inducing the purchase of merchandise treated with said preparation.

On June 25, 1947, subsequent to the issuance of the aforesaid complaint, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the preparation involved in this proceeding is an "economic poison" within the meaning of said act, and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over certain claims, statements, and representations with regard to its effectiveness, in view of which the Commission is of the opinion that under its policy of cooperation 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 these statements and representations.

From the motion to close it appears that respondents have terminated and abandoned the use and dissemination of other claims, statements, and representations alleged to be false, deceptive and misleading and that their use and dissemination will not be resumed. The Commission is therefore of the opinion that with respect to these 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 the motion to close this proceeding without prejudice should be granted:

It is ordered, That this case be, and it is hereby, 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. Joseph Callaway for the Commission.

Hughes, Hubbard & Ewing, of New York City, for respondents.

CROUSE-HINDS CO., GENERAL ELECTRIC CO., EAGLE SIGNAL CORP., AUTOMATIC SIGNAL CORP., SIGNAL SERVICE CORP., AND HORN SIGNAL MANUFACTURING CORP. Complaint, October 9, 1941. Order and opinion, January 23, 1950. (Docket 4610.)

Charge: Carrying out and engaging in an unlawful understanding, agreement, combination and conspiracy to unduly suppress, stifle, and restrict competition between and among respondents and to restrain trade and create a monopoly in the interstate sale and distribution of traffic signals and traffic signal equipment, through acts and practices including standardization of product, sale thereof at identical delivered prices concertedly established, submission of uniform bids, and inducing specifications designed to exclude competitive 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 the corporations hereinafter named and described and referred to as respondents have violated the provisions of section 5 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 respondent Crouse-Hinds Co. is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Seventh, North and Wolf Streets, Syracuse, N. Y.

The respondent General Electric Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Schenectady, N. Y.

The respondent Eagle Signal Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Moline, Ill.

The respondent Signal Service Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at Elizabeth, N. J.

The respondent Automatic Signal Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at East Norwalk, Conn.

The respondent Horni Signal Manufacturing Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 515 Greenwich Street, New York, N. Y.

PAR. 2. All of the respondents herein named have been for the past several years engaged in manufacturing traffic signals, traffic signal equipment and fittings, and all of said respondents, both in their corporate capacity and through various agencies, have been for more

than 5 years last past 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 traffic signals, traffic signal equipment and fittings, and caused said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

PAR. 3. The said respondents now constitute, and have during all the times herein mentioned constituted, substantially all of the manufacturers of traffic signals and traffic signal equipment and fittings. The said respondents do now and have for the past several years manufactured and sold approximately 90 percent of all the traffic signals and traffic signal equipment and fittings sold in the United States. Prior to the adoption of the practices herein alleged said respondents were in active and substantial competition with each other and with other members of the industry, and but for the acts herein alleged said respondents would now be in active and substantial competition with each other and with other members of the industry.

Traffic signals and traffic signal equipment and fittings are used extensively throughout the United States and are bought by private firms, Federal Government agencies, State agencies, and municipalities, and because of the substantial quantity and because of existing laws and regulations, the different governmental agencies purchase said products by the method of invitation for bids from the different manufacturers and from the bids submitted select the member of the industry from whom the purchase will be made.

PAR. 4. Said respondents, for more than 3 years last past, have carried out and are now engaged in, an unlawful understanding, agreement, combination, and conspiracy to unduly suppress, stifle, and restrict competition between and among said respondents and to restrain trade and create a monopoly, in the interstate sale and distribution of traffic signals and traffic signal equipment in the States and territories of the United States and in the District of Columbia.

Pursuant to said understanding, agreement, combination, and conspiracy, said respondents have cooperatively adopted, performed, and carried out the following, among other collusive competitive methods, practices and acts:

(a) Agreed on identical delivered prices to be charged for said products, said prices to be the same to all purchasers throughout the United States irrespective of the cost of transportation and the place of shipment or delivery, and have consistently sold and delivered said products at said prices.

(b) Arbitrarily computed or averaged the delivery costs throughout the United States in order to provide a common freight factor in said identical delivered prices and to prevent differences in delivery

costs from various places of production to various places of delivery causing differences in respondents' delivered prices.

(c) Agreed on discounts to be allowed dealers in and purchasers of traffic signals and traffic signal equipment and fittings, and have consistently allowed said discounts.

(d) At meetings held and through correspondence and by personal contact, have collaborated and advised with one another in compiling and publishing price lists and catalogs in which identical delivered prices of said products and discounts to be allowed were quoted, and have through the cooperative methods above described, compiled, published, and circulated to the purchasing public price lists and catalogs containing said identical delivered prices and discounts, with the understanding or agreement that said prices and discounts would be adhered to and where price and discount changes were contemplated respondents would give to each other advance notice of the contemplated changes.

(e) Respondents have required their respective distributors to bid and adhere to the published delivered prices which were agreed upon among respondents as herein alleged.

(f) Said respondents have, during the years 1938, 1939, 1940, and 1941, submitted numerous bids to Federal agencies, State agencies, and municipalities to furnish traffic signals and traffic signal equipment and fittings in which bids they and each of them have quoted prices and discounts identical in every particular. Typical examples of the numerous bids of that character submitted are the following:

The bids submitted to the State of Massachusetts, December 27, 1938, in which respondents Crouse-Hinds, General Electric, and Eagle Signal bid on one-way three-color signal, \$34.93; one-way four-color signal, \$44.29; one-way slip fitter, \$5.52, and four-way slip fitter, \$6.50.

The bid submitted to the city of Pittsburgh dated June 3, 1939, in which the bids of Crouse-Hinds and General Electric were identical on one article and the bids of Crouse-Hinds, General Electric, Eagle Signal, and Signal Service were identical on two items.

The bid submitted to the State of Massachusetts dated June 27, 1939, in which Crouse-Hinds, General Electric, and Eagle Signal submitted identical bids on one article and Crouse-Hinds and General Electric submitted identical bids on one other article.

The bids to the city of Detroit, dated July 7, 1939, the bids to the city of Cleveland, Ohio, dated August 10, 1939, the bids to the city of Detroit, dated August 22, 1939, the bids to the city of Pittsburgh, dated September 29, 1939, the bids to the city of Philadelphia dated October 31, 1939, the bids to the city of Philadelphia dated December 5, 1939, the bids to the city of Philadelphia dated December 12, 1939, the bids

to the State of Massachusetts dated December 18, 1939, the bids to the city of Grand Rapids dated January 30, 1940, the bids to the city of Omaha dated August 13, 1940, the bids to the city of Cleveland dated October 10, 1940, the bids to the State of Massachusetts dated December 19, 1940, the bids to the city of Cleveland dated March 6, 1941.

(g) In cases where bids were submitted and one of the respondents should through error quote a price on an article less than the price quoted by the other respondents in their bids, such respondent would advise the prospective purchaser that he had made an error in his bid and ask to be permitted to correct it so as to make his bid uniform with the other respondents' bids or to be permitted to withdraw his bid.

(h) In localities where respondents anticipated lower bid prices from competing manufacturers which were not parties to respondents' alleged combination, they at times quoted prices lower than their regular published prices on the items where such outside competition was expected.

(i) Respondents acted in concert and cooperation to establish uniform standards and specifications of quality, design, and performance for their products and have used such standards and specifications to prevent differences therein from interfering with their objective of establishing and maintaining identical noncompetitive prices.

(j) In localities where respondents have encountered competition from concerns not parties to the combination herein alleged, in the sale of their products they have, through cooperative action, advised prospective purchasers against buying the products of such competitors by representing to the prospective purchasers, among other things, that the said competitor's products were not standardized products and the cost of upkeep would be far in excess of that of the upkeep of respondent's products.

(k) In cases where bids have been submitted by respondents and respondents' competitors wherein the competitors' prices were lower than those of the respondents, the respondents have, cooperatively attempted to persuade, and in many instances have induced the prospective purchasers to refuse to buy the competitor's product by representing to the prospective purchasers that the competitor's product was an inferior product and the upkeep would be greater than that of the upkeep of respondents' products.

(l) In localities where respondents anticipated lower competitive bids from other members of the industry, not parties to the combination herein alleged, said respondents have cooperatively induced the prospective purchaser to make specifications which would, in effect, exclude such competitors.

PAR. 5. As an incidental but necessary result of respondents' combination to fix delivered prices identical throughout the United States

without regard to differences in delivery costs from their respective plants to various destinations, as above alleged, the respective respondents have imposed upon nearby customers more and upon distant customers less than the actual cost of delivery and have thereby demanded, accepted, and received from their respective customers, different sums of money per unit of product and larger sums per unit from their nearby customers than from their more distant customers, after allowing for differences in actual cost of delivery. Such inequitable treatment of their customers was for the purpose and with the effect of adhering to respondents' delivered prices and maintaining the identity thereof throughout the United States.

PAR. 6. The capacity, tendency, and effect of such combination, understandings, and agreements and the acts, competitive methods, and practices of the respondents set out herein, and many others not specifically named, are and have been to monopolize in said respondents the said business of manufacturing and selling traffic signals, traffic signal equipment, and fittings and to unreasonably lessen, eliminate, restrain and suppress competition in the manufacture and sale of said products in interstate commerce and have materially enhanced the price to the purchaser of said products and have the tendency and effect of depriving the purchasing public of the advantages of price service and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of traffic signals and traffic signal equipment and fittings in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act, have placed in respondents the power to control and enhance prices, have unreasonably restrained such commerce in the manufacture and sale of traffic signals and traffic signal equipment and fittings, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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, the respondents' answers thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, briefs of counsel, and oral argument; and

The Commission, for the reasons set forth in the accompanying opinion, being of the view that the allegations of the complaint have not been sustained by the greater weight of the evidence; and

The Commission being of the further view that, having determined that the complaint is not sustained by the greater weight of the evidence, it is not necessary to rule more specifically on objections raised by counsel to the recommended decision of the trial examiner:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

OPINION BY COMMISSIONER MEAD CONCURRED IN BY COMMISSIONERS
MASON, AYRES, AND CARSON

The respondents in this case are engaged in the manufacture and interstate sale of traffic signals and related equipment. On October 9, 1941, the Federal Trade Commission issued a complaint charging that these respondents have engaged in an unlawful agreement and conspiracy to unduly suppress competition among themselves and to restrain trade and create a monopoly in the interstate sale of these commodities. It is alleged that pursuant to such agreement, they have concertedly adopted and cooperatively engaged in 12 specified acts and practices, including, among other things, the standardization of their products, the sale thereof at identical delivered prices compiled through meetings and correspondence, the submission of uniform bids, and the inducing of purchasers to formulate specifications in such a manner as to exclude manufacturers other than themselves.

The annual sales volume in this industry is between 1 and 1½ million dollars, of which respondents account for a substantial portion. Three of these respondents have individual productive capacity sufficient to furnish all the traffic signal requirements of the United States. Substantially all the sales of these commodities are to Government agencies, Federal, State, and city, and are made pursuant to specifications prepared for them by these purchasers. The respondent Horni Signal Manufacturing Corp. has gone into bankruptcy. The respondent Signal Service Corp. discontinued manufacture of traffic signal equipment in 1941.

While the products of the industry are highly standardized, the greater weight of the evidence shows that this is due to the efforts of the Institute of Traffic Engineers, a professional society whose chief officers and most of its members are employed in the electric light divisions of municipalities.

For many years prior to the beginning of this proceeding these respondents sold on a f. o. b. factory basis, including a delivery cost factor which is the same for all destinations. Since these respondents in formulating their individual prices are unable to anticipate the

quantity or method of delivery necessitated when bids are awarded, they include this delivery factor in their f. o. b. price. This factor varies as to each of them but represents about $1\frac{1}{4}$ percent of the sales price in the case of one manufacturer and ranges from there to as high as 2.7 percent for another. This system of pricing in this industry was adopted in response to the demand and wishes of the purchasers.

From 1936 to 1938 prices varied widely. However, since early in 1939 the price lists of respondents have been substantially identical; and during this period several revisions of catalogue prices by certain respondents, mostly upward, were followed within 2 months or less by similar changes on the part of other respondents. During the intervals between announcements of price revisions by one manufacturer and similar announced changes, by the others, the latter would continue to sell as their original prices.

The respondents contend that such uniformity in bidding resulted from their individual determination to quote their respective catalogue prices and not from any agreement. Some tabulations of bids in 1939 and later on show uniformity, but in others there were found to be variations. The trial examiner found that instances of uniform bidding were of short duration.

Many letters and other communications passing between representatives of the respondents and their home offices are in the record. Counsel supporting complaint contends that these letters and other communications support the allegations. Although these documents indicate considerable reluctance to antagonize competitors by quoting lower prices, and although they expressed the hope that absence of price cutting would continue, we are of the opinion that there is insufficient basis in the record to support an inference that the alleged agreement ever existed. For example, one of the communications passing between two employees of respondent General Electric, stated substantially that there was an agreement to the effect that all manufacturers in this industry would thereafter bid on ornamental pole clamps only. However, the record shows that thereafter General Electric continued to list and bid on plain clamps, an action which is entirely inconsistent with the statements made in the communication. Because of this and other facts brought out in the record, we believe that the communication is merely an expression of an erroneous impression of one employee of the company, and we do not believe that the exhibit is entitled to the weight contended for it by counsel supporting complaint.

We have also noted the absence in the record of several elements which are often found in cases of this nature. While we recognize that they are not indispensable, we realize the difficulties in supporting the allegations of the complaint herein without them. There is no trade association in this industry. The record further shows no

exchange in statistics between members of the industry. We find no evidence of common price filings, simultaneous price changes or differentials in the record. Finally we find no freight rate books or uniform contracts.

Only one meeting of members of the industry is shown in the record. This was held in November of 1938 at the request of the Institute of Traffic Engineers for the purpose of supplying certain lighting data. Immediately after this meeting a representative of the Crouse-Hinds Co. sent copies of their revised catalogue sheet to a representative of a competitor, the Horni Signal Manufacturing Co. However, a week prior to this meeting the Crouse-Hinds Co. had mailed these same sheets to its distributors and customers.

After considering the record in this matter, we are of the opinion that the greater weight of the evidence does not sustain the allegations of the complaint.

Before *Mr. Charles B. Bayly*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Hiscock, Cowie, Bruce, Lee & Mawhinney, of Syracuse, N. Y., for Crouse-Hinds Co.

Cahill, Gordon, Zachry & Reindel, of New York City, for General Electric Co.

Whitman, Ransom, Coulson & Goetz, of New York City, for Eagle Signal Corp.

Mr. Isidore H. Lutzker, of New York City, for Automatic Signal Corp.

Pennie, Edmonds, Morton & Barrows, of New York City, for Signal Service Corp.

Mr. Harold Gilbert, of New York City, and *Mr. Francis W. Hayden*, of Newark, N. J., for Andrew B. Crummy, trustee for Horni Signal Manufacturing Corp.

F. W. FITCH CO. AND F. W. FITCH MANUFACTURING CO. Complaint, May 21, 1946. Order, February 1, 1950. (Docket 5439.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts, qualities, properties or results, comparative merits, safety and refund or money back guarantee; in connection with the manufacture and sale of toilet preparations, including a preparation designated as Fitch's Dandruff Remover Shampoo.

COMPLAINT: ¹ 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 F. W. Fitch Co., a corporation, and F. W. Fitch Manufacturing Co., a corpo-

¹ For interlocutory order (and accompanying opinion) denying motion to recall complaint or for the adoption of certain alternative procedure, see p. 1128, *infra*.

ration, 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. F. W. Fitch Co. and F. W. Fitch Manufacturing Co. are corporations organized, existing, and doing business under the laws of the State of Iowa, with their principal office and place of business located in the city of Des Moines, State of Iowa.

PAR. 2. Respondent F. W. Fitch Manufacturing Co. is now, and for a number of years last past has been, engaged in the manufacture of toilet preparations, including a preparation designated as Fitch's Dandruff Remover Shampoo; and respondent F. W. Fitch Co. is now, and has been for a number of years, engaged in the sale and distribution of said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause said preparation when sold to be transported from their place of business in the State of Iowa to purchasers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation 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 said business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation 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 their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation 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 caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, radio continuities and other advertising literature, are the following:

The beauty problem confronting many women today is HOW TO RECONDITION THEIR HAIR * * * the miracle of Fitch Shampoo is that this clear amber liquid seeps down into each hair opening in your scalp clearing it of all dandruff and other foreign matter.

Dandruff is not a disgrace * * * but, if neglected, it frustrates hair beauty, and can have serious ill-effects on the scalp. Some dandruff manifests itself in unsightly particles, that flake off embarrassingly. Another type forms close to the scalp, and clings tightly. You may not even know you have it,

though you might wonder why your scalp is occasionally irritated and your hair ALWAYS less attractive than you'd like it to be. Because of the amazing efficiency of Fitch's Dandruff Remover Shampoo, both types of dandruff are totally unnecessary. Fitch Shampoo is guaranteed to remove every tiny, stubborn speck of dandruff with the first application, or your money will be refunded. This guarantee is upheld by one of the world's largest insurance firms. By penetrating deep into each little hair opening, instantly dissolving the clogging dandruff and other types of accumulated waste matter, Fitch Shampoo gives the scalp a basic, corrective cleansing. It is a normalizer for both dry and oily hair and a healthy stimulant for every scalp. After the first Fitch Shampoo, the scalp has renewed tone and the hair new luster and vitality. Fitch Shampoo is applied differently; its action is different, and the results are different. For scalp health and hair beauty, insist on Fitch's Dandruff Remover Shampoo, the shampoo that reconditions as it cleanses.

Used regularly each week, Fitch Shampoo prevents the dangerous accumulation of dandruff which will take its toll from the health and beauty of your hair.

* * * Scientific tests have proven that Fitch Shampoo does exactly this! First, it dissolves and washes away all dandruff with the first application * * *. Second, Fitch Shampoo kills all germs with which it comes in contact. This germ-killing action of Fitch Shampoo has been tested and verified by scientists in some of the country's leading laboratories. After a Fitch Shampoo, your scalp is antiseptically clean and free from germs—even down in the tiny hair openings, for Fitch Shampoo contains special ingredients that penetrate these openings on the scalp. Because Fitch Shampoo is made of only the purest ingredients, the Good Housekeeping Bureau endorses it as a pure, safe shampoo * * *, safe to use on even the tiniest baby's scalp.

* * * Your scalp is deeply cleansed, exhilaratingly stimulated. Your hair has a crisp, "live" quality, a renewed luster and a flattering softness. Best of all, your dandruff has disappeared!

"Goodbye Dandruff"—You'll whistle too when you see how quickly the rich abundant Fitch lather carrier off the dandruff, dust and dirt. Besides * * * you'll be amazed at the way Fitch Shampoo brings out the natural sparkle and luster of your hair.

* * * Folks who have tried so-called dandruff cures know that any product which will not remove dandruff today will not remove it tomorrow or any other day.

* * * when she used Fitch, she could be sure that she was helping to give her children, no matter what their age, fine hair care, and the assurance of attractive hair in the future.

Many baby clinics recommend Fitch for tiny babies' fine hair and tender scalps * * *.

Don't despair, use your head, save your hair, use Fitch Shampoo.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, the respondents, directly and by implication, represent that dandruff is a skin disease which, if neglected, will have serious pathological consequences; that there are two types of dandruff, one manifesting itself in unsightly particles which flake off to the embarrassment of the person so afflicted, the other type forming closely to the scalp and clinging to it tightly; that both conditions are unnecessary because of the efficiency with which every particle of dandruff is

instantly dissolved and removed with the first application of respondents' preparation; that the accumulation of dandruff is destructive to the health and beauty of the hair; that said preparation penetrates into each hair opening, dissolves all clogging dandruff and other waste material, gives the scalp a basic corrective cleansing, stimulates the scalp, brings about a healthy scalp, and acts as a normalizer in both dry and oily conditions of the hair; that its action and results are different than other shampoos; that said preparation kills all germs which are normally present on the scalp, leaving the scalp antiseptically clean and free from germs; that after the first application of said preparation, the scalp is given a new tone and the hair new vitality; that its use reconditions the hair; that it is a safe preparation for use on the scalps of the tiniest babies and that its continued use on the scalps of children, regardless of age, assures possession of attractive hair in the future; that the removal of dandruff on the first application with respondents' product is guaranteed; that the purchaser's money will be refunded if said preparation fails to remove dandruff as stated and that such guarantee is backed by one of the largest insurance companies in the world.

Through the use of the trade name "Fitch Dandruff Remover Shampoo," the phrase "Goodbye Dandruff" and the repeated emphasis of the statement and guarantee that respondents' product will remove dandruff instantly on first application, respondents represent and imply that their product will remove dandruff permanently on first application and constitutes a cure for dandruff, which implication is strengthened by respondents' reference to "so-called dandruff cures" in connection with respondents' representation that if such "cures" will not remove dandruff today, it will not remove it tomorrow or any other day.

Through the use of the slogan "Don't despair, use your head, save your hair, use Fitch Shampoo," respondents represent that the use of their product will preserve hair and prevent its loss.

PAR. 5. In truth and in fact, the aforesaid statements and representations used and disseminated by the respondents in the manner hereinabove described are exaggerated, misleading and untrue. Dandruff is a physiologically normal condition, consisting of dried dead cells cast off from the skin of the scalp which will readily flake off or be held in place by the natural oils of the scalp, and in that event adhere to the scalp more closely. The accumulation of dandruff does not necessarily damage the health or beauty of the hair. Respondents' product will not penetrate into the hair openings and will not give the scalp a basic or corrective cleansing; nor will said product be effective in correcting either dry or oily hair conditions. Its action and results are not materially different than many other shampoos.

Respondents' product does not dissolve dandruff. Such material is taken up by the soap emulsion and rinsed from the scalp. It is not a healthy stimulant to the scalp, does not recondition the hair, nor does it give a new tone to the scalp or vitality to the hair. In truth and in fact, said product constitutes no more than an effective cleansing agent for washing and cleaning the scalp and hair. Although the alcohol and soap contained in said product will act as a mild antiseptic on the surface of the scalp, it will not kill all germs normally present on the scalp and will not make the scalp antiseptically clean and free from germs.

The use of said preparation on the scalp of babies may be dangerous in that it may cause serious irritation of the delicate scalp and skin due to the large percentage of alcohol contained therein. Its use on children will not assure them of having attractive hair in the future.

The use of said product will not save the user's hair.

The trade name "Fitch Dandruff Remover Shampoo," the representation "your dandruff has disappeared," the phrases "Goodbye Dandruff" and "so-called dandruff cures" employed by respondents, together with the statement that one of the world's largest insurance companies guarantees that the purchase money will be refunded if Fitch Shampoo does not remove every trace of dandruff on first application, all combine to mislead purchasers of respondents' product into the belief that dandruff is an abnormal condition; that the first application of said product results in permanently removing all dandruff and thereby curing said abnormal condition. In truth and in fact, the recurrence of dead skin cells on the scalp in the form of dandruff constitutes a normal physiological action, and for that reason, dandruff cannot be removed permanently through the use of any cleansing agent, including respondents' product. The policy of insurance, assuring the performance or fulfillment of the guarantee, is in fact limited to the amount of the purchase price paid by the purchaser of respondents' product.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said preparation has had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and has caused a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of said preparation.

PAR. 7. The aforesaid acts and practices of the respondents 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.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint in this proceeding, filed August 11, 1949, by counsel for the F. W. Fitch Investment Corp., and the answer thereto, filed September 16, 1949, by counsel supporting the complaint, by which said motion is not opposed.

The complaint in this proceeding charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce. It alleges that said respondents have disseminated and have caused to be disseminated in commerce, by United States mails and by other means, advertisements containing certain false, misleading, and deceptive statements and representations with respect to a toilet preparation which they offered for sale, sold, and distributed in commerce under the trade name "Fitch's Dandruff Remover Shampoo" for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said preparation in commerce.

From the motion to dismiss and the answer thereto, it appears that on or about November 30, 1948, the two corporate respondents whose names appear in the caption hereof were merged and consolidated into a single corporation, which adopted the name "The F. W. Fitch Co.," and that on or about June 15, 1949, the latter corporation sold, assigned, and transferred its principal operating assets, including its trade-marks, trade names, formulas, etc., to the Grove Laboratories, Inc., a Delaware corporation, whose office and principal place of business are located at 2652 Pine Street, St. Louis, Mo., and that from and after June 15, 1949, the F. W. Fitch Co. ceased to manufacture, sell, or distribute any product bearing the name "Fitch," including the preparation "Fitch's Dandruff Remover Shampoo." It further appears that the F. W. Fitch Co., in making the sale to the Grove Laboratories, Inc., agreed with the latter that it would not manufacture or sell products bearing the name "Fitch" which products were similar to those it produced and sold prior to June 15, 1949, and that on June 17, 1949, by amendment to its articles of incorporation, the name of The F. W. Fitch Co. was changed to the F. W. Fitch Investment Corp., which now proposes to become solely an investment corporation and which will not in the future manufacture, sell, distribute, advertise, or promote the preparation "Fitch's Dandruff Remover Shampoo."

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that the public interest does not require further corrective action in this matter at this time and that the motion to dismiss the complaint in this proceeding should be granted:

It is ordered, That the complaint herein be, and it is, hereby 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. William L. Pencke for the Commission.

Schaetzle, Williams & Stewart and Comfort, Comfort & Irish, of Des Moines, Iowa, for respondents.

ORDER DENYING MOTION TO RECALL COMPLAINT, OR FOR THE ADOPTION OF
CERTAIN ALTERNATIVE PROCEDURE

This matter coming on to be heard upon respondents' motion that the complaint herein be recalled and that in lieu thereof the advertising claims referred to in the complaint (which are alleged by respondents to be common throughout the scalp-preparation and shampoo industry) be dealt with on an industry-wide basis, or in the alternative that complaints be issued by the Commission against all other members of the Industry using advertising similar to respondents' and that all such proceedings be consolidated, and upon respondents' request for oral argument on said motion, and upon the answer filed by the attorney supporting the complaint to said motion, the reply of respondent to said answer, and the record herein;

And the Commission having first considered respondents' request for oral argument on the motion, and it appearing that the matter is fully presented by the papers referred to above and that oral argument on the matter would serve no useful purpose:

It is ordered, That said request for oral argument be, and it hereby is, denied.

And the Commission having duly considered said motion, and being of the opinion that the matters set forth therein are insufficient to warrant the recalling of the complaint or the adoption of the alternative procedure proposed by respondents:

It is ordered, That said motion be, and it hereby is, denied.

OPINION OF THE COMMISSION

EWIN L. DAVIS, *Commissioner*.

The respondents, F. W. Fitch Manufacturing Co. and the F. W. Fitch Co. have their principal place of business in Des Moines, Iowa. The respondent, F. W. Fitch Manufacturing Co., is engaged in the manufacture and the respondent F. W. Fitch Co. is engaged in the sale and distribution of a preparation designated "Fitch's Dandruff Remover Shampoo." On May 21, 1946, the Commission issued a complaint alleging that respondents were disseminating various false representations relative to the effectiveness of said shampoo. These alleged misrepresentations cover a number of subjects, particularly the efficacy of said shampoo in removing and preventing dandruff. Respondents filed an answer in which they denied that the representa-

tions placed in issue in the complaint are false. No testimony has been taken in the case.

The respondents filed a motion in which they requested the Commission to recall the complaint and to order a general study of the scalp preparation and shampoo industry in the United States with the view of determining on an industry-wide basis the extent to which the practices alleged in the complaint are common to the industry and whether or not such practices constitute violations of the Federal Trade Commission Act. The respondents request in said motion that if it is found that such practices are in violation of said Act the Commission take such actions and procedures on an industry-wide basis as may be proper in the premises.

As an alternative to the above, the respondents request the Commission to issue complaints against other members of the industry who are committing acts of the kind charged against the respondents in the complaint and to consolidate all of such proceedings for hearings and determination with a view to determining in the one proceeding, on an industry-wide basis, whether or not the practices alleged against the respondents are violations of the Federal Trade Commission Act; and if they are violations, respondents request the Commission to take such action on an industry-wide basis as may be proper. Respondents request the Commission to fix a time for oral hearing on the motion before the full Commission, and pending such hearing and the determination of the motion to stay all further action in the proceeding.

As stated above, respondents request the Commission to make a general study of the industry and to take corrective action on an industry-wide basis against those practices which may be in violation of the Federal Trade Commission Act. There are now in preparation and consideration Trade Practice Conference Rules for the Cosmetics and Toilet Preparations Industry. The rules proposed and considered at said conference included a rule covering in general terms the misrepresentation of cosmetics and toilet preparations. Subsequent to the filing by the respondents of the aforesaid motion in this case, the respondents, under date of June 9, 1947, submitted a proposed revision of the said general rule relative to misrepresentations of cosmetics and toilet preparations. This proposed revision submitted by respondents specifies in thirteen separate categories types of representations considered as falling within or without the general prohibitions of the rule. Certain portions of this proposed rule revision would, in effect, approve advertising representations of respondents which the complaint alleges are misleading. The motion of respondents is without prejudice to their position that the advertising used by them is "true and correct in all respects" and it is their stated intention to establish this by proof if and when the issues are tried on their merits.

In view of the statements made in respondents' motion and the nature of the proposed rule revision, it appears that a trial of the issues on their merits is the only appropriate way to dispose of this proceeding.

One of the alternatives suggested in said motion by respondents was that the Commission issue complaints against all members of the scalp preparation and shampoo industry who may be disseminating false advertisements and that these proceedings be consolidated for the purposes of hearings and determinations. If complaints were issued against other concerns which allegedly may be disseminating false advertisements, it would be impractical and confusing to consolidate such matters into one series of hearings. The preparations would undoubtedly have different formulae and the advertisements would be worded differently and would have different approaches to what are perhaps common advertising objectives. In other words, it would be necessary to try each case on its merits and it would be impractical to consolidate all the cases and have one series of hearings.

