

Syllabus

IN THE MATTER OF
CARTER PRODUCTS, INC., ET AL.COMPLAINT, FINDINGS, ORDER AND STATEMENT IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4970. Complaint, May 28, 1943—Decision, Mar. 28, 1951*

No rational man is opposed to advertising or to any other legitimate form of merchandising, nor is the Commission or any Commissioner or Commission employee so opposed.

The Commission is not opposed to self-medication, nor to the manufacture and sale of laxative compounds when the consumer—who is often the unjust, and sometimes tragic victim in the general field of self-medication associated with the word "laxative"—is warned and assured of protection against fraud or against any condition or practice which would be inimical to his health or which would result in the pilfering of his pocketbook.

As respects the false advertising of medicinal products, there is every reason to believe that the consumers who are victims of misrepresentation of such products are all too often the less-informed and less able to protect themselves and their pocketbooks, and that all too often, weakened by fear of illness and burdensome medical expenses, and by unemployment, they become the ready victims of those who would thus prey upon them; and the time has long passed when those engaged in the manufacture and distribution of medicinal preparations and in associated advertising must again take steps—as they did some years ago—to rid the house of those who have less regard for the truth of their representations to the public.

As regards such practices, the Commission is ready and anxious to cooperate in every way and at all times with everyone interested in protecting such honorable professions and businesses as the advertising profession, and the manufacture and distribution of medicinal preparations, from the unlawful practices of the few.

Unrestricted consumption of laxative compounds often invites injury to the health of the consumer; and the advertising columns in many publications now indicate all too clearly that the consumption of laxatives has become a fad or a craze induced by high-pressure advertising practices.

As respects the inclusion in cease and desist orders in false and misleading advertising cases of advertising agencies as involved therein and as concerned in the instant proceeding, it appearing that the Commission has included such agencies in orders on some occasions, and in others has not done so, the Commission will be asked to instruct its staff that hereafter advertising agencies will be cited in every case when the facts warrant such action.

Where a corporation engaged in the interstate sale and distribution of its Carter's Little Liver Pills through wholesale drug jobbers, chain stores, and department stores; through words, phrases, statements, and representations in advertising material, disseminated by it, directly and by implication—

(a) Represented that said preparation represented a fundamental principle of nature in self-treatment; the facts being that since laxation afforded by

an irritant laxative or cathartic is not a normal physiological method of evacuation and not based on any principle having relation to natural bowel motility, such representation was not true;

- (b) Represented that said preparation was a cure and remedy and an effective treatment for constipation and would bring on, help, and restore regularity of bowel movement;

The facts being that said product was incapable of curing or favorably influencing the underlying causes of constipation, and had no therapeutic effect other than to produce laxation or temporary greater frequency of bowel movement; it would tend to aggravate spasticity; and habitual use of irritant laxatives tends to produce irregularity rather than to restore regularity;

- (c) Represented that said preparation contained no strong medicine, and that it was harmless and safe for those who had constipation or were suffering from delay in bowel movement or in whom a failure to digest food had occurred;

The facts being that the ingredients thereof were irritant laxatives and the product was potentially injurious to those suffering from symptoms of appendicitis; might cause perforation of the intestine where delay in evacuation was due to obstruction in the tract; use thereof by some persons might be attended with griping and stomach discomfort; and might increase and aggravate constipation of the spastic type; and, as a laxative, was contraindicated in many conditions;

- (d) Represented falsely that said preparation was a competent and effective treatment for sluggish liver functioning, which would make bile flow freely, increase or beneficially influence the formation, secretion or flow thereof, and prevent or overcome discomfort caused by overindulgence in food or other good times; that it provided two-way relief, and possessed therapeutic properties in addition to those afforded by laxative action;

- (e) Represented falsely that said preparation would cause the proper flow of the gastric juices and natural vital digestive juices, would lessen food decay and was based on the fundamental principle of the operation of the digestive system, and helped digestion, including the stopping of fatty indigestion; and would regulate digestion and the digestive system and thus follow nature's own order for regularity, and would so regulate the digestion that it made the user "fit as a fiddle" and full of "bounce";

The facts being that such value as it might have in inducing well-being would be limited to instances in which indispositions impairing such state were due solely to constipation;

- (f) Falsely represented that constipation poisoned the body;
- (g) Represented that said preparation had value in the treatment of headache, ugly complexion, bad breath, coated tongue, or a bad taste in the mouth, or for conditions in which an individual felt "down and out," "blue," "down in the dumps," etc.;

The facts being that such symptoms might occur in almost any condition affecting the body and said preparation would have no therapeutic value in their treatment when they were not associated with constipation, and then would afford only temporary relief;

- (h) Represented that said preparation was a competent or effective treatment for indigestion or retarded digestion;

The facts being that when failure to digest occurs, diarrhea rather than constipation frequently ensues; use of said preparation would not bring about digestion of food in either event; and while such discomfort of the gastrointestinal tract as may result from constipation may be relieved temporarily by the release of pressure in the colon afforded by laxation, treatment of disturbance or irritation of the intestines looks to soothing such conditions rather than the introduction of an additional irritant in the form of a laxative;

- (i) Represented falsely that said preparation was a competent or effective treatment for biliousness; and,
- (j) Represented falsely through the use of the word "liver" in the name of its said product, that it would have some therapeutic action on the liver and was for use in the treatment of disorders thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of said preparation:

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

As respects the charge in the complaint that said advertisements constituted false advertisements for the reason that they failed to reveal certain facts as to potential dangers inherent in the use of said preparation under prescribed or usual conditions, by persons suffering from habitual pains, nausea, vomiting or other symptoms of appendicitis: the Commission was unable to find that the potential danger to the public health inherent in the use of said preparation was so serious as to require a disclosure in the advertising of the matters concerned in said charge, and under the circumstances was of the opinion that dismissal thereof without prejudice was warranted.

With regard to the charge of the complaint that respondent falsely represented that calomel was a drastic and dangerous laxative compound, the use of which was an ordeal, and the fact that testimony was introduced to show, among other things, that calomel taken in proper doses would not be painful: it was believed that said charges were not supported by the record and they were accordingly dismissed.

As respects the inclusion in the proceeding as respondent, of an advertising agency which assisted respondent Carter Products in the preparation and placing of the various advertisements used in promoting the sale of the preparation involved: it appeared that its service and participation terminated about one year prior to the institution of the proceeding and therefore that the public interest did not require that said agency should be included as a party to the order to cease and desist, and the charges of the complaint were accordingly dismissed without prejudice as they related to said advertising agency.

