

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.

before, during, or after meals; (c) the character of the food; (d) whether the smoking is in moderation or is excessive; or (e) any other known circumstance or condition under which the smoke may enter the mouth. And if smoking in some circumstances may have a psychological effect of relaxation, and of producing some relief from tension, such effects, insofar as any aid to digestion is concerned, are at best only secondary and largely mental, and merely temporary; are present only when the smoker is accustomed to smoking and is in normal good health, with no existing pathology of the gastro-intestinal tract, and do not in any respect impede or prevent the poisonous constituents in the smoke from producing their normal deleterious physiological results.

In determining the meaning of advertisements, the words used therein must, of course, be given their ordinary and well-understood meaning and, thus tested, advertising representations that smoking certain cigarettes "renews and restores body energy; creates and activates the extra energy needed," and other like phrases, plainly imported the meaning that smoking said cigarettes created new energy; that such energy supplemented and was added to that present in the body before the smoking of the cigarette; and that there was thereby generated and produced additional physiological power of greater intensity and duration—representations which were clearly false and deceptive in that there is in tobacco no constituent which could possibly create energy.

As respects the question whether smoking certain cigarettes had the effect of temporarily releasing additional energy already present, and the related and underlying question as to the effect of such smoking upon the blood sugar level of the smoker, it appeared that the smoke from a cigarette has no uniform effect upon the blood sugar level of all persons; that the effect, if any, of, and to what extent, a rise in the blood sugar level of many individuals caused by cigarette smoking has upon their muscular contraction has not been definitely determined and remains in the realm of scientific conjecture; and that the record in the instant proceeding failed to establish that the small changes in blood sugar following smoking, which were reported by competent observers, were alone significant of any changes in bodily energy, or that the mere presence of a high sugar level, whether induced by smoking or otherwise, in and of itself indicates the availability of greater bodily energy.

An athlete cannot smoke as many cigarettes as he likes without affecting or impairing his physical condition due to the adverse action upon the endurance and energy resulting from the increase of pulse rate, rise in blood pressure, and the deprivation of the smoker of oxygen necessary for bodily activity, particularly in athletic competition.

While it may be that a majority of individuals in normal good health, with normal healthy throats, can smoke cigarettes in moderation (which varies with the individual) without causing pathological indications of throat irritation, cigarette smoke, by virtue of the substances contained therein, is an irritant and, being such, the smoke will irritate disordered throats, and excessive smoking of any brand of cigarettes will irritate even throats in normal healthy condition.

The effect of smoking is not the same upon every individual, and in the case of persons addicted to cigarette smoking who become nervous and tense, the smoking of a cigarette of any brand will often afford the smoker some temporary relaxation, while in the case of persons not accustomed to smoking, the effect of even one cigarette will be the opposite; and even in the case of a regular smoker, if he smokes "as many cigarettes as he likes," he is smoking to excess, and excessive smoking, regardless of the conditions of the smoker's nerves, will not be soothing, comforting, or restful.

The nicotine content of domestic tobacco used in the manufacture of cigarettes, as related to the question of nicotine in cigarette smoke, varies very greatly, not only in and among the several types of tobaccos used, but also as among the individual plants of the same types of tobaccos, on the same farm and in the same field, and even as among the leaves on the same plant, due, principally, to difference in the varieties of crops grown, varying soil conditions, differing fertilization methods and cultivation and cropping practices, climatic and weather conditions existing during the growing season, and numerous other factors, and there is no known practical process by which the nicotine content of tobacco leaf may be substantially reduced without at the same time denaturing the tobacco and rendering it unsatisfactory for use in the manufacture of cigarettes.

Where one of the largest manufacturers of tobacco products in the United States; in advertising its Camel cigarettes through magazines of Nation-wide circulation and newspapers of interstate distribution, and by radio broadcasts in Nation-wide hookups and by other means—

- (a) Falsely and deceptively represented to the public, directly or by implication, that the smoking of such cigarettes during, after, or between meals, irrespective of what, where, or when one ate, was good for, advantageous to, and aided digestion in that it renewed and encouraged the flow of digestive fluids and increased the alkalinity of the digestive tract;
- (b) Represented, without limitation or qualification, that the smoking of such cigarettes relieved fatigue, and created, restored, and released a new flow of bodily energy, giving needed bodily strength and vigor, and that this was "a basic discovery of a famous research laboratory" which threw "new light on the subject of cigarette smoking";

The facts being that said representations, even if restricted in their meaning to the claim that such smoking accelerated the release of existing bodily energy, being general in nature and without limitation or qualification, were misleading and erroneous;

- (c) Falsely represented that the wind and physical condition of athletes would not be impaired by the smoking of as many Camel cigarettes as desired;
- (d) Falsely represented that Camel cigarettes were always gentle to and never harmed or irritated even a sensitive throat, or left an after taste;
- (e) Falsely represented that the smoking of Camel cigarettes was soothing, restful, and comforting to the nerves, and protected one against becoming "jittery" or "unsure" when subjected to intense nerve strain; that one with healthy nerves might smoke as many such cigarettes as he or she liked, without the risk of keyed up, jangled, or frazzled nerves; and that Camels in said respect differed from all other brands;
- (f) Falsely represented that the smoke of Camel cigarettes contained less nicotine than did that of any of the four other largest selling brands of cigarettes;

(g) Represented through the dissemination of large numbers of testimonials from users and purported users of Camel cigarettes, which included such statements as "gives me a lift," "don't jangle my nerves," "at meal times I like to enjoy Camels for 'digestion's' sake," "seem to smooth the way for digestion," "no matter how many I smoke Camels always give me a lift yet they never tire my taste," "to me that slower burning explains why Camels smoke so mild and cool and taste so much better"; "Camel gets the best tobacco at most every warehouse sale," etc.; that the claims and expressions contained therein were true, and represented the actual personal experience, knowledge, or beliefs of the persons giving such testimonials;

The facts being that with few, if any exceptions, said testimonials were deceptive and misleading, some who signed such testimonials not only did not smoke Camels exclusively, but smoked no cigarettes of any kind; others who testified to their preference for Camels over all other brands could tell no difference between Camels and other cigarettes; the statements attributed to others were signed without having been read and did not represent their views or opinions; and the real motive inducing the signing in the case of practically all was to obtain the consideration which they were to receive therefor from said corporation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false belief that such representations were true, and thereby into the purchase of said cigarettes; whereby substantial trade was diverted unfairly to it from its competitors:

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

In said proceeding, tests made by the Food and Drug Administration at the instance of the Commission, for the purpose of determining, among other things, the nicotine content of the tobacco in and the smoke from a number of cigarettes of 6 of the largest selling brands, including Camels, showed (a) that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests (measured in groups of 10) varied very greatly both in actual weight and in percentage by weight of the cigarettes, not only as among the 6 different brands, but also as among the individual cigarettes of the same brand, and (b) that the average weight and average percentage by weight of nicotine contained in the tobaccos in and the smoke from the Camel cigarettes involved actually exceeded those of the cigarettes of each of the four brands of the same length as Camel.