One of the grounds stated by the respondents in their motion as a basis for the relief requested was that the Commission has not proceeded against distributors of other preparations in competition with respondents. This statement is not in accord with the facts for the reason that within the past fifteen years the Commission has acted in approximately 185 cases, formal and informal, involving shampoo and scalp preparations and preparations for the removal of dandruff. During such period the Commission has issued approximately 50 orders to cease and desist and has accepted from respondents approximately 70 stipulations to cease and desist in such cases. The total number of cases involving all types of shampoos, hair tonics, and other scalp preparations and treatments, including pending cases, amounts to approximately 360.

Respondents attached to their motion as exhibits photostats of alleged advertisements disseminated by a number of competitors of respondents. It may be that a number of these competitors and others engaged in selling preparations for the scalp and the treatment of dandruff are disseminating false advertisements in violation of the Federal Trade Commission Act. The Commission has directed the Radio and Periodical Division of the Office of Legal Investigations to make a survey of advertising used by manufacturers and distributors of shampoo and scalp preparations and to report to the Commission the results of such survey. If it appears from such survey that any of such concerns are apparently disseminating false advertisements, the Commission will take such action in the public interest as appears advisable.

The respondents requested in the aforesaid motion that the Commission fix a time for oral hearing on the motion before the full Commission. The Commission is of the opinion that all of the facts in

the matter necessary for the disposition of the motion of respondents are before the Commission and it is therefore not necessary to hear oral arguments on said motion.

For the reasons stated above, the motion of respondents has been denied and the Commission has directed that the trial of the issues on the merits proceed in due course.

BERNHARDT PETERSON, TRADING AS BERLOU MANUFACTURING CO.
Complaint, December 15, 1942. Order, February 15, 1950. (Docket 4876.)

Charge: Advertising falsely or misleadingly as to source or origin, history, qualities, properties, or results and safety of product, and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the compounding and sale of an aqueous arsenic preparation designated "Berlou Guaranteed Mothproof."

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 Bernhardt Peterson, individually and trading as Berlou Manufacturing 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 Bernhardt Peterson is an individual trading under the style and firm name of Berlou Manufacturing Co., with his principal place of business located at Marion, Ohio.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Berlou Manufacturing Co., respondent is now, and for more than 2 years last past has been, engaged in the business of compounding, selling and distributing an aqueous arsenic preparation designated "Berlou Guaranteed Mothproof."

Respondent causes said preparation designated as aforesaid when sold to be transported from his 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 mentioned herein has maintained a course of trade in said preparation 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 aforesaid business the respondent has disseminated and is now disseminating and has caused, and is now causing the dissemination of, false advertisements concerning his said preparation by the United States mails and by various other means in commerce as commerce is defined by the Federal Trade

Commission Act, and respondent has also disseminated and is now disseminating and has caused, and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined by the Federal Trade Commission Act. Among and typical, but not exclusive, of the false, misleading, and deceptive statements and representations contained in the aforesaid advertisements disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers, magazines, and other periodicals and by service manuals, circulars, leaflets, pamphlets, stickers, and other advertising literature, are the following:

An Old Arabian formula is the Oriental background for Berlou Mothproofing * * *. It was developed from an Arabian formula.

Many years ago an old-time Arab rug weaver cannily told buyers that his rugs would never be destroyed by moths.

Finally in 1900 scientists discovered the old Arab secret. They suspected that the ancient Oriental's rugs were immune to moths because of a certain combination of ingredients used in his dyes. Chemical analysis soon confirmed this theory.

Further tests and research resulted in a colorless, odorless, harmless mothproofing formula that goes into and remains in fabrics like a dye. Thus Berlou was developed.

BERLOU, as such, became a new commercial achievement in 1930—and since then it rose quickly to national fame. This sky rocketing advancement was due to economic and scientific discoveries, even more sensational than the original formula. For years Berlou research engineers were at work to refine and improve the basic formula. They found that all the ingredients once so expensive, could now be produced from domestic supplies. If purchased in large quantities for mass production, they could be reduced in cost for the broadest possible public use.

Berlou is positive protection against moths.

* * * It will protect against damage by carpet beetles, two bugs, tobacco bugs, silverfish, buffalo moth—in fact, it will kill any insect that attempts to eat any material treated with BERLOU.

Berlou Guaranteed Mothproof ends moth damage for 5 years or Berlou pays the bills.

Note these features of Berlou Guaranteed Mothproof. Only one application is required which is guaranteed for 5 years.

The Berlou 5 year guarantee is moth insurance to you. When Berlou mothproofing is figured in terms of its long, satisfactory, carefree benefits it becomes the most reasonable mothproof to use.

Berlou Guaranteed Mothproof ends moth damage for 10 years or we pay the bill.

Since only one application is required there is no need for repeated spraying. With many temporary moth preventives it is necessary to spray household articles every few months. For this reason Berlou is far more economical.

Mothproof with Berlou and you have mothproofed for life.

BERLOU ACTS LIKE A DYE. It penetrates the fabric. It is guaranteed protection. It is not removed even by dry cleaning. Washing fabric mothproofed with Berlou is like washing any dyed material.

Berlou is made like a dye. Instead of coloring matter it contains the moth

killing ingredients. Once applied it becomes a part of the material treated
* * *

Berlou is permanent protection against moth damage because it actually becomes a part of the material treated.

Time, use or exposure cannot remove or weaken the effects of Berlou.

The amount of Berlou needed is so small that articles treated with it are not poisonous or injurious to humans.

PAR. 4. By and through the use of the foregoing statements and representations and others similar thereto not specifically set out herein, respondent represents that the formula of his preparation is of secret Arabic origin; that said secret formula was discovered in 1900, and was developed and improved by his research engineers through economic and scientific discoveries; that spraying one application of said preparation upon wearing apparel and household furnishings renders them absolutely and permanently immune from damage or destruction by all kinds and varieties of insects and their larvae and that absolute protection of from 5 to 10 years, or for the life of the material, from such damage or destruction is guaranteed; that said preparation acts like a dye and becomes a part of the fabric treated by it; that time, use, or exposure cannot remove or weaken the moth-killing effects of said preparation; that said preparation is entirely safe and harmless in use and articles treated with it are not poisonous or injurious to humans.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the formula for said preparation is not of secret Arabic origin, and was not discovered in 1900 or at any other time. On the contrary, the properties of the active ingredient in said preparation, to wit, sodium arsenite, have been known for centuries and the formula, or one of similar nature, has been known and in general use for a long period of time. Respondent's research engineers at no time have contributed any significant developments or improvements in the formula for said preparation. Application of said preparation to fabrics, either wearing apparel or household furnishings, will not render them permanently immune from damage or destruction by insects or their larvae; and protection of from 5 to 10 years, or the life of the material, cannot be assured. When applied, said preparation does not act like a dye and does not become a part of the fabric. On the contrary, solutions of sodium arsenite have not affinity for woolen fabrics and the arsenic content of the preparation is only physically suspended in and upon the fabric treated when the aqueous solution has evaporated. Such solids are displaced and lost through wear, use and lapse of time and such protection as might otherwise exist is thereby lessened or entirely dissipated. Said preparation is not harmless to humans when used on garments or other materials with which humans come into contact. Frequent contact of the body with materials treated with said

preparation may result in systemic absorption of arsenic, with resultant chronic or acute arsenic poisoning.

The use by the respondent of the trade name "Berlou Guaranteed Mothproof" for his preparation and the use of the words "mothproof" and "mothproofing" to describe such preparation constitute, in themselves, false advertisements in that they serve as representations that said preparation provides permanent and absolute protection against damage or destruction by moths, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations made therein and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Respondent's said preparation contains sodium arsenite in such quantities that garments or other materials treated therewith and coming into contact with the human skin may produce skin irritation followed by increased pigmentation. Frequent contact with such materials may result in systemic absorption of arsenic and acute or chronic arsenic poisoning. Said advertisements also fail to reveal that careless and inexperienced application of said preparation, resulting in an excessive deposit of arsenic on all or parts of the fabric treated, will tend to increase the potential danger of arsenic poisoning. Furthermore, said advertisements fail to reveal that in the application of said preparation by means of a spray, the inhalation of the spray or permitting the same to come into contact with the skin should be avoided.

PAR. 7. The use by the respondent of the aforesaid 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 such statements and representations are true and that said preparation is harmless to humans and entirely safe in use, and induces a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

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 without prejudice by the following order:

This matter came on to be heard upon the motion to close this proceeding without prejudice filed February 8, 1949, by counsel supporting the complaint, to which no answer has been filed.

The complaint herein, issued December 15, 1942, charges that respondent has engaged in unfair and deceptive acts and practices in commerce in connection with the sale and distribution of "Berlou Guaranteed Mothproof," a preparation offered for use as a mothproofing agent, through the dissemination of advertisements which are alleged to be false because they misrepresent product efficacy and for the further reason that they fail to reveal that such preparation containing the ingredient sodium arsenite is potentially injurious to the health of persons using it as directed or under such conditions as are customary or usual.

On June 25, 1947, subsequent to the institution of this proceeding, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the instant preparation is an "economic poison" within the meaning of such act, and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over those statements and representations challenged in the complaint as misleading which relate to the effectiveness of respondent's product. In view of the Commission's policy of cooperation with other Federal agencies in connection with practices and commodities concerning which other Federal agencies also have jurisdiction, the Commission is of the opinion that no further corrective action should be taken in this matter at this time with respect to these statements and representations.

It further appears from the motion that the use of sodium arsenite in respondent's product has been discontinued. The Commission therefore is of the opinion that further proceedings looking to a determination of the issue relating to safety in general use of the product formerly sold by respondent are not required in the public interest at this time.

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 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.

Before *Mr. Lewis C. Russell* and *Mr. John W. Addison*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Guthery & Guthery, of Marion, Ohio, and *Frost & Towers*, of Washington, D. C., for respondent.

HENRY MODELL, ROSE MODELL, AND WILLIAM MODELL, TRADING AS HENRY MODELL AND Co. Complaint, December 1, 1944. Order, March 3, 1950. (Docket 5254.)

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 into commerce and in the sale of clothing and blankets.

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 Henry Modell, Rose Modell, and William Modell, individually and as copartners trading and doing business as Henry Modell and Company, hereinafter referred to as respondents, have violated the provisions of the said acts and the 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. The respondents, Henry Modell, Rose Modell, and William Modell, are copartners trading and doing business as Henry Modell & Co., and have their office and principal place of business at 280 Broadway, New York, N. Y.

PAR. 2. The respondents are engaged in the 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, respondents have violated the provisions of said act and said rules and regulations in the 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 rules and regulations.

PAR. 3. Among the wool products introduced into commerce and sold, transported, and distributed in said commerce as aforesaid were clothing and blankets. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 products, exclusive of ornamentation not exceeding 5 per centum 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 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 percentages 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 respondents 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 or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This proceeding came on to be heard by the Federal Trade Commission upon the complaint, joint answer of respondents, testimony, and other evidence consisting of certain stipulated facts taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and briefs in support of the complaint and in opposition thereto (oral argument not having been requested).

The complaint alleges that respondents have introduced and sold into commerce, blankets, clothing, and other products composed in whole or in part of wool, reprocessed wool, or reused wool to which articles respondents have failed to affix a label or tag affording the information in respect to fiber content and other matters required by the Wool Products Labeling Act of 1939, and the rules promulgated thereunder. It is further charged that such misbranding constitutes unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Respondents engage in the jobbing and retailing of sporting goods, clothing, and sundry dry goods in interstate commerce. During the period referred to in the complaint, the bulk of the wool products offered for sale by respondents consisted of surplus goods manufactured under contracts with the Government and was acquired by respondents from the Government or from the manufacturers thereof. Some of such wool products bore no labels as to fiber content when sold by respondents in commerce, and it is stipulated in such connection that respondents made no alterations or changes with respect to product labeling but resold such merchandise in the same condition in which it had been received by them.

Wool products which are manufactured pursuant to Government contracts and which subsequently become available for civilian use should be labeled with information in the form required under the

act and rules by the civilian business concern which proposes to transmit such products into commercial channels leading to the consumer. In this case, however, the diversion to civilian use of the products here involved occurred prior to December 1944 under the abnormal and unsettled conditions inherent in a wartime economy. Under the conditions then prevailing, the securing of correct information in respect to the fiber content and other matters and the affixing to each of such products of appropriate labels or other means of identification would have delayed substantially their availability to consumers when the demand for such products was urgent. Respondents, during the hearings, have expressed an intention to cooperate in the future with the Commission in its administration of the act. The Commission, therefore, is of the opinion that in the circumstances no further action should be taken herein at this time.

The Commission having duly considered the matter and being fully advised in the premises:

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

Commissioner Mead not participating.

Before *Mr. Arthur F. Thomas* and *Mr. William L. Pack*, trial examiners.

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

Mr. Milton Solomon, of New York City, for respondents.

ARTRA COSMETICS, INC., OSCAR C. OLIN AND EUGENE A. KOVENKO. Complaint, March 17, 1943. Original findings and order, May 26, 1948. 44 F. T. C. 883. (Docket 4930.) Opinion and order vacating and setting aside order to cease and desist, November 8, 1949. 46 F. T. C. 1077. Order vacating and setting aside findings as to the facts and conclusion and dismissing complaint without prejudice, March 9, 1950.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of products; in connection with the sale of two preparations, namely, "Irma" and "Sutra," respectively, recommended for use as a depilatory, and as a protection against sunburn.

Order vacating and setting aside findings as to the facts and conclusion and dismissing complaint without prejudice, follows:

This matter came on to be heard in regular course upon motion, filed December 12, 1949, jointly by counsel for respondent and counsel supporting the complaint, to set aside the findings as to the facts and conclusion in this proceeding as they relate to the product Irma and for an order dismissing the complaint without prejudice as it relates to said product.

The order to cease and desist herein, issued on May 26, 1948, was vacated and set aside by order of November 8, 1949, for the reasons stated in the opinion accompanying said order. By its order of May 26, 1948, the Commission dismissed the complaint as to the respondent Oscar C. Olin for the reason that he severed his connection with the respondent corporation on August 11, 1943, and as to the respondent Eugene A. Kovenko for the reason that his duties in connection with the operation of the corporate respondent were largely clerical and he had taken no prominent part in the conduct of its business. By said order, this proceeding was also closed without prejudice as it related to the product Sutra, primarily on the basis that the use of all advertising of the type alleged in the complaint with respect to this product had been discontinued some 6 years prior to the issuance of the complaint and there was good reason to assume that the use of such advertising material would not be resumed in the future.

The Commission having duly considered the matter and being now fully advised in the premises, and being now of the opinion that in view of the foregoing circumstances and that for the reasons set forth in the opinion accompanying the order of November 8, 1949, the findings as to the facts and conclusion in this proceeding should be vacated and set aside as to all respondents and products named in the complaint, and that the complaint should be dismissed without prejudice as to said respondents and products, and being of the opinion that said joint motion should be granted:

It is ordered, That the findings as to the facts and conclusion entered herein be, and the same are, hereby vacated and set aside in their entirety and that the entire complaint be, and it is, hereby 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 L. Hornor* and *Mr. Randolph Preston*, trial examiners.

Mr. Clark Nichols for the Commission.

Klein, Alexander & Cooper, of New York City, for respondents.

N. ERLANGER, BLUMGART & Co., Inc. Complaint, October 31, 1944. Order, March 13, 1950. (Docket 5243.)

Charge: Discriminating in favor of certain of respondent's customers, including its "prestige" customers, as against others by furnishing or paying for services or facilities furnished by such customers in connection with the processing, handling, sale, or offering for sale to garment manufacturers and their retailer customers, of respondent's "Earl-Glo" and "Duchess" acetate-rayon lining materials in violation of subsections (d) and (e) of section 2 of the Clayton Act, as amended.

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption herein and hereafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsections (d) and (e) 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:

COUNT I

PARAGRAPH 1. Respondent N. Erlanger, Blumgart & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 354 Fourth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged in the business of converting acetate rayon greige fabrics into dyed, finished materials and distributing such dyed, finished materials to garment manufacturers. The respondent is one of the largest converters and distributors of acetate rayon fabrics in the United States. The acetate rayon fabrics converted by the respondent into dyed, finished materials are sold and distributed by the respondent for wearing apparel linings. The dyed, finished materials processed from the acetate rayon greige fabrics are sold and distributed by the respondent under various registered trade names, such as "Earl-Glo," a rayon taffeta, and "Duchess," a rayon satin. The respondent supplies all garment manufacturers purchasing and using its branded linings in their garments with labels or tags bearing the particular brand name of the lining used and identifying it as the product of respondent. These labels or tags are attached to each of the finished garments by the garment manufacturer. In some instances, the respondent furnishes a special tag on which is noted a legend that the garment is lined with Earl-Glo acetate rayon taffeta or with Duchess acetate rayon satin, as the case may be.

The linings processed by the respondent from the acetate rayon greige fabrics are sold directly to manufacturers of coats and suits. The lining materials processed by the respondent are then used by such manufacturers in the manufacture of men's, women's, and children's coats and suits. Such coats and suits are sold by such garment manufacturers to single retail dress shops, multiple retail dress shop, department stores, women's specialty stores, single retail men's stores, multiple retail men's stores, and men's haberdashery stores. Such garments are then resold by such retailers to the consuming public.

PAR. 3. Respondent sells and distributes its finished acetate rayon lining materials in commerce between and among the various States of the United States and in the District of Columbia, and as a result

of such sales causes said products, when sold, to be shipped and transported from its place of business to purchasers thereof who are located in various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for use and resale within the various States of the United States and in the District of Columbia.

The respondent's enterprise is one which is operated with the ultimate objective of marketing all its products to the consuming public in all parts of the United States through manufacturers of coats and suits and through retail stores dealing in such products.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during all the time mentioned herein has been in competition with other corporations and with individuals, partnerships, and firms engaged in the business of converting acetate rayon greige materials and fabrics into dyed, finished materials and distributing such converted rayon fabrics to garment manufacturers.

Many of the respondent's garment-manufacturing customers and their retailer customers are competitively engaged with each other and with customers of the respondent's competitors in the resale of garments lined with acetate rayon fabrics within the trading areas where the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent or where the retailer customers of respondent's customers offer for sale and sell said products.

The respondent's entire plan of distribution, beginning with its sale of acetate rayon fabrics, after being dyed and finished by the respondent, to garment manufacturers for use in the manufacture of men's, women's, and children's coats and suits, the sale of such products by such garment manufacturers to retailers, and ending with the resale of such products by such retailers to the consuming public, is an integrated whole, and respondent's channels of distribution cannot be separated without effacing and destroying the final objective of the respondent, which is to market its processed acetate rayon fabrics to the consuming public in the form of linings for men's, women's, and children's coats and suits under the registered trademarks "Earl-Glo" and "Duchess." Respondent's customers are, therefore, not only manufacturers of men's, women's, and children's coats and suits but retailers, and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions between the respondent and both classes of customers.

PAR. 5. In the course and conduct of its business in commerce respondent, since June 19, 1936, has secretly paid and agreed to pay

to certain manufacturers of men's, women's and children's coats and suits, and to some of their retail customers certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and the offering for sale of acetate rayon greige fabrics converted by respondent into dyed and finished materials and resold by respondent for use in the manufacture of men's, women's, and children's coats and suits under the registered trade-marks "Earl-Glo" and "Duchess." The making of such payments has been concealed by the respondent from the competitors of such favored coat and suit manufacturers and their retailer customers. Respondent has not made such payments available on proportionally equal terms or on any terms to other and competing manufacturers of men's, women's, and children's coats and suits, or to other and competing retailer customers.

For the purpose of determining the customers who shall be thus favored or discriminated against, the respondent arbitrarily classifies them on the basis of "prestige," and on its judgment as to the nature and degree of "prestige" such customers enjoy in the men's, women's, and children's coat and suit industries and in the retail distribution of such products. The respondent has paid to some of such favored manufacturers and to their retailer customers varying amounts of money, ranging from \$125 to \$4,550 and over, during a single-year period for the advertising of garments lined with acetate rayon fabrics under the registered trade-marks "Earl-Glo" and "Duchess."

PAR. 6. It has been the policy of respondent to conceal from all of its men's, women's, and children's coat and suit manufacturing customers and all of their retailer customers, except those favored by respondent, the details of its agreements relating to compensation of coat and suit manufacturing customers and their retailer customers for services in connection with advertising and promotional facilities. Customers of the respondent and their retailer customers are denied knowledge of such allowances and compensation, and the respondent does not and has not made known to any customers except its favored ones and to their retailer customers that it pays compensation for advertising and promotional services in connection with the sale of coats and suits, lined with acetate rayon fabrics manufactured by the respondent, to the consuming public. Respondent has resisted the extension of such allowances to some purchasers of acetate rayon lining materials and their retailer customers, even though such purchasers and customers were willing to furnish advertising and promotional services to the respondent in connection with the sale of garments lined with acetate rayon fabrics under the registered trade-marks "Earl-Glo" and "Duchess" to the consuming public, for the reason that such nonfavored customers did not come within respondent's classification of "prestige" customers.

PAR. 7. The above-described acts and practices of the respondent are in violation of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 13).

COUNT II

PARAGRAPH 1. For its charges under paragraph 1 of count II of this complaint, the Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs were here set out in full. Said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraphs 1 to 4, inclusive, of count I hereof, respondent has discriminated and is discriminating in favor of certain purchasers of acetate rayon fabrics for use as linings in the manufacture of men's, women's, and children's coats and suits under the registered trade-marks "Earl-Glo" and "Duchess" against other purchasers of such linings by agreeing to furnish, by furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such coats and suits and by not according such services and facilities to all purchasers of acetate rayon fabrics for the lining of such coats and suits on proportionally equal terms.

PAR. 3. The respondent has entered into advertising and promotional arrangements with certain of its retailer customers among which are R. H. Macy & Co., of New York, N. Y.; Saks, Inc., 34th St., New York, N. Y.; Bests Apparel, Inc., Seattle, Wash.; Kresge Department Stores of New York, N. Y.; Gimbel Brothers, Inc., New York, N. Y.; Maurice L. Rothschild, Chicago, Ill.; Peck & Peck, New York, N. Y.; B. Altman & Company, New York, N. Y.; Lord & Taylor, New York, N. Y.; Bloomingdale Bros., Inc., New York, N. Y.; Chas. A. Stevens & Co., Chicago, Ill.; Abraham & Straus, Brooklyn, N. Y., and others. As a part of such arrangements, large sums of money have been expended by the respondent since June 19, 1936, in sharing with such purchasers the cost of advertising men's, women's and children's coats and suits containing acetate rayon linings manufactured by respondent under its registered trade-marks "Earl-Glo" and "Duchess," and the respondent has not accorded such services or facilities to other purchasers competitively engaged with the afore-mentioned retailers on proportionally equal terms or on any terms.

PAR. 4. The aforesaid acts of respondent constitute a violation of the provisions of subsection (e) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed March 11, 1948, on behalf of the respondent, requesting that the complaint herein be dismissed, which motion was not answered by counsel in support of the complaint; and

It appearing from said motion and affidavit attached thereto and from the record (1) that the complaint charges the respondent with having discriminated in favor of certain of its customers as against others by furnishing or paying for services or facilities furnished by such customers in connection with the processing, handling, sale, or offering for sale, of its acetate rayon lining materials in violation of subsections (d) and (e) of section 2 of the Clayton Act, as amended; (2) that all of the practices complained of were discontinued by the respondent in 1944 with no intention of ever resuming the same; and (3) that, in any event, the economic conditions in the industry prior to 1944, under which producers of rayon materials felt it necessary to create in the consuming public a demand for products fabricated from rayon yarns no longer exist; 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 or to take such further action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Mr. Eldon P. Schrup for the Commission.

Hays, Wolf, Schwabacher, Sklar, and Epstein, of New York City, for respondent.

ERWIN F. LECHLER TRADING AS HOUSE OF LECHLER. Complaint, October 1, 1948. Order, March 13, 1950. (Docket 5589.)

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 respondent's "Beautiderm" device for use in the electrolytic removal of superfluous hair from the body by individual self-application in the home.

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 Erwin F. Lechler, an individual, trading as House of Lechler, 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. Erwin F. Lechler is an individual, trading as House of Lechler, with his office and principal place of business located at 560 Broadway, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device as "device" is defined in the Federal Trade Commission Act, designated "Beautiderm," and recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of his business the respondent caused said device or apparatus when sold to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in said commerce is substantial.

PAR. 2. In the course and conduct of his business, the respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices, including but not limited to, circulars designated "Unwanted Hair," booklets designated "The Secret of Permanent Hair Removal," a circular designated "Permanent Hair Removal," sent through the United States mails; and respondent has disseminated and caused the dissemination of advertisements concerning his said product by various means including, but not limited to, the circulars and booklets referred to above for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

PERMANENT HAIR REMOVAL

(Yes gone forever)

NEVER TO GROW BACK AGAIN

A precision built electrolysis set for home use, created and designed by the dean of the electrolysis institute.

Electrolysis is the only permanent method of removing unwanted hair forever.

With this instrument you can actually destroy each hair one at a time, and it takes about 30 seconds to destroy each hair. Hundreds of these sets are in use the world over, however we admit that to operate it takes a certain amount of skill and dexterity.

For example there are women who have a natural inclination to dress their own hair and know how to skillfully apply make-up to perfection. Yet others must depend upon the beauty shop to do this work for them.

The same applies to operating their own electrolysis set.

For this reason we find that the average person finds it more practical and more economical to use the other Ethical Lechler Hair Removing methods. Each have their individual own merits, therefore we are offering this instrument merely to the chosen few who feel they have the skill and who can afford it.

If you feel you are adept and can afford to pay \$75.00 we invite you to write for our special booklet on this electrolysis instrument for home use.

HOUSE OF LECHLER

SPECIALISTS IN HAIR REMOVING

560 BROADWAY, NEW YORK 12, N. Y.

Skin smooth and flawless.

Painless. Left no scars.

As easy as filing my nails.

Electrolysis—the one successful, harmless method.

PAR. 4. By the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented directly and by implication that his device is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that its use is painless and harmless and will have no ill effects upon the human body; that it leaves the skin smooth and flawless and will leave no scars and the skill and dexterity required for its self use is comparable to that required in the dressing of one's hair, the self-application of makeup and the filing of one's nails.

PAR. 5. The said advertisements are misleading in material respects and are false advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact the device or apparatus sold and distributed by the respondent as aforesaid, designated as "Beautiderm," is composed primarily of an electric battery to which is attached two cords, one cord terminating in an electrode, and the other terminating in a needle. The said needle is inserted into the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious or irreparable injury to health. The said device is not an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device

is not safe and harmless when used by the unskilled lay public and its use causes pain.

Its use may result in a roughening, scarring, or pitting of the skin. The skill and dexterity required for its use on one's self is far more than is required in dressing one's hair, applying one's makeup or filing one's nails.

PAR. 6. The said advertisements are further misleading in material respects and constitute false advertisements as such term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made concerning said device and material with respect to the consequences which may result from its use under the conditions prescribed in said advertisements or under such conditions as are customary or usual, namely, that the use of the said device by persons not conversant with the technique of removing hair from the human body by electrolysis may result in infections, permanent disfigurement or irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing false advertisements in respect to his device or apparatus disseminated as aforesaid has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations contained in said advertisements are true and because of such erroneous and mistaken belief into the purchase of substantial numbers of respondent's said devices.

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 without prejudice by the following order:

This matter came on for final hearing upon the complaint of the Commission, answer, testimony and other evidence in support of the allegations of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore designated by it, recommended decision of the trial examiner and exceptions thereto and briefs filed by counsel (oral argument not having been requested).

Respondent engages in the sale of "Beautiderm," a device recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home. The complaint charges that certain of the advertising of the above device disseminated by respondent to induce sales thereof in interstate commerce falsely represents, among other things, that the device, under conditions of self-application, is an effective, efficient, safe, and scientific apparatus for hair removal, and that its use is painless and harmless and will have no ill effects on the human body.

The evidence shows that respondent's device in principle is similar to machines used by persons professionally engaged in the electrolytic removal of hair, the object of which is destruction of the hair bulb by an electric battery current together with a fine but relatively blunt needle designed to be inserted into the hair follicle without piercing the skin.

There is evidence to the effect that the skill required to properly insert the needle in the hair opening is achieved after a reasonable period of use. The Commission concludes that the charges pertaining to the lack of efficacy of respondent's device are not sustained by the greater weight of the evidence.

Only when used skillfully and carefully and under the precautions appearing in respondent's directions for use, which precautions, however, formerly were omitted from certain of the advertisements, does it appear that the device is relatively painless and free from harm. Under other conditions its operation may be accompanied by pain and by puncturing of the skin or scarring, and use by a member of that group of persons extremely sensitive to electric current also would involve pain. The Commission is of the opinion that the charges that the use of Beautiderm is not painless and free from harm under general conditions of self use are sustained by the record. In this connection, it appears, however, that approximately one year prior to the institution of this proceeding respondent discontinued those advertising statements which implied that the device is painless and harmless. The Commission is therefore of the view that in the circumstances here no further proceedings are warranted in the public interest at this time.