As respects the request that the Commission declare it unqualifiedly unsafe to consume the product involved—a statement which the Commission did not believe was justified by the evidence—the authority of the Commission extends only to false and deceptive advertising and practices in the sale and distribution in interstate commerce of such products, and there are

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other agencies of the Government concerned with the advancement and welfare of the public health, involving, often, interrelated obligations of the authority conferred on the Commission and those of other agencies.

With regard to the fact that the record in the instant case contains an exceptionally fine body of factual testimony relative to the product involved and to the effect of laxatives on the human system, the Commission decided that said body of factual testimony which was obtained through expenditure of public funds, in part, should not be permitted to become buried in Government files, and that it would be called to the attention of all other Government agencies which were interested; that the Commission should thus offer to cooperate in making use of it for the common good, and would itself hereafter seek every opportunity to make use of comparable evidence so that the maximum of possible contribution should be made to the consumers.

As respects the public interest as involved and affected by false and misleading advertising of medicinal preparations, and as raised by the instant proceeding: the Commission will seek, as set forth in its recent statement of policy, to enjoin such practices whenever such action is warranted in the public interest, so that the day of judgment and penalty may be brought nearer to the day of commission of fraud.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Fletcher G. Cohn for the Commission.

Breed, Abbott & Morgan, of New York City, 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 Carter Products, Inc., a corporation, and Street & Finney, a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Carter Products, Inc., is a corporation existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 53 Park Place, New York, N. Y.

PAR. 2. Respondent, Carter Products, Inc., is now, and for more than 1 year last past has been, engaged in the sale and distribution of a medicinal preparation designated Carter's Little Liver Pills in commerce among and between the various States of the United States and in the District of Columbia. This preparation is distributed by respondent, Carter Products, Inc., through wholesale drug jobbers, chain stores, and department stores.

This respondent causes the said preparation, Carter's Little Liver Pills, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

This respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforesaid preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Street & Finney, is a corporation existing under the laws of the State of New York with its principal place of business located at 330 West Forty-second Street, New York, N. Y. This respondent is an advertising agency and, as such, is engaged in formulating, editing, testing, selling, and advising, its clients on advertising matters.

This respondent is the advertising representative of respondent Carter Products, Inc., and prepares, edits, tests, and places all advertising material used by respondent, Carter Products, Inc., in promoting the sale of said medicinal preparation Carter's Little Liver Pills.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the aforesaid medicinal preparation, the said respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of, false advertisements concerning the said medicinal preparation, Carter's Little Liver Pills, and, disparaging statements and representations of the drug Calomel and of other laxative preparations, by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning the said medicinal preparation, designated as aforesaid, and disparaging statements and representations, as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said preparation Carter's Little Liver Pills in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Through the use of words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by respondents as aforesaid, which purport to be descriptive of the preparation Carter's Little Liver Pills and

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descriptive of the therapeutic action, the result, and value of such action of this said preparation, sold and distributed by the respondent, Carter Products, Inc., as aforesaid, respondents represent directly and by implication; among other things, that the preparation Carter's Little Liver Pills represents a fundamental principle of nature in self-treatment and that it is a competent and effective treatment for a condition designated by respondents as "a sluggish liver"; that Carter's Little Liver Pills will "wake up the flow of bile" and is effective in making "bile flow freely" by getting the liver back to normal and back to producing; that it will cause the proper flow of the gastric juices, the natural vital digestive juices, and the vital alkaline juices; that it is based on the fundamental principle of the operation of the digestive system and will "help food digestion," "lessen food decay," regulate digestion, and the digestive system, bring on, help, and restore regularity and is a cure and remedy, and constitutes a competent and effective treatment, for constipation; that it will clear away the "dark clouds of listlessness and despondency" and "give one's personality a chance"; that it will "keep up one's pep and vigor"; that it will "make one feel good and up to par again" and "keep one smiling and happy"; that it will "eliminate those uncomfortable feelings" that cause a bad disposition and will keep good dispositions "cheerful, happy, and a regular thing"; that it will help in more ways than one to make one feel better again fast and differently and will provide two-way relief.

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills follows nature's own order for regularity and so regulates the digestive process that, if it is taken as directed before retiring at night, one will awaken the following morning feeling the way one wants to feel, "full of normal old-time pep and vigor," "alive," "alert," "cheerful," "peppy," "eager," "robust," "bright," "lively," "full of pep," "bounce," "energy," "sparkle," "snap," "go and vigor," "spry and chipper again," "perked up," "up on your toes," "up to snuff," "up to par again," "fit as a fiddle," "chipper-as-a-chipmunk," "on top of the world," "up and up," "rarin' to go," a new person ready to "jump out," or "roll out," of bed, "singing like a lark," "singing a song for the sheer joy of living," "fresh as a daisy," "glad to be alive," "ready for a big breakfast."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills will so influence the production or flow of liver bile that one can overeat and overindulge in "good times" without the usual

ordinary discomforts resulting therefrom; and, if one has overeaten or overindulged in "good times," that the preparation Carter's Little Liver Pills, by its influence on the production or flow of liver bile, will overcome the discomforts that usually and ordinarily follow such indiscretion and will enable one to wake up, "roll out of bed," "rosy and bright," "clear eyed and steady-nerved," "feeling just wonderful," "feeling like a million," free from that "blue-Monday feeling," "ready for a great big breakfast," "alert and ready for work."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills will enable those engaged in war-production work to avoid awakening in the mornings "feeling bad" and "dragging along all day" and will enable them to "roll out of bed on their toes," "ready for a big breakfast and a bigger day's work."

Respondents further represent, among other things, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills does not contain any strong medicine; that it is safe to use; that it is not an ordinary laxative but possesses therapeutic properties over and above and in addition to its laxative action.

PAR. 7. Through the use of the words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of various physical and mental conditions, respondents represent, directly and by implication, among other things, that if an individual feels "down-and-out," "blue," "down-in-the-mouth," "tired out," "sunk," "logy," "discouraged," "depressed," "headachy," "sluggish," "all-in," "listless," "mean," "low," "peevish," "cross," "tired," "stuffy," "heavy," "miserable," "fagged out," or "dizzy"; or if an individual is "sour," "grouchy," "cross," "bilious," "irritable," "low in spirit," "cranky," "peevish," "listless," "tired of life," or "tired-out"; or if an individual has "headaches," "an ugly complexion," "bad breadth," "coated tongue," "bad taste in the mouth," "nausea," "indigestion or sluggish lazy digestion," or "a cranky, dull, sluggish disposition"; or if an individual has that "fagged out," "all-in" "down-and-out," "dull," "low," "cranky," "sullen," "what's-the-use," "bogged-down," "grompy," "listless," "sour," "sunk," "tired," "run-down," "grouchy," "gloomy," "blue," "spring fever" feeling; or if an individual becomes "moody," "temperamental" or "tired out," or if an individual doesn't feel "up to par," "all to the good"; and, "the world looks black," then such person is exhibiting symptoms, manifestations, or conditions indicating irregularity of bowel movement or constipation; that irregularity of bowel

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movement or constipation is the cause of such symptoms, manifestations, or conditions; and that the preparation Carter's Little Liver Pills is a competent and effective treatment for such symptoms, manifestations, and conditions.

