

IN THE MATTER OF
STANDARD BRANDS INCORPORATED
REPORT OF THE FEDERAL TRADE COMMISSION UPON ITS INVESTIGATION OF
ALLEGED VIOLATIONS OF ITS ORDER TO CEASE AND DESIST

Docket No. 2986. January 10, 1950

THE PROCEEDINGS

On December 30, 1946, the Commission directed that an investigation be conducted for the purpose of determining (1) whether respondents, Standard Brands Incorporated and Standard Brands of California, had violated an order to cease and desist issued against them on June 15, 1939, and (2) whether said respondents were selling or contracting to sell bakers' yeast at prices which were unreasonably low for the purpose of destroying or eliminating a competitor. A trial examiner of the Commission was duly designated to preside at hearings to be conducted for such purposes. Said trial examiner was empowered with all the functions and duties of a trial examiner as provided by the Commission's Rules of Practice in the same manner as though the hearings were to be conducted pursuant to formal complaint. Acting upon respondents' motion of January 6, 1947, the Commission, on January 17, 1947, ordered that further action be deferred as to item (2) above, and thereafter, by order duly entered herein, rescinded its order of December 30, 1946, as to said item so that it is not herein considered.

Pursuant to, and in accordance with, the foregoing, hearings were held at which evidence was adduced and received before said trial examiner in various cities during eight months of 1947, and the reception of evidence was terminated on January 6, 1948. On January 9, 1948, the Commission directed the trial examiner to report to it his findings as to whether or not the evidence adduced was sufficient to justify a petition to the United States Circuit Court of Appeals to affirm and enforce the order to cease and desist herein. Subsequently, counsel supporting the contentions that the order to cease and desist had been violated and counsel for the respondents each filed proposed findings and conclusions, and the trial examiner thereafter submitted his report as directed, to which exceptions were filed by opposing

counsel, each of whom also filed briefs and presented oral argument before the Commission in support of their contentions.

The Commission has duly considered the evidence adduced during the investigation herein, the report of the trial examiner and each of the exceptions thereto, briefs and oral argument of opposing counsel, and the record herein, and being now fully advised in the premises, makes this its report upon the investigation of the alleged violations of the order to cease and desist.

THE ORDER

The order to cease and desist, issued June 15, 1939, prohibits respondents from discriminating in price between different purchasers of bakers' yeast of like grade and quality sold in interstate commerce or in the District of Columbia,

(1) By selling said bakers' yeast at different prices based upon the total quantity or volume purchased or required monthly by the respective purchasers, as set forth in Schedule A of Paragraph Ten of said findings of fact;

(2) By selling said bakers' yeast at different prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) over a period of time by the respective purchasers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or to injure, destroy or prevent competition with respondents or any of their customers, except where said differentials in price, based upon the quantities or volume purchased from the respondents during such period of time by said respective purchasers, make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials are allowed;

(3) By means of price differences resulting from selling said bakers' yeast to a single purchaser at prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) during a period of time by such purchaser, irrespective of the quantities or volume delivered by the respondents to the separate plants, factories, bakeries, or warehouses of such purchaser, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or to injure, destroy or prevent competition with respondents or any of their customers, except where said differentials in price make only due allowance for differences in the cost of manufacture, sale or delivery result-

ing from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered;

(4) By selling said bakers' yeast to certain of such purchasers at so-called "off-scale" prices as described in paragraph 12 of said findings of fact, even though the differentials in price of any given price scale make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials in price are allowed.

REPORT ON THE FACTS

PARAGRAPH 1. Respondent Standard Brands of California was dissolved on December 31, 1942, and its business has subsequently been carried on by Standard Brands, Inc., so that for the purposes of this proceeding only the pricing practices of the latter are considered. Paragraph 1 of the order is not involved in this proceeding, since respondent discontinued the use of the price schedule identified therein on May 1, 1940.

