

Syllabus

IN THE MATTER OF
MORRIS SHAPIRO, CHARLES SHAPIRO, AND MARY SHAPIRO
TRADING AS U-C-A MANUFACTURING CO.

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

Docket 5190. Complaint, Nov. 24, 1947¹—Decision, Jan. 16, 1950

Where three individuals engaged in the interstate sale of salve, vapor balm, menthol inhalers and miscellaneous merchandise, through agents under the "return or remit plan", and in advertising a variety of articles offered to agents as premiums, commissions, or compensation for selling their products; through newspapers, magazines, premium lists, premium plan books, circulars, post cards, reward coupons and other mediums, by pictures and descriptive matter—

- (a) Represented that the articles described were given free to agents selling specified amounts of merchandise; and that other premiums were given free to those submitting orders within five days of the receipt of the order blanks, and to those submitting the proceeds from the sale of merchandise within ten days of receipt of the latter;

The facts being that none of the articles advertised as "free" or "given free" were actual gifts or given as a gratuity without consideration; but were simply additional compensation for the agents' services in selling their salve and balm, or admittedly extra commissions for prompt return of orders or proceeds of sale; with certain exceptions (stated in their premium list), all due postage or express charges were paid by the recipients; and some of the premiums represented as "given free" were in fact never delivered at all;

- (b) Made use of the terms "fleece twill" and "unexcelled value" in describing certain blankets offered by them as premiums; notwithstanding the fact that said products were not, as thus represented, made of wool, but were made of cotton, and worth no more than about a dollar;
- (c) Falsely represented certain billfolds made of sheepskin with cloth linings as "genuine leather", and certain fountain pens as equipped with 14 Karat gold plated pen points and as "amazing offers";
- (d) Falsely advertising certain clocks as "America's most beautiful," "masterpieces in time telling", and worth five dollars each;
- (e) Falsely represented certain sachet perfume as "given free" to purchasers of salve and balm; when in fact said perfume was not a gift but was a part of a combination offer with salve or balm, sold together for twenty-five cents;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of substantial quantities of their products:

¹ Amended.

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. R. P. Bellinger* for the Commission.

Mr. Morris R. Shapiro, of Chicago, Ill., for respondents.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Morris Shapiro, Charles Shapiro, and Mary Shapiro, individuals, trading as U-C-A Manufacturing 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals trading and doing business under the name U-C-A Manufacturing Co., with their principal office and place of business at 1425 South Racine Avenue, Chicago, Ill. Respondents are now and for many years last past have been engaged in the sale of salve, vapor balm, menthol inhalers, and miscellaneous merchandise. Respondents cause said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in the several 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 products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. Respondents' method of conducting their business is what is commonly known as the "return or remit plan." In the course and conduct of their business in said commerce as aforesaid and for the purpose of inducing the purchase of their said products, respondents have advertised and do advertise in various newspapers, magazines, premium lists, premium plan books, circulars, post cards, reward coupons, and other media for agents to sell their merchandise on the said "return or remit plan," under which plan such agents are furnished the merchandise to be sold and are allowed 30 days to sell the same and remit to respondents the agreed portion of its selling price or to return the unsold portion of the merchandise. No deposit is

required and the goods remain the property of the respondents until paid for. Respondents include with the shipment of merchandise one sachet perfume pack to be included with each box of salve sold, which respondent represented to "give away free." The selling agent may remit the stated sum of the amount collected and keep the rest as commission; or may remit the entire sum collected and receive merchandise in lieu of cash commissions. Said premiums are represented by respondents as "given" to agents "free." If the sum collected by the agent on the sale of the merchandise is remitted within 10 days, the agent is promised an additional premium, which premium is advertised and represented by respondents to be "given" the agent "free." The agent may remit other stated amounts in addition to and together with the sum collected upon the sale of the merchandise and receive an additional premium described as a "gift," and if the agent submits his order for the sale of merchandise within 5 days of the receipt by him of the order blank, respondents promise to send to him an additional premium as a "gift," "free."