Respondents further represent, among other things, in the manner, means, and method aforesaid, that constipation poisons one's body.

PAR. 8. Through the use of words, phrases, statements, and representations appearing in the advertising material disseminated and caused to be disseminated by respondents, as aforesaid, which purport to be descriptive of the therapeutic action, the result and value of such action, of calomel and other ordinary laxative preparations or compounds, sold on the market, as well as a comparison thereof with the action and result afforded by the preparation Carter's Little Liver Pills, respondents represent, directly and by implication, among other things, that calomel is a harsh, drastic, dangerous laxative, the use of which is "an ordeal" and "puts one through the wringer"; that other ordinary laxative preparations or compounds sold on the market do not possess the same therapeutic action, nor will the use thereof be as effective, or produce as beneficial results, as the preparation Carter's Little Liver Pills; and that the preparation Carter Little Liver Pills is superior to such laxative preparations or compounds.

PAR. 9. The foregoing representations and implications, and others of similar import not specifically set out herein, appearing in respondents' advertising material, disseminated and caused to be disseminated as aforesaid, are grossly exaggerated, false, and misleading.

The preparation Carter's Little Liver Pills does not represent a fundamental principal of nature in self-treatment. It will not wake up the flow of bile. It is not effective in making bile flow freely. It will not get the liver back to normal or back to producing. It will not cause the proper flow of the gastric juices, of the natural vital digestive juices or of the vital alkaline juices. It is not based on the fundamental principle of the operation of the digestive system. It will not help "food digestion." It will not lessen "food decay." It will not regulate digestion or the digestive system, but is likely to interfere with the digestive processes. It will not bring on, help, or restore regularity. It is not a cure or remedy, nor does it constitute a competent or effective treatment, for constipation. It will not clear away the "dark clouds of listlessness or despondency." It will not "keep up one's pep or vigor." It will not "make one feel good or up to par again." It will not "keep one smiling or happy." It will not keep one's disposition cheerful and happy or a cheerful happy disposition a regular thing. It will not help in more ways than one to

make one feel better again, fast and differently. It does not provide fast two-way relief.

There is no condition, disease, or disorder of the liver known, designated, or recognized by competent scientific or medical authority as a sluggish liver. The preparation Carter's Little Liver Pills will have no therapeutic action on the liver, and it is not a competent or effective treatment for any condition, disease, or disorder of the liver under whatever name designated.

The preparation Carter's Little Liver Pills does not follow nature's own order for regularity, and it does not so regulate the digestive processes that, if taken as directed before retiring at night, one will awaken feeling the way one wants to feel. It will not make one feel "full of normal old time pep and vigor," "alive," "alert," "cheerful," "peppy," "eager," "robust," "bright," "lively," "full of pep," "bounce," "energy," "sparkle," "snap," "go and vigor," "spry and chipper again," "perked up," "up on your toes," "up to snuff," "up to par again," "fit as a fiddle," "chipper-as-a-chipmunk," "on top of the world," "up and up," "rarin' to go," a new person ready to "jump out," or "roll out," of bed, "singing like a lark," "singing a song for the sheer joy of living," "fresh as a daisy," "glad to be alive," "ready for a big breakfast."

The preparation Carter's Little Liver Pills will not influence the production or flow of liver bile so as to enable one to overeat or over-indulge in "good times" without experiencing the usual, ordinary discomforts resulting therefrom. If one has overeaten or overindulged in "good times," the preparation Carter's Little Liver Pills will not influence the production or flow of liver bile so as to overcome the discomforts that usually and ordinarily follow such indiscretion and enable one to wake up, "roll out of bed," "rosy and bright," "clear eyed and steady-nerved," "feeling just wonderful," "feeling like a million," free from that "Blue-Monday feeling," "ready for a great big breakfast," "alert and ready for work."

The preparation Carter's Little Liver Pills will not enable those engaged in war production work to avoid awakening in the morning "feeling bad" and "dragging along all day." It will not enable such persons to "roll out of bed on their toes," "ready for a big breakfast and a bigger day's work."

The preparation Carter's Little Liver Pills does contain strong medicines, and it is not safe to use under all circumstances. It is an ordinary laxative or cathartic and possesses no therapeutic properties over, above, or in addition to, its laxative action.

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PAR. 10. The disorders or conditions such as, an individual feeling "down-and-out," "blue," "down-in-the-mouth," "tired out," "sunk," "logy," "discouraged," "depressed," "all-in," "mean," "low," "peevish," "cross," "tired," "stuffy," "heavy," "miserable," "fagged out," or "dizzy"; or if an individual is "sour," "grouchy," "cross," "irritable," "low in spirit," "cranky," "peevish," "tired of life," or "tired-out"; or if an individual has "an ugly complexion," "bad breath," "bad taste in the mouth," "nausea," "indigestion or a sluggish lazy digestion," or "a cranky, dull, sluggish disposition"; or if an individual has that "fagged-out," "all-in," "down-and-out," "dull," "low," "cranky," "sullen," "what's-the-use," "bogged-down," "grumpy," "sour," "sunk," "tired," "run-down," "grouchy," "gloomy," "blue," "spring fever" feeling; or if an individual becomes "moody," "temperamental" or "tired out," or if an individual doesn't feel "up to par," "all to the good," and "the world looks black," are not symptoms, manifestations, or conditions indicating irregularity of bowel movement or of constipation. The existence of one or more of such symptoms, manifestations, or conditions does not indicate that the individual is suffering from irregularity of bowel movement or from constipation. The preparation Carter's Little Liver Pills is not a competent or effective treatment for such symptoms, manifestations, or conditions.

"Headache," "sluggishness," "listlessness," and "coated tongue" may, and sometimes do, accompany irregularity of bowel movement, and they are sometimes associated with, and are sometimes recognized as symptoms of constipation. When such symptoms, manifestations or conditions are caused by, or are associated with, irregularity of bowel movement or constipation, then the preparation Carter's Little Liver Pills will have no greater therapeutic value in the treatment thereof than the temporary relief afforded by an evacuation of the bowels.

On the other hand, however, "headache," "sluggishness," "listlessness," and "coated tongue" are symptoms of a symptom complex sometimes referred to as "biliousness." "Biliousness" is a general term often used in a broad sense to refer to a group of symptoms or conditions supposed by some—without any supporting scientific evidence—to be caused by or due to disorders in the secretion and flow of bile. Carter's Little Liver Pills will have no therapeutic action, effect, or influence on the secretion and flow of bile and will therefore have no therapeutic value, whatever, in the treatment of any symptom, manifestation, or condition, under whatever name or names designated, caused by or due to disorders in the secretion and flow of bile.