PAR. 2. On May 1, 1940, respondent filed a report of the manner and form in which it stated it was complying with the order of June 15, 1939, which, among other things, contained four price scales which respondent adopted and made effective for pound yeast on the same date in the several areas in which it was selling said product. The scale for the eastern and central portions of the United States (scale A) was as follows:

Bracket No.	Monthly purchases in pounds	Price per pound (cents)
1.....	1-99.....	21
2.....	100-249.....	18
3.....	250-449.....	16
4.....	450-699.....	15
5.....	700-999.....	14
6.....	1,000-1,399.....	13½
7.....	1,400-1,899.....	13
8.....	1,900-2,499.....	12½
9.....	2,500 and up.....	12

The three additional scales (B, C, and D) adopted for sales in other areas, were identical with scale A except that they established per pound prices which were higher by 1, 2, and 3 cents, respectively. On August 1, 1944, respondent made certain adjustments in the areas in which the aforesaid price scales were effective. A portion of the area formerly covered by scale B was included in the territory covered by scale A. All the area formerly covered by scale C was included in the territory covered by scale B, while the area covered by scale D remained unchanged. The use of scale C was discontinued. Thus, a price reduction of 1 cent per pound was effected in all that

area included in the territory covered by another scale in which the prices had been lower by this amount.

PAR. 3. (a) On January 2, 1945, respondent adopted and put into effect revised price scales whereby it lowered its prices for pound yeast in all areas. The new scale A, effective throughout the United States except for certain Rocky Mountain, southeastern, and southwestern territories, was as follows:

Bracket No.	Monthly purchases in pounds	Price per pound (cents)
1.....	1-49.....	20
2.....	50-99.....	18
3.....	100-449.....	15
4.....	450-999.....	13
5.....	1,000-1,899.....	12
6.....	1,900-2,499.....	11½
7.....	2,500 and up.....	11

Two additional scales (B and D) adopted for sales in other areas of the United States and Alaska, respectively, were identical with scale A except that they established per pound prices which were higher by 1 and 3 cents, respectively. These three price scales remained in effect until March 24, 1947.

(b) For comparative purposes, respondent's scale of prices in each bracket in effect in zone A before and after January 2, 1945, is set out in the following table:

Pounds per month	Old price	New price	Difference in price
1-49.....	\$0.21	\$0.20	\$0.01
50-99.....	.21	.18	.03
100-249.....	.18	.15	.03
250-449.....	.16	.15	.01
450-699.....	.15	.13	.02
700-999.....	.14	.13	.01
1,000-1,399.....	.13½	.12	.01½
1,400-1,899.....	.13	.12	.01
1,900-2,499.....	.12½	.11½	.01
2,500 and up.....	.12	.11	.01

(c) The secretary and general counsel of respondent addressed a letter to the Commission on December 22, 1944, in which he explained that the price scales of January 2, 1945, were being adopted—

Because of the expanded total volume in our business, this corporation has been able to effect certain operating economies, and is now in a position to pass certain resulting savings on to its customers by a reduction of at least 1 cent per pound for baker's yeast in every case, and by a greater reduction in certain instances. We have been able to consolidate some of the price brackets, and have added a new bracket of from 1 to 49 pounds, reducing the total number of brackets from nine to seven.

In addition to being able to effect general price decreases, as mentioned above, we have been able to include the areas in Michigan which were formerly sold at prices specified in exhibit II in the prices charged in areas embraced in exhibit I.

We have also been able to change the prices charged in Key West, Fla., from those specified in exhibit IV, by reducing them to prices specified in exhibit II. * * *

PAR. 4. (a) From 1941 to 1945, inclusive, respondent was engaged in competition with ten firms also engaged in the manufacture and sale of bakers' yeast. A list of these, together with a description of the area in which each sold, is as follows:

<i>Company</i>	<i>Sales area</i>
Anheuser-Busch, St. Louis, Mo-----	East of the Rocky Mountains.
National Grain Yeast Corp. (now National Yeast Corp.), Belleville, N. J.	From Richmond, Va., north to Maine and west to Omaha, Nebr.
Red Star Yeast Co., Milwaukee, Wis---	Central United States, west to Salt Lake City, Utah, south to Texas and New Orleans and east to Philadelphia not including Southeastern and New England States.
Federal Yeast Corp., Baltimore, Md----	Eastern seaboard from Massachusetts south to Washington, D. C., including Pennsylvania and Ohio.
Peerless Yeast Co., San Francisco, Calif. (Yeast Division of Acme Brewing Co.).	West coast and Arizona, Nevada, Utah, and Idaho.
Consumers Yeast Co., San Francisco, Calif.	Washington, Oregon, and California.
Capital Yeast Co., West Brookfield, Mass.	New Hampshire, Massachusetts, and Connecticut.
Atlantic Yeast Co., New York City-----	New York metropolitan area.
Calumet Yeast & Grain Products Co., Chicago, Ill.	Chicago, Ill., and Gary and South Bend, Ind.
A. M. Richter Sons Co., Manitowoc, Wis.	Green Bay, Wis., to Chicago, Ill., and west to Minneapolis and St. Paul, Minn.