The complaint in this proceeding further charges that respondent's advertisements constitute false advertisements, as such term is defined in the Federal Trade Commission Act, for the additional reason that they fail to reveal certain material facts, namely, that use of the device under the conditions prescribed in the advertisements or under such conditions as are customary and usual by those not conversant with the technique of removing hair by electrolysis may result in infections, permanent disfigurement or irreparable injury to health. Nothing in the advertisements expressly recommends use for prolonged periods of time or use on moles or skin areas where lesions are present but use in such circumstances, the evidence shows, may cause injury. The evidence adduced in this proceeding does not show, however, whether those conditions of use under which injury may ensue are in fact customary or usual conditions of home use as the complaint alleges. It is concluded, therefore, that the record does not constitute an adequate basis for a determination of the issues relating to this charge of the complaint.

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 without prejudice to the right of the Commission to reopen this proceeding or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Willis B. Rice, of New York City, for respondent.

STANLEY HUSLIN DOING BUSINESS AS ACTANE CHEMICAL CO. Complaint, October 14, 1949. Order, March 13, 1950. (Docket 5704.)

CHARGE: Advertising falsely or misleadingly, misbranding or mislabeling and using misleading product name or title as to qualities, properties or results; in connection with the manufacture and sale of Actane and Actane Compound solution for mixing or blending with gasoline for use as a motor fuel.

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 Stanley Huslin, an individual 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 Stanley Huslin is an individual doing business as the Actane Chemical Company with his manufacturing plant located at 1100 32d St., Camden, N. J., and his main office for business purposes located at 401 N. Broad St., Philadelphia, Pa.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a solution for mixing or blending with gasoline when gasoline is to be used as a motor fuel, which solution is called Actane and Actane Compound. The product as originally sold prior to 1946 was composed of 80 percent petroleum distillate and 20 percent creeping or penetrating agents. The product as now sold is composed of 75 percent petroleum distillate and 25 percent creeping or penetrating agents. The directions for use of said product are as follows:

Into each gallon of gasoline, one-half ounce of Compound. No stirring necessary. Regulate your carburetor to suit the fuel. Advance spark. No changes thereafter required.

The respondent causes, and has caused, his said product, when sold, to be shipped from his manufacturing plant in the State of New Jersey and from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said product in commerce among and between the various States of the United States. Respondent's volume of business in said product in said commerce is substantial.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product in commerce, respondent has made many statements and representations relating to the value and effectiveness of his said product by means of advertisements in the form of pamphlets, leaflets, copies of testimonial letters and labels on the product. Among and typical of such statements and representations contained in said advertisements concerning Actane or Actane Compound are the following:

- Removes carbon
- Won't let hard carbon form
- Cumulative carbon, if any, will be gradually softened and dispersed. Hard carbon formation prevented when this compound is used
- Cleans motor and keeps it clean
- More complete combustion of fuel vapor entering your motor will permit you to use less gasoline
- Quicker start, better acceleration
- Quicker starts in cold weather
- Power, pep, pick-up
- More engine power
- Keeps engine temperatures normal
- Actane is a proven scientific liquid compound that by actual test, smoothes out motors and increases mileage
- It minimizes knocks
- Stops knocks

PAR. 4. Through the use of the above statements and others similar thereto, but not specifically set out herein respondent has represented and now represents that his said product, when used as directed, removes carbon deposits from a gasoline motor and will prevent the formation of carbon; cleans a gasoline motor and keeps it clean; causes a more complete combustion of fuel in a motor than is obtained without the addition of his product; causes quicker starting of the motor, even in cold weather, faster acceleration, faster pickup and more power than is obtained from gasoline without the addition of his product and keeps the engine or motor temperatures normal. Respondent has further represented that his said product when used as directed, makes a motor run more smoothly, minimizes and stops motor knock and also increases the mileage that can be obtained from gasoline by automobiles and trucks.

PAR. 5. The above representations are false, misleading, and deceptive in the following respects: Respondent's said product, when used as directed, or otherwise, does not remove carbon deposits from a gasoline motor or prevent the formation of carbon. It does not clean

a gasoline engine of deposits of gum or carbon on the pistons, rings, or valves or of deposits of carbon the cylinder head or keep these parts of a motor free from such deposits. It does not cause any more complete combustion of fuel in a motor than can be obtained without the addition of respondent's product. It does not cause quicker starting of a gasoline motor, in any kind of weather, faster acceleration, faster pickup, or more power than can be obtained from gasoline without the addition of respondent's said product. It does not keep the engine or motor temperatures normal or make a motor run more smoothly. It does not minimize or stop motor knock or increase the mileage that can be obtained from gasoline by automobiles or trucks.

PAR. 6. The octane rating of gasoline is the measure of its resistance to combustion knock, gasoline having a low resistance being given a low octane number and gasoline having a high resistance being given a high octane number on a scale from 1 to 100. The word "octane," when applied to a motor fuel is, by a substantial portion of the purchasing public, associated with the quality, the power, and efficiency of the fuel. Through the use of the name "Actane," because of its similarity to the word "octane," respondent has represented, contrary to the facts, that his product will increase the quality, the power, and efficiency of the gasoline to which it is added.

PAR. 7. The aforesaid false, misleading, and deceptive statements and representations so made by respondent have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true, and to induce a substantial portion of the purchasing public to purchase respondent's product, because of such erroneous belief.

PAR. 8. The acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 a motion, filed by counsel in support of the complaint, requesting that this case be closed without prejudice, no answer to such motion having been filed; and

It appearing from the motion and from the record herein that the complaint charges the respondent with having falsely represented the value and effectiveness of his petroleum distillate product Actane as a solution for mixing or blending with gasoline when gasoline is used as a motor fuel; and

It further appearing: (1) That the respondent has now discontinued the use of all the advertising representations attacked in the complaint,

and (2) that the product Actane is no longer being advertised at all or sold as a solution to be added to gasoline, but solely as a preparation for use in tuning up motors; and

The Commission having reason to believe that the use of the challenged representations will not be resumed, and 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, however, to the right of the Commission to institute a new proceeding 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.

Mr. Joseph Callaway for the Commission.

JOSEPH LEVY CLOTHING MANUFACTURING Co., INC., CRAWFORD CLOTHES, INC., JOSEPH LEVY, DAVID LEVY, AND FRANK SEIDENWURM. Complaint, January 6, 1944. Opinion and order, April 5, 1950. (Docket 5112.)

CHARGE: Advertising falsely or misleadingly as to business status, prices, composition, direct dealing, quality, source or origin and manufacture or preparation of product; in connection with the sale of men's suits and clothing.

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 Joseph Levy Clothing Manufacturing Co., Inc., a corporation, Crawford Clothes, Inc., a corporation, Joseph Levy, David Levy, and Frank Seidenwurm, individually and as officers and directors of said corporations, herein-after referred to as respondents, having 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 Joseph Levy Clothing Manufacturing Co., Inc., is a corporation organized 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 34-02 Queens Boulevard, Long Island City, N. Y. Said corporation owns all of the stock in respondent corporation Crawford Clothes, Inc.

PAR. 2. Respondent Crawford Clothes, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34-02 Queens Boulevard, Long Island City, N. Y. Said respondent is a wholly owned subsidiary of respondent corporation Joseph Levy Clothing Manufacturing Co., Inc. Said respondent operates stores in the several States of the

United States and sells men's suits and wearing apparel to the general public.

PAR. 3. Respondents Joseph Levy, David Levy, and Frank Seidenwurm are respectively president, treasurer, and secretary and manage, direct, and control the business and affairs of respondent corporations, Joseph Levy Clothing Manufacturing Co., Inc., and Crawford Clothes, Inc., with respect to the acts and practices hereinafter set forth. Said individuals have their principal place of business at 34-02 Queens Boulevard, Long Island City, N. Y. Respondent Joseph Levy owns all of the stock in respondent corporation Joseph Levy Clothing Manufacturing Co., Inc.

PAR. 4. Respondents are now and for many years last past have been engaged in the sale and distribution of men's suits and clothing. Respondents now cause and have caused said products when sold to be transported from their principal place of business in Long Island City, N. Y., and their several stores in the State of New York and in the various States of the United States to purchasers thereof at their respective points of location in the various States of the United States other than the State of origin and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in connection with the offering for sale, sale, and distribution of their products in commerce and for the purpose of inducing the purchase thereof by the public, respondents have caused and now cause various false, misleading, and deceptive statements and representations descriptive of their merchandise and the prices thereof and of their business and business status to be broadcast by radio continuities and to be printed in newspapers, sales magazines, price lists, trade journals, advertising placards and on letterheads and other media which they distribute to prospective customers located in various States of the United States and in the District of Columbia. Among and typical of such false and misleading statements and representations so made and circulated are pictorial representations of buildings upon which are superimposed the words and name "Crawford Custom Made Clothes," and other statements and representations as follows:

There is no middleman—no extra profit to pay because you buy direct from the maker when you buy at Crawford.

Crawford's giant factory, for instance, is the most modern in the world and its outstanding efficiency means more savings for you.

At Crawford's you get more—much more—for your money. There's no middleman—no extra profit to pay because you buy direct from the maker when you buy at Crawford.

You can get luxurious gabardines, smart flannels, tweeds and shetlands at Crawford—for only \$19.95.

Crawford manufactures * * * and sells direct to the consumer eliminating the middleman's profit.

Mollison's 100% pure silk * * * Genuine all-wool Gera gabardines * * *

The same genuine Gera white gabardine and botany white flannels, selling elsewhere at \$40 to \$50, here on sale at Crawford for only \$21.

100% Pure Worsted "Botany" flannels; "Botany" on flannels means the same as "Sterling" on silver.

Tweeds from Scotland.

Crawford Custom quality Clothes * * * are made by master tailors.

Genuine Fleece * * * Overcoat * * * Tailored * * * light weight * * * suits. \$12.50, \$18.75, \$19.95, \$22.50.

All Crawford fabrics are 100% all wool * * * Smart flannels, tweeds and Shetlands at Crawford for only \$19.95.

Crawford clothes are sold exclusively at Crawford's own stores so you buy direct from the maker at Crawford.

Now you can buy custom quality clothing at Crawford's popular prices.

Crawford's giant new factory No. 4 * * * has introduced complete manufacturing control.

We've hand-picked and set aside the cream of higher priced fabrics to better acquaint you with Crawford clothes.

King's Cliffe imported suitings. Color effects found only in British and Scotch fabrics.

Crawford clothes * * * topcoats, spring suits, \$40.00 values for \$18.95.

PAR. 6. Through the use of the aforesaid statements and representations, and other statements and representations similar thereto not set out herein, made by respondents, all of which purport to be descriptive of respondent's business and business status and the prices of respondents' said merchandise, respondents represent directly and indirectly that respondent Crawford Clothes, Inc., is a manufacturer or tailor and handmakes or tailors all of the suits and clothing sold by respondents in factories or plants owned, controlled, and operated by respondent Crawford Clothes, Inc., that purchasers buying merchandise from respondent Crawford Stores, buy direct from the makers and save the profit of the middleman and get more for their money; that the respondents' suits and clothing are made of 100 percent pure silk or 100 percent all-wool fabrics imported from Scotland and England or the British Isles and that their garments are custom quality hand tailored and made by master tailors.

PAR. 7. In truth and in fact, the foregoing statements and representations are false, deceptive, and misleading. Respondent Crawford Clothes, Inc., does not manufacture, make, or tailor the suits and clothing sold by respondents and does not own and control or operate a factory or plant where said clothing is made. Said merchandise is not sold and shipped directly from the factory at prices that save the purchasers thereof the profit of the middleman, or in any wise eliminate the middleman. Said garments are not hand-made by master tailors and are not made of 100 percent pure silk or 100 percent all wool and are not made from fabrics imported from Scotland or Eng-

land and are not custom made or tailor made. Said suits and clothing offered for sale and sold by respondents at prices ranging from \$15.50 to \$22.50 are factory made and are made from low-grade fabrics, and are not comparable to suits and clothing ordinarily and usually sold by the trade in the normal and usual course of business at prices ranging from \$40 up.

PAR. 8. The respondents' said statements and representations, made in the manner aforesaid, are false, deceptive, and misleading and have had and now have the capacity and tendency to and do deceive members of the purchasing public into the erroneous and mistaken belief that all of respondents' said statements and representations are true.

A great number of the purchasing public believe that suits and clothing can be purchased directly from manufacturers at lower prices than from retail dealers; that custom made means tailor made; that custom made or tailor made clothes are made by hand from higher grade fabrics than manufactured or factory made clothes; that fabrics imported from Scotland and England are made from stronger and more durable fiber and are of a better grade and quality and are more durable and wear better than domestic fabrics. As a result of the erroneous and mistaken belief induced by respondents' statements and representations as herein alleged, substantial numbers of the purchasing public have been induced to purchase and have purchased substantial quantities of respondents' said suits and clothing under the mistaken and erroneous belief that they were buying high-grade quality suits and clothing made from fabrics imported from Scotland or England directly from the manufacturer, tailor or maker at an effective saving.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the injury and prejudice of the public and of respondents' 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.

OPINION OF COMMISSIONER MEAD—CONCURRED IN BY COMMISSIONERS,
MASON, AYRES, AND CARSON

The respondents in this proceeding are engaged in the interstate sale and distribution of men's suits and other clothing. The complaint, issued January 6, 1944, charged said respondents with having falsely represented (1) that Crawford Clothes, Inc., is the manufacturer of such suits and other clothing; (2) that by selling direct to consumers the respondents save purchasers the profit of a middleman; (3) that the respondents' suits and other clothing are made of 100 percent wool fabrics imported from Scotland and England or the British

Isles; and (4) that their garments are tailored by hand for individual customers.

The case was fully tried and was presented to the Commission for disposition upon a complete record of testimony and other evidence, the trial examiner's recommended decision and exceptions thereto, written briefs and oral argument.

The charge that the respondents have falsely represented Crawford Clothes, Inc., to be the manufacturer of the garments it sells was predicated upon a state of facts which existed prior to 1940. The situation then was that respondent Joseph Levy Clothing Manufacturing Co., Inc., purchased from various mills fabrics for men's suits and other clothing. This respondent then shrank, allocated by styles, cut and trimmed such fabrics at its own place of business, and thereafter had the cloth finished into suits and other garments by outside "contractors," most of whom worked exclusively for Levy and were supervised and controlled to a greater or lesser extent by Levy. The finished suits and other garments were subsequently sold to ultimate purchasers through retail stores operated by respondent Crawford Clothes, Inc., all of the stock of which was owned by respondent Joseph Levy Clothing Manufacturing Co., Inc. The individual respondent, Joseph Levy, was in turn the owner of all of the stock of Joseph Levy Clothing Manufacturing Co., Inc., and he was president of that corporation.

In 1940, respondent Joseph Levy Clothing Manufacturing Co., Inc., built for its own use in Long Island City, N. Y., a large clothing factory, and there is no question but that after the above date this company did in fact manufacture the garments sold by the subsidiary corporation Crawford Clothes, Inc. Moreover, on June 1, 1946, the parent corporation and the subsidiary corporation were consolidated into a single successor corporation, Crawford Clothes, Inc., and the record is undisputed that since that time the suits and other garments sold by Crawford Clothes, Inc., have been manufactured by that corporation in its own factory.

As shown by the foregoing summary of facts, the situation on the basis of which the complaint alleged that the respondents falsely represented Crawford Clothes, Inc., to be the manufacturer of the clothes it sells has completely changed. The question whether or not before 1940 this respondent was entitled to refer to itself as a manufacturer is now moot. The purpose of the proceeding is to protect the public against future misrepresentations. The improbability of any future use of the challenged representations in the same setting as that heretofore existing renders further consideration of this question wholly unnecessary.

The second question raised by the pleadings is whether or not the respondents have falsely represented that they save purchasers of

their garments the profit of a middleman. As it relates to this question, the evidence indicates that the retail sale price of the respondents' garments includes only one profit, which covers both the manufacture and sale of the clothing. Counsel in support of the complaint argues, and correctly, that this is not necessarily conclusive, since a single profit may, in fact, result in a price to the ultimate purchaser which is as high or even higher than a price including separate profits for the manufacturer and the retailer. There is evidence in the record, however, that because of the large volume of fabrics purchased by the respondents at one time they were able to and did purchase direct from the mills at lower prices than many other clothing producers; and the record contains considerable testimony to the effect that during the period 1938-41 clothes of a grade and quality substantially similar to the grade and quality of the suits sold by the respondents retailed at prices higher than the retail prices charged by respondents. On the basis of this evidence, the Commission is of the opinion that the allegations of the complaint concerning the falsity of the respondents' representation that they save customers the middleman's profit have not been sustained by a greater weight of the evidence.

The charge that the respondents falsely represented their garments to have been made of 100 percent wool imported from Scotland and England or the British Isles has also not been established. The greater weight of the evidence is that suits or garments produced and sold by the respondents, and represented by them to have been 100 percent wool, were such in fact. The evidence further shows that in the years 1937 and 1938, when the respondents advertised and represented that certain of their suits were made of imported fabrics, this was actually the case.

Certain evidence was also received bearing on the questions whether the garments advertised as "Shetlands" were made of the wool of sheep grown on the Shetland Islands or on the nearby mainland of Scotland, and whether garments advertised as "100 percent fleece" were or were not 100 percent wool. Neither of these questions, however was properly put in issue by the complaint. The Commission has accordingly disregarded all of the evidence in the record with respect to these subjects.

The remaining question in the case is whether or not the respondents represented, contrary to the fact, that their suits were specially tailored by them for each individual purchaser. The evidence does disclose that to a substantial number of persons purchasing clothing the word "custom" in an advertisement is of some significance. The record does not show that the respondents at any time made use of the expressions "custom-made" or "custom tailored," but only the term "custom-quality." On the basis of this record the Commission is not in a position to conclude that these terms are all equivalent in meaning. It is noted

that respondents discontinued using the term "custom-quality" in 1943. The attorney for respondents stated on the record that respondents have no intention of resuming the use of the term in the future. Under such circumstances, the Commission is of the opinion that it is unnecessary in the public interest to consider further the use of said term at this time.

For the foregoing reasons, the complaint in this proceeding will be dismissed.

Order dismissing complaint and disposing of exceptions to trial examiner's recommended decision, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and

The Commission, for the reasons set forth in the accompanying opinion, having reached the conclusion that the allegations of the complaint have not been sustained by the greater weight of the evidence:

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

It is further ordered, For the reasons set forth in the aforesaid opinion, that the respondents' exceptions to the trial examiner's recommended decision be, and they hereby are, sustained, and that the exceptions to said recommended decision filed by counsel in support of the complaint be, and they hereby are, denied.

Before *Mr. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

Mr. Carrel F. Rhodes and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Hyman Fried and *Mr. A. I. Goldstein*, of New York City for respondents.

WEB DISTRIBUTING CO., INC., WILLIAM E. BRADLEY AND M. EDWIN WAHL. Complaint, December 6, 1948. Order, June 5, 1950. (Docket 5625.)

Charge: Advertising falsely or misleadingly as to qualities of product, and professional indorsement; in connection with the sale of a preparation, Pyrozide Tooth Powder, used as a dentifrice.

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 Web

Distributing Co., Inc., a corporation, and William E. Bradley and M. Edwin Wahl, individually and as officers of Web Distributing Co., Inc., have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Web Distributing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in Convent, N. J. Its post office address is box 14. Respondents William E. Bradley and M. Edwin Wahl are president and treasurer, respectively, of corporate respondent. These individuals as officers of corporate respondent, formulate, direct, and control the acts, practices, and policies of said corporation. The address of the individual respondents is the same as that of corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of selling and distributing a cosmetic and drug preparation as "cosmetic" and "drug" are defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation and the formula thereof are as follows:

Designation. Pyrozide Tooth Powder.

Formula :	Percent
Precipitated Calcium Carbonate.....	84.3
Magnesium Carbonate, Powdered.....	2.0
Sodium Borate, Powdered.....	5.0
Rhatany, Powdered.....	3.0
Soap, Powdered.....	3.0
Dentinol.....	2.8
Oil of Sassafras.....	.5
Oil of Peppermint.....	.3
Oil of Birch.....	.5

The respondents cause their said preparation when sold to be transported from their aforesaid place of business in the State of New Jersey to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents maintain a course of trade in said preparation 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 business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act including but not limited to advertisements inserted in the Plain Dealer,

Cleveland, Ohio, issue of January 21, 1947; the Times, Los Angeles, Calif., issue of December 8, 1946, and the Post-Gazette, Pittsburgh, Pa., issue of January 21, 1947; and respondents have disseminated and caused the dissemination of advertisements concerning said product by various means, including, but not limited to, the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

DO YOUR GUMS BLEED?

Pyorrhea or trench mouth may be indicated.

PYROZIDE TOOTH POWDER is scientifically prepared for home co-operation with your dentist. The effectiveness of PYROZIDE has been universally known to the dental profession for almost half a century. Use PYROZIDE TOOTH POWDER twice daily for its hygienic and cleansing effect. At all druggists. PYROZIDE TOOTH POWDER MEDICATED.

PYROZIDE TOOTH POWDER is not a mere tasty polish. It is a medicinal prophylaxis and free from all grit. Recommended by many dentists throughout the world for almost half a century for home cooperation.

SENSITIVE SORE GUMS?

Pyorrhea or trench mouth may be indicated. PYROZIDE TOOTH POWDER is scientifically prepared for home co-operation with your dentist. The effectiveness of PYROZIDE has been universally known to the dentist profession for almost half a century. Use PYROZIDE TOOTH POWDER twice daily for its hygienic and cleansing effect. At all druggists. PYROZIDE TOOTH POWDER MEDICATED.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents have represented, directly and by implication that their preparation, Pyrozide Tooth Powder, used as a dentifrice, is a medicinal prophylaxis and is a preventive of and constitutes a competent and effective treatment for and will cure diseases and unhealthy conditions of the oral tissues and particularly pyorrhea, trench mouth, and sore, sensitive, and bleeding gums and that said preparation is recommended by the dental profession.

PAR. 6. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, said preparation is not a medicinal prophylaxis and when used as a dentifrice, or in any other manner, will not act as a preventive of and does not constitute a competent and effective treatment or cure for diseases or unhealthy conditions of the oral tissues including pyorrhea, trench mouth, and sore, sensitive, or bleeding gums. While some dentists may have recommended this preparation, the number thereof, in comparison

to the total engaged in the dental profession, is not sufficient to justify the representation that the dental profession, as a whole, recommends the preparation.

PAR. 7. The use by the respondents of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein, and hereinabove enumerated, were true, and into the purchase of substantial quantities of said preparation by reason of such mistaken 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.

Complaint dismissed without prejudice by the following order:

This matter having come on to be heard before the Commission upon the motion filed on November 30, 1949, by counsel supporting the complaint requesting that this proceeding be closed without prejudice to the right of the Commission to reopen the proceeding if and when warranted by the facts, in which request counsel for respondent has joined; and

The complaint herein, issued on December 6, 1948, having charged that respondents have engaged in unfair and deceptive acts and practices in connection with the sale and distribution of Pyrozide Tooth Powder through the dissemination of advertisements which are alleged to be false for the reason, among other things, that they misrepresent product efficacy; and it appearing from said motion and from an affidavit executed by respondent William E. Bradley that the contract under which the respondents engaged in the distribution of such dentifrice was terminated by the manufacturer on August 25, 1948, which date is prior to the institution of this proceeding, and that the business of the corporate respondent and the advertising to which the charges of the complaint relate have been discontinued by respondents; and

The circumstances being such that there is adequate reason to believe that the use of the practices which are alleged in the complaint to be unlawful will not be resumed and the Commission being of the opinion, therefore, that the public interest does not require further corrective action in this matter at this time:

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

Mr. DeWitt T. Puckett for the Commission.

Osborne, Cornish & Scheck, of Newark, N. J., for respondents.

ELI F. COLBY DOING BUSINESS AS ELI COLBY CO. Complaint, October 6, 1944. Order, June 13, 1950. (Docket 5232.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature of product; in connection with the mining and sale of commercial peat to wholesalers and retailers for resale, and directly to those engaged in agriculture, such as nurserymen, florists, farmers, and poultrymen.

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 Eli F. Colby, 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, Eli F. Colby, is an individual doing business under the trade name, Eli Colby Co., with its principal office and place of business located at Hanlontown, Iowa.

PAR. 2. Said respondent is now and for more than 1 year last past, has been, engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen located at points in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said product, when sold, to be transported from his place of business at Hanlontown, Iowa, to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course or trade by respondent in said commercial peat 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 as described in paragraph 2 hereof, and for the purpose of inducing the purchase of his product, respondent has falsely represented by various means, such as advertisements in pamphlets, newspapers, and trade publications circulated among members of the public and by means of labels on boxes and bags in which his said product is shipped to the purchasing public that the commercial peat sold and distributed by him is "Peat Moss." The following are typical of the representations concerning said peat:

Minnesota Peat Moss.

From the high bog northwest of Bemidji, Minnesota * * * comes this

perfect peat moss. With natural ideal climatic conditions the pure sphagnum mosses have grown year after year for the past thousand and more years to form this valuable vein. * * * Northern Light Brand peat moss is a true peat moss with a true quality peat color * * *.

PAR. 4. There are two general classes of peat: (1) moss peat and (2) reed, sedge, and hypnum peats. There is a pronounced difference in the characteristics, physical properties, and chemical composition of these two types of peat. Moss peat is formed predominantly by the small stems and the leaves of various species of sphagnum moss; and possesses a high capacity for absorbing water, a high degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and hypnum peats have a relatively low capacity for water absorption, a lower degree of acidity, and a high ash content. They are lacking in germicidal properties and in fact have a tendency under certain conditions to harbor insects and micro-organisms.

There is a marked difference also in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as litter for poultry. Due to its high degree of acidity and its germicidal properties, it is the only type which can be used for surgical dressings. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. Respondent's product, designated, described, and represented as "peat moss," is a peat derived from a species of hypnum. It has a relatively low water absorbing capacity, varies in reaction from acid to alkaline, and may contain injurious soluble salts. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "Peat Moss" in describing and identifying his product, falsely represents, directly and by implication, that said product is "Moss Peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. Use by the respondent of the false and deceptive and misleading designation and description of his product, designated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public in the erroneous and mistaken belief that respondent's product is "Moss Peat" and that said product possesses all of the qualities and characteristics of "Moss Peat" and causes and has caused a substantial portion

of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 8. 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 filed March 14, 1950, by counsel supporting the complaint to close the case without prejudice, assented to by counsel for respondent and approved by Daniel J. Murphy, Chief of the Division of Deceptive Practice Trials.

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 were discontinued by respondent upon its acceptance of Trade Practice Rules for the Peat Industry, approved January 13, 1950, and that respondent has now furnished the Commission with evidence of its compliance with said rules and of its intention to continue to comply therewith.

The Commission being of the opinion that in the circumstances here the public interest does not require further proceedings 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 take such other or further action as future facts may warrant.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. Morton Nesmith* for the Commission.

Blythe, Markley, Rule & Cerney, of Mason City, Iowa, for respondent.

TEA BUREAU, INC., AND WILLIAM ESTY & Co. Complaint, October 29, 1943. Order, June 15, 1950. (Docket 5071.)

Charge: Advertising falsely or misleadingly as to qualities of product; in connection with the sale of tea.

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 Tea Bureau, Inc., a corporation, and William Esty & Co., Inc., 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 in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Tea Bureau, Inc., and William Esty & Co., Inc., are corporations organized under the laws of the State of New York, with offices and principal place of business located respec-

tively at 500 Fifth Avenue and 100 East Forty-second Street, city and State of New York.

Respondent Tea Bureau, Inc., is controlled by the International Tea Market Expansion Board, Ltd., a corporation organized under the laws of England and sponsored by the tea growers of British India, Ceylon, Sumatra, and Java. The business of said respondent is to increase the consumption in the United States of tea grown in India, Ceylon, Java, and Sumatra. William Esty & Co., Inc., is in the business of conducting an advertising agency, has been the advertising agent for Tea Bureau, Inc., and has participated in the preparation and dissemination of the advertising matter to which reference is made herein.

PAR. 2. Tea is an article used for drink by man.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents have disseminated and caused the dissemination of false advertisements concerning tea 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 caused the dissemination of false advertisements by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of tea 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 aforesaid by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

My husband is always so tired and nervous—snaps at us all. Is there anything I can do * * * ? What is his usual beverage? Have him change to tea, it is so healthful * * * You can have two cups or all you want, but stick to tea only and see if that tired, nervous feeling doesn't go away * * * It's so nice to have Mark around now. He's so full of fun and pep! Tea sure made a big change in this home.

Tea helps you work better, think faster.

Enjoy tea freely—*Tea* lets you sleep.

Vitalizing.

It's a mighty good tonic.

Figure skating burns up energy, but tea peps me up. It's easy to digest—never makes me feel nervous or wakeful.

* * * Tea * * * it's grand for an athlete—peps you up. * * * Tea makes me more alert during study period, yet I can sleep perfectly after drinking all the tea I want.

Harry's Hard Winter Over at Last. Mrs. H found a grand "spring toneup, * * *" Harry is all run down, * * * Why don't you start serving tea to Harry? Tea peps a person up—it's very good for you this time of year. Tea is always good for you * * *.

Never leaves me feeling nervous or dopey.

Doctor, I'm always tired, there must be something wrong with me. Now, my dear, there's nothing wrong with you. But you need extra pep. My advice is to make tea your daily beverage. It is a scientific fact that tea is vitalizing.

Drink tea several times a day. It has a positive tonic effect, * * * Everybody used to think Martha was listless. What makes you so peppy Martha, * * * Tea.

Tea gives you vim. Tea helps "charge up" your batteries * * * Tea * * * is good for you * * * It won't cause that feeling of nervousness * * * the delicious protective winter drink.
* * * hot tea puts back my energy
* * * hot invigorating tea
* * * puts back your pep.