According to the consensus of opinion of recognized scientific and medical authority, constipation does not poison one's body.

PAR. 11. Calomel used with proper caution and given in proper doses for, and taken in a proper manner to act as, a laxative, is not dangerous; and it is no harsher or more drastic in its action, nor is the taking thereof any more of "an ordeal," nor does it "put one through the wringer" to any greater degree, than the preparation Carter's Little Liver Pills.

The preparation Carter's Little Liver Pills is an ordinary laxative or cathartic possessing no other therapeutic property. Its action is no different from, nor will the results obtained from its use be any more effective or beneficial than, that obtained from the use of many other ordinary laxative preparations or compounds, containing vegetable laxative or cathartic drugs, sold on the market. It is not superior to such other laxative preparations or compounds.

PAR. 12. In addition to the false and misleading representations appearing in the advertising material disseminated, as aforesaid, respondents are engaged in further false and misleading representation in reference to the preparation Carter's Little Liver Pills. Through, and by, the use of the word "Liver," in the name Carter's Little Liver Pills used by respondents in the aforesaid advertising material to identify and designate the medicinal preparation sold and distributed, as aforesaid, respondents represent, directly and by implication, that the preparation Carter's Little Liver Pills, is for use in the treatment of conditions, disorders, and diseases of the liver and that said preparation will have some therapeutic action, effect, and influence on the liver.

The preparation Carter's Little Liver Pills contains no ingredient or ingredients, recognized by competent medicinal or scientific authority, either alone or in any combination of the one with the other, as having any therapeutic value in the treatment of any condition, disorder, or disease of the liver.

The ingredients in the preparation Carter's Little Liver Pills, alone or in any combination of the one with the other, will have no therapeutic action, effect, or influence, corrective or otherwise, on the liver.

PAR. 13. The advertisements, disseminated and caused to be disseminated by the respondents, as aforesaid, constitute false advertisements for the further reason that they represent the preparation Carter's Little Liver Pills as a competent, effective, safe, treatment for common and recurring pains and fail to reveal facts material in the light of such representations or material in respect to the consequences that may result from the use of the preparation under con-

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ditions described in said advertisements or under such conditions as are customary or usual.

The preparation Carter's Little Liver Pills, sold and distributed by respondent, Carter Products, Inc., as aforesaid, is an irritant laxative or cathartic and is potentially dangerous if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 14. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of similar import not specifically set out herein, appearing in respondents' advertising material, disseminated and caused to be disseminated, as aforesaid, do not accurately disclose or describe the preparation Carter's Little Liver Pills, nor truthfully set forth, disclose, or describe the true therapeutic action, or the true results to be obtained from the use, of said preparation, and has had and now has the tendency and capacity to, and might easily, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief: That the use of the preparation Carter's Little Liver Pills will have the effect and accomplish the results claimed for it, by the respondents as set forth in paragraphs 6 and 7 hereinabove; and, as further represented by respondents, that calomel, when taken in proper doses for and as a laxative, is harsh and drastic in its action; that the preparation Carter's Little Liver Pills, is superior to calomel and superior to other ordinary laxative preparations or compounds sold on the market; that it is for use in the treatment of conditions, disorders, and diseases of the liver, and that it will have some therapeutic action, effect, and influence on the liver; that it is safe to take; and has had and now has the tendency and capacity to, and might easily, induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase the aforesaid preparation Carter's Little Liver Pills.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Commission on May 28, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Carter Products, Inc., a corporation, and Street & Finney, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in

violation of the provisions of that act. After the filing by respondents of their joint answer to the complaint, 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 duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, the report of the trial examiner upon the facts and the exceptions filed thereto, briefs and supplemental memoranda briefs in support of and in opposition to the complaint, and oral argument and supplemental oral argument; and the Commission, having duly considered the matter, including the exceptions filed by respondents, 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. Respondent, Carter Products, Inc. (hereinafter referred to as the respondent), is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 53 Park Place, New York, N. Y.

PAR. 2. Respondent, Carter Products, Inc., is now, and for many years past has been, engaged in the sale and distribution through wholesale drug jobbers, chain stores, and department stores, of a medicinal preparation designated Carter's Little Liver Pills. When sold, respondent's product is transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and respondent maintains, and at all times mentioned herein has maintained, a course of trade in the aforesaid preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In furtherance of the sale and distribution of the aforesaid medicinal preparation, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning said preparation by the United States mails and various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has disseminated and is now disseminating, and has caused and is now causing the dissemi-

nation of, advertisements concerning such preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase thereof in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. (a) Through the use of words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by the respondent, as aforesaid, which purport to be descriptive of the preparation Carter's Little Liver Pills and descriptive of the therapeutic action and result of such action of this preparation, respondent represents directly and by implication, among other things, that the preparation Carter's Little Liver Pills represents a fundamental principal of nature in self-treatment, that it is a cure and remedy and constitutes a competent and effective treatment for constipation, and will bring on, help, and restore regularity of bowel movement.

Respondent further represents, in the manner, means, and method aforesaid, that the preparation Carter's Little Liver Pills does not contain any strong medicine, and that it is harmless and safe for use by those individuals who have constipation or are experiencing delay in bowel movement or in whom a failure to digest food has occurred.

(b) Respondent further represents, in the advertising disseminated and caused to be disseminated in the manner aforesaid, that the preparation Carter's Little Liver Pills is a competent and effective treatment for sluggish liver function, liver ills, and disorders affecting the liver; that its use will "wake up the flow of bile," will make "bile flow freely" by getting the liver back to normal and back to producing; that its use will so influence the production or flow of liver bile that one can overeat and overindulge in "good times" without the ordinary discomforts resulting therefrom; that if one has over-eaten and overindulged in "good times" that the preparation Carter's Little Liver Pills, by its influence on the production or flow of liver bile, will overcome the discomforts that usually and ordinarily follow such indiscretion and will enable such user to wake up "clear-eyed and steady-nerved," "feeling just wonderful," and "alert and ready for work"; that such preparation through its favorable influence on bile flow and in helping to restore regularity provides two-way relief, and that it is not an ordinary laxative but possesses therapeutic properties over and above and in addition to its laxative action.

(c) Through the use of the words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by the respondent, as aforesaid, respondent

represents that use of its preparation will cause the proper flow of the gastric juices and natural vital digestive juices; that it will lessen food decay and is based on the fundamental principle of the operation of the digestive system; that such preparation will help food digestion including the stopping of fatty indigestion and will regulate digestion and the digestive system; and so follows nature's own order for regularity and so regulates digestion that it will make the user "fit as a fiddle," and full of "bounce."