These companies are hereinafter sometimes referred to respectively as follows:

Anheuser-Busch or AB;	Consumers or Cons;
National Grain or NG;	Capital or Cap;
Red Star or RS;	Atlantic or Atl;
Federal or Fed;	Calumet or Cal;
Peerless or Prls;	Richter or Ric;

and respondent as Standard Brands or SB.

(b) The annual sales of pound or bakers' yeast by respondent and these competitors for the years 1941 through 1945 and the percentage of the total sales made by each were as follows:

Company	1941 ¹	1942 ¹	1943 ²	1944 ²	1945 ²	Percent
SB.....	Pounds 110,563,388	Pounds 113,495,384	Pounds 116,415,716	Pounds 119,059,336	Pounds 124,491,478	Percent 57.6
AB.....	32,890,127	33,876,894	38,278,860	36,964,237	38,736,364	17.9
NG.....	19,933,717	21,217,554	19,263,171	19,743,341	20,734,559	9.6
RS.....	8,237,003	8,952,512	8,477,839	9,424,659	10,321,979	4.8
Per.....	9,455,394	8,884,187	7,077,453	7,019,844	7,683,334	3.6
Pris.....	3,484,888	4,662,882	4,523,749	4,768,689	5,396,301	2.5
Cons.....	2,152,869	2,452,569	2,509,886	3,035,748	3,342,867	1.5
Cap.....	2,098,002	2,160,370	1,706,072	2,196,498	2,417,278	1.1
Atl.....	2,870,000	3,900,000	4,330,000	4,260,000	4,260,000	1.2
Orl.....	435,346	437,724	429,661	437,832	427,481	.1
Ric.....	516,572	670,190	501,925	278,244	201,282	.1
Total.....	192,637,906	202,710,766	202,534,332	205,498,958	216,231,923	

¹ Figures for 1941 and 1942 include sales to the U. S. Government.

² Except as indicated in footnotes 3 and 4, figures exclude sales to the U. S. Government.

³ Estimated figure on assumption sales to Government were the same as in 1944.

⁴ All sales. Figures exclusive of Government sales not in record. 1945 figure for Atlantic assumed to be same as 1944.

(c) Except for sales made by Calumet, Atlantic, and Capital, the following table provides a comparison of prices existing between respondent and its competitors on pound or bakers' yeast in zone A for the period from May 1, 1940, to the end of 1944:

Monthly purchases in pounds	SB	AB	NG	RS	Fed	Ric
1-50.....	\$0.21	\$0.20	\$0.18	\$0.20	\$0.20	\$0.18
50-100.....	.21	.18	.16	.18	.18	.17
100-150.....	.18	.18	.16	.18	.16	.16
150-250.....	.18	.16	.15	.16	.15	.15
250-450.....	.16	.15	.14	.15	.14	.14
450-500.....	.15	.15	.14	.15	.14	.14
500-700.....	.15	.14	.13	.14	.13	.13
700-750.....	.14	.14	.13	.14	.13	.13
750-1,000.....	.14	.14	.13	.135	.13	.13
1,000-1,400.....	.135	.135	.125	.13	.125	.125
1,400-1,500.....	.13	.13	.125	.13	.125	.125
1,500-1,900.....	.13	.13	.12	.125	.12	.12
1,900-2,000.....	.125	.125	.12	.125	.12	.12
2,000-2,500.....	.125	.125	.12	.12	.12	.12
2,500-3,000.....	.12	.12	.115	.12	.115	.115
3,000-3,500.....	.12	.12	.115	.115	.115	.115
3,500-4,000.....	.12	.12	.115	.115	.115	.11
4,000 and over.....	.12	.12	.11	.11	.11	.11

¹ Effective Apr. 6, 1944.