In said proceeding it further appeared, among other things, as stipulated, that, during all of the time concerned in the complaint, respondent purchased at public auction about 90 percent of the domestic tobaccos which entered into the manufacture of its Camel cigarettes; that it bought substantially all grades of tobaccos offered for sale; that its cigarette manufacturing competitors bid on and purchased at the same auction sales the identical grades of tobaccos purchased by it at substantially the same prices; and that its Camel cigarettes were made chiefly of blends of various types and grades of domestic tobaccos and a small part of imported tobacco, as were the cigarettes made by its principal competitors.

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As respects the fact that the use of certain false and deceptive representations, challenged by the amended complaint in the instant proceeding, had been discontinued by the respondent several years theretofore, and respondent's contention that the issuance of an order to cease and desist such representations would not be justified, the respondent further contending, however, that each and every one of said representations was true and contained no element of falsity or deception: The Commission was of the opinion such being the case, it was manifestly in the public interest for it, through the issuance of an appropriate order, to prevent the continuation or resumption of the use of the representations in question.

As respects other alleged false, deceptive, and misleading advertising statements and representations which, the amended complaint charged were made by respondent, including such representations as that Camels were the cigarettes of costlier tobacco, made of finer tobaccos than any other popular brand, and that all the finest cigarette tobacco went into Camels; that almost all tobacco planters and tobacco planters generally preferred or smoked Camels; that Camels burned 25 percent slower than most leading brands and contained more tobacco by weight than did most of the largest selling competing brands; that "Prince Albert Smoking Tobacco" was 86° cooler than most other brands of pipe tobacco and was the coolest of all smoking tobacco; and that respondent, in the course of its broadcasts, falsely represented therein that certain voices were those of persons named by it and that such persons were present: The Commission was of the opinion and found that the charges with respect to such additional statements and representations had not been sustained by the greater weight of the evidence.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward L. Smith for the Commission.

Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C., and *Mr. P. Frank Hanes*, of Winston-Salem, N. C., for respondent.

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 *R. J. Reynolds Tobacco Co.*, a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, *R. J. Reynolds Tobacco Co.*, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office in Jersey City in said State, and with its principal place of business in Winston-

Salem, N. C. It is now, and for more than 5 years last past has been, engaged in the manufacture and processing of tobacco products, including cigarettes branded "Camel" and pipe tobacco branded "Prince Albert," and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and for more than 5 years last past has caused, such tobacco products, when sold by it, to be transported from its place of business in the State of North Carolina to the purchasers thereof, some located in said State and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than 5 years last past, a constant current of trade and commerce conducted by said respondent in such tobacco products, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 5 years last past has been, one of the largest manufacturers of tobacco products in the United States and is now, and for more than 5 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tobacco products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it of its said "Camel" brand of cigarettes and its said "Prince Albert" brand of tobacco in the commerce aforesaid, respondent has disseminated, and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by radio broadcasts in Nation-wide hook-ups and by other means in commerce, advertisements in which it has represented and still represents, directly and by implication:

(a) That the smoking of Camel cigarettes is good for and advantageous to digestion and aids digestion; that science so proves, and that such is a fact backed by millions of smokers; that it is an aid to digestion no matter where, what, or when one eats, at odd hours and in all sorts of places, and is a positive benefit to the digestion during, after and between meals;

(b) That Camel cigarettes are good to the digestion, promote good digestion, keep the digestion working normally, running smoothly and clicking even when the going is hectic; that they enable the eating of favorite dishes any time one pleases, and help keep digestion on its proper course;

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(c) That when Camels are smoked one's digestion is fine; and that such smoking stimulates, assists, and encourages digestion and has a genuinely beneficial, wholesome, and helpful effect on the digestive process;

(d) That good health follows or is fortified or sustained by indulgence in Camel cigarettes; and that no matter what one eats, the smoking of Camels causes his digestion to behave itself and assures him the digestive stamina of an iron stomach;

(e) That the smoking of Camel cigarettes speeds up and increases the flow of the digestive fluids, renews and increases the secretion thereof and as a scientific fact increases alkalinity and, in general, thereby promotes and facilitates proper digestion;

(f) That the smoking of Camel cigarettes gives a "lift" in energy; picks up, perks up, renews, and restores bodily energy; creates and activates the extra energy needed; releases a new flow of energy inside one; and in general has the capacity to produce and increase bodily strength and vigor;

(g) That the quickest way to relieve fatigue is by smoking Camels; that fatigue then fades away; that when tired, it brings one back, sets one right, puts one right back into the running, helps one snap right back into form, go on with renewed vigor, a new feeling of vim or with returned "pep"; and in general that the smoker of Camels is thereby quickened from a state of fatigue to one of brisk animation;

(h) That the people with abounding energy are Camel smokers; that Camels are efficacious where a sport demands unfailing energy; that smoking a Camel does the same thing that stepping on the accelerator does for one's car—gives the added power that one needs; that Camels are productive of astounding results in increasing energy;

(i) That the effect of smoking Camels is a harmless restoration of the flow of natural body energy, releasing the flow of one's own natural energy, causing such natural energy to snap back; that this is a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking;

(j) That to keep in athletic condition one should smoke Camels, as many as he likes; that athletes who must guard condition, and famous champions who can't take chances on condition, do so; that great athletes and outstanding stars of sport use Camels because from their own experience such use either enables or helps them to keep in condition or does not damage or affect good condition; and generally, that athletes conditioning themselves for any type of competition will be benefited or helped, or will not be impaired or harmed, by the smoking of Camel cigarettes;

(*k*) That national championships have been won because the winners smoked Camels; that the winner of an auto race was in condition for it, having had a Camel the last thing before the race and the first thing after winning it; that a golf champion naturally was fit for the grueling contest because he was a Camel smoker; and in general, that an aspirant for honors in sport or athletics may promote his chances by smoking Camel cigarettes;

(*l*) That Camels do not "get your wind" or cut or affect the wind of athletes; that athletes say generally, and a host of athletes throughout the country agree in saying that the smoking of Camels is not disadvantageous to breathing capacity during an athletic contest;

(*m*) That Camels are the athlete's cigarette, the overwhelming choice of athletes, endorsed by athletes in large majority, and otherwise are generally recognized and acclaimed as especially suitable, fitting, and appropriate for the particular needs or welfare of athletes as well as other types and classes of persons;

(*n*) That Camel cigarettes never irritate the throat, that they cause no sign of throat irritation, leave the user free of throat irritation, are always gentle to the throat and never leave an aftertaste, that even people with sensitive throats can smoke as many Camels as they like, and that Camels are different or unique in this respect, and generally, that the smoking of Camel cigarettes does not harm the throat;

