

IN THE MATTER OF
**BENJAMIN D. RITHOLZ ET AL., TRADING AS NATIONAL
OPTICAL STORES COMPANY, ETC.**

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

Docket 5176. Complaint, June 8, 1944—Decision, Mar. 22, 1950

Where six partners, engaged in the interstate sale of eyeglasses and optical supplies, with principal office and place of business in Chicago, and branch offices in various cities and States in advertising their said products in newspapers and by other means, directly and by implication—

- (a) Represented falsely that the lenses for all glasses sold by them were ground in accordance with proper prescriptions made for customers' eyes by their physician-oculists or doctors;
- (b) Represented that their offers of complete glasses at \$2.88, or at substantially similar prices, were special offers at reduced prices and for a limited time only;

The facts being said glasses were wholly unsuited for most people with defective vision and few if any were actually sold at such prices; persons attracted by such subterfuge were examined by doctors whose incomes said partners often guaranteed, and told that their eyes were in such serious condition that other glasses were needed and salesmen were thereby enabled, often by falsely representing that the advertised glasses were unsuited for the customer, to sell such persons glasses at prices many times higher and which very frequently differed otherwise little if at all; and

- (c) Falsely represented through such statements as "15-day free trial," "15-DAY FREE TRIAL * * * MONEY BACK GUARANTY," etc., that customers would be permitted to wear glasses purchased from them for 15 days and that at the expiration of that time, if not satisfied, they might return the glasses and have their money promptly refunded;

The facts being that many such customers, after wearing their glasses, found refunds refused for various excuses; and while in some instances, after the matter was taken up with local better business bureaus, sufficient pressure was brought to bear to obtain the return of customers' money, it was only after said partners were threatened with exposure of their practices or were otherwise forced to do so that they ever made a refund;

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

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

As regards the allegations of the complaint that said partners in the course of their said business traded under the name Midwest Scientific Company, as

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well as under the names National Optical Stores Company, and Dr. Ritholz Optical Company, it appeared that said first designation was a trade name under which they manufactured certain articles for the Government during the war, and that there was no evidence that said name had ever been used in connection with the sale or distribution of eyeglasses.

With respect to charges in the complaint to the effect that some of the alleged physician-oculists or doctors of said partners had not been licensed to operate as such in the States where they were employed that others were unqualified and inexperienced and unable to and did not properly examine or prescribe for defects of the eyes; that in many instances untrained and unqualified store managers measured the pupillary distances of customers' eyes and inaccurately calculated measurements used in prescriptions; that they had 3,000,000 satisfied customers; and that the mountings on certain glasses offered by them were not, as represented, solid rhodium or with rhodium finish, the Commission was of the opinion and found that such additional charges had not been sustained by the greater weight of the evidence.

Before *Mr. Arthur F. Thomas*, *Mr. Earl J. Kolb*, and *Mr. Everett F. Haycraft*, trial examiners.

Mr. John M. Russell for the Commission.

Mr. Benjamin D. Ritholz, of Chicago, Ill., for respondents.

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 Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz, individually and as copartners trading under the names National Optical Stores Company, Dr. Ritholz Optical Company, and Midwest Scientific Company, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz are individuals trading individually and as copartners under the names National Optical Stores Company, Dr. Ritholz Optical Company, and Midwest Scientific Company, with their principal place of business at 1148 West Chicago Avenue, Chicago, Ill., and having branch places of business located in various cities including Detroit and Lansing, Mich.; Cleveland and Akron, Ohio; Indianapolis, Gary, South Bend, and Evansville, Ind.; Nashville, Memphis, Knoxville, and Chattanooga, Tenn.; and Atlanta, Ga.

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PAR. 2. The respondents are now, and have been for more than 2 years last past, engaged in the sale and distribution of eyeglasses and other optical supplies. Respondents cause their said products when sold to be transported from their said place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and the qualifications of their agents or employees by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers, on cards, in circulars and by other means, are the following:

GLASSES ON CREDIT

Buy direct and save. Save on your glasses by buying direct from factory, through our local branch. Why pay more? It's smart to be thrifty. Be wise. Buy direct. Glasses complete with Toric lenses, for far or near vision, with "Engraved" gold filled mounting at our now low factory price. All glasses ground on prescription of Licensed Doctor.

Lowest Factory Price.

15-day free trial.

Convince yourself by 15 days actual test, at our risk. Perfect satisfaction guaranteed or no cost.