(d) The following table supplies a similar comparison with Pacific coast competitors from May 1, 1940, to August 1, 1944:

Monthly purchases	Standard Brands	Consumers	Peerless
1-99 pounds.....	\$0.22	\$0.22	\$0.22
100-249 pounds.....	.19	.19	.19
250-449 pounds.....	.17	.17	.17
450-699 pounds.....	.16	.16	.16
700-999 pounds.....	.15	.15	.15
1,000-1,399 pounds.....	.145	.145	.145
1,400-1,899 pounds.....	.14	.14	.14
1,900-2,499 pounds.....	.135	.135	.135
2,500 pounds and over.....	.13	.13	.13

On August 1, 1944, the foregoing prices were changed as follows:

Monthly purchases	Standard Brands	Consumers	Peerless
1-99 pounds.....	\$0.21	\$0.21	\$0.21
100-249 pounds.....	.18	.18	.18
250-449 pounds.....	.16	.16	.16
450-699 pounds.....	.15	.15	.15
700-999 pounds.....	.14	.14	.14
1,000-1,399 pounds.....	.135	.135	.135
1,400-1,899 pounds.....	.13	.13	.13
1,900-2,499 pounds.....	.125	.125	.125
2,500-2,999 pounds.....	.12	.12	.12
3,000 pounds and over.....	.12	.12	.115

During the period from May 1, 1940, to the end of 1944, Consumers, in two or three instances, made sales at 11 cents per pound for quantities in excess of 2,500 pounds per month. On April 6, 1944, Red Star Yeast Company reduced its prices by one-half cent per pound on quantities of 3,000 pounds to 4,000 pounds and one cent per pound

on quantities of 4,000 pounds and up. There were no other changes in price schedules during the year by respondent or any of its competitors in the territory covered by scale A. It was not until the respondent, on January 2, 1945, issued its new price list, hereinbefore mentioned, in which it reduced the price in all of its brackets, that competitors, such as Anheuser-Busch, National Grain, and Federal, reduced their prices, and then Red Star again reduced its price to meet the further reduction by respondent and the other competitors.

PAR. 5. (a) At the time respondent adopted its price scales of January 2, 1945, its officials had knowledge of its relative position in the industry, as well as the relative position of each of its major competitors. They had knowledge of the prices at which most competitors were selling bakers' yeast. A number of said officials testified that price was the dominant factor in the sale of yeast, that the afore-said price scales were adopted and made effective because respondent had suffered major losses in its business and was threatened with additional losses because of the lower price of competitors, and that the adoption of said price scales was necessary in order for it to maintain its position in the industry.

(b) The evidence of record clearly discloses that during the years 1941 through 1944, inclusive, respondent consistently sold bakers' yeast at prices higher than those in effect with most of its competitors and that during said period its volume of sales in bakers' yeast was slightly in excess of 57 percent of the total sales of said product throughout the United States. In fact, its volume of sales in 1944 exceeded its sales made in any of the three previous years by more than 2½ million pounds, and in the same year it slightly increased its percentage of sales in relation to the total sales of all competitors. It is equally clear that the general reduction in prices and those price reductions and differentials effected through the revision of total monthly purchase requirements adopted by the price scale of January 2, 1945, were not made for the purpose of meeting equally low prices of competitors. A comparison of respondent's prices thereby made effective in zone A with those of competitors in the same area discloses that in at least 48 instances respondent reduced its prices one-half to 3 cents per pound below those of competitors, while in many other instances its prices, which had previously been higher, were brought to the same level. Respondent conducted no cost study, either before the adoption of said price scales or during the period in which they were effective, to determine if the differentials in price based on different volume purchase requirements therein set out made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which its bakers' yeast was sold or delivered to purchasers during the period in which said differentials were allowed.

(c) As a result of respondent's change in prices on January 2, 1945, three of its competitors, namely, Anheuser-Busch, Consumers, and Peerless, were obliged to lower their bakers' yeast prices in every bracket, while all remaining competitors found it necessary to reduce their prices in some brackets. Some competitors showed an operating loss, while others sustained material reductions in profit. Practically all competitors were compelled to curtail their operations by reducing the number of their delivery routes, by reducing the number of customers served or otherwise, and one competitor discontinued its bakers' yeast business as an indirect result of respondent's adoption of said price scales.