PAR. 4. Through the use of the aforesaid statements and claims, and others of similar import and meaning in their said advertising not specifically set out herein, respondents have represented, directly and by implication, that by drinking tea those whose activities are such as to induce chronic fatigue or nervousness will not suffer those consequences, and that those whose activities have induced these consequences will be relieved therefrom; that tea used as a beverage will improve the health of, increase the vitality of, and restore energy to, the user; that tea may be drunk in any quantity without injurious effects, and without interfering with sleep; that the tea drinker will work better and think faster; that tea is a tonic, and that tea is always good for the user.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, persons whose activities have been such as to produce chronic fatigue or nervousness, will not be relieved of those conditions by drinking tea. Fatigue is a natural and unavoidable consequence of physical or mental exertion, and there are many factors of which the natural and unavoidable consequence is nervousness. Tea-drinkers are not immune to or rendered less susceptible to these consequences. Tea in no way improves, nor is beneficial to, the health of the user. It does not restore expended energy, but is a stimulant which induces a further expenditure of energy from the bodily reserves more rapidly than would otherwise be the case. Tea does not increase the vitality of the user, but merely acts as a spur to a lessened vitality. During the period of stimulation induced by tea, the drinker's physical and mental powers may be somewhat enhanced, but this will be followed by a period of depression during which such powers will be reduced. Tea may not be drunk in any quantity without injurious effects. The physiological effect of tea is due to the presence of caffeine, to which not all persons react alike. Amounts of tea which, for the individual user are immoderate, will interfere with sleep, and will tend to make the drinker irritable, nervous, and fatigued, and may result in chronic caffeine poisoning characterized by symptoms of heightened irritability, nervousness, tremors, mental

confusion, palpitation, and the like. Tea possesses no tonic qualities. There are many persons to whom tea is harmful, and it is not beneficial to anyone in excess of its temporary stimulating effect due to caffeine.

PAR. 6. The use by respondents of the foregoing false and misleading statements, representations, and claims with respect to tea has had the capacity and tendency to mislead, and has misled, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and by reason of such erroneous and mistaken belief into the purchase of substantial quantities of tea.

PAR. 7. The foresaid 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 came on to be heard by the Commission upon motion filed by counsel for respondents February 8, 1950, to dismiss the complaint without prejudice or close the case without prejudice, with affidavits and other material in support thereof, to which counsel supporting complaint filed answer February 20, 1950, in which he conjoined with counsel for respondents' motion stating that, upon the facts as they appear in the said motion and affidavits and other matters attached thereto, there is no public interest which would require further prosecution of the complaint; and upon oral argument February 20, 1948, on a previous motion.

The complaint herein, issued on October 29, 1943, which was placed on the suspense calendar because of conditions imposed by the war, charges respondents with the dissemination of false advertisements concerning tea by the United States mails, and by various other means in commerce, as "commerce" is defined by the Federal Trade Commission Act; and that respondents have also disseminated and caused the dissemination of false advertisements by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of tea in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Having duly considered the motions and the record herein, and it appearing to the Commission that respondent Tea Bureau, Inc., has, for a substantial prior period of time hereto, discontinued the dissemination of advertisements of the character covered by the complaint; with no apparent likelihood of resumption thereof; that respondent William Esty & Co., Inc., has resigned as advertising agency of respondent Tea Bureau, Inc., and does not contemplate the resumption thereof; and 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 the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Randolph W. Branch for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondents.

GEORGIA PEAT MOSS CO., INC. Complaint, October 19, 1944. Order, June 15, 1950. (Docket 5238.)

Charge: Assuming or using misleading trade or corporate name, advertising falsely or misleadingly, and misbranding or mislabeling as to nature of product; in connection with the mining and sale of commercial peat to wholesalers and retailers for resale, and directly to those engaged in agriculture, such as nurserymen, florists, farmers, and poultrymen.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said act, the Federal Trade Commission, having reason to believe that Georgia Peat Moss Co., 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Georgia Peat Moss Co., Inc., is a corporation organized under and by virtue of the laws of the State of Georgia with its principal office and place of business located at Lake Park, Ga.

PAR. 2. Said respondent is now and for more than 1 year last past, has been engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen located at points in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said product, when sold, to be transported from its place of business at Lake Park, Ga., to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade by respondent in said commercial peat 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 business as described in paragraph 2 hereof, and for the purpose of inducing the purchase

of its product, respondent has falsely represented, by the use of the words "Peat Moss" in connection with and as part of its corporate name and by various other means, such as advertisements in pamphlets, newspapers, and trade publications circulated among members of the public and by means of labels on boxes and bags in which its said product is shipped to the purchasing public, and on its letterheads that the commercial peat sold and distributed by it is "Peat Moss."

PAR. 4. There are two general classes of peat: (1) moss peat and (2) reed, sedge, and hypnum peats. There is a pronounced difference in the characteristics, physical properties, and chemical composition of these two types of peat. Moss peat is formed predominantly by the small stems and the leaves of various species of sphagnum moss; and possesses a high capacity for absorbing water, a high degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and hypnum peats have a relatively low capacity for water absorption, a lower degree of acidity, and a high ash content. They are lacking in germicidal properties and, in fact, have a tendency under certain conditions to harbor insects and micro-organisms.

There is a marked difference also in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as litter for poultry. Due to its high degree of acidity and its germicidal properties, it is the only type which can be used for surgical dressings. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. Respondent's product, designated, described, and represented as "Peat Moss" is a peat derived from various sedges and is properly identified as "Sedge Peat." It has a relatively low water absorbing capacity, varies in reaction from acid to alkaline and may contain injurious soluble salts. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "Peat Moss" in its corporate name and in describing and identifying its product, falsely represents, directly and by implication, that said product is "moss peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. Use by the respondent of the false and deceptive and misleading words "Peat Moss" in its corporate name and in designating and describing its product, 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 respondent's product is "moss peat" and that said product possesses all of the qualities and characteristics of "moss peat" and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 8. 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 filed April 4, 1950, by counsel supporting the complaint to dismiss the complaint without prejudice, assented to by counsel for respondent and approved by Daniel J. Murphy, Chief of the Division of Deceptive Practice Trials.

It appears from said motion and upon the record as a whole that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act were discontinued by respondent upon its acceptance of Trade Practice Rules for the Peat Industry, approved January 13, 1950, and that respondent has now furnished the Commission with evidence of its compliance with said rules and of its intention to continue to comply therewith.

The Commission being of the opinion that in the circumstances here the public interest does not require further proceedings 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 take such other or further action as future facts may warrant.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McQuat and *Mr. R. P. Bellinger* for the Commission.

Bingham, Collins, Porter & Kistler, of Washington, D. C., and *Mr. James M. Aungst*, of Canton, Ohio, for respondent.

CELANESE CORP. OF AMERICA. Complaint, September 26, 1944. Order, June 21, 1950. (Docket 5226.)

Charge: Discriminating in favor of certain customers, namely, certain garment or dress manufacturers and some of their retailer customers, on the basis of "prestige," by secretly paying and agreeing to pay them certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and offering for resale of cellulose acetate rayon fabrics converted into women's dresses and women's wearing apparel under the registered trade mark "celanese," while resisting the extension of such allowances to some purchasers of such fabrics and dresses and apparel even though willing to give advertising and

promotional services to respondent, as not prestige customers, in violation of subsection (d) of section 2 of the Clayton Act as amended; and discriminating in favor of certain purchasers of cellulose acetate rayon yarns, cellulose acetate rayon fabrics, and women's dresses and wearing apparel processed therefrom, against other purchasers of such commodities bought for resale, by agreeing to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such garments so purchased, while not according such services and facilities to all purchasers on proportionately equal terms; in violation of subsection (e) of section 2 of said act as amended.

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsections (d) and (e) 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:

COUNT I

PARAGRAPH 1. Respondent Celanese Corp. of America is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 180 Madison Avenue, New York, N. Y.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, selling, and distributing cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from the said yarns. The respondent is one of the largest producers and distributors of cellulose acetate rayon yarns and fabrics in the United States and occupies a dominant position in said industry. The cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from said yarns are sold and distributed by said respondent under the registered trade-mark "Celanese." Said respondent operates and maintains plants for the manufacture of said yarns at Amcelle, near Cumberland, Md., and Celco, near Pearisburg, Va., and manufactures said fabrics at the Amcelle plant.

The yarns manufactured by the respondent are sold directly to "weavers" and "knitters" for processing by them into greige fabrics. The griegie fabrics are then sold by such weavers and knitters to "converters," who dye and finish the greige materials. The finished, dyed fabrics are then resold by such converters principally to "garment or dress manufacturers." Respondent manufactures various fabrics from its processed yarns, and such manufactured fabrics are sold by it

primarily to garment or dress manufacturers, although some sales are made to upholsterers, drapery manufacturers, and the "piece goods" departments of large "dry goods" stores.

The yarns and fabrics manufactured by the respondent and its customers are, after conversion into women's dresses and other women's wearing apparel, sold by such garment or dress manufacturers to single retail dress shops, multiple retail dress shops, department stores, and women's specialty stores. Such women's dresses and women's wearing apparel are resold by such retailers to the consuming public.

Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, and, as a result of such sales, causes said products to be shipped and transported from its places of business to purchasers thereof who are located in various States of the United States other than the States in which respondent's places of business are located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factories and the purchasers of said products. Said products are sold and distributed for use and resale within the various States of the United States and in the District of Columbia.

The respondent's enterprise is one which is operated with the ultimate objective of marketing all its products through the various channels of distribution heretofore set forth to the consuming public in all parts of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during all the time herein mentioned has been, in competition with other corporations and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured from such yarns in commerce.

Many of the respondent's weaving and knitting customers, converting customers, and garment or dress manufacturing customers and their retailer customers are competitively engaged with each other and with customers of the respondent's competitors in the resale of cellulose acetate rayon fabrics, or of women's dresses and women's wearing apparel manufactured from such fabrics, within the trading areas in which the respondent's said customers and their retailer customers respectively offer for sale and sell the said products purchased from the respondent or from its customers.

The respondent's entire plan of distribution, beginning with its sale of cellulose acetate rayon yarns to weavers and knitters, including the processing of such yarns into greige fabrics, the sale of such greige fabrics to "converters" for dyeing and finishing, the sale of such finished fabrics by converters to garment or dress manufacturers for

conversion into women's dresses and women's wearing apparel, the sale of such women's dresses and women's wearing apparel by garment or dress manufacturers to retailers, and ending with the resale of such women's dresses and women's wearing apparel by such retailers to the consuming public, is an integrated whole, and the channels of distribution cannot be separated without effacing and destroying the final objective of the respondent which is to market its processed yarns to the consuming public in the form of women's dresses and women's wearing apparel under the registered trade-mark "Celanese." Respondent's customers are therefore "weavers," "knitters," "converters," "garment or dress manufacturers," and "retailers" and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions between the respondent and such customers.

PAR. 4. In the course and conduct of its business in commerce respondent since June 19, 1936, has secretly paid and agreed to pay to certain garment or dress manufacturers and to some of their retailer customers certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and the offering for resale of cellulose acetate rayon fabrics converted into women's dresses and women's wearing apparel under the registered trade-mark "Celanese." The making of such payments was concealed by respondent from competitors of such favored garment or dress manufacturers and retailers. Respondent did not make such payments available on proportionally equal terms or on any terms to other garment or dress manufacturers and to their retailer customers who compete in the sale and distribution of women's dresses and women's wearing apparel made of cellulose acetate rayon fabrics under the registered trade-mark "Celanese."

The respondent arbitrarily classifies its customers on the basis of "prestige" and the respondent's judgment as to the degree of "prestige" such customers enjoy in the women's dress and women's wearing apparel industries in selecting which customers are to be favored with compensation for advertising and promotional services performed on behalf of the respondent. The respondent has paid to some of such favored garment or dress manufacturers or to their retailer customers varying amounts of money, ranging from \$60 to \$11,000 and over and ranging from approximately 25 to 50 percent of the advertising cost expended by such garment- or dress-manufacturer customers and their retailer customers during a single year period for the advertising of women's dresses and women's wearing apparel made of "Celanese" fabrics.

PAR. 5. It has been the policy of respondent to conceal from all of its garment- or dress-manufacturing customers and all of their retail customers, except those favored by the respondent, the details of

its agreements relating to compensation of garment- or dress-manufacturing customers and their retailer customers for services in connection with advertising and promotional facilities. Customers of the respondent and their retailer customers are denied knowledge of such allowances and compensation, and the respondent does not and has not made it known to any customers except its favored ones and to their retailer customers that it pays compensation for advertising and promotional services in connection with the sale of women's dresses and women's wearing apparel to the consuming public. Respondent has resisted the extension of such allowances to some purchasers of cellulose acetate rayon fabrics and women's dresses and women's apparel made therefrom, even though such customers were willing to give advertising and promotional services to the respondent in connection with the sale of such commodities to the consuming public, for the reason that such nonfavored customers did not come within the respondent's classification of "prestige" customers.

PAR. 6. The above-described acts and practices of the respondent are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S. C. title 15, sec. 13).

COUNT II

PARAGRAPH 1. For its charges under this paragraph of this count the Commission relies upon the matters and things set out in paragraphs 1 to 3, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 to 3, inclusive, of said count I were here set out in full. Said paragraphs 1 to 3, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraphs 1 to 3, inclusive, of count I hereof, respondent has discriminated and is discriminating in favor of certain purchasers of cellulose acetate rayon yarns, cellulose acetate rayon fabrics, and women's dresses and women's wearing apparel processed therefrom, against other purchasers of such commodities bought for resale, by agreeing to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such commodities so purchased and by not according such services and facilities to all purchasers on proportionally equal terms.

PAR. 3. The respondent has entered into advertising and promotional arrangements with certain of its customers, among which are: Alder & Alder, Inc., of New York, N. Y.; Davidow, Inc., of New York, N. Y.; Kane-Weil, Inc., of New York, N. Y.; Mutual-Rosenbloom Corp. of New York, N. Y.; Zoltan Rosenberg, of New York,

N. Y.; Sam Steinberg & Co., Inc., of New York, N. Y.; Murray Hamburger, Inc., of New York, N. Y.; Jeannette Modes, Inc., of New York, N. Y.; Kallman & Morris, Inc., of New York, N. Y.; Peck & Peck, of New York, N. Y.; Lord & Taylor, of New York, N. Y.; Page Boy Co., of Dallas, Tex.; Associated Merchandising Corp., of New York, N. Y.; Saks Fifth Avenue, of New York, N. Y.; Gorgeous Frocks, Inc., of New York, N. Y.; and others. As a result of such arrangements, large sums of money have been expended by respondent since June 19, 1936, in cooperatively advertising with such purchasers the "Celaneese" dresses and women's wearing apparel so purchased and the respondent has not accorded such services or facilities to other garment or dress manufacturers and retailers competitively engaged with the aforementioned purchasers on proportionally equal terms or on any terms.

PAR. 4. The aforesaid acts of respondent constitute a violation of the provisions of subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

Complaint dismissed without prejudice by the following order:

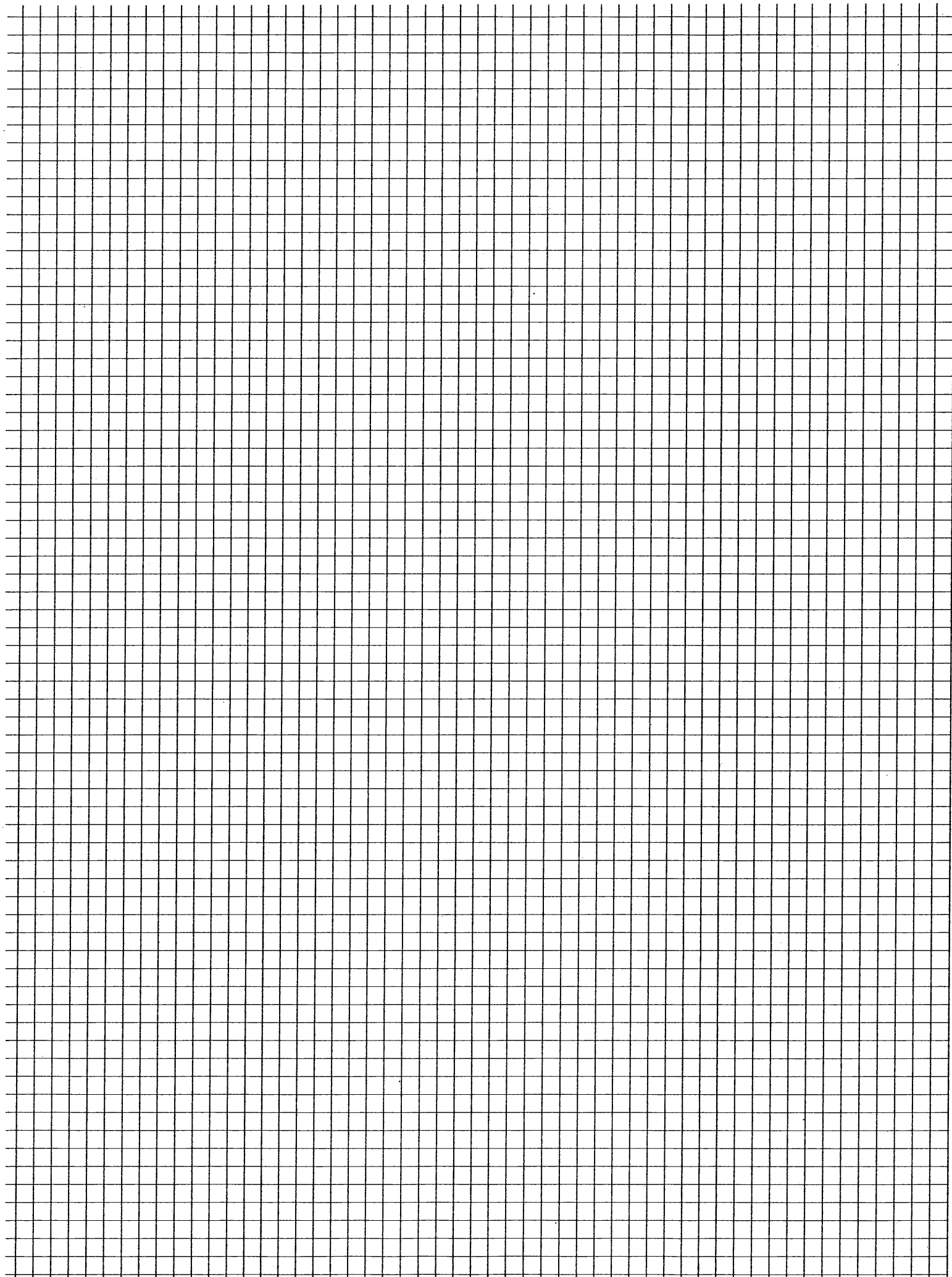
This matter came on to be heard in regular course upon a motion to dismiss the complaint without prejudice (designated "Memorandum Proposing Disposition") filed March 31, 1950, by counsel supporting the complaint and Chief, Division of Antimonopoly Trials, to which no answer was filed by respondent.

It appearing to the Commission from said motion and from the record herein that the complaint charges respondent with having discriminated in favor of certain of its customers as against others by furnishing services or facilities, or paying for services or facilities furnished by such customers, in connection with the processing, handling, sale, or offering for sale of its cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from said yarns in violation of subsections (d) and (e) of section 2 of the Clayton Act as amended; that war conditions prevented an early trial of the case; that a supplemental investigation made in 1949 disclosed that the practices complained of were in substance discontinued about 1941 and have not been resumed; and that there is no present reason to anticipate a resumption of said practices:

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 as future circumstances may warrant.

Mr. Philip R. Layton and *Mr. Eldon P. Schrup* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson and *Roberts & McInnis*, of Washington, D. C., and *Mr. Matthew H. O'Brien*, of New York City, for respondent.



STIPULATIONS

DIGEST OF STIPULATIONS¹ EFFECTED AND HANDLED THROUGH THE COMMISSION'S BUREAU OF STIPULATION²

2867.³ Soaps and Dentrifice—Unique Qualities, Composition, Effectiveness, etc.—This stipulation has been amended so that it now reads:

Colgate-Palmolive-Peet Co., a Delaware corporation, and Kirkman & Son, Inc., a Delaware corporation, a wholly owned subsidiary of Colgate-Palmolive-Peet Co., engaged in the sale and distribution of soaps and toilet goods in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Colgate-Palmolive-Peet Co. and Kirkman & Son, Inc., and each of them, agreed that in connection with the sale and distribution of their products in commerce as defined by said act, they will cease and desist from representing, directly or otherwise, by assertion or by implication:

(a) That Palmolive soap contains special protective qualities all its own or not present in any other soap or soaps;

(b) That such soap "protects" the skin against the loss of natural or "youth giving" oils, or has a "protective" lather;

(c) That the use of Palmolive soap will keep the skin young or prevent "middle age" skin; or that it is efficacious in retarding the natural aging of the skin;

¹ The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, July 1, 1949, to June 30, 1950, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 45 of the Commission's decisions.

² Under a reorganization of the Commission's internal structure, effective June 1, 1950 (see annual report for that year at p. 6), the former Bureau of Trade Practice Conferences and the Bureau of Stipulations were consolidated into the Bureau of Industry Cooperation, and a Division of Stipulations was created, under said Bureau, to handle such work.

For an account of a prior reorganization, effective August 12, 1946, under which the Division of Stipulations, then created, was charged with the handling of all matters considered appropriate for settlement by stipulation, including both such matters as had theretofore culminated in the false and misleading advertising stipulations effected through the Commission's Radio and Periodical Division, as it theretofore functioned, and those theretofore effected through the Trial Examiner's Division, see footnote in Volume 45 at p. 845.

³ Amended, See 31 F. T. C. 1630.

(*d*) That Palmolive soap "thoroughly" cleanses the pores or gently removes "every trace" of dirt and cosmetics;

(*e*) That removal of dirt and cosmetics from the pores by the use of Palmolive soap will enable the skin to breathe; or by statement or inference that breathing or respiration is a function of the human skin;

(*f*) That the "natural" or "youth" oils or the fatty secretions from the sebaceous glands "feed" or "nourish" the skin; or that Palmolive soap assists in any way toward the nourishment of the skin;

(*g*) That Palmolive soap is "unique" or "utterly unlike" any other soap, or that it is essentially different from various other soaps on the market;

(*h*) That Palmolive soap was or is the "only" soap gentle enough or sufficiently pure, soothing, mild or safe for use by the Dionne quintuplets; or that no other soap made is as pure, soothing, mild, or safe;

(*i*) That the "soft, smooth complexions" of the Dionne quintuplets are directly the result of or wholly attributable to Palmolive soap;

(*j*) By oral or written statements or by depictions or illustrations, that Palmolive soap is composed wholly or in part of edible olive oil or of the grade of olive oil used for bathing new-born babies;

(*k*) By the use of the unqualified statement "Made with olive oil" as descriptive of Palmolive soap, Palmolive shave cream, or Palmolive brushless shave cream; or by representations of like import, that the oil or fat content of such products is wholly or predominantly olive oil.

(*l*) That persons purporting to be authorities, who have not professionally used and actually approved Palmolive soap or other products, and whose names appear on published testimonial letters or endorsements thereof, have inferentially or otherwise based such testimonials or opinions upon their own professional experience, use, and controlled laboratory tests;

(*m*) By the use of appellations such as "Beauty Specialists" that persons purporting, in testimonials, endorsements or otherwise, to make scientific statements regarding the skin are experts adequately equipped and qualified to render such opinion unless they actually are accredited skin specialists or dermatologists;

(*n*) That Cashmere Bouquet soap or the lather thereof will remove "every bit" of dirt and cosmetics from every pore; or in any other way asserting or implying that such soap or lather removes all dirt and cosmetics whatsoever from the pores;

(*o*) That Cashmere Bouquet soap will cause or is capable of causing the skin to become alluring, clear, or smooth in cases where such results will not be achieved by cleansing the skin;

(*p*) That the product Concentrated Super Suds destroys or removes all germs, dangerous and otherwise, that "lurk in every family wash" or are present in wearing apparel or other washable fabrics;

(*q*) That Concentrated Super Suds is the only soap which has the capacity to protect the family health from being endangered by germs depicted in accompanying microphotographs or referred to in such statements as "the above microphotos show some of the dangerous germs which Mrs. Robinson saw through the microscope—germs that were actually found in her wash," "millions of germs are present in all family washes," and "dangerous germs that unless removed, may spread serious infection;"

(*r*) That clothing or other fabrics washed in a solution of Concentrated Super Suds and water at a temperature ordinarily used for home laundering, be "Hospital Clean;" or otherwise, that such articles will be effectively sterilized or as germ-free as by hospital sterilization methods;

(*s*) That dishes washed with the product "Super Suds" require no wiping but will dry clean with no soap film adhering thereto; or that dishes washed with Super Suds require no wiping, rinsing, scalding or other operation subsequent to washing, for the purpose of removing soap or other residue therefrom;

(*t*) That Super Suds "protects your hands," or that such preparation contains any special ingredient that shields or preserves the skin;

(*u*) Unqualifiedly that the use of Colgate rapid-shave cream will obviate the necessity for shaving twice daily; that the use of such product or of Palmolive shave creams results in faster or smoother shaves than are obtainable with comparable shaving preparations;

(*v*) That Palmolive shave creams make the skin either healthier, firmer or younger; or that such preparations have therapeutic or nutritional properties affecting the skin structure;

(*w*) That "Most bad breath begins with the teeth," or that bad breadth in most cases is due to or caused by improperly cleaned teeth; or that "A safe, sure way to correct bad breath is through regular use of the thorough, cleansing action provided only by the special ingredients in Colgate's dental cream;" or that the action of said preparation is certain and unfailing in removing bad breath or that it "corrects" the condition regardless of causes; or that "only" Colgate dental cream can accomplish the things claimed for it; or that such product contains "special" or "unique" ingredients for combatting bad breath or for cleansing purposes not to be found in any other dentifrice;

(*x*) That the foam produced by Colgate dental cream removes "all" decaying food deposits lodged between the teeth or in the mouth; or that the use of such product will prevent tooth decay or dental caries: *Provided*, That nothing herein contained shall be construed as an

agreement by respondent not to represent that cleansing of the teeth promptly after each ingestion of food will tend to decrease the incipience of dental caries.

(y) That "every dentist knows" that mucin plaques harden into tartar; or otherwise, that such is the unanimous opinion of the dental profession;

(z) That "Kirkman Soap Flakes keep your hands soft and white," or that such flakes "Do my hands more good than a flossy manicure;" or will soak dirt out of fabrics without rubbing or some mechanical or manual action; or that lingerie or other textiles washed with such product will keep their brand new appearance almost forever.

Colgate-Palmolive-Peet Co. and Kirkman & Son, Inc., or either of them also agreed that should they ever resume or indulge in any of the aforesaid methods, acts, or practices which they have herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondents as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondents of the methods, acts or practices herein referred to. (1-10611 Aug. 9, 1949.)

2921.⁴ **Cosmetics—Nature, Indorsements, Competitive Products, etc.**—This stipulation has been amended so that it now reads:

Physicians Formula Cosmetics, Inc., a California corporation, engaged in the sale and distribution of cosmetics in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Physicians Formula Cosmetics, Inc., in connection with the sale and distribution of its cosmetic preparations in interstate commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(a) The use of the letters "Rx" or other letters, signs, or symbols which cause or have or may have the capacity to cause the impression or belief that its cosmetic or toilet goods are in fact medicinal preparations or that each parcel is individually compounded in accordance with a specific prescription therefor;

(b) Stating that its advertising has been accepted by the Los Angeles County Medical Association when such advertising is not currently so accepted;

(c) Unqualifiedly representing that its preparations are "nonallergic," or "effective beauty aids" for the skin, or that they may be

⁴ Amended. See 31 F. T. C. 1671.

depended upon to prevent allergic irritations or maintain healthy skin;

(*d*) Stating that "cholesterin" or any other ingredient in its cosmetic preparations "restores" or "replaces" or has capacity to restore or replace natural oils in the skin or that it effectively combats or prevents crow's feet, wrinkles, or dry skin by means of oils applied to the skin or in any other manner whatsoever;

(*e*) Representing that the ingredients in its products penetrate the skin deeply or effectively; or that its cleansing cream removes "every particle" of make-up, grime, and dirt from the skin or the pores thereof;

(*f*) Statements to the effect that cosmetic preparations containing mineral oil forms a film which seals in the dirt, causing blackheads, whiteheads, and enlarged pores; or other statements which constitute unwarranted disparagement of competitive products;

(*g*) Representing that "Physicians Formula Deodorant is an absolute necessity," or "unqualifiedly that modern women's skins require stimulation";

(*h*) Representations which import or imply that its product designated "Facial Masque" or its product heretofore designated "Tissue Cream" can be depended or relied upon to clear up blackheads, whiteheads, or enlarged pores, or keep the skin youthful or free from lines;

(*i*) Denominating, describing, or referring to any cosmetic product as a tissue cream, or otherwise by statement or inference representing that such preparation externally applied has of itself any beneficial effect upon the tissues or cell-structure of the skin;

(*j*) Statements such as "Mothers who are interested in the health of their adolescent daughters should insist that they use only Physicians Formula Cosmetics" or similar presentations having the capacity or tendency to convey the impression or belief that competitive cosmetic preparations contain ingredients injurious to the health or that only preparations offered for sale and sold by it may be safely used by adolescents.

Physicians Formula Cosmetics, Inc., also agreed that should it ever resume or indulge in any of the aforesaid methods, acts or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts, or practices herein referred to. (1-13364, Mar. 1, 1950.)