(*o*) That the smoking of Camels is soothing, positively soothing, and comforting to the nerves; eases and rests nerves, eases and protects against nerve strain and tension; secures one under intense stress against becoming "jittery" or "unsure"; is recommended or approved for thrilling sports demanding "nerves of steel"; and keeps a speed champion's nerves as sound as the motor in his racer;

(*p*) That Camel cigarettes never get on the nerves, bother, upset, or affect the nerves; may be smoked, even as many as one likes, without interference with healthy nerves or without risk of keyed-up, jangled, or frazzled nerves; and that in such respects Camels are different from other standard brands;

(*q*) That Camels are the cigarettes of costlier tobacco; that it is a well-known fact that they are made of finer, more expensive tobaccos than any other popular brand; and that all of the finer cigarette tobaccos go into Camels;

(*r*) That the makers of Camels buy and take up, for said brand of cigarettes, the choice lots of tobacco, the best loads and the really fine baskets of the year's crop; that they don't bother with the cheap

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grades, just go after the choice tobacco; and, in general, that the total annual crop of high grade cigarette tobacco is acquired by respondent, and that no kind of tobacco but the highest priced and the finest grown is blended into Camel cigarettes;

(s) That almost all tobacco planters, and tobacco planters, generally, prefer or smoke Camels; that Camels are far and away the choice of men who grow tobacco and are the leading or most popular cigarettes with planters; that the tobacco planters know that only the choice, fine, or costlier tobaccos are used in Camels, having real inside information relative thereto;

(t) That Camels burn 25 percent slower than most other competing brands and contain more tobacco by weight than do most of the largest selling, competing brands; that smokers of Camels receive the equivalent of, or a "smoking plus" equal to five extra smokes or cigarettes per package over other competing brands; and that the use of Camels thereby results in a saving;

(u) That the smoke of Camels contain 28 percent less nicotine than does the smoke of other competing brands of cigarettes and that the tobaccos in Camels contain 28 percent less nicotine than do the tobaccos used in competing brands of cigarettes;

(v) That Prince Albert smoking tobacco is 86° cooler than most other brands of pipe tobacco and that it is the coolest of all said smoking tobaccos.

PAR. 3. In the course of its business, as described in paragraph 1 hereof, and for the purpose of inducing the purchase of its tobacco products in commerce, as aforesaid, the respondent now uses and for more than 5 years last past has published in commerce, paid testimonials from users and purported users of its Camel cigarettes which do not present or reflect the actual personal experience, knowledge, or beliefs of the signers thereof and in some of such cases the testimonialists not only do not and have not smoked Camel cigarettes, but have not and do not smoke cigarettes of any kind or make. Many of such testimonials are prewritten by representatives of respondent and are signed by the testimonialists without their knowing or being advised by the respondent or by any of its representatives of the contents of them; and many of such testimonials are false and are known by the respondent to be false; and all of such testimonials so obtained by respondent are given and secured in sole consideration of the payments which respondent makes therefor.

PAR. 4. In the course and conduct of its business, described in paragraph 1 hereof, and for the purpose of aiding in and promoting the

sale by the respondent of its Camel cigarettes in the commerce aforesaid, the respondent has represented in its radio broadcasts that certain voices used in such broadcasts are those of persons named by it and by its representatives in such broadcasts when in truth and in fact such voices were not those of the persons so represented by it, and such persons were not present at such broadcasts; and in such broadcasts it has represented to be present and speaking persons not actually present and speaking and has used other artifices and pretenses implying and inducing and leading the listening public into the belief that such nonpresent persons were on its said radio programs and that the voices of such nonpresent persons were the voices actually heard on such broadcasts.

PAR. 5. In truth and in fact (1) smoking Camel cigarettes is of no aid or benefit to digestion, does not increase the flow of digestive fluids nor increase alkalinity and does leave an after taste; (2) good health will not be fortified or sustained by smoking Camel cigarettes; (3) the smoking of such cigarettes will not give a "lift" in energy, renew energy, release natural energy, provide added power, relieve fatigue or renew vigor, nor are the claims of respondent in such respects sustained by impartial scientific laboratory research; nor are the claims regarding the effect of smoking Camels as set out in subparagraph (i) of paragraph 2 hereof a basic discovery of a famous research laboratory or of any research laboratory, and such claims cannot be sustained by impartial scientific laboratory research; (4) the smoking of Camel cigarettes does not keep one in athletic condition and is neither beneficial to nor harmless to athletes in their training or contests; said cigarettes are not the preponderant choice of athletes; (5) the use of Camel cigarettes irritates the throat and has a deleterious effect thereon; (6) Camel cigarettes do not contain any properties capable of mitigating or correcting neuromental disturbances; (7) Camel cigarettes are not made of tobacco more costly than the tobacco used in other cigarettes, do not absorb the total supply of finer cigarette tobaccos grown, and are not the favorite brand of tobacco planters; (8) Camel cigarettes do not burn 25 percent slower nor any percentage slower than most other competing brands, nor do they contain more tobacco by weight than do most of the largest selling, competing brands; smokers of Camels do not receive the equivalent of, or a "smoking plus" equal to, five extra smokes or cigarettes per package over other competing brands, resulting in a saving; (9) the smoke of Camel cigarettes does not contain 28 percent less nicotine nor any less nicotine than does the smoke of other competing brands, nor do

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the tobaccos in Camels contain 28 percent less nicotine nor any less nicotine than do the tobaccos used in competing brands of cigarettes; in truth and in fact the content of nicotine, of tarry matter, and of other substances, irritating to the throat and nasal passages of the smoker and otherwise harmful, varies continually in respondent's cigarettes and the smoke therefrom, as they are offered for sale to the general public; and the relative content of nicotine, of tarry matter and of such substances in respondent's cigarettes as compared with that of competing brands of cigarettes likewise varies continually. The number of variable factors involved in the growing of tobacco for cigarettes, in the blending and processing of such tobacco into cigarettes, and in the packing, handling, and distribution of such cigarettes to the consumer make it impossible for respondent or any of its competitors to produce and market the large volume of cigarettes, which they respectively sell, with a standard or constant content of nicotine, tarry matter, and other harmful substances. Among these variable factors are differences in weather conditions during the tobacco-growing season in different localities in which tobacco of the same variety is grown; differences in such weather conditions from year to year; differences in the soil in which cigarette tobacco is grown, and in the cultivation and fertilization thereof; variation in the mixing and blending of the varieties of tobacco incorporated in the cigarettes; variations in the changes brought about in cigarette tobacco in the processing thereof; deviations in the density with which the tobacco is packed in cigarettes and in the weight of the cigarettes themselves; variations in methods of handling and distribution of cigarettes and changes and differences in climatic conditions affecting cigarettes after they leave the factory where made. In truth and in fact, there is no practicable method whereby the content of nicotine, tarry matter, and other harmful substances in the general run of respondent's cigarettes as they reach the consumer or in those of its competitors, or in the smoke therefrom, can be ascertained with any degree of accuracy for any appreciable length of time. Any test which may be made to determine such content must as a practical matter, be limited to a few samples, infinitesimal in number as compared with the total number of such cigarettes on sale at any one time, and the results obtainable from any such test are indicative of nothing more than the facts sought to be ascertained as of the particular time and place of the initiation of the test. In truth and in fact, the differences in the content of nicotine, tarry matter, and other harmful substances to be found in respondent's cigarettes as compared with