HIGH PRICES FOR GLASSES ARE UNNECESSARY

(Picture Representation of Spectacles)

\$3.45 Complete

CASH or CREDIT

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WE MANUFACTURE ALL GLASSES WE SELL. SAVES YOU SEVERAL PROFITS

No longer any need to pay high prices for good glasses. * * * quality Rhodium-Rimless glasses complete with TORIC stock lenses for FAR OR NEAR VISION, all complete, only \$3.45.

FACTORY-TO-YOU

Deal with your local factory branch and save many dollars. All lenses ground on prescription of licensed Physician-Oculist.

SAVE MIDDLEMAN'S PROFIT

Volume purchasing and single ownership of largest chain of optical stores in America save you the middleman's profit. * * *

15-DAY FREE TRIAL . . . MONEY BACK GUARANTEE

SPECIAL! THIS WEEK ONLY

(Representation of spectacles)

WHY PAY MORE? \$2.88. 15-DAY TRIAL

Glasses no better than these are sold by other concerns for several times this price. Take advantage of this low factory price. "Peerless-Rhodium" finish mounting complete with TORIC stock lenses for FAR OR NEAR VISION, complete only \$2.88.

Convince yourself by 15-day test, that this is the biggest bargain you ever had. Glasses ground on prescription of licensed doctor. Moderate extra charge for bifocal, tinted or astigmatic correction.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent, directly or by implication, that the glasses sold by them will correct defective vision; that they have at each of their stores a duly licensed physician-oculist, or a licensed registered doctor qualified to examine eyes and properly prescribe to correct any defects in vision; that the lenses for all of the glasses sold by them are ground in accordance with proper prescriptions made for customers' eyes by their said physician-oculists, or doctors; that their offers of complete glasses at \$2.88, or substantially similar prices, are special offers at reduced prices and for a limited time only; that they have 3,000,000 satisfied customers; that the mountings of their glasses sold at \$3.45, or approximate amounts, are solid rhodium, and the finish of those sold at \$2.88, or approximate amounts, contains substantial amounts of rhodium; that their glasses offered for \$2.88 and \$3.45, or approximate amounts, are suitable for all persons in need of glasses; that customers are permitted to test the glasses by wearing them for fifteen days and at the expiration of said time, if they are not completely satisfied, they may return them and their money will be promptly refunded.

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PAR. 5. The foregoing statements and representations are grossly exaggerated, false, misleading, and deceptive. The glasses sold by respondents will not, in a large proportion of cases, correct the defective vision of the purchasers. Some of respondents' alleged physician-oculists, or doctors, have no license to operate as physicians, oculists, or otherwise in the States where they are employed, and others are unqualified or inexperienced and are unable to, and do not, properly examine or prescribe for eye defects. In many instances, managers of respondents' stores, who are untrained and unqualified, measure the pupillary distances of customers' eyes and inaccurately calculate measurements which are used in prescriptions. A large proportion of the lenses used in glasses sold by respondents are not ground in accordance with any proper prescription, or even in accordance with the prescriptions written therefor by respondents' alleged physician-oculists, or doctors. In many instances, glasses sold by respondents are ill-fitted and absolutely useless to the purchasers thereof. Respondents' alleged special offers of glasses are not special offers at reduced prices or for a limited time only, but on the contrary are continuous offers over long periods of time and are the usual and customary prices charged for said glasses. Respondents sell very few glasses at the advertised prices, as they are unsuited for the great majority of persons with defective vision. In truth and in fact, respondents use such advertisements only as an inducement to persons to visit their various stores. The general practice of respondents' agents and representatives is, after so-called examinations, to advise prospective purchasers that the glasses advertised are unsuited for their particular eye conditions, and then by adroit salesmanship, and in many instances by false and misleading statements to the effect that serious and dangerous conditions exist in their eyes, to sell them glasses at much higher prices. Often, the glasses sold are the same or approximately the same as those offered by the terms of the aforesaid advertisements, but at many times the advertised price. Respondents do not have 3,000,000 satisfied customers. In truth and in fact, they have comparatively few satisfied customers. The mountings of the glasses offered for sale by respondent at \$3.45, or approximate amounts, are not solid rhodium, and the finish on the glasses sold for \$2.88, or approximate amounts, does not contain a substantial amount of rhodium. In truth and in fact, the base metal of these mountings has only a rhodium wash or a thin plating of rhodium which soon deteriorates and wears away, exposing the base metal which is then subject to rust. Respondents do not promptly refund

the purchase price of their glasses, or any part thereof, to dissatisfied customers, any refunds made being only after extreme pressure is brought to bear upon respondents or their agents or employees, or they are threatened with exposure of their practices. In many cases no refunds whatsoever are made.