3433.⁵ **Caskets—Qualities, Properties or Results.**—This stipulation has been amended, so that it now reads:

Batesville Casket Co., a corporation, engaged in the business of manufacturing burial devices, including a metal casket called "Monoseal" which it has sold in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Batesville Casket Co., in connection with the offering for sale, sale, or distribution of its "Monoseal" casket in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing in its advertisements and advertising matter of whatever kind or description, or in any other way, that the said casket will remain in such condition after burial as to afford or assure permanent protection or absolute security to the body encased therein "for centuries" or for any other stated period of time.

Batesville Casket Co. also agreed that should it ever resume or indulge in any of the aforesaid methods, acts, or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts, or practices herein referred to.

It is further stipulated and agreed that as thus amended, all of the terms and provisions of said Stipulation No. 3433 shall remain in full force and effect. (1-16166, June 29, 1950.)

3894.⁶ **Sheets and Pillow Cases—"Certified" and "guaranteed."**—This stipulation has been amended, so that it now reads:

Lamport Co., Inc., a New York corporation with its place of business in New York, N. Y., engaged in the sale and distribution of textile products, including sheets and pillowcases, in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Lamport Co., Inc., in connection with the sale and distribution of its textile products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(1) Using the word "Certified" or other word or words of like meaning on its products except under the following conditions,

⁵ Amended. See 34 F. T. C. 1660.

⁶ Amended. See 39 F. T. C. 606.

(a) The identity of the certifier be clearly and plainly disclosed,
(b) The certifier be qualified and competent to know what has been certified is true,

(c) If the certifier is some one other than the seller, any connection between the certifier and the seller be clearly shown.

(2) Representing, by the use of the word "guaranteed" or other word or words of like meaning in its advertising material or otherwise, that a product is guaranteed unless, whenever used, clear and unequivocal disclosure be made in direct connect therewith of exactly what is offered by way of security as, for example, refund of purchase price.

It is further stipulated and agreed that the aforesaid amendment shall be effective as of the date of the approval thereof by the Federal Trade Commission.

Lamport Co., Inc., also agreed should it ever resume or indulge in any of the aforesaid methods, acts, or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts, or practices herein referred to. (1-18873, May 1, 1950.)

4087.⁷ **Cosmetics—Doctors' Recommendation.**—This stipulation has been amended so that it now reads:

C. W. Beggs Sons & Co., an Illinois corporation with place of business at Chicago, Ill., also operated under the trade names Marcelle Cosmetics and Marcelle Hypo-Allergenic Cosmetics, engaged in the sale and distribution of a line of cosmetics under the trade or brand designation "Marcelle" in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

C. W. Beggs Sons & Co., whether trading under its own name, as Marcelle Cosmetics, Marcelle Hypo-Allergenic Cosmetics, or by any other designation or style, in connection with the sale and distribution of its commodities in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that it will forthwith cease and desist from representing:

That thousands of doctors have prescribed Marcelle Hypo-Allergenic Cosmetics, or that any numbers in excess of the true total thereof have so approved or recommended the same.

⁷ Amended. See 40 F. T. C. 817.

C. W. Beggs Sons & Co. also agreed that should it ever resume or indulge in any of the aforesaid methods, acts, or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to. (1-1348, Mar. 1, 1950.)¹

7870. **Hair and Scalp Preparation—Therapeutic Properties.**—Henry Carroll Wright, an individual, trading as Henry's Beauty Creations and as Superior Products Co., with his principal place of business located in Jersey City, N. J., advertiser-vendor, engaged in offering for sale and selling in commerce, a preparation for the hair designated "Henry's Sulphur-Lanolin-Castor Treatment for Hair and Scalp," entered into an agreement, in connection with the dissemination of advertising relating to that produce, to cease and desist from representing directly or by implication:

- (a) That the product grows or promotes the growth of hair or prevents or corrects falling hair or baldness;
- (b) That the product prevents or cures dandruff or has any effect in the mitigation or treatment of such condition;
- (c) That the product cures or corrects the disease conditions which cause itching scalp. (1-22029, July 5, 1949.)

7871. **Medicinal Preparations—Therapeutic Properties, Composition and Nature of Business.**—Forrest Griffeth, an individual, trading as the Forrest Griffeth Westward Health Center, the Forrest Griffeth Westward Health Foundation, Westward Health Foundation, Forrest Griffeth Westward Products Co., and as Westward Health Products Co., with his principal place of business located in North Hollywood, Calif., advertiser-vendor, engaged in offering for sale and selling in commerce, medicinal preparations designated "Nutritone" ("Nu-tri-tone") and "Nutri-Lax" ("Nu-tri-lax"), entered into an agreement, in connection with the dissemination of advertising relating to those products to cease and desist from representing directly or by implication:

- (a) That "Nutritone" is a dietary supplement;
- (b) That "Nutri-Lax" is a gland nourishing product;
- (c) That such preparations contain no drugs;
- (d) That such preparations prevent, remedy or cure fevers; colds; diarrhea; congestion of lungs, skin, or kidneys; neuritis; arthritis; high or low blood pressure; overweight; anemia; colitis; or asthma.

Forrest Griffeth further agreed that he will forthwith cease and desist from the use of the word "Foundation" as a part of his trade name. (1-22328, July 5, 1949.)

¹ For amended S. 7813 see p. 1243.

7872. Miniature Gasoline Engine—Manufacture and Operation.—America's Hobby Center, Inc., a New York corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce model supplies including a model or miniature gasoline engine designated "G. H. Q. Gasoline Motor," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication, that said device:

- (1) Is precision engineered or precision built;
- (2) Is easy to start;
- (3) Has a maximum operating speed of 7,000 revolutions per minute or a minimum operating speed of 300 revolutions per minute; or has any other maximum or minimum operating speed, unless such indicated speed shall have been determined by adequate tests to be the actual speed which the engine is capable of maintaining for a reasonable period of time. (1-22846, July 5, 1949.)

7873. Drug Product—Therapeutic Properties.—Arnold Nydegger, an individual, trading as Nydegger Pharmacal Co., with his principal office and place of business located in Cleveland, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a drug product designated "Romotox," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that the product is a treatment for rheumatism, arthritis, or sciatica or that it has any effect thereon except to such extent as it may provide relief from minor pains accompanying those conditions. (1-22387, July 7, 1949.)

7874. Cement Additive—Qualities and Results.—L. Sonneborn Sons, Inc., a Delaware corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling a cement additive under the brand names "Trimix" and "Santorized Trimex," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

- (a) That said product is an effective dispersing agent for cement mortars or concrete;
- (b) That the use of said product results in a saving of 20 percent or any other definitely stated percentage of gaging water;
- (c) That, using the same water ratio, said product added to the gaging water will cause a slump of from 6 to 7 inches, or any definitely stated amount of slump, as compared with a 2½ to 3-inch slump when said product is not used; and it is also agreed that in connection with

any comparative claims for increase in slump from the use of Trimex the quantity of water contained in the product will be computed in the water ratio of the total mixture;

(*d*) That the use of said product in mortar or concrete results in greater water impermeability;

(*e*) That said product has any appreciable effect in causing air entrainment or that it increases resistance to alternate freezing and thawing. (1-21019, July 8, 1949.)

7875. Hair Preparations—Qualities and Results.—Richard Wolfson, an individual, trading as Lan-O-Tone Products Co., with his principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce, preparations for the hair designated “Lan-O-Tone Hair Cream,” “Lan-O-Tone Shampoo,” and “Lan-O-Tone Concentrated Shampoo,” entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing directly or by implication:

(*a*) That the preparations prevent baldness or grow hair;

(*b*) That the preparations promote or insure a healthy scalp or head of hair;

(*c*) That the preparations rid or free the scalp of dandruff, in excess of the temporary removal of loose dandruff scales by shampooing, or correct or end dandruff;

(*d*) That the preparations relieve or cure an itching scalp in excess of temporarily relieving minor cases of itching of the scalp;

(*e*) That the preparations have any beneficial effect upon the hair in excess of the removal of superficial dirt, grease, and loose dandruff scales. (1-21296, July 11, 1949.)

7876. Hair Preparation—Qualities and Results.—Earl Van Briggles, an individual trading under his own name, with his principal place of business located in Huntington Park, Calif., advertiser-vendor, engaged in the business of offering for sale and selling a preparation for the hair designated “Hair Gro,” entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(*a*) That said preparation will be of any value in the treatment of baldness or will have any effect on the growth of hair; and

(*b*) That said preparation has any effect on dandruff other than as an aid in the mechanical removal of loose dandruff scales. (1-21488, July 13, 1949.)

7877. Cement-Water Paint—Qualities and Results.—Perinol Products Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling a cement-water paint designated “Micro-Seal,” entered into an agreement, in connection with the offer-

ing for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

- (a) That the said product waterproofs or prevents seepage;
- (b) That the said product will not crack or craze. (1-21631, July 15, 1949.)

7878. **Auto Radiator Repair Products—Qualities and Results.**—Service Supply Co., a Colorado corporation, with its principal office and place of business located in Denver, Colo., and Charles A. Kimble, president and treasurer, advertiser-vendors, engaged in the business of offering for sale and selling a product for repairing minor leaks in automobile radiators and similar articles, designated "Serco," and a product for cleaning such circulating systems, designated "Ki-Mo," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

- (a) That use of Serco results in permanently sealing a leak, crack or crevice in metal; or
- (b) That Ki-Mo removes rust or scale, unless limited to such rust or scale as may be held in place by a binder consisting mainly of grease or oil. (1-20216, July 20, 1949.)

7879. **Antifreeze Preparation—Qualities and Safety.**—Dimmit J. Wood, Arthur M. House, Sr., George J. Gray and Tom U. Gray, copartners trading as Big G Distributing Co., with their principal place of business located in Dallas, Tex., advertiser-vendor, prior to January 3, 1948, engaged in the business of offering for sale and selling a preparation designated "Frigidzone Anti-Freeze," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

That said preparation is noncorrosive; that it will prevent rust or corrosion; or that its use will not cause damage to any part of the cooling system of an automobile engine or other water cooled engine. (1-21930, July 21, 1949.)

7880. **Hair Preparation—Qualities, Results, Safety, Uniqueness.**—Herbold Laboratory, Inc., a California corporation, with its principal place of business located in Hollywood, Calif., and Milton Herbold, president and sole owner, advertiser-vendor, engaged in the business of offering for sale and selling a preparation for the hair designated "Herbold Pomade," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

- (a) That said preparation will restore gray, streaked or faded hair to its natural or original shade;
- (b) That said preparation helps to remove loose dandruff or to keep the scalp clean or free of dandruff;

(c) That said preparation is safe or harmless;

(d) That said preparation is new or unique. (1-21849, July 22, 1949.)

7881. **Bread—Contest Award.**—Davidson Baking Co., an Oregon corporation, with its principal place of business located in Portland, Oreg., and Eugene F. Davidson, Eugene D. Davidson, and H. Marshall Wood, officers thereof, engaged in the business of baking, offering for sale, and selling Davidson's Fresh Spun Bread, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that any prize or trophy awarded to Davidson Baking Co. was awarded in a Nation-wide contest or a national contest, when such prize or trophy was not awarded in a contest so generally available to and participated in by the baking industry, and of such scope, that the contest might reasonably be termed Nation-wide or national. (1-21808, July 26, 1949.)

7882. **Treatment for Fabrics—Qualities.**—The Perfex Co., a Nebraska corporation, with its general office located in Shenandoah, Iowa, advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a preparation for use in preparing fabrics for ironing, designated "Glosstex," entered into an agreement, in connection with the offering for sale, sale, or distribution thereof, to cease and desist from representing, directly or by implication, that said preparation:

(1) Will brighten colors in fabrics or compensate for changes in color due to the fading thereof;

(2) Will cause fabrics to resist wrinkling, unless such representation pertains only to such designated fabrics as will, in fact, be rendered less liable to wrinkling by the use of said preparation. (1-21039, July 28, 1949.)

7883. **Mirrored Vanity Chests—Unbreakable Properties.**—Kobro Products, Inc., a New York corporation, with its principal place of business located in Brooklyn, N. Y., advertiser-vendor, engaged in offering for sale and selling in commerce, mirrored vanity chests, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

By the use of the representation "Completely Eliminates Breakage," or by any other means or device that mirrored glass on its vanity chests cannot be broken. (1-21634, July 28, 1949.)

7884. **Sweaters—Foreign Origin.**—Glasgow Sportswear, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling sweaters, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale,

and distribution thereof, to cease and desist, with respect thereto, from:

(a) Representing in any manner that said products are Scotch or of Scotch origin; *Provided*, That this provision shall not be deemed to prohibit use of the trade-mark "Scotch Crown" as applied to such products when it clearly appears that it is a trade-mark and also that the products to which it is applied are manufactured in the United States; *Provided further*, That this provision shall not be deemed to prohibit the use of the word "Glasgow" with reference to said articles if it clearly appears that the reference is to the corporate name "Glasgow Sportswear, Inc.," and not to the city of that name; or

(b) The use of the word "Homespun" as descriptive of products made from fabrics or yarns that are spun or woven in a mill or factory. (1-21744, Aug. 2, 1949.)

7885. Dog Food—Composition.—Roanoke City Mills, Inc., a Virginia corporation, with its principal place of business located in Roanoke, Va., advertiser-vendor, engaged in the business of offering for sale and selling a certain dried dog food preparation designated "Tasty-Dinner Dog Food," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

Using the terms "meat," "liver," or "milk," or any other terms of similar import or meaning, to designate or describe dehydrated meat meal, liver meal, and dry skin milk. (1-21771, Aug. 2, 1949.)

7886. Laundering Preparation—Qualities, Composition, Safety, etc.—John Wiley Jones, an individual trading as John Wiley Jones Co. with his principal place of business located in Caledonia, N. J., advertiser-vendor, engaged in the business of offering for sale and selling a sodium hypochlorite preparation designated "Sunny Sol," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That Sunny Sol removes lipstick, or paint stains, or stains made by permanent ink;

(b) That this product contains no lye;

(c) That Sunny Sol is harmless to the hands, unless limited to use when substantially diluted by water, in the proportions of one part of this preparation to forty parts of water;

(d) That this product is harmless to cloth or fabrics, unless limited to undyed materials; or

(e) That the boiling of a solution of this preparation in water removes kitchen odors. (1-21668, Aug. 2, 1949.)

7887. Home Permanent Wave Kit—Safety.—Ruval Products, Inc., a

Tennessee corporation, trading under its own name and as U-Wavit and U-Wav-It Co., with its principal office and place of business located in Chattanooga, Tenn., advertiser-vendor, engaged in the business of offering for sale and selling a product designated "U-Wav-It Home Cold Permanent Wave Kit," entered into an agreement, to cease and desist from the dissemination of advertising representing directly or by implication that the product is safe: *Provided, however,* That, this shall not prohibit the corporation from representing that the product is safe when used according to directions. (1-22634, Aug. 3, 1949.)

7888. **Trousseau Linen Outfits—Manufacturing Status.**—Trousseau Linen Outfitters, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in interstate commerce, Trousseau Linen Outfits, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing by use of the statement "we own our own mills and looms," or otherwise, that it manufactures the articles composing the outfits or that it maintains, owns, operates, or controls a factory wherein the said merchandise is manufactured. (1-21334, Aug. 5, 1949.)

7889. **Child's Table—Manufacturing Status.**—Tiny Tot Safety Table Co., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a table for use by small children, designated Tiny Tot Safety Table, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

That it owns, operates or controls, any factory wherein the Tiny Tot safety table is constructed. (1-22344, Aug. 10, 1949.)

7890. **Home Permanent Wave Kit—Comparative Merits and Prices.**—The Toni Co., a Minnesota corporation, with its principal office and place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling a cosmetic product designated "The Toni Home Permanent Creme Cold Wave Kit," entered into an agreement to cease and desist from the dissemination of advertising relating to that product, which

(a) Through pictorial comparison of one who had a professional wave with one who had a Toni wave, each having coiffures actually effected by a hair stylist without the disclosure of the latter fact represents that the coiffure with the Toni wave was done by the purchaser herself or by an amateur; or

(b) Compares, in advertisements containing the pictorial comparisons referred to in paragraph (a) above, the stated price of a Toni wave alone with a stated price of a beauty shop wave and coiffure combined without disclosing that that is the basis of the comparison. (1-19769, Aug. 10, 1949.)

7891. **Correspondence Course—Institute, Earnings and Opportunities.**—William J. Benko, an individual trading as International Trade Promotion Service, with his principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a home study course of instruction designated as the "ITP Course in Importing and Exporting," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) Through the use of the terms "Registrar" or "Diploma," or otherwise, that the business conducted by him is that of an institute of learning with the equipment and faculty of an institute;

(2) That the purchase and study of such course of instruction will assure substantial incomes or high salaries or qualify the purchaser in a short time as an expert in the import and export trade, or that substantial sums may be earned easily by pursuing said course of study;

(3) That the completion of said course of instruction will per se enable the purchaser thereof to establish his own import and export business with a small capital investment or quickly develop the same into a successful business: *Provided*, That this is not intended to prevent representations to the effect that the knowledge derived from this course will be of assistance to one who does establish his own import and export business, and aid in the development of the same. (1-21437, Aug. 15, 1949.)

7892. **Pullets—Quality and Productivity.**—Marti Leghorn Farm, Inc., a Missouri corporation, with its principal office and place of business located in Windsor, Mo., advertiser-vendor, engaged in the business of offering for sale and selling started pullets in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing in any manner that said started pullets have been sired by cockerels whose dams have records of 250 to 350 eggs per year or that said pullets are 250 to 350 egg pedigreed sired or that their sires have records of any number in excess of the actual number thereof. (1-22148, Aug. 24, 1949.)

7893. **Perfumes—Foreign Source.**—Paul Jones, an individual, with his principal place of business located in Piedmont, Calif., advertiser-vendor, engaged in the business of offering for sale and selling per-

fumes, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

(1) Representing, directly or through inference, that said perfumes are manufactured or compounded from flowers, scents, oils or other ingredients from the Territory of Hawaii; or that said perfumes originate in the Territory of Hawaii or are made and manufactured in the United States from ingredients imported from Hawaii;

(2) Using the words Hawaiian, Hawaii, or any other word indicative of Hawaii in any manner which connotes that perfumes manufactured or compounded in the United States are made or compounded in Hawaii;

(3) Using the terms "Flower Lei," "Pikaki," "Haupala," "Pono Moi," "Kiele," "Ua Lani," "Honi-Honi," "Aloha Nue," or any other Hawaiian word or term as brand or trade names to in any way designate describe, or refer to perfumes made or compounded in the United States, without plainly disclosing that such products are made or compounded in the United States. (1-21620, Aug. 24, 1949.)

7894. **Putty—Composition.**—Jaye Manufacturing, Inc., an Ohio corporation with its principal place of business located in Cleveland, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling putty under the name "National Brand Products," in commerce, entered into an agreement, in connection with the sale, offering for sale, and distribution thereof, to cease and desist from:

Designating, describing, or referring to any putty as a linseed-oil putty the vehicle of which is not composed wholly of pure linseed oil: *Provided, however,* That nothing herein shall be construed as prohibiting the use in such putty of necessary or desirable amounts of drier if the presence of such drier is conspicuously disclosed. (1-22340, Aug. 25, 1949.)

7895. **Magazine, etc.—Association Status.**—Bernard W. Coates, an individual trading as National Mail Dealers Association, with its principal office and place of business located in Dorchester, Mass., advertiser-vendor, engaged in the business of offering for sale and selling in commerce a bimonthly magazine entitled "Opportunities Preferred," an annual reference directory of mail-order businesses, and a monthly bulletin, entered into an agreement, in connection with the offering for sale, sales, and distribution thereof, to cease and desist from designating such enterprise as an "Association" and from representing in any other manner that it is not a private commercial enterprise conducted for profit. (1-22280, Aug. 25, 1949.)

7896. **Costume Jewelry—Nature.**—S. Buchsbaum & Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling a wide variety of merchandise including costume jewelry, in

commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Using the word "ruby" or "pearl" or the names of any other gems or precious stones as descriptive of jewelry insets which are not in fact the natural gems or precious stones so named, unless it is clearly disclosed that the insets are simulated or imitation gems or stones;

(2) Using the word "stone" or "birthstone" as descriptive of jewelry insets which are not in fact gems or precious stones, unless it is clearly disclosed that the insets are simulated or imitation gems or stones. (1-22124, Aug. 25, 1949.)

7897. **Pipes—Qualities.**—M. Linkman & Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling Dr. Grabow Pipes in commerce, entered into an agreement, in connection with the sale, offering for sale, and distribution thereof, to cease and desist from representing directly or by implication:

That Dr. Grabow pipes will not bite and have no bitter taste: *Provided, however*, That nothing herein shall be construed as prohibiting any claim to the effect that said pipes may reduce bite and reduce bitter taste by reason of the manner in which they are made and pre-smoked. (1-21597, Aug. 26, 1949.)

7898. **Liquid Fertilizer—Comparative Merits and Government Approval.**—James E. Murley and Marjorie Burns, copartners doing business under the trade name of Hy-Trous Sales Co., with their principal place of business in Boston, Mass., advertiser-vendor, engaged in the business of offering for sale and selling a liquid fertilizer designated "Hy-Trous," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(a) That the said product differs from other fertilizers or plant food generally, either in its proportions of "feeding and conditioning elements" or in that it contains larger quantities of such elements.

(b) That the said product has the approval of the States or the agricultural departments of the States in which it is sold. (1-20115, Aug. 31, 1949.)

7899. **Lottery devices—Interstate Sale.**—A. E. Schmidt Co., a Missouri corporation, with its principal place of business located in St. Louis, Mo., engaged in the sale and distribution of punchboards, push cards, and similar devices in interstate business, entered into an agreement, in connection with the sale and distribution thereof, to cease and desist from:

Selling or distributing in commerce as "commerce" is defined in the Federal Trade Commission Act, punchboards, push cards, or other lottery devices which are to be used, or may be used, in the sale or

distribution of merchandise to the public by means of a game of chance, gift enterprises, or lottery scheme. (1-19699, Sept. 1, 1949.)

7900. Novelty Merchandise and Push Cards—Lottery Merchandising and Sale.—Faye Marion, an individual trading as Marion Co., with her place of business located in Wichita, Kans., engaged in the sale and distribution of novelty merchandise and push cards in interstate commerce, in competition with other individuals and with partnerships and corporations likewise engaged, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Selling or distributing novelty merchandise or any other merchandise so packed or assembled that sales of such novelty merchandise or other merchandise to the public are made or may be made by means of a game of chance, gift enterprise, or lottery scheme;

(2) Supplying to or placing in the hands of others, push cards or other lottery devices, either with assortments of novelty merchandise or other merchandise, which said push cards or other lottery devices are to be used or may be used in selling or distributing said novelty merchandise or other merchandise to the public;

(3) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

Faye Marion further agreed that she will forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme. (1-22580, Sept. 1, 1949.)

7901. Hair Preparation—Qualities and Nature.—Mary Greene, an individual trading under her own name, with her place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling a preparation for the hair designated "Mary Greene Hair Coloring Cream," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That said preparations will restore the original color to hair which has become gray;

(b) That said preparation will penetrate to the roots of the hair or will effect pigmentation of the hair roots or of the hair shaft below the surface of the scalp;

(c) That said preparation is not a hair dye. (1-21829, Sept. 1, 1949.)

7902.^s Wallpaper Cleaner—Qualities and Competitive Products.—The

^s Supplemental.

Absorene Manufacturing Co., a Missouri corporation, with its principal office and place of business located in St. Louis, Mo., advertiser-vendor, engaged in the business of offering for sale and selling a wallpaper cleaner designated "Absorene," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

- (a) That absorene is nonsticky or will not stick;
- (b) That this product will purify or have any effect on the healthfulness of a room;
- (c) That use of this product will be of any benefit in restoring the newness of wallpaper beyond removing mild superficial soil; or

(d) That competing products are inferior or may ruin wallpaper. The Absorene Manufacturing Co., also agreed that Stipulation No. 02548, accepted by the Commission on April 12, 1940,⁹ is to remain in full force and effect, and that the terms and agreements thereof are not to be considered modified or altered in any way by this supplemental stipulation. (1-14682, Sept. 2, 1949.)

7903. Wallpaper Cleaner—Qualities.—Fred R. Hartman, an individual trading as Buckeye Paste Co., with his principal office and place of business located in Columbus, Ohio, advertiser-vendor, engaged in the business of offering for sale, and selling, in commerce, a product designated "Capitol Wallpaper Cleaner," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

That Capitol wallpaper cleaner will not deposit crumbs; it being understood that this provision is not intended to prevent designation thereof as a noncrumbly type of cleaner. (1-22743, Sept. 2, 1949.)

7904. Wallpaper Cleaner—Qualities.—Climax Industries, Inc., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a product designated "Climax Wallpaper Cleaner," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly, or by implication:

That Climax wallpaper cleaner does not become sticky or tacky. (1-22747, Sept. 2, 1949.)

7905. Wallpaper Cleaner—Qualities.—Cleophas McVicker, Noah Wesley McVicker, Irma Anna McVicker, and Margaret M. Weber, copartners, trading as Cincy Products Co. and Kutol Products Co., with their principal office and place of business located in Cincinnati, Ohio, advertiser-vendors, engaged in the business of offering for sale and selling, in commerce, products designated "Cincy Wallpaper Cleaner," "Kutol Wallpaper Cleaner," and "Avalon Wallpaper Cleaner," entered into an agreement, in connection with the offering

⁹ See 30 F. T. C. 1594.

for sale, sale, and distribution of those products, to cease and desist from representing, directly or by implication:

(a) That the said wallpaper cleaners will not deposit crumbs; it being understood that this provision is not intended to prevent designation thereof as a "noncrumbly" type of cleaner; or

(b) That Cincy wallpaper cleaner will not stick, smudge or get tacky. (1-22746, Sept. 2, 1949.)

7906. Wallpaper Cleaner—Qualities and Guaranty.—The Cleveland Cleaner & Paste Co., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a wallpaper-cleaning preparation designated "Walvet," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That Walvet wallpaper cleaner will not deposit crumbs; it being understood that this provision is not intended to prevent designation thereof as a "noncrumbly type" of cleaner; or

(b) That this product is protected by a financial guaranty or surety bond. (1-22745, Sept. 2, 1949.)

7907. Wallpaper Cleaner—Qualities.—George W. Gusler, Thoburn T. Mosier, and John R. Gusler, copartners, trading as Clean Products Co., with their principal office and place of business located in Columbus, Ohio, advertiser-vendors, engaged in the business of offering for sale and selling, in commerce, a product designated "Clean Wallpaper Cleaner," sometimes designated "Clover Farm" or "Whitehouse," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That said product will not skip, skid, slip, or stick; or

(b) That Clean Wallpaper Cleaner will not deposit crumbs, it being understood that this provision is not intended to prevent designation thereof as a "noncrumbly type" of cleaner. (1-22744, Sept. 2, 1949.)

7908. Wallpaper Cleaner—Qualities.—The Kroger Co., an Ohio corporation, with its principal office and place of business located in Cincinnati, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a product designated "Avalon Wallpaper Cleaner," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

That Avalon wallpaper cleaner will not deposit crumbs; it being understood that this provision is not intended to prevent designation thereof as a "noncrumbly type" of cleaner. (1-22748, Sept. 2, 1949.)

7909. Wallpaper Cleaner—Qualities.—The Omar Products Co., an Ohio corporation, with its principal office and place of business located

in Columbus, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a product designated "Omar Wallpaper Cleaner," sometimes designated "Sho Wallpaper Cleaner," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

That Omar wallpaper cleaner will not deposit crumbs, it being understood that this provision is not intended to prevent designation thereof as a "noncrumbly type" of cleaner. (1-22749, Sept. 2, 1949.)

7910. **Shoe Polish—Qualities.**—John Lincoln, an individual trading as The John Lincoln Co., with his place of business located in San Francisco, Calif., advertiser-vendor, engaged in the business of offering for sale and selling various shoe polishes, dressings, and cleaners including products designated "Lincoln Tube White" and "Lincoln Quality Utility White Cleaner," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution of these products, to cease and desist from representing directly or by implication that such shoe dressings will not rub off. (1-21048, Sept. 2, 1949.)

7911. **Water Purifying Device—Nature.**—American Cyanamid Co., a Maine corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a water-purifying device designated "Filt-R-Stil," entered into an agreement, in connection with the sale, offering for sale, and distribution thereof, to cease and desist from using the name "Filt-R-Stil" to designate, describe or refer to any water purifying equipment which does not employ the process of distillation or from other representing that the said device is a still. (1-20493, Sept. 8, 1949.)

7912. **Abdominal-Supporter Belts—Therapeutic Properties.**—Alexander Segal and Celia Segal, copartners, trading as the Ward Green Co., with their principal office and place of business located in New York, N. Y., advertiser-vendors, engaged in the business of offering for sale and selling abdominal-supporter belts, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

(a) That wearing one of these belts will cause one to get in shape, breathe easier, or take weight off tired feet, or that these belts make the wearer's wind longer, brace one's back, or assure "bay window" control or firm support for sagging muscles;

(b) That use of the Commander abdominal belt gives extra support or extra double support; or

(c) That wearing one of these belts causes one to maintain slenderness or to improve posture. (1-18495, Sept. 9, 1949.)

7913. **Books—Business as Institute.**—William Harold Schwartz, an

individual trading as National Institute for Home Study, with his principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, books or publications designed to assist students thereof in obtaining civil service positions, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Using the word "Institute" as part of or in connection with his trade name; or using the word "Institute" in any manner which connotes that the business conducted by him is for the promotion of learning such as philosophy, art, or science, or has the equipment and faculty of an institute. (1-21601, Sept. 9, 1949.)