(d) From the foregoing, the Commission finds that from January 2, 1945, to March 24, 1947, respondent, in the offering for sale, sale and distribution of bakers' yeast of like grade and quality in interstate commerce, discriminated in price between different purchasers by selling said yeast at different prices based upon the total quantity or volume purchased monthly by the respective purchasers; that the effect of said discriminations in price was, and has been, to substantially lessen competition in the line of commerce in which respondent has been, and is engaged, and to injure, destroy, or prevent competition with respondent; that said price discriminations were not made in good faith to meet equally low prices of competitors; and that respondent made no cost study to determine if said differentials in price made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which said bakers' yeast was sold or delivered.

PAR. 6. During approximately 7 months of 1945 respondent sold bakers' yeast to Pucillio Brothers, Inc., Boston, Mass., and delivered a portion thereof to this firm and the balance to the nearby Lagrassa Bakery. The total amount delivered to both each month was billed to Pucillio at the scale price which prevailed on the combined amount, thus resulting in a lower price to Pucillio than if it had taken delivery only in amounts sufficient to meet its requirements. The record shows that this arrangement was made by a local representative of respondent and was terminated by a higher official when brought to his attention. Having found that sales at the regular scale of prices prevailing during this period resulted in unjustified price discriminations, the Commission finds that the sale of bakers' yeast as described in this paragraph resulted in greater discriminations than those previously set forth and that the effects of such discriminations are substantially as stated in paragraph 5 above.

PAR. 7. (a) The record contains details of the accounts of 242 customers of respondent which were introduced as evidence tending to show violations of paragraph 4 of the order to cease and desist. It appears that in 15 of these sales were made in accordance with the

scale prices, while in 226 sales were made at prices which were below those established by respondent's scale of prices in existence between January 2, 1945, and March 1946 for the volume of monthly purchases by respective customers involved. Sales made below scale prices fall in two categories: (1) Those where the customer purchased a portion of his monthly requirements from respondent and a portion from competitors and the price granted him by respondent was based upon the customer's total purchases in accordance with the respondent's established scale of prices just as though the customer's entire monthly purchases had been made from respondent, and (2) those in which the customer purchased his total monthly requirements from respondent but was granted a price below that required by respondent's established price for his particular monthly volume of purchases. The majority of sales made by respondent at prices below its established scale of prices falls in the first category.

(b) Most of the 226 accounts to which sales were made at prices below those established by respondent's scale of prices involved transactions with small and medium-sized bakers in which sales were made by respondent's sales representatives in accordance with its instructions. It was this class of customer which was given the greatest advantage by respondent's price scales of January 2, 1945, and which had previously been purchasing bakers' yeast from respondent at prices in excess of those paid competitors. Respondent's sales representatives were in effect instructed to exercise their best efforts to sell at scale prices when possible and to deviate therefrom only where, and to the extent, they found it necessary to do so in order to protect respondent's business or get new business and to permit such price deviation only to the extent of meeting the low price of a competitor. The evidence of record discloses that these instructions were substantially carried out.

However, said instructions were initially deficient in two respects and therefore ineffective in preventing sales at prices which deviate from respondent's scale prices only to the extent of meeting equally low prices of competitors. Respondent failed to advise said representatives as to what low price of a competitor was to be met or to define said low price and permitted them to consider the entire monthly requirements of a customer to be used as a basis for determining the price to be quoted and used in meeting the undefined low price of a competitor regardless of the monthly quantity actually purchased from respondent. The record discloses numerous instances in which respondent quoted and sold bakers' yeast not only at prices below its established scale prices but below the prices of competitors, particularly when the monthly volume purchased by the customer is taken into consideration and used as a basis for determining price. In such instances the low price of a competitor was for a monthly quantity of

yeast far in excess of that sold said customer by the respondent. In other instances, where respondent was already supplying the total monthly requirements of a customer it reduced prices below its scale for such requirements. In these instances its representatives were advised by the buyer of unconfirmed price quotations of competitors, and in others neither respondent nor its representatives had any knowledge of the competitive price quotations or even the name of the alleged potential competitor.