PAR. 3. The advertising placed by respondents in various newspapers, magazines and other media as aforesaid, is variously devised to show by pictures and descriptive matter representations of blankets, billfolds, pen and pencil sets, clocks, guitars, movie projectors, bicycles, wagons, rifles, radio sets, watches and various and sundry other articles not herein enumerated offered to agents as premiums, commissions, or compensation for selling respondents' "U. C. A. Salve," "U. C. A. Menthol Salve" and "U. C. A. Vapor Balm." The articles so featured and offered as premiums are variously designated, described and represented as follows:

Blankets.

Given * * * a pair of blankets or cash commission * * * a pair of fleece twill blankets * * * a premium of unexcelled value * * * for selling only 12 boxes U-C-A Salve at 25¢ a box (nothing more to sell). Sachet perfume sent to give away free.

Billfold.

Given, genuine leather billfold. Genuine leather. Given for selling only 12 boxes U-C-A Salve.

Pen and Pencil Set, and Wallet.

GIVEN! An Amazing offer GIVEN! Fountain Pen Set and Wallet. * * * a nationally known manufacture * * * backed by a guarantee service and has most of the features found on high priced pens. * * * 14 K Gold Plate * * * Pen Point.

Clock.

ALL AMERICAN CLOCK GIVEN. America's most beautiful Clock. A REAL \$5.00 value, masterpiece in perfect time telling. Flag automatically twirls

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round and round and this action shows the clock operates. Suitable for finest homes. Fully guaranteed Electric movement. GIVEN for selling only \$3 worth of U-C-A Products (12 articles at 25¢ each) giving Sachet Free.

Guitar.

BIG GUITAR GIVEN. Standard size Guitar—Regulated fretted, ebonized finger-board—Pearl Position dobts—GIVEN—Simply given away FREE Sachet Perfume and famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

Movie Projector.

GIVEN, BOYS! GIRLS! MOVIE PROJECTOR. SHOW MOVIES AT HOME. Fully equipped with alternating current electric motor. Will accommodate 200 feet of film—8 minute show. GIVEN—Simply given away FREE Sachet Perfume with famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

BIKE GIVEN

Bicycle.

You can get a Boy's or Girl's RANGER Zephyr Bicycle easy. Fully equipped, Electric horn and headlight, coaster brake, balloon tires, for SIMPLY GIVING AWAY FREE Fragrant Sachet Perfume with our Famous UCA MENTHO SALVE * * * which you sell at 25¢ a box (with Sachet Perfume FREE) and remitting as per our Premium Catalog Plan Book. Write today for order of UCA Mentho Salve and Sachet Perfume sent, Postage Paid * * *.

Wagon.

WAGON GIVEN. NOTHING TO BUY! NO RISK—NO CASH, JUST MAIL CARD. * * * GIVEN without one cent of cost by simply GIVING AWAY FREE Sachet Perfume with our famous U. C. A. Salve which you easily sell at 25¢ a box and remit as explained in Premium Catalog Book.

Radio Set and Rifle.

PHILCO RADIO GIVEN

This 22 Cal. Bolt Action Safety Rifle or Superhetrodyne Philco, or ZENITH Radio—you can easily get one of these Radios or Rifles by SIMPLY GIVING AWAY FREE Sachet Perfume with famous U-C-A Household SALVE which you sell at 25¢ a box and remit as per new big Premium Plan Book! SPECIAL: Large list of premiums in catalog for selling only 12 boxes—\$3.00 worth. It's easy. Mail Coupon NOW—today. Be first.

Wrist Watch.

7 JEWEL—WRIST WATCH GIVEN, GIRLS. LADIES! Here is just the prettiest watch you can imagine! Made in America. Case has Charm and color of Natural Yellow Gold Stainless steel back. Raised Gold numerals on Silvered Background. Watch is small—width of dial is smaller than a dime. Given—Simply given away FREE Sachet Perfume with famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

Big list of premiums for selling only 12 Boxes U-C-A Salve at 25¢ each * * * You can have cash if you prefer.