7914. Punchboard Combinations—Selling in Commerce.—Frederick Schechter and Allan Schechter, copartners trading as Howard Machine Products Co., with their place of business located in Chicago, Ill., engaged in the business of offering for sale and selling punchboards in combination with other merchandise, in interstate commerce, in competition with other individuals, firms, and corporations likewise engaged, entered into an agreement to cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

Frederick Schechter and Allen Schechter also agreed, in connection with the offering for sale, sale, and distribution of merchandise, to cease and desist from:

(a) Selling or distributing merchandise so packed or assembled that sales thereof to the public are made or may be made by means of a game of chance, gift enterprise, or lottery scheme; or

(b) Supplying to, or placing in the hands of, others, punchboards or other lottery devices with assortments of merchandise which said punchboards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public. (1-22135, Sept. 15, 1949.)

7915. Glue—Nature and Qualities.—George Leonard Herter, an individual, trading as Herter's, with his office and place of business located in Waseca, Minn., advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a glue which has been designated "Herter's Pheno Resin Marine Glue," sometimes designated "Herter's Unequaled Amber Waterproof Glue," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That this glue is waterproof;

(b) That this product is a phenol resin glue, or

(c) That this glue is boil proof. (1-22099, Sept. 15, 1949.)

7916. **Calf Food—Composition and Qualities.**—Consolidated Products Co., a Nebraska corporation, with its principal office and place of business located in Danville, Ill., advertiser-vendor, engaged in the business of offering for sale and selling a food for calves designated Kaff-A, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(a) That said preparation is made, wholly or in part, from whole milk or from dried whole milk, or that it is a milk food: *Provided, however,* That nothing herein contained shall be construed as an agreement by respondent not to represent that Kaff-A contains any ingredient derived from milk which is actually present in the product;

(b) That Kaff-A saves any specific amount of milk in the feeding of calves, unless the basis for the comparison is clearly explained; or

(c) That said preparation will prevent the development of scours, digestive upsets or other intestinal troubles in calves. (1-19980, Sept. 21, 1949.)

7917. **Disinfectant and Detergent—Preparations—Qualities, Composition, Approval and Importer Status.**—Pittsburgh Chemical Laboratory, Inc., a Pennsylvania corporation, with its principal place of business in Pittsburgh, Pa., and George C. Schmidt, Robert George Schmidt, and Lois R. Schmidt, officers and owners thereof, engaged in the business of offering for sale and selling, principally to restaurants, taverns and similar establishments for use in cleaning or in connection with the cleaning of glassware, dishes, and other eating utensils, a chlorine disinfectant designated "Meta Chlor" and two detergent preparations designated "Meta-Suds" and "Limegon," in interstate commerce, entered into an agreement, in connection with the offering for sale, and distribution of these products, to cease and desist from representing directly or by implication:

(a) That Meta Suds or Limegon will sterilize dishes, glassware, or other eating utensils, or will render them germ-free;

(b) That Meta Chlor will sterilize dishes, glassware, or other eating utensils;

(c) That any combination of Meta Chlor and Meta Suds will sterilize or disinfect dishes, glassware, or other eating utensils;

(d) That Meta Suds is composed wholly of minerals or that it is a mineral-chemical development;

(e) That any State or city has given its official approval or endorsement of Meta Chlor for use as a sterilizer, when such is not a fact; and from representing directly or by implication in connection with the offering for sale, sale, and distribution of any of their products, in commerce as aforesaid,

(f) That they are engaged in importing; and

(g) That they are engaged in exporting, when they do not, in the regular course of their business, sell and ship or otherwise distribute their products to customers outside of the continental United States (1-21703, Sept. 22, 1949.)

7918. Women's Wearing Apparel—Fictitious Pricing.—Eva A. Waldman, an individual, trading as Evalyn's, with her place of business located in Washington, D. C., engaged in the business of offering for sale and selling, in commerce, articles of women's wearing apparel, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

By the use of fictitious price marking, or otherwise, that the regular price of said articles of women's wearing apparel is any amount in excess of the price at which said articles are regularly and customarily sold by her. (1-22231, Sept. 21, 1949.)

7919. Belt Dressing—Comparative Merits.—William J. DuPont, an individual, trading as Du-Grip Manufacturing Co., with his principal place of business located in Toledo, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a belt dressing designated "Du-Pull," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from advertising results of comparisons of Du-Pull with Beltraction or any other belt dressing when such comparisons are not based on the formula of products currently sold contemporaneously with the advertised comparison. (1-21005, Sept. 21, 1949.)

7920. Witch Hazel—History, Manufacture, Relevant Facts, Approval and Competitive Products.—Harold C. Blankenbiller, an individual trading as American Distilling & Manufacturing Co., with his principal office and place of business located in East Hampton, Conn., advertiser-vendor, engaged in offering for sale and selling in commerce, witch hazel, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(a) That it is a new product or that it represents a change in or an improvement over witch hazel N. F.;

(b) That the process of irradiation employed in the course of manufacture of the product is one of constant control or that by its use the product undergoes constant or complete irradiation or that all equipment and containers are sterilized by its use;

(c) That by use of the irradiation process such factors as oversight, negligence, and carelessness are eliminated;

(d) That the product has been accepted, approved, or endorsed by the Alcohol Tax Unit of the Treasury Department or any other

branch of the United States Government as superior to that of other manufacturers;

(e) That the product is finer than or superior to other witch hazels or that other witch hazels are ordinary or from otherwise falsely disparaging competing products. (1-21031, Sept. 22, 1949.)

7921. **Men's Suits—Qualities, Composition, and Quality.**—Karno Tailors, Inc., a Louisiana corporation, and Nick S. Karno, Hyman Karno, and David Karno, with their principal place of business located in New Orleans, La., advertiser-vendors, engaged in the business of offering for sale and selling in commerce, general merchandise including men's suits, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Representing, directly or inferentially, that clothing or textile fabrics are wrinkleproof or present no pressing problem, unless such products are made of or consist of materials which, in fact, are proof against wrinkling and do not require pressing for better appearance;

(2) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent;

(3) Advertising, labeling, invoicing, selling, or offering for sale products which are so-called seconds, factory rejects, or irregulars or which contain flaws, without clearly and conspicuously disclosing that said products are seconds, factory rejects, irregulars, or that they contain flaws, as the case may be. (1-22084, Sept. 22, 1949.)

7922. **Fuchsia Plants—History and Qualities.**—Earl A. Aldrich, an individual trading as California Geranium and Fuchsia Growers Co., with his principal office and place of business located in Half Moon Bay, Calif., advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, fuchsia plants, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

(a) By applying newly coined or framed words to designate commonly and generally known varieties of fuchsia plants, or in any other manner, that such varieties are new creations;

(b) That the plant referred to by him as "Compacta Fuchsia" is a distinct strain; or

(c) That the Fuchsia Procumbens produces berries as large as a large cherry, or from otherwise exaggerating the size of berries produced. (1-22279, Sept. 27, 1949.)

7923. Punchboard Combinations—Supplying to Others and Lottery Merchandising.—Shari Candies, Inc., a Minnesota corporation, with its principal place of business located in Mankato, Minn., and Louis Kitsis and Maurice J. Kitsis, engaged in the sale and distribution of punchboard combinations, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

1. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, either with other merchandise or separately, which are to be used or may be used in the sale or distribution of other merchandise to the public;

2. Selling or distributing any merchandise so packed or assembled that sales of such merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by said parties, may be made by means of a game of chance, gift enterprise, or lottery scheme;

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (1-21729, Sept. 28, 1949.)

7924. Correspondence Course in Combustion Engineering—Business as Institute and Personnel.—The Hays Institute, also trading as the Hays Institute of Combustion Engineering, an Illinois corporation, with its principal place of business located in Chicago, Ill., and Ralph G. Johansen, K. P. Johansen and J. Stanley Johansen, as individuals and as officers of said corporation, engaged in the business of offering for sale and selling a correspondence course in combustion engineering, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, agreed to cease and desist from:

- (a) Using the word "institute" or any abbreviation thereof, or any word of similar meaning or import, in the trade and corporate name of said correspondence school;

- (b) Representing directly or by implication that said school has a staff of educators, engineers, or board of editors;

- (c) Representing directly or by implication that Joseph W. Hays is the educational director of said school or is otherwise associated with the operation or conduct of said school. (1-22528, Oct 3, 1949.)

7925. Perfumes—Foreign Source.—Ethel Wiesinger, an individual trading as Beverly Hills Gift Shop of Beverly Hills, Calif., and as Airways Gift Shop of Burbank, Calif., with her principal place of business located in Beverly Hills, Calif., advertiser-vendor, engaged

in the business of offering for selling perfumes, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

(1) Representing, directly or through inference, that said perfumes are manufactured or compounded from flowers, scents, oils, or other ingredients from the Territory of Hawaii; or that said perfumes originate in the Territory of Hawaii or are made and manufactured in the United States from ingredients imported from Hawaii;

(2) Using the word "Hawaii" or any other word indicative of Hawaii in any manner which connotes that perfumes manufactured or compounded in the United States are made or compounded in Hawaii;

(3) Using the terms "Flower Lei," "Pikaki," or any other Hawaiian word or term as brand or trade names to in any way designate, describe, or refer to perfumes made or compounded in the United States, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States. (1-21620, Oct. 12, 1949.)

7926. **Storage Bags—Mothproofing Qualities.**—Manahan Moth Paper Co., a New York corporation, with its principal place of business located in New York, N. Y., and Abraham Stone, Elliott Miller, and Max Frost, individuals and sole stockholders, engaged in the business of offering for sale and selling storage bags designated "Cedartrue Storage Bags," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Using the name "Cedartrue" without plainly disclaiming any mothproofing effect of the cedarwood pulp, or the aroma therefrom.

(b) Otherwise representing directly or impliedly that the cedarwood pulp in the paper used in the "Cedartrue storage bags" or the aroma therefrom gives protection against, or stops moth damage. (1-19883, Oct. 17, 1949.)

7927. **Auto Tires—Used as New, Terms and Conditions.**—Jean Blatt, an individual trading as Standard Brand Tire Co., with his principal place of business located in Philadelphia, Pa., advertiser-vendor, engaged in the business of offering for sale and selling automobile tires and tubes in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Using the terms "slightly used" or "Hi-Tread" if up to approximately one-half the tread has been worn away or is gone;

(2) Using the words "original tread" or any other statement of like meaning in connection with tires which have been retreaded or recapped;

(3) Representing that inner tubes are included in the purchase price of tires without including the same.

Jean Blatt further agreed, in connection with the offering for sale and sale of automobile tires as aforesaid, that he will continue to cease and desist from:

(4) Using the terms "very slightly used" "O.K. perfect tires," "85 percent nonskid original tread," "98 percent original nonskid," "will give new tire service," or "genuine factory adjustments," as descriptive of his tires. (1-22477, Oct. 21, 1949.)

7928. **Jewelry—Composition and Manufacture.**—George Dumas, an individual trading as Sterling Jewelers, with his principal place of business located in Columbus, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling jewelry in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, or distribution thereof, to cease and desist from:

(1) Representing, directly or inferentially, that a product is plated or covered with a gold alloy of a designated fineness, such as "14K" unless the entire surface of such product is plated with a gold alloy of the fineness so indicated; *And provided*, If the gold or gold alloy covering of a product is not of such substantial thickness as properly to be designated as plating or filling but the product is merely flashed, washed or colored with gold, that no quality mark such as "Karat" or "K" shall be used in connection with the description thereof, and that the word "gold," if used in such description, shall be immediately followed in equal conspicuousness by the words "flashed," "colored," or "washed";

(2) Using the word "stone" or "whitestone" as descriptive of jewelry insets which are not in fact precious stones or gems, unless such descriptive words be preceded in equal conspicuousness by the word "imitation" or "simulated." (1-17525, Oct. 21, 1949.)

7929. **Bulbs, Plants and Roots—Producer and Quality.**—Michigan Bulb Co., a Michigan corporation, with its principal place of business located in Grand Rapids, Mich., and Forrest Laug and Gerald Laug, individually and as officers and principal stockholders of said corporation, engaged in the business of offering for sale and selling bulbs, plants, and roots, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

(a) By the use of the word "farms" as a part of a trade or firm name, or otherwise, that this corporation owns, controls, or operates a farm on which it raises any substantial amount of the nursery stock which it sells;

(b) That evergreen seedlings are young evergreen trees;

(c) That the table lamps sold by them portray or create the illusion of a forest fire or falling water on their shades, when, in fact,

a substantial number of said lamps do not portray or create the illusions claimed; or

(d) That plants, roots, and bulbs will be delivered in time for seasonal planting unless such stock is shipped and delivered within such time.

Michigan Bulb Co., Forrest Laug, and Gerald Laug further agreed to cease and desist from representing that roots, plants, and bulbs sold and shipped by them in commerce are hardy, virile, or free from disease unless said products not only are in such condition when shipped, but are so packed and shipped that there is reasonable assurance that they will be delivered to purchasers still in that condition. (1-19292, Oct. 21, 1949.)

7930. **Real Estate Booklet—Qualities, Content and Value.**—William B. Schulte, an individual, doing business under the names American Business Builders and W. B. Schulte Organization, with his place of business located in Huston, Tex., engaged in the offering for sale and sale of a booklet designated "Establishing and Operating a Real Estate and Insurance Brokerage Business," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(a) That study of such publication will enable anyone to operate successfully a real estate or insurance business;

(b) That the publication contains inside information or is an exhaustive or complete treatise on the operation of a real estate or insurance business;

(c) That the same or substantially the same information cannot be obtained for less than the \$2 price charged by the said William B. Schulte. (1-22043, Oct. 21, 1949.)

7931. **Drug and Spray Device—Commercializing Government Report.**—Peda Spray Co., Inc., a Washington corporation, with its principal place of business located in Pontiac, Mich., engaged in the business of offering for sale and selling a drug preparation designated "Peda Spray Solution" and a device designated "Peda Spray Dispenser," entered into an agreement, in connection with the offering for sale and selling said products, to cease and desist from using, in whole or in part, for advertising, publicity, or sales-promotion purposes any report by any bureau, department, or agency of the United States Government or by any officer, official, or employee thereof, where such use of said report is violative of any rule, regulation, or instruction by any bureau, department, or agency of the United States Government, or where such use imports or implies in any manner that said bureau, department, or agency has approved or recommended the use of the said products. (1-22462, Nov. 9, 1949.)

7932. Motor Oils and Greases—Source.—Thermoil Lubricants Corp., an Oklahoma corporation, with its principal office and place of business located in Elk City, Okla., engaged in the business of offering for sale and selling lubricants, greases, motor oils, and similar types of products among which is a product designated “Penn-Bee” motor oil, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Using the word “Pennsylvania,” or the abbreviation or derivation “Penn,” or any other abbreviation or derivation of such word, alone or in conjunction with any other word, to designate or describe a product not composed entirely of oil derived from the Pennsylvania Grade oil fields: *Provided, however,* That in the case of a product composed in part of oil derived from the Pennsylvania Grade oil fields, this shall not be construed as prohibiting said corporation from stating truthfully the percentage of such oil in such product. (1-22178, Nov. 10, 1949.)

7933. Vacuum Cleaners—Factory Rebuilt.—Re-New Sweeper Co., a Michigan corporation, with its principal place of business located in Detroit, Mich., advertiser-vendor, engaged in offering for sale and selling in commerce rebuilt vacuum cleaners, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

By the use of the terms “factory modernized” or “factory rebuilt,” without clearly disclosing that the factory referred to is not the factory of the original manufacturer; or in any other manner that rebuilt vacuum cleaners are modernized or rebuilt at the factory of the manufacturing company. (1-21035, Nov. 18, 1949.)

7934. Dog Food—Qualities and Composition.—The Ubiko Milling Co., an Ohio corporation, with its principal office and place of business located in Cincinnati, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, a dry dog food designated “Life Guard Dog Food,” entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the product will maintain or improve the health of dogs or is beneficial as a preventive of diseases in dogs without expressly limiting such claims to cases of inadequate diet;

(b) That the product will increase the functioning of a dog’s reproductive organs without expressly limiting it to those cases where sub-normal functioning is due to an inadequate diet;

(c) That the product will promote speed, drive, or endurance in

dogs without expressly limiting it to cases where lack of those conditions is due to an inadequate diet;

(d) That the product contains meat or milk. (1-19623, Nov. 18, 1949.)

7935. **Correspondence Courses in Theology—College Status, Qualifications, etc.**—Lighthouse Bible College, a nonprofit Illinois corporation, with its office and place of business located in Rockford, Ill., engaged in the business of offering for sale and selling, in commerce, correspondence courses in theology, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Representing through use of the word "college" in its corporate name or in any other manner that its business is that of a college or other institution of higher learning.

(b) Representing that its courses are recognized courses or that they are endorsed by the churches or approved by educators;

(c) Representing that the courses represent the best factors in modern education;

(d) Representing that it is accredited by any agency which is not a standard recognized accrediting agency without clearly disclosing the true status of such agency;

(e) Representing, in any manner, that the degrees awarded by it have any standing in recognized colleges, universities, seminaries, or other institutions of higher learning;

(f) Representing that the degrees attributed to those associated in the conduct of its affairs were earned in recognized or accredited institutions. (1-22887, Nov. 18, 1949.)

7936. **Embalming and Cemetery Supplies—Personnel.**—Undertakers Supply Co., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling in commerce, embalming and cemetery supplies, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from using the terms "research staff" and "research department," or either, or any similar term in referring to its activities or facilities at such times as it does not employ a full-time chemist who conducts tests and research in connection with the types of products sold by it. (1-22484, Nov. 21, 1949.)

7937. **Baby Chicks—Government Inspected, Disease-free, etc.**—Berry's Poultry Farm & Hatchery, an Iowa corporation, with its principal office and place of business located in Clarinda, Iowa, and Ralph Duff and Paul W. Frehse, engaged in the business of offering for sale and selling in commerce, baby chicks, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That the baby chicks or the flocks producing the eggs from which said chicks are hatched are inspected, tested, or approved by the State of Iowa or by inspectors licensed by that State or that the business is conducted under a license granted by the State of Iowa other than a license to operate under the provisions of the hatchery law of Iowa issued following an inspection of the facilities of the hatchery for sanitation;

(b) That the baby chicks are free from pullorum. (1-22249, Nov. 21, 1949.)

7938. **Cutlery—Manufacture.**—Millers Forge Manufacturing Corp., a New York corporation, with its principal office and place of business located in New York, N. Y., and Jack Brown, Miller, Otto Wyland, and August Henkel, engaged in the business of offering for sale and selling in commerce, cutlery, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing that the cutlery is made by hand; *Provided*, That this shall not be construed as an agreement not to represent that the cutlery is individually forged, hand ground, or hand polished. (1-21940, Nov. 21, 1949.)

7939. **Photographs and Frames—Size of Business and Composition.**—Philip H. Rich and Conrad C. Voegler, copartners trading as Lavelle Studios, with their principal place of business located in the District of Columbia, engaged in the business of offering for sale and selling photographs in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Representing, directly or inferentially, that they conduct or operate the foremost family photographic studio in the District of Columbia, or otherwise that the magnitude or prominence of their business is in excess of the true magnitude or prominence thereof;

(2) The use of the word "gold" as descriptive of or as a designation for picture frames or other products not made throughout of gold; provided that if a product is plated or filled with gold or gold alloy of a designated fineness and the word "gold" is used in connection with the description of such covering, then such word, whenever used, shall be immediately preceded in equal conspicuousness by an appropriate quality mark clearly indicating its karat fineness and shall be followed by the word "plated" or "filled," as the case may be: *And provided further*, If the gold or gold alloy covering of the product is not of such substantial thickness as properly to be designated as plating or filling, but the product is merely flashed, washed, or colored with gold, then no quality mark shall be used in connection with the description thereof and the word "gold" if used in such description shall be immediately followed in equal conspicuousness by the words "colored," "flashed," or "washed." (1-20722, Nov. 23, 1949.)

7940. **Ties—Manufacture and Composition.**—Boris M. Levin, an individual trading as Monterey Hand Loomed Mills with his principal office and place of business located in Los Angeles, Calif, engaged in the business of offering for sale and selling in commerce, ties and other merchandise, entered into an agreement, in connection with the offering for sale, sale, and distribution of such products, to cease and desist from:

(a) Using "hand" as a part of his trade name unless it is clearly and conspicuously disclosed in connection therewith that said products are not made from hand-loomed material;

(b) Representing said ties or other articles as made from hand-loomed material. (1-22536, Nov. 23, 1949.)

7941. **Rug Cleaner—Qualities, History, etc.**—Magic Foam Sales Corp., an Ohio corporation, with its principal place of business located in Cincinnati, Ohio, and Donald C. Wiggins and June W. Wiggins, as individuals and officers of said corporation, engaged in the business of offering for sale and selling a rug and upholstery cleaner designated "Magic Foam," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(a) That the product embodies a new principle of cleaning;

(b) That the product does not remove natural oils from fabrics;

(c) That the product restores natural oils to fabrics; and that they, and each of them, will not resume the representations, either directly or by implication.

(d) That the product has any value as a mothproofing agent;

(e) That the product has any sterilizing effect. (1-22304, Nov. 23, 1949.)

7942. **Bed Board—Therapeutic Properties.**—Rest-Well Bed Board, Co., a New York corporation, also trading as Rest-Well Products, Inc., with its principal place of business located in New York, N. Y., and Frank R. Muenzen, Arthur J. Muenzen, Leo J. Muenzen, Carl C. Muenzen, Lawrence Muenzen, Wendell J. Muenzen, Leo Whitaker, Edward Daly, Ross E. Muenzen, and Kathryn T. Muenzen, engaged in the business of offering for sale and selling a bed board designated "Rest-Well Bed Board" and "Orthopedic Bed Board," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing directly or by implication:

(a) That said product is of any benefit for backache except where such condition is caused by or due to overly soft mattresses or sagging springs;

(b) That said product is of any benefit for fatigue, general nervous tension, inability to relax in sleep, sacroiliac pains, lumbago, or ar-

thrititis except where such conditions are aggravated by overly soft mattresses or sagging springs;

(c) That said product will make one healthy or invigorated or has any beneficial effect on the nervous or circulatory systems;

(d) That said product is of any benefit for anemia or diseases of the kidneys, ovaries, uterus, colon, or prostate;

(e) That said product is an orthopedic device, or from representing in any manner that the product will correct or prevent deformities of the human body;

(f) That said product will produce a natural sleep;

(g) That said product will enable one to have a correct or proper sleeping posture or has any beneficial effect on bodily functions. (1-21461, Nov. 28, 1949.)

7943. Photographs—Conditions, Refunds, etc.—Clinton Studios, Inc., a New Jersey corporation, with its principal place of business located in Newark, N. J., and Edward J. Davis and Ethel Davis, as officers and stockholders, engaged in the sale and distribution of photographs in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(a) That a local studio is to be opened when no such studio is contemplated;

(b) That photographs of local children will be displayed in a local studio to be opened;

(c) That the general policy is to furnish dissatisfied customers with reprints and if the customers are dissatisfied with the reprints to make retakes and if the retakes are unsatisfactory to make refunds unless performance is in strict accordance therewith.

(d) That customers receive an oil painting of the children photographed. (1-20971, Dec. 2, 1949.)

7944. Burial Caskets—Durability.—Crane & Breed Casket Co., an Ohio corporation, with its principal office and place of business located in Cincinnati, Ohio, engaged in the business of offering for sale and selling in commerce, burial caskets designated "Ever Seal Caskets," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing that said caskets will afford permanent protection against the elements to the body therein encased: *Provided*, That this shall not be construed as an agreement not to use "Ever Seal" as a designation for the said caskets. (1-20589, Dec. 5, 1949.)

7945.¹⁰ Cough Drops—Therapeutic Properties and Indorsements.—C. A. Briggs Co., a Maine corporation, with its principal place of business located in Cambridge, Mass., engaged in the business of manufacturing

¹⁰ Supplemental.

a medicinal preparation in cough drop form now designated "Hospital Brand H-B Cough Drops," and offering for sale and selling the same under the adopted trade name "H. B. Sales Co.," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

(a) Representing, directly or by implication, through the use of the phrase "Stop That Cough" or otherwise, that said preparation is a remedy for coughs, or that its therapeutic value exceeds that of a soothing demulcent for allaying minor throat irritations such as those caused by excessive smoking or those which accompany coughs due to colds;

(b) Using in conjunction with the words "Hospital Brand" in the name of said preparation, the collateral statement "Compounded Like a Prescription" or the symbol "Rx," or any other representations which tend or may tend to cause or convey the belief or impression that said preparation is in general use in hospitals or has received the sanction, endorsement, or approval of hospitals.

This stipulation is supplemental to Stipulation No. 3745, approved October 22, 1943,¹¹ as amended by stipulation approved June 19, 1947.¹² (1-17290, Dec. 12, 1949.)

7946. **Electric Fence Controllers—Maker.**—Guaranteed Products, Inc., an Ohio corporation, with its principal office and place of business located in Wellington, Ohio, and Philip L. Bradstock, Simon S. Maier, and Howard R. Maier, officers of said corporation, engaged in the business of offering for sale and selling electric fence controllers in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from in any manner representing the manufacturer of said electric fence controllers to be other than the actual manufacturer thereof. (1-22864, Dec. 15, 1949.)

7947. **Correspondence Courses in Handwriting Analysis—Qualifications, Institute, etc.**—American Institute of Grapho-Analysis, Inc., a Missouri corporation, with its principal place of business located in Springfield, Mo., and Milton N. Bunker, advertiser-vendors, engaged in the business of offering for sale and selling home study courses of instruction in handwriting analysis, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or inferentially:

(1) By the use of the term "Dr." in connection with the name of the aforesaid Milton N. Bunker, or otherwise, that said individual has been accorded a doctorate or the degree or title of a doctor by an accredited university or college;

¹¹ See 37 F. T. C. 729.

¹² See 43 F. T. C. 719.

(2) By the use of the word "institute" as part of or in connection with said corporate name, or other use of the word "institute," that the business conducted by them is for the promotion of learning such as philosophy, art, or science, and has the equipment and faculty of an institute.

(3) By use of the statement "The Ceiling tuition for the Complete Course was established at \$250", or otherwise, that a ceiling price for their course of instruction has been established by a governmental agency;

(4) By statements such as "men who never before earned \$25 in an hour have done it with graphoanalysis," or otherwise, that the potential earnings of persons completing such course of instruction are in excess of the earnings which therefore have been consistently made in the ordinary and usual course of business and under normal conditions and circumstances by a substantial number of persons completing such course or courses of instruction;

(5) That they conduct or operate regional schools, unless or until they actually do conduct regional schools as represented. (1-20222, Dec. 16, 1949.)

7948. Flooring Composition—Nature, Comparative Merits and Qualities.—Lasting Products Co., a Maryland corporation, with its principal place of business located in Baltimore, Md., advertiser-vendor, engaged in offering for sale and selling in commerce, a magnesium oxychloride flooring composition under the trade name "Corkstone," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist:

(1) From the use of "Corkstone" as the name of the flooring without plainly disclosing that it is an oxychloride cement;

(2) From representing that such resilience as the flooring possesses is comparable to the resilience of cork or otherwise resembles cork;

(3) From representing that a flooring of the product is waterproof, dustfree, dustproof, yielding under foot, a nonconductor of heat or cold or won't deteriorate. (1-22750, Dec. 19, 1949.)

7949. Water Demineralizers—Qualities and Results.—Penfield Manufacturing Co., Inc., a Connecticut corporation, with its principal office and place of business located in Meriden, Conn., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, water demineralizers, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing in any manner that its water demineralizers produce water that is the chemical equivalent of distilled water or water superior thereto. (1-22942, Dec. 21, 1949.)

7950. Carbonated Beverage—Nature.—Union Bottling Co., a Tennessee corporation, with its principal place of business located in Mem-

phis, Tenn., also doing business as the Graport Co., engaged in the business of offering for sale and selling a certain carbonated beverage designated "Graport," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from using the brand name "Graport," or such terms as "grape flavor," "winey flavor," or "winey muscadine flavor," to describe or designate such product, unless it appears in connection therewith that the product is an imitation grape beverage. (1-22252, Jan. 3, 1950.)

7951. **Syrup—Material Facts.**—Penick & Ford, Ltd., Inc., a Delaware corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling a food designated "Vermont Maid Syrup," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from disseminating:

Any advertisement which depicts any Vermont Maid Syrup label other than one bearing all of the pertinent data contained in the actual label affixed to the container in which the product is packed and sold. (1-22781, Jan. 3, 1950.)

7952. **Silver-Plated Holloware—Foreign Source.**—English Silver Manufacturing Corp, a New York corporation, with its principal office and place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling silver-plated holloware, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Using "English" as a part of its trade name unless, in immediate conjunction with said trade name and in prominent type, clear and conspicuous disclosure is made through use of the words "Made in U. S. A.," or otherwise, that the products are made in the United States.

(b) Using any symbol which may create the impression that the products are made in England.

(c) Using as descriptive of silver-plated holloware not made in Sheffield, England, the word "Sheffield," alone or in connection with any other word or words, sign, symbol, or device to describe or designate such silver-plated holloware either by stamping or impressing the name "Sheffield" thereon or in any other manner: *Provided, however,* That the words "Sheffield" may be used in connection with the sale of silver-plated holloware not made in Sheffield, England, if it is used only in connection with the word or words "design" or "pattern" or words of similar import and meaning so as clearly to reveal that the article described is a modern copy or modern reproduction of the "design" or "pattern" of a piece of Sheffield plate manufactured

in the eighteenth century and such descriptive words are clearly qualified by the words "Made in U. S. A." or words of similar import and meaning revealing the country in which said ware has been manufactured. (1-20973, Jan. 3, 1950.)