those of competing cigarettes, and such differences among the cigarettes of such competitors, are so minute as to be insignificant and undetectable from the standpoint of the effect which such substances have on the smoker of respondent's cigarettes as compared to that experienced by the smoker of competing brands. For the above reasons, among others, the representations which respondent has made concerning the content of nicotine, tarry matter, and other harmful substances in its cigarettes and the smoke therefrom are false and deceptive, and mislead the public into erroneously believing that respondent's cigarettes are less injurious, when smoked, than are other and competing brands of cigarettes; (10) Prince Albert smoking tobacco is not 86° cooler nor any degree cooler than most other competing brands of pipe tobacco and is not the coolest of all competing smoking tobaccos. In general, the representations made by the respondent as set out in paragraph 2 hereof and the implications and intendments thereof, whether specifically controverted herein or not, are inaccurate, deceptive, false, and misleading.

PAR. 6. The aforesaid representations made by the respondent, as set out in paragraph 2 hereof, have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true and to purchase respondent's products, Camel cigarettes and Prince Albert tobacco, in the belief that such representations are true. Thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 7. The use of testimonials by the respondent, as alleged in paragraph 3 hereof, has the capacity and tendency to mislead and deceive the purchasing public into the beliefs that the statements in such testimonials are true; that the testimonialists furnishing such testimonials smoke Camel cigarettes; that such testimonials have been furnished to the respondent voluntarily and that the persons giving such testimonials have known and did know the contents thereof when signing the same; and the aforesaid use by the respondent of such testimonials has the capacity and tendency to induce and has induced the purchasing public to purchase Camel cigarettes in such erroneous beliefs and thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 8. The representations by the respondent, as set out in paragraph 4 hereof, that certain persons are present and speaking at radio broadcasts when such persons are not present and speaking, as alleged in paragraph 4 hereof, has the capacity and tendency to mislead and

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deceive the purchasing public into the beliefs that such persons are actually present and making at such broadcasts the statements purportedly made by such nonpresent persons, and thereby to induce the public to purchase Camel cigarettes and Prince Albert tobacco. Thereby substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 26, 1943, issued and subsequently served upon the respondent, R. J. Reynolds Tobacco Co., a corporation, its amended complaint in this proceeding, charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of the respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before Webster Ballinger, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondent's answer, testimony, and other evidence, the trial examiner's report and exceptions thereto, briefs in support of and in opposition to the amended complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, R. J. Reynolds Tobacco Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located in the city of Jersey City, State of New Jersey, and its principal place of business located in the city of Winston-Salem, State of North Caro-

lina. Said respondent is engaged in the manufacture and processing of tobacco products, including cigarettes branded "Camel," and in the sale and distribution of such products.

PAR. 2. The respondent causes, and for more than 5 years last past it has caused, the aforesaid tobacco products, when sold, to be transported from its place of business in the State of North Carolina to purchasers thereof located in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past there has been, a constant current of trade and commerce conducted by the respondent in its tobacco products in commerce among and between the various States of the United States and in the District of Columbia. The respondent is one of the largest manufacturers of tobacco products in the United States, and it is now, and at all times mentioned herein it has been, in substantial competition with other corporations and with persons, firms, and partnerships also engaged in the sale and distribution of tobacco products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, and for the purpose of aiding and promoting the sale in commerce of its tobacco products, the respondent has disseminated, and has caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate distribution, by radio broadcasts in Nation-wide hookups, and by other means in commerce, large numbers of advertisements concerning such products. In certain of these advertisements relating to its Camel brand of cigarettes, the respondent has made, and has caused to be made, among others, the following claims and representations:

(a) That the smoking of Camel cigarettes is good for and advantageous to digestion and aids digestion; that science so proves, and that millions of smokers so attest; that it is an aid to digestion no matter where, what, or when one eats, and is a positive benefit to digestion, during, after, and between meals.

(b) That Camel cigarettes are good to the digestion, promote good digestion, keep the digestion working normally, running smoothly, and help keep digestion on its proper course.

(c) That the smoking of Camels stimulates, assists, and encourages digestion, and has a genuinely beneficial, wholesome, and helpful effect upon the digestive process.

(d) That the smoking of Camel cigarettes speeds up and increases the flow of the digestive fluids, renews and increases the secretion

thereof, and as a scientific fact increases alkalinity, and in general thereby promotes and facilitates proper digestion.

(e) That the smoking of Camel cigarettes gives a "lift" in energy; that it picks up, perks up, renews, and restores bodily energy; and that it releases a new flow of energy inside one.

(f) That if Camels are smoked, fatigue then fades away; that when one is tired, the smoking of Camels brings him back and sets him right; and that it helps one go on with renewed vigor and with a new feeling of vim, or returned "pep."

(g) That the effect of smoking Camels is a harmless restoration of the flow of natural body energy, releasing the flow of one's own natural energy, causing such natural energy to snap back; that this is a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking.

(h) That the wind and physical condition of athletes will not be impaired by the smoking of Camel cigarettes, as many as one likes; that athletes and famous champions smoke Camels because the smoking of such cigarettes does not affect or damage their condition; and that the smoking of Camels is not disadvantageous to breathing capacity during an athletic contest.

(i) That Camel cigarettes never harm or irritate the throat; that they cause no sign of throat irritation, leave the user free of throat irritation, are always gentle to the throat, and never leave a cigarettey aftertaste; that even people with sensitive throats can smoke as many Camels as they like; and that Camels are different or unique in this respect.

(j) That the smoking of Camels is soothing, positively soothing, and comforting to the nerves; that it eases and rests nerves, eases and protects against nerve strain and tension; and that it secures one under intense strain against becoming "jittery" or "unsure."

(k) That Camel cigarettes never get on the nerves; bother, upset, or affect the nerves; may be smoked, even as many as one likes, without interference with healthy nerves and without risk of keyed-up, jangled, or frazzled nerves; and that in such respects Camels are different from all other brands of cigarettes.

(l) That the smoke of slower burning Camels contains 28 percent less nicotine than the average of the four other of the largest-selling cigarettes tested—less than any of them—according to independent scientific tests of the smoke itself.