SPECIAL OFFER FOR PROMPTNESS FREE of extra cost. This is in addition to your regular premium, JUST FOR BEING PROMPT! We want quick action and we are willing to pay for it * * *. All you have to do is get busy and sell this package of salve. Send us \$3 which you collect so it will reach

us in 10 days and you will have this beautiful * * * in addition to your regular premium * * *.

SPECIAL EXTRA PRESENT. RETURN NO MONEY. GET AN EXTRA PRESENT FREE. As soon as you receive this order of goods, start out at once and sell them quickly. Send us the money within 10 days after you receive the goods, and you will be rewarded with an extra present absolutely free * * *.

SPECIAL PRESENT FOR PROMPTNESS.

FREE SINGING LARIET SENT FREE * * * IF you will mail this card within 5 days after its receipt by you. * * *

CHOOSE ANY PREMIUM. YOURS WITHOUT ONE CENT COST. DON'T DELAY! ACT NOW! You will be delighted with these beautiful articles of guaranteed quality! Oh Boy! Imagine yourself speeding down the avenue on an up-to-the minute Streamlined Bike, fully equipped. Imagine yourself the proud owner of the big advertised Wagon shown here, the boys' or Girls' wrist watches * * *—yes and cash for spending money—all yours for simply giving away **FREE** Sachet Perfume with famous U-C-A Salve which easily sells at 25¢ a box * * * (with **FREE** perfume) and remit as explained in Premium Catalog Plan Book. *Big list of premiums for selling only 12 boxes U-C-A Salve at 25¢ each.* U-C-A Manufacturing Company, Chicago, Illinois.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that they are manufacturers or makers of the products so advertised; that the particular premiums so advertised are given free to agents selling the specified amounts of merchandise stated and other premiums are given free to persons submitting orders for the merchandise within 5 days from the receipt of the order blank and submitting the proceeds from sales of merchandise within 10 days from the receipt of the merchandise; that the blankets are made of the wool of sheep; that the billfolds are genuine leather; that the fountain pens are equipped with 14 K gold plate pen points and are backed by service guarantee of a nationally known manufacturer; that the clocks are America's most beautiful and are masterpieces in time telling and are of a value of \$5 and will run 7 days without rewinding; that the movie projectors are fully equipped with 200 feet of film; that the bicycles, wagons, radio sets, rifles, wrist watches and other articles offered as premiums are delivered to agents in lieu of the \$1 cash commission for the sale of 12 boxes of salve sold at 25 cents each for a total of \$3; that the packets of sachet perfume distributed with other articles of merchandise sold are given to the purchasers of the merchandise as a gift or gratuity; that the premiums listed are fully equipped and function in the manner and according to the purposes

for which like articles similarly designed and constructed are represented and intended to be used.

PAR. 5. In truth and in fact, respondents are not manufacturers or makers of the products which they vend and do not own, operate, or control a factory, plant or laboratory where such products are manufactured, made or compounded; the various aforesaid articles offered to agents as premiums for the submission of orders within 5 days and for the remittance of sums of money procured from the sale of respondents' products within 10 days after the receipt of the merchandise are not gifts and are not given free, but are compensation in lieu of cash paid for services rendered; the sachet perfume included with the sale of respondents' products is not given away free, and the so-called gifts offered for promptness are never delivered to the agents. Respondents do not pay postage on all goods shipped to the agents and the premiums offered for the sale of merchandise are not awarded in conformity with the representations made by respondents, and some of the aforesaid premiums are never awarded to agents and other of said premiums are not fully equipped to perform the functions for which they are represented, designed and intended and for which they are ordinarily and customarily used and are only awarded upon payment by the agent of a sum in cash over and above the commission allowed. The blankets represented as premiums are not made from the wool of sheep, and are not all wool, and are not of unexcelled value; the billfolds are not genuine leather; the fountain pens are not equipped with 14 K gold plate pen points and are not backed by service guarantee of a nationally known manufacturer; the clocks are not America's most beautiful and are not masterpieces in time telling and are not of the value of \$5 and are not 7-day clocks and will not run over 24 hours without rewinding; the movie projectors are not delivered fully equipped with 200 feet of film. Respondents' sales plan generally contemplates the sale of specified amounts of merchandise to obtain premiums, and the said bicycles, wagons, radio sets, rifles, wrist watches and many other articles of value offered as principal premiums are not "free," or "given," or "given free," or "given away free" where no cash commission payment is involved, inasmuch as the premium constitutes in fact compensation for valuable services rendered respondents. Likewise where premiums are given or accepted in lieu of or in addition to the commissions due, said premiums are not "free," or "given," or "given free" or "given away free" inasmuch as they represent the equivalent of money earned and due for valuable services rendered. The use of the word "given" in the manner employed by respondents in their advertising conveys the impression to