7953. **Spot Remover—Properties.**—Renuzit Home Products Co., a Pennsylvania corporation, with its principal office and place of business located in Philadelphia, Pa., advertiser-vendor, engaged in the business offering for sale and selling in commerce a product designated "Renuzit Spot and Stain Remover," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing that the product will remove all kinds of spots. (1-21438, Jan. 4, 1950.)

7954. **Quilt Fabric Pieces—Qualities.**—Anthony Salzman, an individual trading as Union Mill Ends, with his principal office and place of business located in Monticello, N. Y., engaged in the business of offering for sale and selling, in commerce, quilt fabric pieces, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

That said quilt fabric pieces are color fast. (1-22695, Jan. 11, 1950.)

7955. **Wiring Instructions for Motors—Qualities and Results.**—Joseph F. Bent, an individual presently connected with the Sanfer Manufacturing Co., Inc., with his principal place of business located in the city of Huntington Park, Calif., formerly trading as Home Products, Inc., engaged in the business of offering for sale and selling in interstate commerce, wiring instructions for operating three-phase electric motors on single-phase power and operating single-phase electric motors on three-phase power, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or inferentially:

That by following said wiring instructions, a three-phase motor may be operated on single-phase power, unless such representation be accompanied in equal conspicuousness by a statement to the effect that a second three-phase motor must be used as a converter. (1-21998, Jan. 13 1950.)

7956. **Correspondence Course in Massage—Price.**—College of Swedish Massage, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling, in commerce, a correspondence course in massage, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

That the price at which said correspondence course in massage is offered for sale and sold is a special or reduced price, for a limited

time, when such price is in fact the usual and customary price thereof. (1-22141, Jan. 16, 1950.)

7957. **Chewing Gum—Lottery Merchandising.**—Trio Gum Corp., a Pennsylvania corporation, with its principal place of business located in Philadelphia, Pa., and Edward Rosenberg and Louis Karloff, officers thereof, engaged in the manufacture, sale, and distribution of chewing gum, and sale and distribution of certain assortments consisting of a quantity of bubble gum designated "Trio Triple Gum" and a football, in interstate commerce, in competition with other corporations and with partnerships and individuals likewise engaged, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Selling or distributing chewing gum or any other commodity so packed or assembled that sales thereof to the public are made or may be made by means of a game of chance, gift enterprise, or lottery scheme;

(2) Selling or distributing any commodity or merchandise by means of a plan or method involving use of a game of chance, gift enterprise, or lottery scheme. (1-22519, Jan 23, 1950.)

7958. **"Plastic Metal" Product—Qualities. History and Manufacturing Status.**—Metalite Manufacturing Co., Inc., an Ohio corporation, with its principal place of business located in Cleveland, Ohio, and Charles Schaeffer and Ned L. Mann, officers thereof, engaged in the offering for sale, sale and distribution of a product designated "Metalite Plastic Metal," in interstate business, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Representing directly or by implication that said product dries to metal hardness or hardens into metal;

(b) Representing directly or by implication that said product is new or that there is no other product like it;

(c) Using the word "manufacturing" as part of their corporate or trade name and from otherwise representing that their concern manufactures or compounds the said product. (1-21918, Jan. 27, 1950.)

7959. **Food, Drug and Cosmetic Products—Maker.**—A. W. Curtis, Jr., an individual trading as A. W. Curtis Laboratories, with his principal office and place of business located in Detroit, Mich., engaged in the business of offering for sale and selling in commerce a drug product designated "Curtis Rubbing Oil" and approximately 83 other products in the category of foods, drugs, or cosmetics, all of which he refers to as both Curtis products and as Carver products, entered into an agreement, to cease and desist disseminating any advertisement which represents through pictorial likeness of Dr. George Washington Carver, through references to the products as "Carver" products or in any other manner that any of the products is manufactured according to

a formula originated by Dr. George Washington Carver except the product now designated "Curtis Rubbing Oil" or that Dr. Carver participated in origination of the formulas of any of the other said products unless such is a fact and then only to such extent as Dr. Carver actually participated in the origination thereof.

It is understood that this shall not be construed as an agreement by A. W. Curtis, Jr., not to use his registered trade-mark (the name Dr. George Washington Carver in association with the portrait of the individual, now deceased, together with the name Curtis): *Provided*, That said registered trade-mark is used solely as a trade-mark and is followed by the words "trade-mark." (1-19775, Jan. 27, 1950.)

7960. **Candy—Selling for Lottery Merchandising.**—James O. Welch Co., a Massachusetts corporation, with its principal place of business located in Cambridge, Mass., and James O. Welch, Robert H. W. Welch, Jr., and Lucy M. Byron, individually and as officers of said corporation, engaged in the manufacture and sale of candy bars and caramel suckers, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Selling any candy or other merchandise so packed and assembled that sales of such merchandise to the public are to be made, or due to the manner in which such merchandise is packed and assembled at the time it is sold by respondents, may be made by means of a game of chance, gift enterprise or lottery scheme;

(2) Selling or distributing any candy or other merchandise through the use of any sales promotion scheme involving a game of chance, gift enterprise or lottery scheme;

(3) Selling or otherwise disposing of any candy or other merchandise by means of a game of chance, gift enterprise or lottery scheme. (1-22389, Feb. 3, 1950.)

7961. **Motor Fuel Additive—Economizing Properties.**—Raymond C. Brin, Herbert D. Brin, Samuel E. Brin, and E. Garonzik, copartners doing business under the trade name of Hydrotex Industries, with their principal place of business located in Dallas, Tex., advertiser-vendors, engaged in the business of offering for sale and selling a motor fuel additive designated "Essentialube," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication that said product reduces fuel consumption in either gasoline or Diesel engines. (1-22343, Feb. 3, 1950.)

7962. **Costume Jewelry—Nature and Composition.**—A. C. Becken Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the wholesale and retail jewelry business, offering for sale and selling a wide variety of items including costume jewelry in interstate commerce, entered into an

agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from using the word "stone" as descriptive of such insets unless it is clearly disclosed that the insets are simulated or imitations. (1-22122, Feb. 6, 1950.)

7963. Insecticide—Effectiveness, Safety and Relevant Facts.—Gaston George Johnston, an individual trading as Gaston Johnston Co., with his principal office and place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, an insecticide designated "No Roach," an economic poison entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(a) That the product affects a 100-percent kill of roaches or that its use results in their complete elimination or roach free premises;

(b) That the product has a residual effectiveness for any definite number of months;

(c) That the product is nonpoisonous, safe, or harmless;

(d) That insecticide exterminators do not buy the product because of its effectiveness. (1-22821, Feb. 8, 1950.)

7964. Vitamin Preparation—Therapeutic Properties.—The Chattanooga Medicine Co., a Tennessee corporation, with its principal office and place of business located in Chattanooga, Tenn., engaged in the business of offering for sale and selling a vitamin and iron preparation designated "Zyrone," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

(a) That said preparation is effective in the treatment of any mineral deficiency symptoms other than those due to an iron deficiency; or

(b) That Zyrone is effective in the treatment of any vitamin deficiency symptoms other than those due to a deficiency of vitamin B₁. (1-21415, February 6, 1950.)

7965. Animal Feed Supplement—Therapeutic and Nutritional Qualities.—Yeastex Co., an Iowa corporation, with its principal offices and places of business located in Waterloo, Iowa, and Monticello, Iowa, advertiser-vendor, engaged in the business of offering for sale and selling products designated "Yeastex" and "Yeastex-G," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(a) That Yeastex is of any significant value from a therapeutic or a dietary standpoint when used in connection with the feeding of poultry, livestock, or other animals;

(b) That Yeastex contains vitamin A or any other ingredient not therein contained or that the amount of any ingredient of which it is composed is other than the actual amount thereof;

(c) That Yeastex-G is of any significant value from a therapeutic or a dietary standpoint when used in connection with the feeding of poultry, livestock, or other animals, without expressly limiting its value to that of a riboflavin supplement. (1-18692, Feb. 15, 1950.)

7966. **Traveling Bags—Non-Disclosure of Composition.**—George Goldberg, an individual trading as Artgold Leather Goods Manufacturing Co., with his place of business located in Boston, Mass., advertiser-vendor, engaged in the business of offering for sale and selling men's traveling bags, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist:

(a) From failing to reveal clearly in the advertising of such products and in a stamp, tag, or other label affixed to such products that the leather is split or cut from the underside of the hide and is not top grain leather, as for example: "Split Cowhide."

and, in connection with the offering for sale, sale, and distribution of men's traveling bags or other products made of or containing leather which is backed with fabric, or with any material other than leather, or with split leather, said individual will forthwith cease and desist:

(b) From failing to reveal clearly in the advertising of such products and in a stamp, tag or other label affixed to such products that the leather is backed with fabrics, or with certain designated material other than leather, or with split leather of a certain kind, as the case may be. (1-22684, Feb. 15, 1950.)

7967. **Hair Preparation—Therapeutic Properties and Unique Nature.**—Locke Chemical Co., a Maryland corporation, with its principal office and place of business located in Baltimore, Md., advertiser-vendor, engaged in the business of offering for sale and selling a product designated "308 Hair Preparation," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the product is a cure or a remedy for dry, scaly, itchy, or oily scalp, or dandruff or any other scalp condition;

(b) That the product does what no other product can do;

(c) That the product is a cure or a remedy for falling hair or that it will prevent that condition. (1-23246, Feb. 16, 1950.)

7968. **Automotive Repair Product—Nature.**—Hobb Swetnam Co., Inc., a Texas corporation with its principal place of business located in Wichita Falls, Tex., and Shafter C. McAdams, Sr., Shafter C. McAdams, Jr., and William J. McAdams, officers thereof, engaged in the business of offering for sale, selling, and distributing a number of automotive products including two products designated "Block-Weld Liquid" and "Liquid Radiator Solder," in interstate commerce, entered into an agreement, in connection with the offering for sale,

sale, and distribution of their product now designated "Block-Weld Liquid," to cease and desist from:

(a) Representing through the use of the word "weld" as a part of the brand name of such product, or otherwise, that the product welds metal, and from representing directly or by implication that such product will permanently seal a leak, crack, or crevice in metal;

and, in connection with the offering for sale, sale, and distribution of their product now designated "Liquid Radiator Solder," or any other product of the same or substantially the same composition they, and each of them, will forthwith cease and desist from:

(b) Using the word "solder" as a part of the brand name of such product unless accompanied by a clear disclosure that the product is nonmetallic. (1-22383, Feb. 24, 1950.)

7969. **Jewelry—Composition and Quality.**—W & H Jewelry Co., Inc., a Rhode Island corporation, with its principal office and place of business located in Providence, R. I., engaged in the business of offering for sale and selling, in commerce, jewelry, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

(a) That any of said jewelry contains any specified percentage or proportion of gold in the metal alloy portion thereof, in excess of the percentage or proportion of gold actually contained in the finished article; or

(b) That any article of said jewelry is "Sterling" silver unless the metal alloy portion thereof contains at least 925 parts of silver per thousand. (1-20711, Feb. 24, 1950.)

7970. **Medicinal Preparation—Therapeutic Properties.**—William T. Brennan, an individual with his principal place of business located in Beckley, W. Va., doing business under the trade name of the Miner's Medicine Co., engaged in offering for sale and selling a medicinal preparation designated "Miner's Friend," also doing business as Ortona Medicine Co., for a period of time during the years 1944 and 1945, he engaged in offering for sale and sold the same preparation under the brand name "Ortona," and doing business as Cam-Lac Medicine Co. during a portion of the year 1947, he engaged in offering for sale and sold the same preparation under the brand name "Cam-Lac," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(a) That such preparation is of value in the treatment of aches, stiffness, flatulence, heartburn, biliousness, poor appetite, upset stomach, poor digestion, nervousness, dizziness, or poor complexion;

(b) That such preparation will prevent a cold or be helpful in the treatment of colds;

(c) That such preparation is a cure or remedy for constipation; or that it affords relief for constipation in excess of that which a laxative affords to a temporarily constipated condition. (1-21687, Feb. 27, 1950.)

7971. **Clothing—Foreign Source.**—S. Weitz & Co., Inc., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling, in commerce, men's and women's clothing, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Using on labels attached to clothing manufactured in the United States the terms "Tweedshire," "British Styled," "St. Patrick's Tweed," "Loomed from imported English Wool," or "Made in Ireland," unless it is clearly disclosed thereon that such terms apply to the fabrics only, and that the garments are made in the United States. (1-23075, Mar. 1, 1950.)

7972. **Quilt Pieces—Qualities, Weight, Limited Offer and Value.**—Sigmund Lobel, an individual trading as the Quilt Lady and House of Goddard, with his principal office and place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, among other items, bundles of quilt pieces, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That any of the quilt pieces contained in the bundles are color-fast, when they do not possess that quality.

(b) That the weight of the quilt pieces contained in any of the bundles is 3 pounds, when such is not a fact or that the weight thereof is any amount other than the actual weight thereof.

(c) That an offer is for any period of time other than the actual time thereof.

(d) That the value of the scissors is any amount other than their actual regular price. (1-22773, Mar. 1, 1950.)

7973. **Men's Hats—Quality and Old as New.**—Joseph Fishlin and Harry Fishlin, copartners doing business under the trade name of Marda Hat Co., with their place of business located in New York, N. Y., engaged in the business of finishing men's hats and offering for sale, selling, and distributing them in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution of men's hats having bodies which are "seconds," as this term is understood in the trade:

(a) They will forthwith cease and desist from representing directly or by implication through the use of the phrases "finest quality obtainable in Danbury" and "custom-made," and otherwise, that such hats are first-grade or high-quality hats; and

(b) They will clearly disclose in all advertisements and advertising material relating to such hats and by conspicuous stamping, marking, or labeling of the hats, the fact that the bodies of the hats are "seconds." (1-22974, Mar. 10, 1950.)

7974. Macaroni Products—Composition, Qualities, Relevant Facts, etc.—Buitoni Macaroni, Inc., a New York corporation, with its principal offices in New York, N. Y., and with manufacturing plants located in New Jersey and New York, prior to January 1, 1947, and for more than 1 year prior thereto, engaged in the business of offering for sale and selling various food products, including designated "Buitoni 20% Gluten Macaroni," "Buitoni Gluten Spaghetti," and "Buitoni Gluten Pastina," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from:

(a) The use of the word "gluten" or any other word or term of similar meaning in any manner which connotes directly or inferentially that said products are made wholly of gluten or wholly of gluten flour;

(b) Representing that said products are nonfattening or that said products are incapable of adding excess body weight;

(c) Representing directly or impliedly that said products will destroy fat or fat in the cells;

(d) Representing directly or impliedly that said products do not contain starch or carbohydrates;

(e) Representing that, due to the small size of its pastina, the assimilation thereof is quick and perfect; or otherwise representing directly or impliedly that the size of its products affects the assimilation thereof;

(f) The use of the term "vegetable meat" as a designation for or descriptive of said products;

(g) Representing that the said products when cooked contain more protein than meat or that the proteins in said products are identical to or the equivalent of meat proteins or that the said products are more nutritious than meat;

(h) Representing directly or by implication that no other macaroni, spaghetti, or pastina product contains vitamin B₁ or iron;

(i) Representing directly or by implication that said products are a perfect food or perfectly balanced foods;

(j) Representing directly or by implication that said products are of any therapeutic value in the treatment of any ailment or disease;

(k) Representing directly or by implication that said products possess antiketogenic properties;

(l) Representing directly or by implication that starch fatigues the digestive organs. (1-19042, Mar. 1, 1950.)

7975. Drug Preparation—Therapeutic Properties.—J. C. Eno, Inc., a New York corporation, with its principal office and place of business located at Bloomfield, N. Y., engaged in the business of offering for sale and selling a drug preparation designated “Eno Effervescent Salt,” entered into an agreement, in connection with the disseminating of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the product has any therapeutic efficacy in the treatment of constipation or gastric hyperacidity in excess of that relief which a laxative affords to a temporarily constipated condition or that relief which an antacid affords to a temporary hyperacid condition;

(b) That the product will enable one to keep cool or that it will have a refrigerant effect on the body. (1-22972, Mar. 15, 1950.)

7976. Radiator Repair Compound—Qualities, Composition, and Approval.—Roscoe C. Meneray, an individual trading as Radiator Seal Co., with his place of business located in Council Bluffs, Iowa, engaged in offering for sale and selling in commerce, a radiator and motor-repair compound designated as “R-C Radiator and Motor Block Repair,” entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That said product will repair leaks in radiators and motor blocks of automobiles, trucks, tractors, low-pressure boilers, and motors having aluminum heads, without specifically limiting such representations to small and minor leaks;

(b) That said product will repair leaks in high-pressure boilers;

(c) That said product contains a cleaner, and that it cleans radiators, motor blocks, and water pumps of automobiles, trucks, and tractors;

(d) That said product contains a lubricant and that it will lubricate water pumps of automobiles, trucks, or tractors;

(e) That said product stops squeaking in the water pumps of automobiles, trucks, or tractors;

(f) That said product contains an antirust solution which prevents and removes rusting in and from radiators, motor blocks, and water pumps of automobiles, trucks, or tractors, and that said product is rustproof;

(g) That said product softens water;

(h) That said product has a high metallic content;

(i) That said product is approved or tested and approved unless said product has been so approved or tested by a presently existent laboratory of recognized standing in testing automotive parts, equipment, or accessories, or by a presently existent automobile club. (1-22397, Mar. 15, 1950.)

7977. **Diamonds and Watches—Guarantees, Standards Conformance, Qualities, etc.**—Weisfield's, Inc., a Delaware corporation, with its principal office and place of business located in Seattle, Wash., engaged in the business of offering for sale and selling, in commerce, diamonds and watches, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

(a) That Weisfield's, Inc., guarantees the perfection of any diamonds unless such representation is expressly limited to the specific diamonds included in said guarantee;

(b) That any of its diamonds meet or surpass any alleged requirements or standards of the Federal Trade Commission;

(c) That it is the only vendor of diamonds which gives purchasers a written guarantee;

(d) That its watches are shockproof;

(e) That its watches are waterproof, without clearly explaining that their continued imperviousness to water is dependent on special expert care in connection with repairs. (1-21793, Mar. 20, 1950.)

7978. **Rings—Source and Quality.**—E. A. Wiedlund, an individual trading as Vogue Manufacturing Co. of California and Vogue Manufacturing Co., with his principal office and place of business located in Los Angeles, Calif., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, novelty jewelry, including rings, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That the rings or their insets are produced in California or any other place other than that where they are actually produced;

(b) That the insets of the rings are reproductions of genuine diamonds or that they are anything more than simulations thereof;

(c) That only an expert can tell the difference between the insets of the rings and genuine diamonds;

(d) That the insets of the rings meet any of the tests for genuine diamonds. (1-22760, Mar. 20, 1950.)

7979. **Raincoats—Misbranding Wool Products.**—The Mansbrooke Rainwear Co., a Massachusetts corporation, with its principal place of business located in Needham Heights, Mass., in offering for sale and selling in commerce certain raincoats which were not tagged or labeled in accordance with the Wool Products Labeling Act of 1939, entered into an agreement, in connection with such offering for sale and selling, to cease and desist, or continue to cease and desist from failing to affix to such wool products 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) reused wool, (4) each fiber other than wool where said per centum 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 percentages in words and figures plainly legible by weight of the wool contents of such wool products 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 Regulation 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;

The Mansbrooke Rainwear Co. further stipulated and agreed that it will hereafter fully comply with the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated pursuant thereto. (1-23242, Mar. 20, 1950.)

7980.¹³ Liniment — Therapeutic Properties.—International Laboratories, Inc., a New York corporation, with its principal office and place of business located in Rochester, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling a liniment designated "Moone's Emerald Oil," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That Moone's Emerald Oil has any therapeutic value in the relief or treatment of eczema rashes, pimples, ivy poisoning, or other skin irritations in excess of that afforded by the alleviation of, or relief from, the symptom of itching;

(b) That this preparation will promote healing;

(c) That this liniment is an adequate treatment for aching, burning feet or that it has any therapeutic value in excess of its counterirritant action in alleviating or relieving the discomfort of tired, aching, burning feet, or that it will overcome foot odors; or,

(d) By the use of the words "Stop that Itching," or otherwise, that "Moone's Emerald Oil" will be of benefit in the treatment or cure of a disease or condition causing the symptom of itching, or that it has any therapeutic value in excess of that resulting from the alleviation or relief of the symptom of itching.

It is further agreed that Stipulation No. 01406, executed by the said International Laboratories, Inc., and accepted by the Federal Trade Commission on May 26, 1936,¹⁴ is to remain in full force and

¹³ Supplemental.

¹⁴ See 22 F. T. C. 1095.

effect, and that the terms and agreements therein are not to be considered modified or altered in any way by this supplemental stipulation. (1-9441, Mar. 29, 1950.)

7981. **Perfumes—Foreign Source.**—Rolley, Inc., a California corporation, and Charles A. Rolley, whose principal place of business is in San Francisco, Calif., advertiser-vendors, engaged in the business of offering for sale and selling perfumes and other cosmetic preparations, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from:

(1) Representing, directly or through inference, that said perfumes or other toilet preparations are manufactured or compounded from flowers, scents, oils, or other ingredients from the Territory of Hawaii; or that said perfumes or toilet preparations originate in the Territory of Hawaii or are made and manufactured in the United States from ingredients imported from Hawaii;

(2) Using the word Hawaiian or any other word indicative of Hawaii as a brand or trade name for perfumes or other toilet preparations manufactured or compounded in the United States, or in any other manner representing that perfumes or other toilet preparations so compounded are made or compounded in Hawaii.

(3) Using the terms "Pikaki" or any other Hawaiian word or term as brand or trade names to in any way designate, describe, or refer to perfumes or other toilet preparations made or compounded in the United States, without clearly and conspicuously stating in immediate connection and conjunction therewith that such products are made or compounded in the United States. (1-21027, Mar. 31, 1950.)

7982. **Electric Water Heater—Qualities.**—Richard F. Kneisley and Florence H. Kneisley, copartners trading as the Kneisley Electric Co. with their general office and principal place of business located in Toledo, Ohio, engaged in the business of offering for sale and selling in commerce an electric immersion type water heater designated "Shokless Portable Electric Water Heater," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Exaggerating the speed within which said device will provide hot or boiling water. (1-22952, Apr. 7, 1950.)

7983. **Brooches—Quality.**—William Regelman and Elizabeth Regelman, copartners trading as Atlantic Jewelry Co., with their principal office and place of business located in Providence, R. I., advertiser-vendors, engaged in the business of offering for sale and selling in commerce, brooches and other costume jewelry, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Stamping, branding, labeling, or otherwise marking any brooch as covered with a gold alloy of a designated or certain fineness, unless

such gold alloy covering is in fact of the fineness indicated subject to a tolerance of not to exceed one-half of 1 karat;

(b) Using any figure or designation, such as " $\frac{1}{20}$," to indicate the proportion of gold alloy covering in relation to the total weight of any brooch, unless such gold alloy covering is of the relative weight indicated, subject to a tolerance of not to exceed 10 percent;

(c) Using the words "gold filled," or the letters "G. F." as descriptive of any brooch of which the gold alloy does not amount to at least $\frac{1}{20}$ of the total weight of the product. (1-21612, Apr. 10, 1950.)

7984. **Television Sets—Tube Capacity.**—Mattison Television & Radio Corp., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in offering for sale and selling in commerce, television receiving sets, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

That any television receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are devices which do not perform the recognized and customary functions of television receiving set tubes in the detection, amplification, and reception of television signals. (1-23229, Apr. 10, 1950.)

7985. **Watches—Qualities, Prices, etc.**—Jules Livingston, an individual trading as Maryland Distributors and as Maryland Distributing Co., with his principal place of business located in Baltimore, Md., advertiser-vendor, engaged in offering for sale and selling in commerce, watches, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

- (1) That his watches are shockproof or shock protected;
- (2) That his watches are waterproof, moistureproof or water repellent;
- (3) That his watches are "super accurate" or contain precision movements;
- (4) That any price or value which is in fact fictitious and in excess of the price at which said watches were customarily or regularly offered for sale and sold in the normal and usual course of business is the original or former price or value of his watches;
- (5) That the established or regular retail selling prices at which his watches are offered for sale and sold are wholesale prices;
- (6) That his watches are postwar surplus.

Jules Livingston further agreed that he will cease and desist from giving fictitious reasons for the prices at which his watches are offered for sale and sold. (1-22388, Apr. 10, 1950.)

7986. **Hair Cosmetic—Qualities.**—Jasper L. Nelson, an individual trading as Nelson's Cosmetics, with his principal place of business

located in New York, N. Y., advertiser-vendor, engaged in selling a cosmetic preparation designated as "Bernel's Hair Cream," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that such preparation or the use thereof:

- (1) Will cause hair to grow longer and thicker;
- (2) Is of any value in correcting falling hair;
- (3) Will bring about or assure a healthy scalp. (1-22486, Apr. 26, 1950.)

7987. **Hair Preparation—Qualities.**—Lillie Miller, an individual trading in her own name, with her place of business located in Xenia, Ohio, advertiser-vendor, engaged in the business of offering for sale and selling a preparation for the hair designated "Matilda's Grow-Quick Hair Grower," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist:

- (a) From using as or in the brand name of such preparation the words "grow-quick," "hair growers," or any other words or words of similar import, and from otherwise representing directly or by implication that such preparation is effective in the growing of hair;
- (b) From representing directly or by implication that such product will prevent falling hair or will have any effect in the treatment of dandruff.

Lillie Miller further agreed that she will not publish or cause to be published any testimonial contrary to the foregoing agreement. (1-22490, Apr. 26, 1950.)

7988.¹⁵ **Drug Preparations—Therapeutic Properties.**—Dr. Leonhardt Co., a New York corporation, with its principal place of business located in Buffalo, N. Y., engaged in the business of selling and distributing two drug preparations designated "Hen-Roib" and "Len-Oint" and a third commodity designated "Hen-Roib Combination Treatment," which is merely a package containing the two items, "Hen-Roib" and "Len-Oint," entered into an agreement that it will continue to desist from the dissemination of advertiseing relating to those products which represents directly or by implication:

- (a) That alone or in combination Hen-Roib and Len-Oint cure piles;
- (b) That Hen-Roib has therapeutic value in the treatment of piles; and
- (c) That Len-Oint has any effect in the treatment of piles beyond providing temporary relief of such discomfort as itching, burning, pain, and soreness.

It is further agreed that this substitute stipulation cancels and supersedes Stipulation No. 02080 tendered by Dr. Leonhardt Co. and

approved by the Federal Trade Commission on March 22, 1938.¹⁶ (1-12155, Apr. 26, 1950.)

7989. **Medicinal Preparation—Qualities, Relevant Facts, etc.**—Benson Laboratories, Inc., a Pennsylvania corporation, with its principal place of business located in Pittsburgh, Pa., and Palmer S. Chambers, Sr., and Palmer S. Chambers, Jr., individuals and officers and directors of said corporation, engaged in offering for sale and selling in commerce, a medicinal preparation designated "Formula A-N-1," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That the preparation prevents or cures colds, or is effective for the relief of minor throat irritations due to colds;

(b) That absenteeism of employees caused by colds is reduced 80 percent or any other stated percentage through the use of the preparation;

(c) That the preparation is sold only to corporations when in fact sales are sometimes made to individuals and individual proprietorships. (1-18818, Apr. 26, 1950.)

7990. **Electric Water Heater—Qualities and Safety.**—The Zevex Corp., an Illinois corporation, with its principal place of business located in Chicago, Ill., an advertiser-vendor, engaged in the business of offering for sale and selling in commerce, an electric water-heating device designated as "the Boil-Quik Water Heater," which device consists of an electrical element with a nondetachable cord; in use, the heating portion of said device is immersed in a vessel of water and the nondetachable cord, which consists of heavily insulated wires, is connected to a conventional electrical outlet. Said corporation entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Exaggerating the speed within which said device will provide plenty of hot or boiling water;

(2) Distributing or selling said device unless the word "caution" or "warning" together with adequate directions for safe use of the device is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock. (1-22928, Apr. 26, 1950.)

7991. **Diamonds—Dealer as Producer and Importer and Competitive Products.**—Hans C. Kionka, an individual trading as Kimberley Diamond Cutting Works, with his place of business located in New York, N. Y., and Albert Levy and Anna Z. Kionka, copartners, trading as H. C. Kionka & Co., with their place of business located in New York, N. Y., engaged in selling diamonds in commerce, entered into an

¹⁶ See 26 F. T. C. 1453.

agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(1) That they are cutters of diamonds or have a diamond-cutting works;

(2) That they are importers of diamonds;

(3) That the diamonds they sell as imperfect are regularly sold by competitors as perfect. (1-20904, Apr. 26, 1950.)

7992. Carburetor Device—Qualities and Manufacturing Status.—A. Fred Blakeslee, an individual with his place of business located in Wilkes-Barre, Pa., heretofore trading as Grosz Carburetor Co., advertiser-vendor, engaged in the business of offering for sale and selling in commerce a device for use in automobile carburetors designated as the "Grosz Air Feed Valve," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication, that said device or the use thereof will:

(1) Cause engines to start instantly;

(2) Almost eliminate carbon, sludge, or gum from engines;

(3) Increase gasoline mileage or effect a saving in gasoline;

(4) Result in better engine pick-up or increased engine power;

(5) Eliminate engine bucking and sputtering or the necessity for choking the carburetor;

(6) Decrease the oil consumption of an engine;

(7) Result in smoother engine performance;

(8) Result in higher motor or engine efficiency;

(9) Cause a perfect air-gas mixture;

(10) Result in increased vacuum pressure; or

(11) Result in better vaporization of gasoline.