The representations referred to in subparagraphs (a) to (d), inclusive, were first made beginning in January 1936; were repeated regu-

larly until November 1937; and were used sporadically thereafter until November 1939. The representations referred to in subparagraphs (e) to (g), inclusive, were first made beginning in May 1934; were used regularly until November 1938; and were used sporadically thereafter until January 1, 1939. The representations referred to in subparagraph (h) were first made beginning in May 1935; were used regularly until February 1936; and were used sporadically thereafter until April 1936. The representations referred to in subparagraph (i) were first made beginning in 1937; were used regularly until February 1939; and similar statements in somewhat milder form were used in testimonials thereafter until as late as 1944. The representations referred to in subparagraphs (j) and (k) were first made beginning in June 1933, and were used regularly until June 1939, and occasionally thereafter. The representations referred to in subparagraph (l) were first made in November 1940 and were continued until July 1942.

PAR. 4. For the purpose of further aiding and promoting the sale in commerce of its tobacco products, the respondent has also disseminated, and has caused to be disseminated, by the means and in the manner aforesaid, large numbers of testimonials from users and purported users of such products. Among such testimonials relating to Camel cigarettes, which the respondent used in advertising subsequent to 1935, were the following:

One given by Miss Helen Stansbury, then the director of women's traffic for United Airlines, as follows:

I choose Camels for their mildness. They're never harsh, and have such a good rich taste. When the pace I go gets me fatigued, a Camel gives me a "lift." (Comm. Ex. 549.)

Another given by Miss Margaret Bourke-White, a well-known photographer, as follows:

Camels are very different, Mr. Martin, in a *lot* of ways. My nerves must be as trustworthy as a steeple jack's, and Camels don't jangle my nerves. When I'm tired I get a lift with a Camel. At mealtimes I like to enjoy Camels for "digestion's sake." There's something about Camels that agrees with me—all around! I think that's what counts most. (Comm. Ex. 546.)

Another given by Allan Patterson, owner of an automobile repair shop, which included the following:

In the garage business you sometimes have to catch your meals on the run—but after a quick bite I always grab a Camel, because Camels seem to smooth the way for digestion.

■ * * * * *

Findings

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I smoke all I want, because no matter how many I smoke Camels always give me a "lift," yet they never tire my taste.

* * * * *

The Mrs. smokes Camels too because they hit the spot with her just like they do with me. (Comm. Ex. 720.)

Another given by Joseph Bolan, a farm foreman, as follows:

Look how slowly the Camel burns compared to other brands—to me, that slower burning explains why Camels smoke so *mild* and *cool* and taste so much better. "Seeing is believing and smoking is believing," I say. (Comm. Ex. 122.)

Another given by John T. Bone, a tobacco farmer, as follows:

My finest grades of tobacco last year went to Camel . . . Camel gets the best tobacco at most every warehouse sale. You bet I smoke Camels. Most planters who know tobacco prefer Camels. (Comm. Ex. 473.)

PAR. 5. Through the use of the claims and representations set forth in paragraph 3, the respondent has represented to the public, directly or by implication, that the smoking of Camel cigarettes, during, after, or between meals, irrespective of what, where, or when one eats, is good for, advantageous to, and aids digestion, in that it renews and encourages the flow of digestive fluids and increases the alkalinity of the digestive tract; that the smoking of such cigarettes relieves fatigue and creates, restores, renews, and releases a new flow of body energy giving needed bodily strength and vigor, and that this is "a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking"; that the mind and physical condition of athletes will not be affected or impaired any way by the smoking of as many Camel cigarettes as they desire; that Camel cigarettes, unlike other brands of cigarettes, are always gentle to and never harm or irritate even a sensitive throat, nor leave an after taste; that the smoking of such cigarettes is soothing, restful, and comforting to the nerves, and protects one against becoming "jittery" or "unsure" when subjected to intense nerve strain; that one with healthy nerves may smoke as many Camel cigarettes as he or she likes without the risk of keyed-up, jangled, or frazzled nerves, and that Camels are in these respects different from all other brands of cigarettes; and that the smoke of Camel cigarettes contains less nicotine than does the smoke of any of the four other largest selling brands of cigarettes.

Through the use of the testimonials referred to in paragraph 4, the respondent has represented that the several claims, statements, and expressions contained therein are true and that they represented the actual personal experience, knowledge, or beliefs of the persons giving such testimonials.

PAR. 6. The record in this proceeding consists largely of expert testimony and documentary evidence. It shows as a preliminary matter that the tobacco in all of the leading brands of cigarettes consists of inorganic material usually obtained as ash, of carbohydrates, protein material, and nitrogenous bases, principally nicotine, together with other organic substances—pyridine, aldehydes, organic acids and alcohols, and various aromatic substances, which are responsible for the odor. The smoke from a lighted cigarette consists chiefly of carbon dioxide, carbon monoxide, particles of carbon—partially oxidized tobacco products which are carried off with the smoke—volatilized nicotine, and other nitrogenous substances—aldehydes, including furfural and formaldehyde-ammonia and some water vapor. In addition, the smoke contains actual particles of tobacco, some charred tobacco and tarry and oily materials, the exact chemical composition of the tarry materials being generally not determined.

No two comparable normal persons 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. This is due to a number of variables, a reference to only a few of which will serve as illustrations. The tobacco constituents of cigarettes are not uniform. The smoke from a lighted cigarette passes off in two streams, the main stream passing through the wrapper in the direction of the suction, and the side stream passing off the lighted end when there is no suction. The main stream goes into the mouth of the smoker as the cigarette is smoked, the volume and composition thereof varying greatly, depending, among other things, upon the position of the cigarette while burning; the volume speed, and frequency of the puffs; the humidity of the tobacco and of the room; density of the packing; porosity of the wrapper; and the air current to which the lighted end is exposed, the unburned portion acting as a filter, and as the cigarette is smoked the butt or unburned portion increasing in tarry density, and others. These factors likewise produce variances in the tobacco constituents in a given amount of smoke entering the mouth, which include carbon monoxide, varying from approximately 13/100 to 26/100 percent; carbon dioxide; forms of salts like ammonium, cyanide, nitrates, aldehydes (acrolein, formaldehyde, and furfural); resins, tar, and a small amount of nicotine. The amount of deposits of tar depends upon the length of time the smoke remains in the mouth, irregularities in the respiratory tract, which are common and which impede the free passage of the smoke, causing eddies and a deposit of tar on the surface, and the extent to which the smoke is inhaled.

The physiological effect upon an individual of a given amount of cigarette smoke depends in large measure upon the degrees of physical normalcy, sensitivity, and tolerance of the individual, variances to a greater or lesser extent in all of which in different persons exist. The record shows, however, as a general proposition, that the smoking of cigarettes, including Camel cigarettes, in moderation by individuals not allergic nor hypersensitive to cigarette smoke who are accustomed to smoking and who are in normal good health, with no existing pathology of any of the bodily systems (circulatory, respiratory, digestive, nervous, neuromuscular, and special senses), is not appreciably harmful. But what is normal for one person may be excessive for another, and excessive smoking is injurious in varying degrees to all of the bodily systems. Moreover, while 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 condition be physiologically beneficial to any of the bodily systems. Nicotine is not a therapeutic agent for any purpose.