purchasers that the articles so described are in fact free, when in fact payment is required in order to obtain said articles as hereinabove described.

In truth and in fact, the majority, if not all, of the aforesaid various premiums, so-called gifts, represented as given free, and advertised by respondents to be obtainable by their selling agents on completing the sales of a specified number of packages of salve or other merchandise are only obtainable by such selling agents upon the payment of various sums in cash in addition to cash remittances realized upon the sale of such merchandise, and in truth and in fact, the only goods upon which respondents pay postage are the items of merchandise forwarded to selling agents for sale by them. While it is true that upon receiving an application from an individual who desires to become a selling agent, respondents send with the merchandise forwarded to such selling agent various communications in which it is indicated that the receipt of many of the so-called gifts or premiums aforesaid is conditional upon payment of an amount in cash in excess of the proceeds from the sale of such merchandise; nevertheless, such conditions are so presented to prospective selling agents as to fail to negative the representations in this regard contained in respondents' advertising.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1944, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that act. The respondents' answer to said complaint having been filed, testimony and other evidence were introduced before a trial examiner of

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the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the trial examiner submitted his report, to which the respondents filed a number of exceptions, and in due time written briefs in support of and in opposition to the complaint were filed.

After having afforded the respondents an opportunity to show cause why the complaint should not be amended pursuant to a motion filed by counsel in support of the complaint, and after having considered said motion and the respondents' written objections thereto, the Commission on November 24, 1947, issued and subsequently served upon the respondents its amended complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. The respondents' answer to said amended complaint was filed on January 19, 1948.

At a hearing before the trial examiner held on October 7, 1948, a stipulation was entered into by and between the respondents and counsel in support of the amended complaint, and in said stipulation it was agreed that for the purpose of disposing of this proceeding the record should consist of the amended complaint and the answer thereto, the testimony and other evidence theretofore received in support of and in opposition to the original complaint, the trial examiner's report, and the briefs theretofore filed, and that the Commission might proceed upon such record to make its findings as to the facts and to enter its order disposing of said proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' answer thereto, the testimony and other evidence, the stipulation, the trial examiner's report and the respondents' exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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 respondents, Morris Shapiro, Charles Shapiro, and Mary Shapiro, are individuals trading and doing business under the name U-C-A Manufacturing Co. Their office and principal place of business was formerly maintained at 1425 South Racine Avenue,

Chicago, Ill., but is now located at 1933 South Halsted Street, Chicago, Ill. Said respondents are now, and for a number of years last past they have been, engaged in the business of selling salve, vapor balm, menthol inhalers, and miscellaneous merchandise.