Respondent further represents that constipation poisons the body.

(d) Through the use of the words, phrases, statements, and representations, appearing in the advertising material disseminated and caused to be disseminated by respondent, as aforesaid, which purport to be descriptive of various physical and mental conditions, respondent represents directly and by implication, among other things, that when caused by constipation or irregularity of bowel movement the preparation designated Carter's Little Liver Pills is a competent and effective treatment for those conditions in which an individual feels "Down-and-out," "blue," "down-in-the dumps," "worn out," "sunk," "logy," "depressed," "headachy," "sluggish," "all-in," "listless," "mean," "low," "cross," "tired," "stuffy," "heavy," "miserable," "sour," "grouchy," "bilious," "irritable," "cranky," "peevish," "fagged out," "dull," "sullen," "what's-the-use," "bogged down," "grumpy," "run-down," and "gloomy."

Respondent further represents that the preparation designated Carter's Little Liver Pills is a competent and effective treatment for headache, ugly complexion, bad breath, coated tongue, bad taste in the mouth, "lazy digestion," and "indigestion," when caused by constipation.

PAR. 5. The quantitative formula of Carter's Little Liver Pills is as follows: Podophyllum resin U. S. P., $\frac{1}{16}$ grain; podophyllum purified aloes, $\frac{1}{4}$ grain. Podophyllum resin, also known as podophyllin, is the resin of the dried root of the mandrake or mayapple plant. Aloes is the dried juice of the aloe plant. Podophyllin is used as a laxative, purgative or drastic cathartic, and aloes is one of the irritant cathartics ranking with senna, rhubarb, and cascara sagrada.

PAR. 6. Respondent's product, when used as directed, has laxative properties. Its use serves to increase temporarily the motility of the large bowel by irritation and thus induces partial evacuation of the large intestine. Inasmuch as the laxation afforded by an irritant laxative or cathartic is not a normal physiological method of evacuation and is not based on any principle having relation to natural bowel motility, it is not true as stated in respondent's advertising that

the preparation represents a fundamental principle of nature in self-treatment.

PAR. 7. In a scientific sense, constipation is a term used to connote a slower evacuation of the large bowel than the average normal evacuation of the individual. Although it has reference to delay in the passage of indigestible residues through the alimentary tract and to infrequency of bowel action, and may be used to describe the condition in which the stools are dry and hard, constipation has been described also as being that condition which causes a person to believe that a cathartic is necessary to cause a bowel movement. Normal frequency in bowel movement varies widely among individuals. Because varied notions obtain with respect to what represents normal frequency, the average layman may not diagnose constipation properly and there is a tendency for self-diagnosis to be made on the basis of symptoms having no relationship to constipation.

In its chronic form, there are two general types of constipation: (1) Spastic, and (2) atonic. The state of the musculature of the large bowel, and the neuromusculature system of the large bowel differs in the two conditions named. In the spastic variety, the musculature is abnormally contracted and rigid and does not propel the contents thereof forward in a normal manner. In the atonic condition usually associated with an enlargement of the large bowel due to tremendously increased content, the musculature does not contract and retain its tonus or state of partial contraction. Atonic constipation is attributable to constitutional weakness of the muscles of the colon and is supposed to occur principally in the rectum, while the spastic type is supposed to be due principally to anxiety, worry, or nervous strain. Among the causes of constipation or irregularity of bowel movement are improper diet and stool habits, insufficient intake of fluids and variations or obstructions of the alimentary tract such as fissure, cancer, and debilitating conditions. Factors predisposing to constipation are numerous and thorough study by the physician is necessary before comprehensive treatment is undertaken. Competent medical treatment for chronic constipation, therefore, varies in individual cases but is directed to correcting the basic conditions which are responsible. Respondent's product is incapable of remedying or curing the underlying causes of constipation, or favorably influencing them in any way. Carter's Little Liver Pills will have no therapeutic effect on constipation other than to produce laxation or temporary greater frequency of bowel movement. With regard to the type of constipation known as spastic, Carter's Little Liver Pills will tend to aggravate any state of spasticity which is present. It has no therapeutic

value in the treatment of any of the symptoms of constipation in excess of such temporary relief as may be afforded by laxation. The statements appearing in the advertising which represent that Carter's Little Liver Pills are a cure or remedy for and constitute a competent and effective treatment for constipation are false and misleading.

The habitual use of irritant laxatives tends to produce irregularity rather than to restore regularity, and the use of respondent's preparation will not restore regularity of bowel movement.

PAR. 8. The statements appearing in the advertising that respondent's product is composed of two simple vegetable medicines, and containing reference to gentle action purportedly afforded by use of respondent's product, imply that Carter's Little Liver Pills do not contain strong medicines. Carter's Little Liver Pills, however, do contain strong medicines. Although they are obtained by purification of members of the plant kingdom, the ingredients of respondent's pills are irritant purgatives. Aloes taken in sufficient amounts lead to some hyperemia and increased vascularity. Neither aloes nor podophyllin is absorbed to any great extent, and as long as they remain in the colon may be causative of local irritation. Podophyllin was removed from the U. S. Pharmacopoeia when the scientific group responsible for the preparation of this publication recognized it to be a "drastic," or member of that class of irritant drug which includes colocynth and jalap.

Respondent's product is not safe for and harmless to all individuals who are constipated or suffering from delay or irregularity of bowel movement and symptoms thereof, or from failure of digestion. It is potentially injurious if taken by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis. It may cause perforation of the intestine in instances where delay in evacuation is due to obstruction in the tract. In some persons, the use of Carter's Little Liver Pills may be attended with griping and stomach discomfort, and when used in the presence of constipation of the spastic type may serve to increase and aggravate such state of spasticity. The use of a laxative is contraindicated in many conditions.

PAR. 9. A determination of those charges of the complaint as relate to what influence, if any, the use of Carter's Little Liver Pills will have on sluggish liver function, the production and flow of bile and other digestive juices, involves consideration of the testimony and other evidence introduced herein which, among other things, describes the physiology of the alimentary tract, the essential nature of bile, and the pathological conditions impeding the formation and flow of bile.

The alimentary system extends from the mouth to the anus and its primary functions are the taking in of food, digestion thereof, and passage of the indigestible or undigested residues to the outside. From the stomach where ingested food has been changed to a thick liquid and subjected to the action of the gastric juices, food passes into the duodenum, which is the upper extremity of the small intestine. At the time of the food's entry into the duodenum, the pancreatic juice and the bile begin to flow and when the mass passes out of the small intestine into the large intestine more than 90 percent of the proteins, fats, and starches have been digested and absorbed into the blood stream. Food residues thereafter are conveyed through the large bowel for evacuation from the body.