(c) For more than 9 years prior to January 2, 1945, respondent consistently sold bakers' yeast at prices higher than those of most of its competitors and yet retained more than 57 percent of the total volume of said yeast sold throughout the United States. A competitive situation or condition was thus established under which most competitors of respondent could normally expect to sell and did sell bakers' yeast at prices slightly below those of respondent. Also, buyers normally expected to purchase, and did purchase, said product from respondent at prices slightly in excess of those paid most of its competitors. Under these conditions it was unnecessary for respondent to meet or match exactly a lower price of a competitor in order to retain business or to get new business. By adoption of its price scales of January 2, 1945, respondent overturned the conditions of 9 years' standing and initiated discriminatory prices in many instances lower than the prices of its competitors and thereby forced them to lower their prices to an extent which threatened their ability to survive. By thereafter selling below the prices thus established, in some instances, respondent in fact put into effect still larger price differentials resulting in still broader discriminations than those found to exist under said price scale. In view of the foregoing the Commission is of the opinion that the respondent did not in good faith meet the equally low prices of competitors after January 1945 but abandoned its former policy of making higher prices than its competitors for one of underselling them on a discriminatory basis.

CONCLUSION

From the foregoing, the Commission concludes that in the sale of bakers' yeast in interstate commerce between January 2, 1945, and March 24, 1947, respondent has violated paragraphs (2), (3), and (4) of the order to cease and desist issued June 15, 1939.

Commissioner Mason not concurring.

TRADE PRACTICE CONFERENCE SUMMARY

During the period covered by this volume, namely, from July 1, 1949, to June 30, 1950, trade practice rules were promulgated for nine industries, and revised for a tenth, under the Commission's trade practice conference procedure, which was established by the Commission to protect the public from the harmful effects of such unfair practices as false, misleading advertising and other forms of distribution, and is designed to bring about law observance on an industry-wide basis through the cooperative establishment and maintenance of rules designed to prevent unfair trade practices.

As pointed out by the Commission in its 1950 Annual Report, the procedure is utilized by the Commission, along with its voluntary individual stipulation-agreements or procedures to encourage widespread observance of the law by enlisting the cooperation of members of industries and informing them more fully of the requirements of the law, so that wherever consistently possible the Commission may avoid the need for adversary proceedings against persons who through misunderstanding or carelessness, may violate the law unintentionally, and the objective is to utilize the best thought and voluntary cooperation of all concerned in establishing rules reflecting the requirements of law and a high standard of ethics.

Such industries, and rules applicable thereto, as thus promulgated, include:

The Venetian blind industry, the members of which are engaged in the manufacture, assembly, sale, or distribution of venetian blinds or parts or accessories for them, with aggregate annual retail sales of blinds approximating \$200,000,000, and in which the rules include a definition of what may properly be termed a venetian blind, prohibit misuse of the term, and of such significant terms as "custom built," "made to order," and "removable slats" in describing such blinds, and proscribe various deceptive pricing schemes and unfair methods.

The Peat industry, in which business of the industry is the marketing of peat products represented as suitable for any agricultural or horticultural soil conditioning or soil improvement purpose, for use as poultry or stable litter, or for similar uses, and in which the rules ban various unfair methods and deceptive practices and afford in-

¹ Copies of the full trade practice conference rules, as promulgated for the different industries, and other specific information with respect to the Commission's Trade Practice Conference work, which is described in the Commission's Annual Report, may be had on application to the Commission.

dustury members guidance as to the proper use of terms such as "peat moss" and "moss peat."

The Fountain pen and mechanical pencil industry, the members of which are engaged in manufacturing and marketing fountain pens, ball point pens, dip pens, mechanical pencils, and parts of such products, with annual sales, at retail, aggregating \$250,000,000 and in which rules are directed to the elimination and prevention of various types of unfair trade practices offer a yardstick to industry members in curbing misleading advertising and cover specifically the false use of the terms "Iridium tipped" and "Osmiridium tipped," and also deal with deceptive practices with respect to gold content.