PAR. 2. The respondents cause the aforesaid products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in such products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. The respondents' method of selling their products consists of a plan commonly referred to as the "return or remit plan," under which plan agents are furnished the products in lots of 12 boxes, to be sold at 25 cents a box, and are allowed 30 days within which to sell the same and remit to the respondents 2 dollars of the proceeds, retaining as their commissions 1 dollar thereof; or, if the entire 12 boxes have not been sold, to remit to the respondents 25 cents for each box sold and return the unsold portion of the merchandise. In lieu of the 1 dollar cash commission for selling the 12 boxes of salve and balm, the agents may elect to receive any one of a number of premiums depicted in a catalog furnished them by the respondents, each of which premiums is described as a "\$3 Prize." No deposit is required on the salve and balm so furnished the agents, and the merchandise remains the property of the respondents until paid for. With each shipment of 12 boxes of salve and balm the respondents formerly included 12 packs of sachet perfume, it being intended by them that 1 pack of such perfume should be "given free" to the purchaser of each box of salve or balm at 25 cents a box, but the respondents testified that this particular practice was discontinued sometime in 1944.

Under the respondents' plan of operation, if a prospective agent accepts the respondents' offer of an agency within 5 days after receiving the offer the respondents promise him a "special extra present" which they describe as being a reward given "absolutely free." If the agent sells the 12 boxes of salve and balm and remits the sales price, less his commission, within 10 days after receipt of the merchandise the respondents promise him still another "extra present—absolutely free." The agent may also remit other stated amounts in addition to and together with the sum collected upon the sale of the merchandise and receive from the respondents other premiums described by them as "gifts."

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The volume of salve and balm sold by the respondent by the above-described method has been around 1,000,000 boxes a year.

PAR. 4. In an effort to obtain agents to sell their products under the aforesaid plan, the respondents advertise in various newspapers, magazines, premium lists, premium-plan books, circulars, and on post cards, reward coupons, and other media. Such advertising is variously devised to show by pictures and descriptive matter representations of blankets, billfolds, pen and pencil sets, clocks, guitars, movie projectors, bicycles, wagons, rifles, radio sets, watches, and various other articles offered to agents as premiums, commissions, or compensation for selling the respondents' products.

In the manner and by the means aforesaid, the respondents have represented, among other things, that the particular articles described in their literature were given free to agents selling the specified amounts of merchandise stated; that other premiums were given free to persons submitting orders within 5 days of the receipt of the order blanks and to persons submitting the proceeds from the sale of merchandise within 10 days of the receipt of the merchandise; that the blankets described were made of the wool of sheep and were of unexcelled value; that the billfolds described were made of genuine leather; that the fountain pens described were equipped with 14-karat gold-plate pen points; that the clocks described were America's most beautiful and were masterpieces in time telling, each of which was of the value of 5 dollars; and that the packets of sachet perfume to be distributed with the salve and balm sold by the agents were given free to the purchasers of the salve and balm as gifts or gratuities.

PAR. 5. The record clearly establishes that none of the articles advertised by the respondents as being "free" or "given free" to agents selling the specified amounts of merchandise, or to persons submitting orders within 5 days of the receipt of such orders, or to persons submitting the proceeds from the sale of merchandise within 10 days of the receipt of the merchandise, were actual gifts or were given as a gratuity without consideration. In the case of agents selling specified amounts of merchandise the articles described were simply additional compensation for the agents' services in selling the respondents' salve and balm, and in the case of persons submitting orders within 5 days and persons submitting the proceeds of sale within 10 days the respondents admitted that the articles awarded were extra commissions for prompt returns. Moreover, except in certain instances in which the respondents "directly" stated in their premium lists that they would pay the postage or express charges on such articles, all of these charges were paid by the recipients, and it further appears

that some of the premiums which the respondents represented as being "given free" were in fact never delivered at all.

The blankets offered by the respondents as premiums and described by them as "fleece twill" and of "unexcelled value" were not made of wool, but of cotton, and each of such blankets was worth no more than approximately 1 dollar. They were not of "unexcelled value." The billfolds described in the respondents' advertising as "genuine leather" were made of sheep skin with cloth linings, and the fountain pens referred to by the respondents as "amazing offers" were not equipped with 14-karat gold plate pen points. The clocks offered by the respondents were not "America's most beautiful," were not "masterpieces in time telling," and they were not worth 5 dollars each as the respondents advertised. Contrary to the respondents' representations, the sachet perfume, said to have been "given free" to purchasers of salve and balm, was not a gift, but was a part of a combination offer of salve or balm and sachet perfume, both of which together sold for the price of 25 cents.