The liver is a detoxifying organ and has an important role in the metabolism of proteins, carbohydrates, and fats. Formed in the hepatic cells of the liver and secreted by the liver in the bile are the bile salts, which are indispensable in the emulsification and digestion of fats. In addition to bile salts, bile contains pigment or coloring matter which has no function in digestion, fatty acids, and cholesterol, the latter being an excretion. The bile as normally secreted by the liver and as passed through the biliary system into the intestine is not a laxative fluid, but if extra bile salts are administered by mouth definite laxation can be obtained.

Bile drains from hepatic ducts, is propelled into a channel known as the common bile duct, and then passes into the gall bladder where it undergoes concentration in a degree depending upon the length of time it is permitted to remain in that muscular sac. When the gall bladder subsequently contracts, the fluid returns to the common bile duct and passes into the intestine when the sphincter of Oddi, certain rings of musculature at the end of the duct, relaxes. When this sphincter is contracted, bile does not flow out of the common duct.

PAR. 10. Among the diseases which may interfere with normal formation or flow of bile are stones in the common bile duct, parasites therein or in the hepatic duct, infections in the bile passages, and cancer or tumor. Other ailments interfering with the flow of bile are spasm of the sphincter of Oddi, and inflammation or cancer of the ampulla of Vater or in tissues of the common bile duct. In the presence of these ailments, increased bile flow would cause pain and distress. Carter's Little Liver Pills will have no therapeutic value whatsoever in the presence of the foregoing diseases affecting the liver or the biliary system.

The various ways in which an increase in the flow of bile into the duodenum could be brought about are the following:

- (1) To stimulate the formation or secretion of bile by the liver.
- (2) To cause the gall bladder to contract.
- (3) To cause the sphincter of Oddi to relax.
- (4) To irritate the intestine in such manner as to eliminate the reflex action which causes contraction of the sphincter of Oddi.
- (5) To milk the bile from the bile ducts or from the ampulla of Vater by increasing the motility of the duodenum.

PAR. 11. Received into the record in this proceeding were testimony and other evidence relating to experiments conducted by various scientists which, together with the opinions expressed in support of and in criticism of such experiments by other expert witnesses, are of great importance in determining what effects, if any, the ingestion of Carter's Little Liver Pills will have on the biliary system and the liver.

(a) The experiments conducted by Dr. Lockwood in collaboration with others, which are described in testimony and other evidence introduced into the record by counsel supporting the complaint, appear to have utilized methods permitting the collection by a T-tube, for precise measurement and analysis, of all bile passing through the upper portion of the common bile duct in each of the human subjects participating in the experiments who were patients in an eastern university hospital. The experiments entailed control periods of several days and subsequent periods of administration of Carter's Little Liver Pills. Testimony was received into the record to the effect that comparison of the analyses made for periods of control and administration of respondent's pills show that Carter's Little Liver Pills had no effect on bile volume or on the cholic acid content (bile salts) of the bile.

(b) Other experiments as conducted by Dr. Case were directed to visualization through X-ray examination of the gall bladders of human subjects who had ingested dye substances. X-ray films were taken prior to and subsequent to the ingestion of respondent's product, and visually observed also were the gall bladders of the subjects prior to and subsequent to the ingestion of fats which are known to cause the gall bladder to contract and to stimulate the flow of bile into the intestine. In this connection, evidence was offered tending to show, among other things, that respondent's product brought about no apparent reduction in size of the gall bladders as thus observed and had no effect thereon, whereas the fat meal, on the other hand, significantly reduced their size; other evidence was introduced by respondent tending to show that these experiments could not be so interpreted.

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(c) Various of the experiments conducted by Dr. A. C. Ivy utilized dogs as subjects. As a method of collecting bile, in the animals used in several series of experiments, a biliary fistula or tract from the outside of the body to the bile duct itself was made and a catheter inserted. After a period of measurement and analysis of the bile to establish a standard or control, a mixture of aloes and podophyllin was administered and analyses were made of the biliary fluids. According to the exhibits and testimony relating to these experiments introduced by counsel supporting the complaint, the results show no increase in bile volume or cholic acid content during therapy, and generally similar appear to be the results of another series employing bile salts as the control and bile salts plus aloes and podophyllin during the period of therapy, and still another series entailing the repetition of the foregoing experiment on the same animal during various control diets. Respecting another experimental series using dogs, evidence was received to the effect that no significant increase in bile volume cholic acid content, cholesterol or pigment over the control period was afforded by respondent's product, and, according to the evidence adduced in such connection, similar results appeared when Carter's Little Liver Pills were administered to animals in which a condition of constipation had been induced through dietary means, which last referred to experiments, in the opinion of the witness conducting them, indicate also that constipation does not reflexly decrease the output of bile.

In the opinion of various witnesses, experiments on dogs regarding the liver, gall bladder, and bile, may be directly translated to man, since the fundamental mechanisms of the physiology of the liver, gall bladder, and bile ducts in dog and man are identical; consequently, these witnesses testified that the results of experiments to determine the effects of aloes, podophyllin, and Carter's Little Liver Pills on the secretion and flow of bile in dogs are transferable to human beings.

(d) Received into the record also and considered by the Commission are testimony and exhibits respecting a series designed for graphically recording the contractions of the gall bladders of experimental dogs as well as other experiments conducted by Dr. Ivy with human subjects, and those of Dr. Bollman with surgically obstipated dogs.

The data introduced into the record pertaining to the experiments of Dr. Ivy with a group of clinically normal people, in the opinion of the witness, show, among other things, that there is no essential difference in the concentration of bile constituents between drain-

ages of the duodenal fluid performed during the period when Carter's Little Liver Pills were administered and drainages conducted when they were not. Other experiments also utilizing duodenal drainages were made with a group of people giving histories of constipation in which there were alternating periods of control and therapy. As interpreted by the witness, the experimental results constitute a failure to show that the taking of Carter's Little Liver Pills increased the flow of bile into the duodenum.

In connection with the other experiments with human subjects who gave histories of constipation, data respecting a second series of such experiments gave results which, in the opinion of the witness, showed no statistically significant differences in drainages of the duodenal fluid made during the administration of Carter's Little Liver Pills than in drainages before its administration.