A. Fred Blakeslee further agreed that he will cease and desist from representing that he is the manufacturer of such device. (1-21119, Apr. 26, 1950.)

7993. Carburetor Device—Qualities and Manufacturing Status.—Stanley J. Petroski and John Moran, copartners trading as King Pin Air Feed Valve Co., with their principal place of business located in Wilkes-Barre, Pa., advertiser-vendors, engaged in the business of offering for sale and selling in commerce a device for use in automobile carburetors designated as the "King Pin Air Feed Valve," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication, that said device or the use thereof will:

(1) Cause engines or motors to start instantly;

(2) Eliminate carbon, sludge, or gum from engines;

(3) Increase the mileage per gallon of gasoline or effect a saving in gasoline;

- (4) Result in smoother engine performance;
- (5) Result in faster engine pick-up or increase the power of an engine;
- (6) Decrease the oil consumption of an engine;
- (7) Eliminate engine bucking or sputtering or the necessity for choking the carburetor;
- (8) Provide a more perfect gas-air mixture for an engine.

Stanley J. Petroski, in connection with the offering for sale and sale of said device as aforesaid, further agreed that he will continue to cease and desist from representing that he is the manufacturer of said device. (1-21119, Apr. 26, 1950.)

7994. **Carburetor Device—Qualities.**—Bernard Wallace Coates, an individual trading as General Merchandising Co., with his principal place of business located in Dorchester, Mass., advertiser-vendor, engaged in the business of offering for sale and selling in commerce a device for use in automobile carburetors designated as the "Magic Motor Tune-Up," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication, that said device or the use thereof will:

- (1) Cause engines to start easier or quicker;
- (2) Increase gasoline mileage or effect a saving in gasoline;
- (3) Result in better vaporization of gasoline;
- (4) Increase engine power;
- (5) Result in smoother engine performance;
- (6) Reduce the formation of carbon in an engine;
- (7) Result in higher motor or engine efficiency. (1-21119, Apr. 26, 1950.)

7995. **Cigarettes—Qualities and Competitive Products.**—Leighton Tobacco Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling a tobacco product known as Phantom cigarettes, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

- (a) That whether they are dry or moist Phantom cigarettes cause no irritation of any kind and their smoking quality remains uniform;
- (b) That such cigarettes never become stale;
- (c) That the act of smoking a Phantom cigarette which has become dry restores its freshness; and
- (d) That the addition of chemicals or humectants to other cigarettes increases the irritating effect of the smoke. (1-22839, May 2, 1950.)

7996. **Liquid Petroleum Gas—Government Approval.**—Delaney's Inc., an Alabama corporation, with its principal office and place of business located in Mobile, Ala., and Edgar E. Delaney, president and principal stockholder of Delaney's Inc., engaged in the business of offering for sale and selling liquid petroleum gas, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

That this liquid petroleum gas is either inspected or approved by the United States Government. (1-22934, May 4, 1950.)

7997. **Drug Preparation—Therapeutic Properties.**—Frank J. Dawson, Donald W. Dawson, and Constance Dawson were copartners trading as the Converse Co. for several years prior to January 1, 1950, and they were engaged in the business of offering for sale and selling a drug preparation designated "Converse Compound." On January 1, 1950, that partnership was dissolved and the business has since been conducted as a copartnership by Donald W. Dawson and Nathan Dawson, under the same name. Prior to and discontinued with the dissolution of their partnership, Frank J. Dawson, Donald W. Dawson, and Constance Dawson disseminated certain advertising. Subsequently the same advertising was disseminated by Donald W. Dawson and Nathan Dawson, copartners trading as the Converse Co. With respect thereto, Frank J. Dawson and Constance Dawson agreed to continue to cease and desist from, and Donald W. Dawson and Nathan Dawson agreed to cease and desist from representing directly or by implication that the product has a beneficial effect on any type of epilepsy or nervous disorder associated therewith other than any tendency which it may have to diminish the severity and the frequency of the convulsive seizures of the grand mal type of epilepsy or to temporarily allay nervousness associated with the grand mal type or to promote sleep. (1-22793, May 1, 1950.)

7998. **Electric Water Heater—Properties and Safety.**—Nu-Way Corp., a Michigan corporation, with its principal place of business located in Grand Rapids, Mich., and Forrest Laug and Louis Laug, officers of said corporation, and as individuals, engaged in the business of offering for sale and selling in commerce a portable electric immersion type water heating device designated as "Hy-Speed Electric Water Heater," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Exaggerating the speed within which said device will provide hot or boiling water;

(2) Distributing or selling said devices unless the word "caution" or "warning" together with adequate directions for safe use of the device is firmly affixed thereto in a lasting manner informing the user

that failure to follow instructions may result in dangerous electric shock. (1-22951, May 1, 1950.)

7999. **Electric Water Heater—Properties and Safety.**—Horace G. Galloway and Gervis J. Galloway, copartners trading as G L Electric Co. and also as Bendik Sales Co. with their principal offices and places of business located in Detroit, Mich., engaged in the business of offering for sale and selling, in commerce, an immersion electrode type heating appliance in which the heating element is in direct contact with the water or liquid, said device being designated “Flasheat,” in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

- (a) That the use of this device is the cheapest way to heat water; or
- (b) That the use of this device will produce hot water in less time than is actually required, the volume of water to be heated and other conditions being specified.

Horace G. Galloway and Gervis J. Galloway, and each of them, further agreed to cease and desist from representing that this device is safe to use; and agreed further to cease and desist from distributing or selling said device unless the word “caution” or “warning,” together with adequate directions for safe use of the device, are indelibly impressed, imprinted, or affixed thereon, informing the user that unless the directions for use are strictly followed dangerous electric shock may result: *Provided, however*, That the word “caution” or “warning,” whichever is used, may be accompanied by reference to adequate directions for safe use separately but securely attached to the device and which inform the user that unless such directions are strictly followed dangerous electric shock may result. (1-21972, May 1, 1950.)

8000. **Petroleum Products—Dealer as Refiner.**—International Refining Co., a New Jersey corporation, with its principal place of business located at Ramsey, N. J., and John H. Westall, Jean Westall, and A. Edward Major, officers of said corporation, engaged in the business of offering for sale and selling petroleum products in interstate commerce, entered into an agreement, in connection with the sale and offering for sale thereof, to cease and desist from the use of the word “refining” or other word or term of like meaning as part of the trade or corporate name of said corporation, or in any manner which connotes that the said corporation owns, operates or directly controls a refinery where its products are distilled and refined from crude oil. (1-23209, May 12, 1950.)

8001. **Hair Preparation—Properties.**—Sapho Chemical Co., a North Carolina corporation with its principal office and place of business located in Winston-Salem, N. C., engaged in the business of offering for sale and selling a hair preparation designated “Sapho,” entered

into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

- (a) That the product has a beneficial effect on falling hair;
- (b) That the product has a beneficial effect on itching scalp or dandruff other than such tendency as it may have to temporarily relieve scalp itch accompanying dandruff and such tendency as it may have to facilitate the removal of loose dandruff scales; or
- (c) That the product promotes hair growth. (1-22823, May 12, 1950.)

8002. **Phonograph Needles—Durability.**—Jensen Industries, Inc., an Illinois corporation with its principal place of business located in Chicago, Ill., advertising-vendor, engaged in the business of offering for sale and selling phonograph needles in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Representing that its sapphire tipped phonograph needles will play 10,000 times or that its metal tipped needles will play up to 5,000 times, or that said needles will give any other stated number of plays, without plainly indicating that such needles may chip, break, or wear, which will cause sound distortion and result in improper tone fidelity. (1-19870, May 12, 1950.)

8003. **Phonograph Needles—Nature and Durability.**—Bonot Co., a Connecticut corporation with its principal place of business located in Stamford, Conn., advertiser-vendor, engaged in the business of offering for sale and selling phonograph needles in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Designating synthetic ruby tipped phonograph needles as "Ruby" or designating synthetic sapphire tipped phonograph needles as "Sapphire" without plainly describing them as synthetic ruby or synthetic sapphire, as the case may be;

(2) Representing that its synthetic, ruby-tipped needles will give up to 25,000 plays, that its synthetic-sapphire-tipped needles will give up to 10,000 plays, or that its alloy-tipped needles will give up to 5,000 plays, or that said needles will give any other stated number of plays, without plainly indicating that such needles may chip, break, or wear, which will cause sound distortion and result in improper tone fidelity. (1-21413, May 12, 1950.)

8004. **Varnish—Qualities and History.**—David Knopping and Sidney G. Goode, trading as Plastex Co., with their principal place of business located in Cambridge, Mass., advertiser-vendor, engaged in offering for sale, and selling, in commerce, a varnish designated "Plastex," entered into an agreement, in connection with the offering for sale, sale,

and distribution thereof, to cease and desist from representing, directly or by implication:

(a) That the said product is not affected by cold water or by alcohol, or that it is nonskid or slipproof, or that it will not chip or crack;

(b) That this product is a new laboratory discovery. (1-20145, May 15, 1950.)

8005. **Phonograph Needles—Durability.**—Columbia Records, Inc., a New York corporation with business offices located in Bridgeport, Conn., advertiser-vendor, engaged in the business of offering for sale and selling phonograph needles in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Representing that its sapphire tipped phonograph needles will give up to 10,000 plays or any other stated number of plays, without plainly indicating that such needles may chip, break, or wear which will cause sound distortion and result in improper tone fidelity. (1-23048, May 19, 1950.)

8006. **Jewelry—Nature and Quality.**—House of Jordan, Inc., a Connecticut corporation with its principal place of business located in New York, N. Y., and Robert M. Jordan, Ruth Mildred Jordan, George Reid, and Earl L. Morrow, individually and as officers of the corporation, engaged in the jewelry business, in interstate commerce, entered into an agreement in connection with the offering for sale, sale, and distribution, to cease and desist from:

(a) Using the word “pearls” or any other word or term of like meaning to designate, describe, or refer to products which are not pearls, or in any manner to imply that such products are pearls;

(b) Using the word “turquoise” as descriptive of insets in jewelry which are not in fact the natural precious stone turquoise; and from the use of such name or that of any other gem stone in a manner which may cause the belief or impression that an artificial product is such genuine stone;

(c) The use of the word “stone” or “stones” either alone or in connection with any other word or words as descriptive of or referring to insets of jewelry which are not in fact natural stones;

(d) Using the words “ruby,” “topaz,” “amethyst,” or “emerald” as descriptive of insets in jewelry, which are not in fact the natural precious stones named; and from the use of such names or that of any other gem stone in a manner which may cause the belief or impression that an artificial product is such genuine stone. (1-22125, May 19, 1950.)

8007. **Cosmetic Preparation—Qualities and Unique Nature.**—Duon, Inc., an Ohio corporation, with its principal office and place of business located in Coral Gables, Fla., and Donald H. Miller and Mary E.

Miller, officers of said corporation, engaged in the business of offering for sale and selling a cosmetic preparation designated "Vita-Fluff Custombilt Cream," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(a) That, when applied to hair, this preparation will strengthen the curl, will be absorbed by the hair shaft, is not removed by shampooing, or will not make the hair greasy;

(b) That this cream is of value in the prevention or treatment of skin wrinkles, that it will increase the fat content of the skin, or that it will be of value in the treatment of dark circles under the eyes;

(c) That this cream will be of value in the treatment of allergy, psoriasis, double chin, or brittle nails; or

(d) That this product is substantially different from every other cream on the market. (1-22437, May 29, 1950.)

8008. **Mattresses—Sample Conformance.**—United Mattress Manufacturing Co., a Massachusetts corporation with its principal place of business located in Lawrence, Mass., engaged in offering for sale and selling in commerce mattresses, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from the use of model mattresses which are not truly representative of the full size mattresses which it sells. (1-23140, May 18, 1950.)

8009. **Kneeling Device—Unique Business Status.**—The Holstein Rubber Products Co., Inc., a Connecticut corporation, with its principal place of business located in Hartford, Conn., engaged in offering for sale and selling in commerce a kneeling device designated "Kneel-O-Matic," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication that it is the only manufacturer of automatic kneeling devices. (1-22526, May 29, 1950.)

8010. **Correspondence Courses in Languages—History, Personnel, Prices, etc.**—Outlet Book Co., Inc., trading also as Living Languages Division, Crown Publishers, a New York corporation with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce courses of instruction in languages designated as "Living Language" courses, entered into an agreement, in connection with the offering for sale, sale, or distribution thereof, to cease and desist from representing, directly or by implication:

(1) That its said language courses are identical with the Army language courses; or that its said courses were used to teach foreign languages to men and women in the armed services;

(2) That Ralph W. Weiman is the country's foremost or best

equipped language expert; or that he was personally responsible for devising, developing or perfecting the language courses used by the armed forces;

(3) That said corporation maintains a faculty or teaching service to aid students of its language courses;

(4) That the price of said courses is 40 percent less than that of any similar course on the market.

Outlet Book Co., Inc., further agreed that it will forthwith cease and desist as aforesaid from:

(5) Using the abbreviation "Dr." in connection with the name of any representative of the said Outlet Book Co., Inc., or otherwise representing that any such person has received a doctorate or the degree of a doctor from an accredited institution of learning, when such is not the fact;

(6) Representing that persons taking such courses will learn to speak French or Spanish in seven days, or that they will learn French or Spanish without study or concentration, or that whoever takes such courses will be reading and speaking conversational French and Spanish fluently within a month; or in any other manner exaggerating the speed within which, or the ease or degree of thoroughness by which, a person taking the aforesaid language courses will be enabled to learn, speak, read, or write Spanish, French, or any other foreign language. (1-21127, May 29, 1950.)

8011. Correspondence Course in Maintenance of Radio and Television Equipment—Results.—National Radio Institute, a District of Columbia corporation, with its principal office and place of business located in Washington, D. C., engaged in the business of offering for sale and selling, in commerce, a correspondence course of instruction in the operation and maintenance of radio and television equipment, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

That students obtain experience in the field of television unless expressly limited to so much of the subject as is actually covered by the experiments included in said course. (1-22507, May 29, 1950.)

8012. Punchboards—Lottery Schemes.—Clifford H. Jenkinson and Joseph W. Koll, copartners trading as Hub Sales Co., with their principal place of business located in Spokane, Wash., engaged in the business of offering for sale and selling punchboards in combination with other merchandise, in interstate commerce, in competition with other individuals, firms, and corporations likewise engaged, entered into an agreement to cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards or other lottery devices which are to be used or may be used in the sale or distribution of

merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

Clifford H. Jenkinson and Joseph W. Koll, and each of them, further agreed that, in connection with the offering for sale, sale, and distribution of said merchandise, to cease and desist from:

(a) Selling or distributing merchandise so packed or assembled that sales thereof to the public are made or may be made by means of a game of chance, gift enterprise, or lottery scheme; or

(b) Supplying to, or placing in the hands of, others, punchboards or other lottery devices with assortments of merchandise which said punchboards or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public. (1-22953, June 7, 1950.)

8013. Floor Coating—Durability.—Rock-Tred Corp., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in offering for sale and selling in commerce a floor covering or coating designated "Resn-X," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

1. That the product is impervious to solvents;
2. That the use of the product will put an end to floor problems forever. (1-23180, June 7, 1950.)

8014. Pumps—Competitive Products.—Standard Steel Works, a Missouri corporation, with its principal place of business located in North Kansas City, Mo., advertiser-vendor, engaged in offering for sale and selling in commerce single jet type pumps and bituminous heating and spraying equipment, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist:

- (1) From representing that the spur-gear type pump has four bearings and two stuffing boxes and causes the material to foam and churn;
- (2) From representing that the rotating-plunger type pump has two bearings and two stuffing boxes to repair, adjust, or replace, and pushes the material through a labyrinth of passages, stops and abrupt changes causing the material to foam and churn. (1-21952, June 8, 1950.)

8015. Hair and Skin Preparations—Qualities, Composition and Competitive Products.—Benjamin D. Baxter, an individual doing business under the trade name of Kreem of Herb Laboratories, with his place of business located in Brooklyn, N. Y., engaged in the business of offering for sale and selling preparations designated "Kreem of Herb Shampoo," "Kreem of Herb Hair Conditioner," "Kreem of Herb Skin Cream," and "Kreem of Herb Hand Lotion," entered into an agree-

ment, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(a) That any of such preparations is compounded wholly of organic substances and that the use of such preparations or any of them will maintain the natural or youthful condition of the hair or skin;

(b) That Kreem of Herb skin cream penetrates the pores of the skin, activates the skin, assists skin glands, or gives natural lubrication to skin glands, and that such preparation is the only skin cream in which there is no mineral oil, petroleum, or paraffin wax;

(c) That skin preparations which contain petroleum oils clog or tend to clog the skin. (1-22501, June 9, 1950.)

8016. **Supports for Anatomical Conditions—Qualities, Doctors' Recommendation, etc.**—S. H. Camp & Co., a Michigan corporation, with its principal office and place of business located in Jackson, Mich., advertiser-vendor, engaged in the business of manufacturing and offering for sale and selling devices, supports in various forms and styles offered for use in specific anatomical conditions under the brand name "Camp," entered into an agreement, in connection with the dissemination of advertising relating to such products, to cease and desist from representing directly or by implication:

(a) That the use of said supports is indicated generally in cases of pregnancy, after-pregnancy or after operations;

(b) That these supports are recommended by physicians in other than certain individual cases;

(c) That Camp supports do not apply pressure or constriction; or

(d) That Camp supports have any usefulness other than providing a measure of support to and a change of position of certain parts of the body to which they may be applied during the time said supports are worn. (1-23194, June 8, 1950.)

8017. **Spaghetti Products—Red Cross Sponsorship.**—The John B. Canepa Co., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling food products designated "Red Cross Spaghetti" and "Red Cross Macaroni," entered into an agreement, in connection with dissemination of advertising relating to those products, to cease and desist from:

Representing directly or by implication that the said products are sponsored by, approved by, or in any way connected with the American National Red Cross: *Provided*, That it may use (subject to the permissible limits prescribed by the act of January 5, 1904, as amended by sec. 4 of the act of June 23, 1910), the words "Red Cross" or the mark of a Greek Red Cross in such advertising, but only if in each advertisement containing said words or said design it is clearly disclosed that

said products have no connection whatsoever with the American National Red Cross. (1-19013, June 15, 1950.)

8018. Insecticide—Effectiveness and Comparative Merits.—Cenol Co., Inc., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in offering for sale and selling in commerce an insecticide designated “1068 Cenol Tensite,” entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from disseminating any advertising which represents directly or by implication:

(1) That the preparation, when used in accordance with directions, will kill carpet beetles;

(2) That the preparation can be used to kill or control flour beetles infesting flour;

(3) That the preparation is more effective than DDT in the control of roaches by any specifically designated ratio when such relative effectiveness does not apply to actual conditions of use; and

(4) That the preparation has substantially greater effectiveness than DDT in controlling any species of insects other than roaches. (1-21937, June 19, 1950.)

8019. Poultry Feeds With “Built-In Worm Control”—Qualities.—Spear Mills, Inc., a Missouri corporation, with its principal place of business located in Kansas City, Mo., engaged in the business of offering for sale and selling various forms of Spear poultry feeds described as having “Built-In Worm Control,” entered into an agreement, in connection with the dissemination of advertising relating to said poultry feeds, to cease and desist from representing directly or by implication:

(1) That such products keep or help to keep poultry worm free;

(2) That such products control worms in poultry, unless clearly limited to the types of worms against which the products are effective as control measures;

(3) That such products can be used in a flock of poultry without shock to the systems of the birds and without reduction in the rate of egg laying. (1-22485, June 19, 1950.)

8020. Women’s Garments, etc.—Fiber Content and Prices.—Stern Bros., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling various products, including women’s garments and rugs, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist, with respect thereto, from:

(a) Advertising for sale or selling as “linen” any garment the fiber content of which is not linen exclusively;

(b) Advertising for sale or selling as “nylon,” any garment the fiber content of which is not nylon exclusively;

(c) Advertising for sale or selling articles composed in part or in whole of rayon without clearly disclosing the rayon and other content of such articles, designating each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent; or

(d) Representing that any article is regularly sold at any specified price, unless said price is that at which the article is usually sold. (1-23178, June 21, 1950.)

8021. Cigarettes—Comparative Merits and Qualities.—Brown & Williamson Tobacco Corp., a Delaware corporation, with its principal place of business located in Louisville, Ky., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, cigarettes designated as "Life," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That said cigarettes are safer for the throat, safer for the lungs, better for health or give safer smoking pleasure than other cigarettes;

(2) That said cigarettes or the smoke therefrom contain less irritating tars than other cigarettes or the smoke therefrom;

(3) That said cigarettes may be smoked to the full extent of anyone's desire without irritation or ill effects. (1-23239, June 21, 1950.)

8022. Electric Fence Controllers—Safety and Manufacture.—International Electric Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, electric fence controllers, including a controller designated as "Model 106 Maxi-Shok," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That its "Model 106 Maxi-Shok" controller is safe;

(2) That its controllers, or any thereof, are so constructed as to insure freedom from service worries. (1-22765, June 22, 1950.)

8023. Miscellaneous Merchandise—Supplying Lottery Devices, etc.—George J. Wanisko, an individual trading as George Sales Co., with his principal place of business located in Northampton, Pa., engaged in the sale and distribution of numerous articles of merchandise, including, among others, watches, rings, choker sets, and cameras, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Supplying to or placing in the hands of agents, distributors, dealers, members of the public, or others, push cards or any other devices which are to be used or may be used in the sale or distribution of his merchandise, or any merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme; or

(b) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (1-23335, June 28, 1950.)

8024. **Window Materials—Qualities.**—Arvey Corp., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in offering for sale and selling in commerce, window materials designated “R-V-Lite,” advocated as substitutes for glass window materials, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing:

(a) That the materials are moistureproof;

(b) That the materials designated “R-V-Lite 100-C,” “R-V-Lite 200-P,” and “R-V-Lite 400-T” are not adversely affected by weather or that they remain weatherproof or waterproof;

(c) That the material designated “R-V-Lite 100-C” will not crack or become brittle or that it transmits more radiant heat from sunlight than does ordinary glass;

(d) That the material designated “R-V-Lite 400-T” will not discolor or that it effects an appreciable transmittance of the ultraviolet rays;

(e) That the materials transmit rays which are essential to health or growth;

(f) That the use of its plastic-coated window materials in poultry or other farm buildings will cause animals housed therein to be healthier or sturdier or to grow faster or that the said materials will cause hens to lay more and larger eggs than will be the case where ordinary glass is used, unless such representations are clearly and expressly limited to the benefit which may result from exposure to such ultraviolet rays as may be transmitted by said materials where such rays adequately compensate for a deficiency of vitamin D in the diet;

(g) That the use of its plastic-coated window materials in poultry houses will prevent such conditions as leg weakness and crooked breast bones, unless such representations are clearly and expressly limited to the benefits which may result from exposure to such ultraviolet rays of the sun as may be transmitted by such materials where such rays adequately compensate for a deficiency of vitamin D in the diet. (1-22779, June 28, 1950.)

8025. **Electric Water Heater—Qualities and History.**—Adolph Grossman, an individual trading as Metropolitan Electronics & Instruments Co., with his principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, an electric water heating device designated as the “DeLuxe Heater,” entered into an agreement, in connection

with the offering for sale, sale, and distribution thereof to cease and desist from:

(1) Exaggerating the speed with which said device will provide running hot water or exaggerating the quantity of hot water which it will provide;

(2) Representing that said device is revolutionary or new. (1-22924, June 29, 1950.)

8026. **Dry Rug Shampoo—Qualities.**—Puritan Sales Co., a Georgia corporation, with its principal place of business located in Atlanta, Ga., advertiser-vendor, engaged in the business of offering for sale and selling a preparation designated "Puritan Dry Rug Shampoo," entered into an agreement, in connection with the offering for sale, sale, or distribution thereof, to cease and desist from representing, directly or by implication, that said preparation:

Will restore faded or soiled colors in rugs. (1-21395, June 29, 1950.)

8027. **Pencils—Comparative Merits and Tests.**—Eberhard Faber Pencil Co., a New York corporation, with its principal office and place of business located in Brooklyn, N. Y., advertiser-vendor, engaged in offering for sale and selling in commerce pencils designated "Mongol pencils," entered into an agreement in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(a) Representing that the pencils stay sharper longer than every other well-known pencil in the same price range or that said pencils are superior in point sharpness to every other well-known pencil in the same price range;

(b) Representing that scientific laboratory tests of every well-known pencil in the same price range conclusively prove point sharpness superiority for the Mongol pencils by 29 percent. (1-22367, June 30, 1950.)

8028. **Electric Water Heater—Qualities, Safety and Laboratory Status.**—Jiffy, Inc., an Illinois corporation with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in commerce an electric hot water heating device designated as the "Jiffy Electric Hot Water Heater," which device consists of an electrical element with a non-detachable cord, when in use, the heating portion of the device is immersed in a vessel of water and the nondetachable cord, which consists of heavily insulated wires, is connected to an electrical outlet, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Exaggerating the speed with which said device will provide steaming hot water or will provide hot water in quantity;

(2) Distributing or selling said devices unless the word "caution"

or "warning" together with adequate directions for safe use of the device is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock;

(3) Using the word "laboratories" or other word or term of like meaning in connection with its corporate name, or otherwise representing, directly or inferentially, that it maintains a laboratory, unless it actually owns and operates or directly and absolutely controls a laboratory containing equipment and apparatus for study and experimentation by scientists or technicians employed for the conduct of research in connection with electric water heating devices or other products. (1-23120, June 30, 1950.)

7813.¹ "Jump Boots"—Nature, Army Specifications and Composition.—This stipulation has been amended so that it now reads:

Georgia Shoe Manufacturing Co., Inc., a Georgia corporation, with its principal office and place of business located in Flowery Branch, Ga., advertiser-vendor, engaged in the business of offering for sale and selling *shoes*, including a style known as "*Jump Boots*," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(a) Pictorially or otherwise, that said boots are regulation paratroop boots, or are manufactured in accordance with specifications for paratroop boots for use by the armed services; or

(b) That said boots are made from elk-finish cowhide, or that they have two full grain outer soles or a steel instep shank.

Georgia Shoe Manufacturing Co., Inc., further agreed that the aforesaid amendment shall be effective as of the date of the approval thereof by the Federal Trade Commission. (1-21928, Nov. 18, 1949.)

¹ Amended.

INVESTIGATIONS AND RECOMMENDATIONS UNDER THE EXPORT TRADE ACT

IN THE MATTER OF

CARBON BLACK EXPORT, INC., ET AL.¹

REPORT OF INVESTIGATION, CONCLUSION, AND RECOMMENDATIONS IN RE
ALLEGED VIOLATIONS OF THE EXPORT TRADE ACT, APPROVED APRIL 10,
1918

*Docket 202-5. Notice and Summons, October 28, 1944. Report, Conclusions, and
Recommendations, July 12, 1949*

CONTENTS

Report of investigation:	Page
I. The proceedings.....	1250
II. The association.....	1250
A. Description of organization.....	1250
B. Officers and directors.....	1251
III. Historical background.....	1251
A. Commodity involved.....	1251
B. Carbon Black Association, Inc. (former group).....	1256
C. Transition period.....	1256
D. Carbon Black Export, Inc. (present group).....	1257
IV. Export trade operations investigated.....	1260
A. Association—Phillips Petroleum Co. contract.....	1260
B. Exclusive contracts with stockholders.....	1271
C. Exclusive contracts with nonstockholders.....	1289
1. 10 percent purchases from outsiders.....	1289
2. Herkness negotiations.....	1291
3. Invitation of October 24, 1935.....	1300
4. Magnolia correspondence.....	1304
5. Continental quota.....	1308
6. Invitation of June 6, 1940.....	1324

¹ The officers, directors and stockholders joined as respondents, follow :

Officers : C. E. Kayser, president and director, 500 Fifth Avenue, New York 18, N. Y. ;
Reid L. Carr, secretary and director, 45 East Forty-second Street, New York 17, N. Y. ;
F. R. Cantzlaar, treasurer, 41 East Forty-second Street, New York 17, N. Y.

Directors : Godfrey L. Cabot, 77 Franklin Street, Boston 10, Mass. ; Thomas D. Cabot,
77 Franklin Street, Boston 10, Mass. ; Oscar Nelson, United Carbon Co. Building, Charles-
ton 27, W. Va. ; R. H. Eagles, 460 West Thirty-fourth Street, New York 1, N. Y. ; Hans W.
Huber, 460 West Thirty-fourth Street, New York 1, N. Y. ; Robert I. Wishnick, 295 Madi-
son Avenue, New York 17, N. Y. ; L. C. Herkness, Tenth and Lombard Streets, Philadelphia,
Pa.

Stockholders : United Carbon Co., Inc., United Carbon Co. Building, Charleston 27,
W. Va. ; Columbian Carbon Co., 45 East Forty-second Street, New York 17, N. Y. ; Godfrey
L. Cabot, Inc., 77 Franklin Street, Boston 10, Mass. ; J. M. Huber Corp., 460 West Thirty-
fourth Street, New York 1, N. Y. ; Panhandle Carbon Co., Inc., 295 Madison Avenue, New
York 17, N. Y. ; Chas. Eneu Johnson & Co., Tenth and Lombard Streets, Philadelphia, Pa.