For the foregoing reasons and in the particulars stated, the respondents' advertising representations referred to in paragraph 4 were and are false, misleading and deceptive.

PAR. 6. The use by the respondents of the foregoing false, misleading and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondents' products.

CONCLUSION

The acts and practices of the respondents as herein found have all been to the prejudice and injury of the public and have constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, a stipulation entered into by and between the respondents and counsel in support of the amended complaint, the trial examiner's report and

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the respondents' exceptions thereto, and written briefs (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Morris Shapiro, Charles Shapiro, and Mary Shapiro, individually and as co-partners trading as U-C-A Manufacturing Co., or trading under any other name or through any corporate or other device, and said respondents' agents, representatives and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of salve, vapor balm, menthol inhalers or other articles of merchandise, do forthwith cease and desist from:

1. Using the words or terms "given," "free," "given free" or "given away free", or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondents.

2. Using the term "fleece twill," or any other term of similar import or meaning, to designate, describe or refer to blankets or other articles not made of wool or otherwise representing, directly or by implication, that any article not made of the wool of sheep is made of wool.

3. Representing, directly or by implication, that billfolds or other articles made of substance other than leather are made of leather.

4. Representing, directly or by implication, that fountain pens not equipped with 14-karat gold plate pen points are so equipped.

5. Misrepresenting in any manner the value, quality, condition or characteristics of any article offered as a premium, commission or compensation for selling the respondents' products.

6. Offering as a premium, commission or compensation any article which it not in fact delivered upon full compliance with the terms or conditions of the offer.

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

Syllabus

IN THE MATTER OF
THE RUBEROID CO.

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

Docket 5017. Complaint, July 26, 1943—Decision, Jan. 20, 1950

Where one of the largest manufacturers of asbestos and asphalt roofing, insulating materials and allied products in the United States, with principal office and place of business in New York and branch warehouses and sales offices in Baltimore, Mobile, Erie, Pa.; Millis, Mass.; and Chicago, engaged in the competitive interstate sale and distribution of said products to wholesalers, retailers, and building or roofing contractors, or "applicators," many of whom were competitively engaged with one another and with customers of said manufacturer's competitors in the resale of said products within the several trade areas concerned—

Discriminated in price between purchasers of its said products who competed keenly in the resale thereof as roofing contractors or applicators and as retailers, and under conditions where a difference of a dollar in the price of a roofing job as between equally reputable applicators could be decisive in securing the business for the one offering the lower price, through granting to some, with no contention of cost justification, an additional 5 percent discount not extended to others for products of like grade and quality;

With the result that customers who receive such preferential discounts had a material advantage over the others, and that such discrimination might substantially lessen competition in the line of commerce concerned and injure, destroy, or prevent competition between those receiving the benefit of such discriminatory prices and those from whom such prices were withheld:

Held, That such discriminations in price, under the circumstances set forth, were violative of subsection 2 (a) of the Clayton Act as amended.

In said proceeding in which there was sharp disagreement between counsel as to whether the record established discriminations by respondent among wholesalers, the trial examiner, in the opinion of the Commission, was correct in his conclusion that there was insufficient evidence to establish such discrimination.

As respects the fact, in said proceeding, that the particular designations given purchasers were not always controlling as indicating the functions actually performed by them—as, for example, in the case of a roofing contractor or applicator who sold quantities to other applicators, and a purchaser classified as a wholesaler who also functioned as an applicator—and the confusion for which this was responsible with respect to the question of whether or not discrimination by respondent among wholesalers was established; the fundamental and controlling factor in the proceeding was that the record established price discriminations by respondent among purchasers who were in fact competing with one another in the resale of the products in question, and the Commission was of the view that the particular designations applied