PAR. 12. (a) Introduced by respondent into the record also were testimony and data relating to experiments conducted by Dr. Morrison using human beings as subjects and by Dr. Hazleton with dogs. The experiments of Dr. Hazleton, in the opinion of this witness, indicate, among other things, increases in bile volume on the part of dogs receiving intravenous injections of aloes and in animals so injected with podophyllin given separately. Values definitely indicating a state of stimulation were not noted, however, in other experiments where the aloes and podophyllin were introduced into the duodenum itself rather than intravenously. Dr. Morrison testified as to five series of experiments incident to which aloes and podophyllin, Carter's Little Liver Pills, and other substances variously are reported to have been administered to normal and abnormal human subjects and the duodenal fluid collected. The witness expressed the opinion that the volume of duodenal fluid collected from the clinically normal subjects was greater and that such fluid contained higher concentrations of the various biliary constituents than appeared in the drainages of the subjects deemed clinically abnormal. He further stated that, under the conditions of such experiments, aloes and podophyllin and Carter's Little Liver Pills stimulate the flow of bile into the duodenum in response to direct stimulation.

(b) Respondent also introduced into the record testimony and data relating to four separate series of experiments conducted by Dr. Killian, a biochemist, the first series of which appear to have been directed to establishing appropriate procedures for further experiments. Dr. Killian testified that the data for the four human subjects participating in the second series of experiments indicated that the administration of aloes and podophyllin was accompanied by the

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presence of greater amounts of bile acids and cholesterol in the duodenal fluid than were observed in other drainages in which these ingredients were not administered.

The third series of experiments utilized four groups of human subjects giving histories of chronic constipation, which groupings in part were made on the basis of whether subjects' initial biliary values were relatively high or low in control periods. To these groups, there was administered as a stimulant to bile flow, peptone, which is a substance resulting from partial digestion of protein and is used in biliary drainage technique to stimulate the flow of bile in the duodenum. With respect to the two groups so segregated because they were deemed by the witness to display low biliary values during the control periods, in subsequent experimental drainages with peptone as a stimulant to bile flow during periods of control, and in others with peptone as a stimulant during periods of therapy with Carter's Little Liver Pills resulting in laxation, larger amounts of bile pigment, cholic acid, and cholesterol are reported by him to have been present during the periods of therapy among the group of subjects showing initially low values in response to peptone. On the other hand, no substantial increase was found in the other group of persons who initially showed comparatively low values without stimulation but displayed improved values upon the administration of peptone.

As to the fourth series of experiments, the data prepared by Dr. Killian and introduced by respondent in connection therewith indicates, among other things, that larger quantities of bile constituents were present in the duodenal fluids collected for 7 of the 10 subjects during periods of laxation induced by respondent's pills than were present during the periods of control. The scientific witness testifying on behalf of respondent asserted that, on the basis of the third and fourth series of experiments conducted by him, it was his opinion that continued administration of Carter's Little Liver Pills to subjects showing relatively low values for bile constituents in drainages during control periods in response to peptone increased their capacity to respond to the stimulating effect of peptone.

On the basis of the experiments, he expressed the opinion that Carter's Little Liver Pills will increase the flow of bile in persons who during periods when no Carter's Little Liver Pills are taken show low values of biliary constituents in the duodenal fluid in response to a stimulus introduced into the duodenum of the type of peptone and further show diminished rates of intestinal motility as evidenced by abnormal low fresh weight of stools and symptoms depending upon an abnormally low rate of intestinal motility. Such increase will be

contingent, however, upon the pills being given over a sufficient period of time to induce laxation either within the normal limits of fresh weight stools or the maximum laxative effect.

Seven of the subjects in the fourth series who, according to certain exhibits having reference to the histories and progress notes, experienced chronic constipation accompanied by conditions of headache, sluggishness, coated tongue, and gas, respondent contends, were relieved of such associated conditions when therapy with Carter's Little Liver Pills relieved the constipation, and these are the subjects for whom larger amounts of bile constituent were reported during periods of laxation in the experimental data. On the basis of the experiments and all the evidence, respondent contends that a large number of those individuals who suffer from chronic constipation and simultaneously display symptoms such as headache, gas, and listlessness are, in fact, suffering also from subnormal levels of biliary constituents, and that, in such case, a significant increase in biliary levels will ensue with the alleviation of constipation and disappearance of the associated conditions.

PAR. 13. The testimony and evidence relating to the experiments conducted by the scientists who testified at the request of counsel for respondent when viewed in the light of the other evidence adduced is an inadequate basis for a conclusion that the administration of respondent's product alone, without bile stimulant such as peptone, will affect the flow of bile. Even though there were control drainages without therapy when the subjects were constive, it was in only 16 drainages out of several hundred performed during the experiments of Dr. Killian that the witness who conducted such experiments believed any direct relationship was demonstrated between delays in the passage of fecal matter and low values of biliary constituents. The record contains testimony that there is no condition which could arise in a nondiseased liver which would prevent it from forming sufficient bile to properly complement the normal function of the hepatic system and to furnish an ample supply of bile to discharge the role which bile plays in the human system. Constipation does not injure the liver and there is no relationship between constipation and the secretion of bile by the liver.

Duodenal drainages, the experimental method employed by the scientists whose testimony was introduced by respondent, are widely used for diagnostic purposes which look to ascertaining whether bile is present qualitatively but are less reliable for quantitative determination. Such drainages disclose only the concentration of biliary ingredients recovered from the duodenal fluid itself and present also

in the duodenum, in addition to bile, are other digestive fluids. As between different individuals and in the same individual, the secretion of bile is subject to great variation and even a small amount of bile flowing from the gall bladder into the duodenum would give an identical finding with a much larger amount, of hepatic bile. There is nothing to assure that all hepatic fluids are being collected during the period of duodenal drainage inasmuch as some bile may be absorbed into the walls of the duodenum, and there is nothing to prevent some portion of the fluid from passing on into the jejunum of the intestine. The variations to which bile secretion may be subjected make interpretations of experimental results obtained from duodenal drainages extremely hazardous.

In the opinion of the Commission, the greater weight of the testimony and other evidence introduced into the record bearing on the question of what influence, if any, respondent's product may have upon the liver and the biliary system, including that relating to the scientific experiments conducted with various chemical substances and respondent's product, shows that the preparation Carter's Little Liver Pills will not stimulate the formation of the bile by the liver or increase the secretion of bile by the liver. Inasmuch as respondent's product will not cause the gall bladder to contract or cause relaxation of the sphincter of Oddi or serve in any way to milk bile from the ampulla of Vater or the bile duct, the Commission further concludes that respondent's product will not increase the flow of bile into the duodenum.