PAR. 6. The advertisements disseminated by respondents as aforesaid are false, misleading, and deceptive for the further reason that they fail to reveal facts material in the light of the representations contained therein in that it is not revealed that the glasses advertised by them for \$2.88, \$3.45, or approximate amounts, are unsuited for most persons in need of glasses and that it is only by chance that stock lenses will correct the visual defects of persons buying such glasses. Such advertisements constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations therein contained, or material with respect to the consequences which may result from the use of their said glasses under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, the wearing of glasses sold by respondents containing stock lenses which are unsuited to a customer's eyes, or glasses for which a proper examination has not been made and proper prescription written or where the prescription has not been followed, may result in serious injury to the already impaired vision of the purchasers.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations are true and that respondents' glasses will correct defective vision and may be safely used and without ill effects. As a result of the erroneous and mistaken belief engendered by respondents' said advertisements, the public has purchased substantial quantities of respondents' products.

PAR. 8. 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 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 June 8, 1944, issued and subsequently served upon the respondents named in the caption hereof its

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complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of the respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore 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 respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and exception thereto (which exceptions have been disposed of by separate orders herein), and briefs and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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, Benjamin D. Ritholtz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz, are individuals trading individually and as copartners under the names National Optical Stores Company and Dr. Ritholz Optical Company, with their principal office and place of business located at 1148 West Chicago Avenue, in the city of Chicago, State of Illinois. Said respondents also have branch offices and places of business in various cities of the United States, including Detroit and Lansing, in the State of Michigan; Cleveland and Akron, in the State of Ohio; Indianapolis, Gary, South Bend, and Evansville, in the State of Indiana; Nashville, Memphis, and Chattanooga, in the State of Tennessee; and Atlanta, in the State of Georgia.

PAR. 2. The aforesaid respondents are now, and for a number of years last past they have been, engaged in the sale and distribution of eyeglasses and other optical supplies. The respondents cause these products, when sold by or through their branch offices or places of business, to be transported from their principal office and place of business in the State of Illinois to or for the purchasers thereof located in various other 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 and commerce in said products 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 their eyeglasses and other optical supplies, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination, by the United States mails, through the use of advertisements in newspapers, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning said products. Included among such advertisements have been a large number containing the following statements and representations and others similar thereto:

Save on your glasses by buying direct from factory * * * glasses complete with Toric lenses, for far or near vision, with "Engraved" gold filled mounting at our new low factory price. All glasses ground on prescription of Licensed Doctor.

Convince yourself by 15 days actual test, at our risk. Perfect satisfaction guaranteed or no cost.

HIGH PRICES FOR GLASSES ARE UNNECESSARY. * * * WE MANUFACTURE ALL GLASSES WE SELL. SAVES YOU SEVERAL PROFITS.

No longer any need to pay high prices for good glasses. * * * quality Rhodium-Rimless glasses complete with TORIC stock lenses for FAR or NEAR VISION, all complete, only \$3.45.

FACTORY-TO-YOU—Deal with our local factory branch and save many dollars. All lenses ground on prescription of licensed Physician-Oculist. 15-DAY FREE TRIAL.

SAVE MIDDLEMAN'S PROFIT—Volume purchasing and single ownership of largest chain of optical stores in America save you the Middleman's profit. * * * MONEY BACK GUARANTEE.

SPECIAL! THIS WEEK ONLY
WHY PAY MORE? \$2.88 15-DAY TRIAL

Glasses no better than these are sold by other concerns for several times this price. Take advantage of this low factory price. "Peerless-Rhodium" finish mounting complete with TORIC stock lenses for FAR OR NEAR VISION, complete only \$2.88.

Convince yourself by 15-day test, that this is the biggest bargain you ever had. Glasses ground on prescription of licensed doctor. Moderate extra charge for bifocal, tinted or astigmatic correction.