The Wholesale optical industry, the members of which sell corrective eye glasses or lenses, with or without processing, and eye glasses, frames, mountings, parts or accessories, the total volume of business of which is about \$147,000,000 and in which the rules promulgated, upon application from the industry, are concerned with clarifying the interpretations of section 2 of the Clayton Act, as amended, and cover also certain unfair methods and practices such as misrepresentation, misuse of the terms "close-outs" and "discontinued lines," transactions below cost, commercial bribery and inducing breach of contracts;

The Mail-order insurance industry, in which the rules are designed primarily to eliminate and prevent deceptive sales-promotional practices and advertising, in interstate commerce, and include such subjects as misuse of such terms as "full coverage" and "hospitalization"; deceptive concealment of exceptions contained in the policy; misuse of the word "all" as applied to benefits; confusing use of duplicate names for the same disease; time limitations not fully disclosed; deceptive testimonials; and misrepresentations that policies are especially advantageous to a special group;

The Shoe finders industry, including wholesalers of leather and rubber shoe repair materials and other products used in the repair, servicing, and preservation of shoes and similar footwear, with sales amounting, in 1948, to about \$100,000,000, and in which the rules are designed to correct such unfair practices as illegal price discrimination, misrepresentation of quality grading, defamation of competitors, commercial bribery, and coercing purchase of one product as a prerequisite to the purchase of other products;

The Candy manufacturing industry, involving all products of the industry, excluding solid or molded chocolate products (for which a separate set of rules is under consideration) with total sales, at wholesale, in 1948, in excess of \$900,000,000 and in which the rules are directed at the correction of such specific abuses as misuse of the word

"free," tie-in sales, false advertising, price discrimination, and the use of lottery schemes;

The Fine and wrapping paper distributing industry, held upon industry application, in which the members are engaged in selling at wholesale or distributing fine and wrapping paper products, including writing paper, envelopes and paper boards, and in which the group I rules are directed against the prohibition of various forms of deception and unfair methods, and eight group II rules are directed to fostering sound business methods and the promotion of fair competition;

The Tie fabrics industry, held upon application of industry members, including converters who produce fabrics used in the manufacture of men's neckwear, and in which the rules proscribe various forms of misrepresentation as to fiber content, color fastness, foreign origin of fabric or design, and other unfair practices;

The Umbrella industry, having to do with the manufacture, assembly, sale and distribution of various kinds and types of such products and parasols, in which the rules as promulgated on March 9, 1940, were revised to include additional rules relating to misuse of the word "free," selling below cost, combination or coercion to fix prices, suppress competition, or restrain trade, fictitious or deceptive pricing, and guaranties and warranties, together with numerous other changes clarifying applicable requirements of laws administered by the Commission.

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Syllabus

IN THE MATTER OF
ALLIED RADIO CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5520. Complaint, Dec. 1, 1947—Decision, Nov. 15, 1949*

Although the functional abbreviations or names and technical trade numbers used in radio advertisements to designate various tubes or other devices may be clearly understood to define function exactly, by those members of the public engaged in the manufacture, assembly, and repair of radio sets, and by those technically trained in electronics, such abbreviations, names and numerals are not so understood by the remainder of the purchasing public, which believes that the numerical tube complement of a radio-receiving set indicates its power, sensitivity, and volume, rather than its refinement, and that the greater the number of tubes in a receiving set, the greater will be its power of detecting, receiving, and amplifying radio signals.

Where a corporation engaged in the interstate sale and distribution of radio sets, radio tubes, component and accessory parts and like products to dealers for resale, and directly to the purchasing public; through statements in catalogs and other literature circulated by mail among 500,000 to 600,00 prospective purchasers annually throughout the United States—

Represented, directly or by implication, that the tubes contained in its receiving sets were necessary and fully functioning tubes, performing the recognized and customary functions of radio receiving-set tubes in the detection, reception, and amplification of radio signals, through such language as "You get full 6-tube efficiency and power with this tube lineup," etc., and "The 5-tube circuit (including rectifier) is licensed * * *. You get full efficiency and power from the following tube lineup," etc., followed by descriptive abbreviations and technical-trade numbers;

The facts being that one of the tubes contained in the sets thus advertised was a "rectifier" tube, which, while serving the auxiliary function of changing alternating current to direct current, without which conversion the commercially sold home radio set will not operate, did not perform the primary function of detecting, receiving, and amplifying radio signals;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said sets possessed capacities and qualities which they did not in fact possess, and thereby to induce its purchase of substantial quantities thereof:

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

While the complaint in the instant proceeding charged respondent with misrepresenting through its advertisements the prices at which it regularly sold its sets or authorized dealers to sell the same, and the prices at which it sold or authorized its dealers to sell said products as special or reduced, the Commission found such charges not supported by the record.