All of the representations referred to in paragraphs 3 and 4 concerning the effect of Camel cigarettes were that the smoke therefrom is either beneficial to or is not injurious to a particular bodily system or some part of the body. Such representations were general in their nature and were made alike to all persons irrespective of their physical condition or the quantity of cigarettes smoked. The record clearly shows that Camel cigarettes are physiologically injurious (1) when smoked to excess, and (2) where the smoker is diseased (a fact not disputed even by the most enthusiastic of the respondent's witnesses); and it follows that in these respects at least each of the respondent's advertisements concerning the effect of its cigarettes upon parts of the body or upon the several bodily systems were deceptive and misleading.

PAR. 7. (a) The smoking of a sufficient number of Camel cigarettes does increase, by accelerating the flow of saliva, a digestive secretion, but it does not renew it. Moreover, the real function of saliva is to moisten the mouth and food, and normal chewing and swallowing produces all the saliva necessary for digestive purposes. Any additional saliva which may be induced by smoking is of no digestive significance unless it is swallowed, and in that event it is not helpful, but harmful, to digestion, in that it inhibits the motility of the esophagus and of the stomach and the upper end of the small intestine. Smoking cigarettes, including Camels, does not bring about or in-

crease the alkalinity of the digestive tract, and smoking is not, under any circumstances, good for, advantageous to, or an aid to digestion. The only physiological effect cigarette smoking can have upon digestion, if it has any at all, is harmful, irrespective of (a) the physical condition of the smoker, (b) the time of smoking, whether before, during, or after meals, (c) the character of the food, (d) whether the smoking is in moderation or is excessive, or (e) any other known circumstances or conditions under which the smoke may enter the mouth. Such harmful effects may be an interference with the normal gastric and intestinal motility, an increase in the acidity of the digestive fluids of the stomach, a lessening of the hunger sensation, or an aggravation of existing incipient gastrointestinal disorders.

In support of its advertising representations concerning the effect of smoking Camel cigarettes on digestion, the respondent produced certain testimony tending to show that smoking does in some circumstances have a psychological effect of relaxation and of producing some relief from tension. The record is clear, however, that insofar as any aid to digestion is concerned, these effects at best are only secondary and largely mental and merely temporary, are present only when the smoker is accustomed to smoking and is in normal good health, with no existing pathology of the gastrointestinal tract, and that they do not in any respect impede or prevent the poisonous constituents in the smoke from producing their normal deleterious physiological results.

The Commission therefore finds that the respondent's representations to the effect that the smoking of Camel cigarettes is good for, advantageous to, and aids digestion, were false, deceptive, and misleading.

(b) As they related to bodily energy, the respondent's representations were that the smoking of Camel cigarettes will relieve fatigue, that it creates, restores, renews, and releases a new flow of bodily energy needed, and that this was a basic discovery of a famous laboratory. By such representations the respondent contends it was claiming only that the smoking of Camel cigarettes accelerates the release of existing bodily energy—only that it has the effect of temporarily releasing additional energy already present. The Commission does not so interpret these representations. In determining the meaning of advertisements, the words used in such advertisements must, of course, be given their ordinary and well-understood meaning. When subjected to this test, the respondent's representations that "smoking Camel cigarettes renews and restores bodily energy; creates and acti-

vates the extra energy needed," and other like phrases, plainly imported the meaning that smoking Camel cigarettes creates new energy; that such new energy supplements and adds to that present in the human body before the smoking of the cigarette; and that there is thereby generated and produced additional physical power of greater intensity and duration. As so interpreted, the representations were clearly false and deceptive, there being in tobacco smoke no constituent which could possibly create energy, and neither the respondent nor any of its witnesses seriously contend otherwise.

A large part of the evidence on this phase of the case, however, had to do with the question whether or not the smoking of Camel cigarettes will actually accelerate, even temporarily, the release of bodily energy and relieve fatigue, and in view of the earnestness with which the respondent urges this interpretation of its advertisements, all of the evidence pertaining to this subject has been carefully considered.

The record clearly establishes that the source of all bodily energy is food, which is digested in the stomach and the small intestine, and the glucose (blood sugar) therein segregated. From the small intestine the glucose is taken into the blood stream, in which a part remains, with the balance being deposited as glycogen in the liver and muscles under the stimulus of hormone insulin generated in the pancreas gland. The normal concentration of sugar in the blood stream of a normal person is from 70 to 100 milligrams per 100 cubic centimeters of blood. The glucose (blood sugar) in the blood stream, subject to all the variables affecting the human economy, particularly the state of the nervous system, state of the blood, weight and activity of the endocrine glands, etc., is fed to the muscular and other tissues in order to meet their respective requirements under the control of body hormones and enzymes. The glucose, coming in contact with the oxygen in the air breathed into the body, is burned, giving off carbon dioxide, which is exhaled. This consumption by oxidation of the blood sugar in the muscles, like the burning of coal in a furnace, produces power or energy. When extra power or energy is needed, the stored supplies of glycogen in the liver and muscles are drawn upon as the occasion requires, and under the stimulus of adrenalin from the adrenal gland is transferred back into glucose and distributed throughout the blood stream to meet the needed tissue requirements. Thus, the answer to the question whether or not the smoking of Camel cigarettes accelerates the temporary release of existing bodily energy depends in large measure on the effect of such smoking upon the blood-sugar level of the smoker. It was to this point that substantially all of the testimony and other evidence on this phase of the case was directed. Such

testimony and other evidence, although sometimes couched in language which appears to render it somewhat conflicting, upon careful analysis, is found to be not irreconcilable.

The witnesses testifying on this subject were in agreement that the smoke from a cigarette has no uniform effect upon the blood-sugar level of all persons. In the case of some, it will, under certain conditions, cause a rise; in the case of others, it will cause a reduction; and in the case of still others, it will have no appreciable effect at all. Under many conditions, such as "following a meal," or if the blood sugar at the time of the smoking is "fairly well elevated," or if the storage of glycogen in the liver and muscle tissues is depleted, the smoke will have no significant effect upon the blood-sugar level of anyone. The most noticeable increase in blood sugar as a result of smoking occurs in persons who have fasted, or whose blood-sugar level is below normal, or who inhale the smoke, or who are under 50 years of age. Moreover, the effect, if any, and to what extent, a rise in the blood-sugar level of many individuals caused by cigarette smoking has upon their muscular contraction has not been definitely determined and remains in the realm of scientific conjecture. It has not been established in this record that the small changes in blood sugar following smoking that have been reported by competent observers are alone significant of any changes in bodily energy, or that the mere presence of a high sugar level, whether induced by smoking or otherwise, in and of itself, indicates the availability of greater bodily energy.

The respondent's representations, even if restricted in their meaning to the claim that the smoking of Camel cigarettes accelerates the release of existing bodily energy, being general in nature and without limitation or qualification, were misleading and erroneous.