PAR. 4. By means of said statements and representations contained in the advertisements disseminated and caused to be disseminated as herein set forth, the respondents have represented, directly and by implication, that the lenses for all of the glasses sold by them are ground in accordance with proper prescriptions made for customers' eyes by their physician-oculists or doctors, that their offers of complete glasses at \$2.88 or substantially similar prices are special offers at reduced prices and for a limited time only, and that customers are

permitted to test the glasses sold by the respondents by wearing them for 15 days, and at the expiration of said time, if such customers are not completely satisfied, they may return the glasses and their money will be promptly refunded.

PAR. 5. The aforesaid representations are false, misleading, and deceptive, and the advertisements wherein they are made are false advertisements.

The record discloses that a substantial portion of the lenses used in glasses sold by the respondents are not ground in accordance with any proper prescription, or even in accordance with prescriptions written therefor by the respondents' own physician-oculists or doctors. Out of 15 pairs of glasses sold by the respondent which were introduced as exhibits in this proceeding, competent experts who testified in support of the complaint testified that they would reject 10 pairs, for the reason that the lenses used in the glasses were not ground in accordance with the specifications set forth in the prescriptions therefor. In addition to this testimony, the Commission has also given consideration to the testimony of the purchasers of the glasses themselves, each of whom testified that the glasses were not satisfactory for the purposes for which they purchased them. This type of evidence, while not itself conclusive, is of some probative value, it being the consensus of opinion among all of the experts testifying that the comfort of the purchaser in using glasses is an important factor in determining whether or not the glasses are acceptable.

In advertising complete glasses at \$2.88 or substantially similar prices, the respondents do not in good faith offer to prospective purchasers a real opportunity to purchase glasses at the advertised price, or at any price lower than the price customarily charged for the glasses prescribed. The record discloses that the glasses advertised in these alleged "special offers" are wholly unsuited for the great majority of persons with defective vision, and consequently very few, if any, of the respondents' glasses are actually sold at the advertised prices. The advertisements are used practically exclusively by the respondents to induce persons to visit their various stores, where such persons, prospective purchasers, are given examinations by doctors whose incomes are often guaranteed by the respondents. The doctors, after completion of the examinations, and at the instance of the respondents, then advise the prospective purchasers that their eyes are in such serious condition that glasses other than those advertised are needed, and salesmen of the respondents are thus enabled, often by falsely and misleadingly representing that the glasses advertised are unsuited for the

particular eye condition of such prospective customers, to sell them glasses for much higher prices than those advertised. Very frequently the glasses so sold are the same or approximately the same as those offered by the terms of the advertisements, the only substantial difference being that the glasses are sold at many times the advertised price. Thus, contrary to the respondents' representations, their alleged "special offers" do not in fact afford prospective purchasers an opportunity to buy glasses at reduced prices for a limited time only, but, on the contrary, constitute a mere subterfuge by which the respondents induce such prospective purchasers to visit their various stores, where, by the use of additional false representations, the respondents' agents and employees sell them glasses at prices much higher than those advertised.

Through the use in advertising of such statements as "15-day free trial," "15-DAY FREE TRIAL . . . MONEY BACK GUARANTEE," etc., the respondents clearly represent to their customers that they will be permitted to wear glasses purchased from the respondents for 15 days, and that at the expiration of that time, if the customers are not satisfied, they may return the glasses to the respondents and have their money promptly refunded. This, however, has not been the experience of a large number of the respondents' customers who testified in this proceeding. Many of these customers who sought refunds after wearing glasses purchased from the respondents were unable to obtain such refunds, various excuses being given by the respondents for their refusal. In some instances, the customers have taken the matter up with the local better business bureaus and have brought sufficient pressure on the respondents to obtain the return of their money, but it is only after the respondents are threatened with exposure of their practices or are otherwise forced to do so that they ever make a refund. The respondents' representations that the customers purchase glasses on a 15-day free trial, and that their satisfaction is guaranteed, are wholly false and misleading.

PAR. 6. The complaint herein alleged that the respondents, in the course and conduct of their business of selling eyeglasses and other optical supplies, have traded under the name Midwest Scientific Company, as well as under the names National Optical Stores Company and Dr. Ritholz Optical Company. The record discloses, however, that the designation Midwest Scientific Company is a trade name under which the respondents manufactured certain articles for the United States Government during the war, and there is no evidence that this name has ever been used in connection with the sale or dis-

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tribution of eyeglasses. The complaint further charged that a number of representations in the respondents' advertisements, in addition to those herein mentioned, are false and deceptive, but the Commission is of the opinion, and finds, that these additional charges have not been sustained by the greater weight of the evidence.