(c) In other advertisements the respondent represented that an athlete can smoke as many Camel cigarettes as he likes without affecting or impairing his physical condition. The record shows, however, that for one to smoke as many cigarettes "as he likes" is to smoke to excess, and that smoking to excess, like eating or drinking to excess, is harmful, not only to an athlete but to others as well. In the words of one of the scientific witnesses (Dr. Anton Julius Carlson), "One cannot smoke as many Camels, or any other brand of cigarettes, as he likes and keep in athletic condition because of its apparent adverse action upon the endurance and energy." The adverse action upon the endurance and energy referred to by this witness is due in part to the increase in pulse rate, the rise in blood pressure, and the deprivation of the smoker of oxygen so necessary for bodily activity, particularly in

athletic competition. While ordinarily an individual suffers no disadvantage from a slight increase in pulse rate and a slight rise in blood pressure, whenever there is unusual strain put upon the circulatory system, as in the stress of an athletic contest, the individual will very likely become breathless from the exertion, even though he is only a moderate smoker. Because of this impairment of wind and physical condition as a result of smoking, it is, and for many years last past has been, a common practice among colleges, universities, and coaches of athletic teams to forbid the use of tobacco, particularly during training periods, by those participating in sports.

The Commission is of the opinion, therefore, and finds, that the respondent's representations to the effect that athletes may smoke as many Camel cigarettes as they like without having their wind or physical condition affected or impaired, were false, deceptive, and misleading.

(d) As was true in the case of the other representations involved, the respondent, in representing that Camel cigarettes never irritate even a sensitive throat or leave an after-taste, did not limit its claims to persons in normal good health or to those who smoke in moderation, but applied them generally to all persons irrespective of their physical condition or the quantity of cigarettes smoked. It may be, as the respondent contends, that a majority of individuals in normal good health with normal healthy throats can smoke cigarettes in moderation (which varies with the individual) without causing pathological indications of throat irritation. The medical witnesses testifying in this case were in agreement, however, that cigarette smoke, containing, as it does, the substances carbon dioxide, carbon monoxide, nicotine, ammonia, various aldehydes, such as acrolein, formaldehyde, furfural, tars, and formic acid, is an irritant. The smoke from Camel cigarettes contains all the irritating substances in essentially the same quantities and degree found in the smoke from five other leading brands of cigarettes, and in this respect Camel cigarettes are no different from any other of the five leading brands. Being an irritant, the smoke will irritate disordered throats, and excessive smoking of Camels, or any other brand of cigarettes, will irritate even throats in normal healthy condition. Contrary to the respondent's representations, Camel cigarettes are not always gentle to the throat; individuals with sensitive throats cannot smoke as many Camels as they like without irritation to the throat; and Camel cigarettes, like other cigarettes, do leave an after-taste.

(e) The representations that the smoking of Camel cigarettes is always soothing and restful to the nerves, and that such smoking protects one against becoming "jittery" or "keyed up," regardless of the number of cigarettes smoked, are in much the same category. The record is clear that the effect of smoking, including the smoking of Camel cigarettes, is not the same upon every individual. In the case of persons addicted to cigarette smoking who become nervous and tense, the smoking of a Camel, or any other brand of cigarette, often will afford the smoker some temporary relaxation. In the case of persons not accustomed to smoking, however, the effect of smoking even one cigarette will be the opposite. Such a person will not only fail to have his nerves soothed or steadied, but he will probably become positively ill and quite upset as a result of his experience. Even in the case of the regular smoker, if he smokes "as many cigarettes as he likes" he is smoking to excess, and the record is uncontradicted that excessive smoking, regardless of the condition of the smoker's nerves, will not be soothing, comforting, or restful. In this respect, there is no difference between the smoke from Camel cigarettes and the smoke from any of the other leading brands of cigarettes. The respondent's representations to the contrary, as set forth above, were false and misleading.

(f) Concerning the nicotine content of Camel cigarettes, the respondent's representations were in effect that the smoke from such cigarettes contains substantially less nicotine than does the smoke from the cigarettes of any of the four other largest selling brands. In view of the scientific evidence establishing the fact that the nicotine content of cigarette smoke is in direct proportion to the nicotine content of the tobaccos contained in the cigarette itself, the respondent's advertisements necessarily imported also that the tobaccos contained in Camel cigarettes have a substantially lower nicotine content than do the tobaccos contained in the cigarettes of any of the other four largest selling brands. It follows that the answer to the question whether or not the respondent's representations with respect to the nicotine content of the smoke of Camel cigarettes were true or false depends in large measure on the answer to the further question whether or not the tobaccos in the respondent's cigarettes contain less nicotine than do the tobaccos in the cigarettes of each of the respondent's principal cigarette manufacturing competitors.

As it relates to this question, the evidence in the record consists of: (1) A stipulation entered into between counsel in which it was stipulated, among other things, that during all of the time mentioned in the

complaint the respondent purchased at public auction approximately 90 percent of the domestic tobaccos entering into the manufacture of its Camel cigarettes; that it bought substantially all grades of tobaccos offered for sale; that its cigarette-manufacturing competitors bid on and purchased at the same auction sales the identical grades of tobaccos as those purchased by the respondent at substantially the same prices; and that the respondent's Camel cigarettes were made chiefly of blends of various types and grades of domestic tobaccos and a small part of imported tobacco, as were the cigarettes manufactured by the respondent's principal competitors; and (2) expert testimony by chemists, plant physiologists, and others familiar with the chemical composition of domestic tobaccos used in the manufacture of cigarettes, to the effect that the nicotine content of such tobaccos varies very greatly, not only as among the several types of tobaccos used (principally flue-cured, Burley, and Maryland tobaccos), but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even as among the leaves on the same plant; that such variations in nicotine content are due principally to difference in the varieties of crops grown, varying soil conditions, differing fertilization methods and cultivation and cropping practices, climatic and weather conditions existing during the growing season, the positions of the leaves on the tobacco plants, the height of topping, the manner and conditions of curing and packing the tobacco, the amount of moisture and the temperature to which the tobacco is subjected, and other factors too numerous to mention; and, further, that there is no known practical process by which the nicotine content of tobacco leaf may be substantially reduced without at the same time denaturing the tobacco and rendering it unsatisfactory for use in the manufacture of cigarettes. The record also contains certain testimony and reports concerning a series of tests which were made by the Food and Drug Administration, at the instance of the Commission, for the purpose of determining, among other things, the nicotine content of the tobaccos in and the smoke from a number of cigarettes of six of the largest selling brands, including Camels. The results of these tests showed (a) that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests (measured in groups of 10) varied very greatly, both in actual weight and in percentage by weight of the cigarettes, not only as among the six different brands, but also as among the individual cigarettes of the same brand, and (b) that the average weight and average percentage by weight of nicotine contained in the tobaccos in and the smoke from the Camel cigarettes involved in the tests actually exceeded the average weight and the

average percentage by weight of nicotine contained in the tobaccos in and the smoke from the cigarettes of each of the other four brands of the same length as Camels.

It is thus apparent to the Commission: (1) That the nicotine content of the tobaccos used by the respondent in the manufacture of its Camel cigarettes varies very materially; (2) that the tobaccos used by the respondent in the manufacture of its Camel cigarettes contains substantially the same amount of nicotine in substantially the same quantities and variations as do the tobaccos used by the respondent's principal cigarette manufacturing competitors in the manufacture of their cigarettes; and (3) that the variations in the nicotine content of said tobaccos, both those used by the respondent and those used by its principal competitors, in the manufacture of their respective brands of cigarettes, continue throughout the process of manufacturing such tobaccos into cigarettes and are definitely reflected in both the tobaccos in and the smoke from samples of cigarettes of each of said manufacturers.

The Commission is of the opinion, therefore, and finds, that the respondent's Camel cigarettes do not, as a matter of fact, contain less nicotine than do the cigarettes of any of its four principal cigarette-manufacturing competitors, and that the respondent's representations to the effect that the smoke from Camel cigarettes contains less nicotine than does the smoke from any of the other four largest selling brands were false and deceptive.

(g) On the question of the truth or falsity of testimonials published by the respondent, counsel in support of the complaint called as witnesses 43 persons who signed testimonials which were reproduced by the respondent in whole or in part in advertisements in periodicals or in radio broadcasts. The testimony of these witnesses establishes conclusively that with few, if any, exceptions these witnesses' testimonials were deceptive and misleading. In each of the testimonials, for example, the testimonialist either stated categorically or necessarily implied that he or she was an exclusive Camel smoker. A number of such testimonialists testified, however, that they not only did not smoke Camels exclusively, but that they did not smoke cigarettes of any kind. Others whose testimonials showed them as favoring Camels over all other brands of cigarettes for one reason or another testified that they could tell no difference between Camel cigarettes and cigarettes of any other brand. Still others testified that the statements attributed to them were signed by them without even having been read, and that such statements did not represent the testimonialists' views or opinions.

Some testified that they could not even read and that the contents of the testimonials were not read to them before they signed them, and in the case of practically all it is apparent that the real motive inducing the signing of the testimonials was to obtain the consideration which they were to receive from the respondent for such testimonials. The allegations of the amended complaint with respect to the falsity of such testimonials have been fully sustained.

PAR. 8. As the Commission has found in paragraph 3 hereof, the use of certain of the representations shown by the evidence to have been false and deceptive was discontinued by the respondent several years before the amended complaint in this proceeding was issued. For this reason, the respondent contends that the issuance of an order to cease and desist those representations would not be justified. The respondent further contends, however, that each and every one of said representations was true, and that it contained no element of falsity or deception; and in these circumstances it is manifestly in the public interest for the Commission, through the issuance of an appropriate order, to prevent the continuation or resumption of the use of such representations.

PAR. 9. The amended complaint in this proceeding listed a number of advertising statements and representations in addition to those referred to herein, which have been used by the respondent in promoting the sale of its tobacco products, and charged that such statements and representations were also false, deceptive, and misleading. The Commission is of the opinion, however, and finds, that the charges with respect to these additional statements and representations have not been sustained by the greater weight of the evidence.

PAR. 10. The use by the respondent of the false, deceptive, and misleading representations, as set forth in paragraphs 3 and 4 hereof, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations were true and into the purchase of the respondent's Camel cigarettes as a result of such false and erroneous belief. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent as herein found have all been to the prejudice and injury of the public and of the respondent's competitors, and have constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint, the report of the trial examiner upon the evidence and exceptions to such report, briefs in support of the amended complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, R. J. Reynolds Tobacco Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its Camel brand of cigarettes, do forthwith cease and desist from representing, directly or by implication:

1. That the smoking of such cigarettes encourages the flow of digestive fluids or increases the alkalinity of the digestive tract, or that it aids digestion in any respect.

2. That the smoking of such cigarettes relieves fatigue, or that it creates, restores, renews, gives, or releases bodily energy.

3. That the smoking of such cigarettes does not affect or impair the wind or physical condition of athletes.

4. That such cigarettes or the smoke therefrom will never harm or irritate the throat, nor leave an aftertaste.

5. That the smoke from such cigarettes is soothing, restful, or comforting to the nerves, or that it protects one against nerve strain.

6. That Camel cigarettes differ in any of the foregoing respects from other leading brands of cigarettes on the market.

7. That Camel cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or the smoke therefrom of any of the four other largest selling brands of cigarettes. L

It is further ordered, That said respondent, and its officers, 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 its Camel brand of cigarettes, do forthwith cease and desist from using in any advertising media testimonials of users or purported users of said cigarettes which contain any of the representations prohibited in the foregoing paragraph of this order or which are not factually true in all respects.

Order

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

Syllabus

IN THE MATTER OF

P. LORILLARD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4922. Complaint, Mar. 2, 1943—Decision, Mar. 31, 1950*

While the first few puffs from an extra-long cigarette might be somewhat cooler than the smoke from a shorter cigarette and contain less of the irritating properties in the smoke, when an extra-long cigarette is smoked to the same butt length as a shorter cigarette, there is no difference in the temperature of the smoke from the two cigarettes and no lessening of the irritating properties in the smoke entering the smoker's mouth. And, in fact, if the longer cigarette is smoked to the same butt length as the shorter one, the amount of nicotine and tarry substances entering the mouth is probably greater for the former, due to the accumulation of the harmful substances in the butt of the longer one during the first few puffs, and also due to the fact that the longer cigarette contains more tobacco and therefore more of the harmful substances.

The nicotine content of the smoke of a cigarette is in direct proportion to the nicotine content of the tobacco contained in the cigarette, and the nicotine content of the tobaccos used in the manufacture of the popular brands varies greatly, not only as among the several types of tobaccos used, but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even as among the leaves on the same plant, due to a number of variable factors, including weather conditions, type of soil, method of fertilization and cultivation, and others.

There is no index by which the tobacco buyers for any cigarette manufacturer can judge the nicotine content in tobacco leaves by visual inspection; and, due to the above-mentioned variations in the nicotine content of tobacco, consistency in said content of the tobaccos purchased by any cigarette manufacturer cannot be maintained through the purchase of only the leaves in a certain position on the tobacco plant, or by sampling specimens of the tobaccos, or in any other manner. Furthermore, there is no known practical process by which the nicotine in the tobacco leaf may be removed or substantially reduced without at the same time destroying the tobacco for commercial use, and it is not practically possible for the cigarette manufacturers to maintain a consistency of nicotine in the finished cigarette, due to the large amount of tobacco leaves used in the manufacture thereof, and the extreme variation in their nicotine content.

As respects tars and resins in the tobaccos from which popular cigarettes are made, these vary considerably, as does the nicotine content, and for the same reasons. And here too it is not practically possible for the manufacturers to determine the amount of tars and resins in the tobaccos purchased, or to remove or substantially reduce the amount therein, or to maintain consistency in the amount thereof in the finished cigarettes.