PAR. 7. The use by the respondent of the false, misleading, and deceptive representations contained in their advertisements, as set forth in paragraph 3, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and mistaken belief that such representations are true and, as a result of such false and mistaken belief, into the purchase of substantial quantities of the respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 (which exceptions have been disposed of by separate orders herein), and briefs and oral argument of counsel, 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, Benjamin D. Ritholz, Morris I. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Fannie Ritholz, and Sophie Ritholz, individually and as copartners trading under the names National Optical Stores Company and Dr. Ritholz Optical Company, or trading under any other name or trade designation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of eyeglasses or other optical supplies, do forthwith cease and desist from:

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

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

(a) That the lenses in all or any of the glasses sold by the respondents are ground in accordance with prescriptions by doctors, when in fact said lenses are not accurately ground in accordance with the prescriptions of doctors, optometrists, or physician-oculists.

(b) That any of the respondents' glasses are offered for sale at prices substantially lower than the prices actually charged for said glasses; or that any offer of glasses at the respondents' usual or customary prices which is not limited in point of time is a special offer for a limited time only.

(c) That the purchase price of glasses sold by the respondents will be refunded to dissatisfied customers, or that the respondents in the sale of their glasses guarantee satisfaction, when in fact said respondents do not in all instances accept the return of glasses from dissatisfied customers and refund the full purchase price thereof.

2. Entering into any arrangement, agreement, or understanding with any doctor, optometrist, or physician-oculist to advise any prospective purchaser that the condition of his eyes is such as to require glasses other than those advertised by the respondents, when such condition actually does not exist.

3. Representing that glasses advertised by the respondents at special low prices are unsuitable to correct the defective vision of any prospective purchaser, when such glasses would be adequate for such purpose.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the respondents' eyeglasses or other optical supplies, any advertisement which contains any of the representations prohibited in paragraph 1 (a), (b), or (c) of this order.

It is further ordered: That the respondents shall, within sixty (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.

IN THE MATTER OF
R. J. REYNOLDS TOBACCO COMPANY

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

Docket 4795. Complaint, Feb. 26, 1943¹—Decision, Mar. 31, 1950

No two comparable normal persons, due to a number of variables such as the fact that the tobacco constituents are not uniform, and varying conditions under which the smoking takes place and others, will take into their mouths the same amount of smoke or experience the same physiological effects from smoking a like number of cigarettes under like conditions and within a given time. Furthermore, the physiological effect upon an individual of a given amount of cigarettes smoked depends in large measure upon the degrees of physiological normalcy, sensitivity and tolerance of the individual—matters as to which variance to a greater or lesser extent exist in different persons. And while as a general proposition the smoking of cigarettes in moderation by individuals not allergic nor hypersensitive to cigarette smoking, who are accustomed to smoking and are in normal good health, with no existing pathology of any of the bodily systems, is not appreciably harmful—what is normal for one person may be excessive for another.

Nicotine is not a therapeutic agent, and excessive smoking is injurious in various degrees to all of the bodily systems, including the circulatory, respiratory, digestive, nervous, neuromuscular, and the special senses; and which in some cases if a person is accustomed to smoking cigarettes and becomes tense and nervous the smoking of a cigarette may have a psychological tendency to relieve the tension and produce a quieting effect, the smoking of cigarettes will not under any conditions be physiologically beneficial to any of the bodily systems.

In the instant proceeding in which respondent made various representations which were general in their nature and were made alike to all persons irrespective of their physiological condition or the quantity of cigarettes smoked, to the effect that the smoking of its cigarettes was either beneficial to or not injurious to a particular bodily system or part of the body—such as digestion and other functions, throat and nerves—the record clearly showed that said cigarettes were physiologically injurious when smoked to excess and where the smoker was diseased; so that it followed that in such respects at least each of said respondents' advertisements concerning the effect of its cigarettes upon parts of the body or upon several bodily systems were deceptive and misleading.

Smoking cigarettes does not bring about or increase the alkalinity of the digestive tract, and smoking is not under any circumstances good for, advantageous to, or an aid to digestion, and the only physiological effect cigarette smoking has upon digestion, if any at all, is harmful, irrespective of (a) the physical condition of the smoker; (b) the time of smoking, whether

¹ Amended.