PAR. 14. The preparation Carter's Little Liver Pills is not an effective treatment for sluggish liver function and will have no therapeutic action on the liver or diseases thereof. It will not wake up the flow of bile, cause the bile to flow freely or favorably influence the formation or flow of bile either as to quantity or the vital and effective constituents thereof. The use of respondent's product therefore will not influence the production or flow of bile so that an individual can overeat and overindulge in "good times" without such ordinary discomforts as may result therefrom, nor enable one who has overeaten and overindulged in "good times" to overcome the discomforts usually incident thereto and enable the user to wake up "clear-eyed and steady-nerved," "feeling just wonderful," and "alert and ready for work." Diarrhea rather than constipation may result from certain of these excesses. Respondent's product will not influence bile flow. Such laxation as may be induced will not prevent or overcome disturbances caused by overindulgence and may serve to further disturb the digestive process. Respondent's product does not provide

two-way relief and has no therapeutic effect beyond that of an ordinary laxative that is to say, of any substance which increases the movements of the large bowel either through irritation, bulk or fluid content.

PAR. 15. Only in the extreme condition where very great quantities of food as such arrive in the large bowel in an undigested state and there remain until bacterial action and putrefaction ensue, can it be said that food decay is present. In such case, the use of respondent's product, as is true of any laxative, will only aid in the outward passage of the food. Normally over ninety percent of digested food is digested before reaching the large bowel and putrefaction is not a factor in food digestion. Respondent's preparation has no chemical action on food which will prevent decay thereof. The representation that respondent's product lessens food decay is misleading. The use of such product will not increase the effectiveness of the gastric juices, cause the proper flow of any of the vital digestive juices, and will not help digestion. The action afforded by respondent's product is not based on a fundamental principle of the operation of the digestive system and its use will not stop fatty indigestion or favorably influence the symptoms thereof, or regulate the digestive system or digestion, or have any salutary effect upon the gastro-intestinal tract aside from affording temporary partial evacuation of the colon. In some instances, the use of respondent's preparation may interfere with and disturb digestion. The representations contained in the advertising, as are made directly and by suggestion, to the effect that use of respondent's product will cause an individual to feel "fit as a fiddle" and full of "bounce," and have a vigorous state of well-being, by reason of the fact that it follows nature's order for regularity and regulates digestion, are false and misleading. Its use does not induce natural regularity. Such value as it may have in inducing well-being would be limited to instances in which indispositions impairing such state were due solely to constipation.

PAR. 16. Excluding the conditions of biliousness, "lazy digestion," and indigestion, which are hereinafter separately discussed, the symptoms, manifestations, and conditions, referred to in Paragraph Four, subparagraph (d), hereof, may occur in almost any condition affecting the human body, and, when they are not associated with and due to constipation, respondent's preparation will have no therapeutic value in the treatment thereof. When they are associated with and due to constipation, respondent's preparation will not correct or favorably influence in any way the basic conditions causative of constipation, and it will have no therapeutic value in the treatment of

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the symptoms, manifestations and conditions named other than the temporary relief therefrom as may be afforded by an evacuation of the bowels. Carter's Little Liver Pills, the Commission concludes therefore, do not constitute a competent and effective treatment for these manifestations when they are associated with or caused by constipation.

The foregoing does not apply, however, in reference to "indigestion" and "lazy digestion." When indigestion; that is, a failure to digest or absorb food occurs in the human system, diarrhea rather than constipation frequently ensues. The use of respondent's preparation would not bring about digestion of food in either case. Furthermore, treatment of symptoms indicating disturbance or irritation of the intestines looks to soothing such conditions rather than the introduction of an additional irritant in the form of a laxative. The expression "lazy digestion" has no scientific meaning but refers vaguely to retarded digestion. A laxative will not stimulate the digestion or absorption of food. It will, however, increase the rate of passage of indigestible and undigested masses through the large intestine for evacuation from the body, which refers to egestion not digestion. Discomforts of the gastrointestinal tract, examples of which are abdominal distress and gas, may result from constipation and such discomforts may be relieved temporarily by the release of pressure in the colon afforded by laxation. The Commission concludes that respondent's preparation is not an effective treatment for indigestion, or of "lazy digestion" or retarded digestion in any circumstances in which such conditions may occur.

Biliousness is a general term often used in a broad sense to refer to a group of symptoms or conditions supposed by some, without any supporting evidence, to be caused by or due to disorders in the secretion and flow of bile. Constipation does not in any manner impair the flow of bile. Respondent's preparation will have no therapeutic action, effect, or influence on the secretion or flow of bile, and does not constitute an effective treatment for biliousness or for any symptoms or conditions, under whatever name or names designated, which are caused by or due to disorders in the secretion or flow of bile.

The subjective feeling of discomfort which sometimes accompanies constipation comes largely from abnormal stimulation of the sensory nerves in the mucous membrane and musculature. It has no connection with poison or auto-intoxication. Constipation does not poison the human body.

PAR. 17. Through and by use of the word "Liver" in the name Carter's Little Liver Pills, used by respondent in the advertising mate-

rial disseminated by it to identify and designate the medicinal preparation sold and distributed, respondent represents directly and by implication that the preparation Carter's Little Liver Pills will have some therapeutic action, effect, and influence on the liver, and is for use in the treatment of conditions, disorders, and diseases of the liver. Said representations are false and misleading. The ingredients in the preparation Carter's Little Liver Pills, alone or in any combination of one with the other, will have no therapeutic action, effect, or influence, corrective, or otherwise, on the liver. Respondent's preparation will have no therapeutic value in the treatment of any condition, disorder, or disease of the liver. Upon consideration of the remedy which should be applied in this connection, the Commission is of the opinion that only excision of the word "Liver" from the product name will serve to eliminate the deception engendered by its use.

PAR. 18. (a) The complaint charges also that respondent's advertisements constitute false advertisements for the further reason that they fail to reveal certain facts as to potential dangers inherent in the use of such preparation under conditions described in the advertisements or conditions as are customary and usual by persons suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis. The Commission is unable to find, however, that the potential danger to the public health inherent in the use of respondent's preparation is so serious as to require a disclosure in the advertising of the matters to which this charge relates, and, in the circumstances, is of the opinion that dismissal of such charge without prejudice is warranted.

(b) Additional allegations of the complaint charge that respondent has falsely represented that calomel is a drastic and dangerous laxative compound, the use of which is an ordeal. Although testimony was introduced into the record directed to showing, among other things, that calomel, when taken in proper doses, would not be painful, it is not believed that these charges are supported by the record, and they are, accordingly, dismissed.

(c) Named also as a respondent in this proceeding is Street & Finney, a corporation, an advertising agency, which assisted respondent Carter Products, Inc., in the preparation and placing of the various advertisements used in promoting the sale of the preparation here involved. Its service to Carter Products, Inc., and participation, terminated, however, approximately 1 year prior to the institution of this proceeding. It does not appear, therefore, that the public interest now requires that respondent Street & Finney be included as a party to the order to cease and desist which is issuing herein, and the charges

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of the complaint are, accordingly, being dismissed without prejudice as they relate to respondent Street & Finney.

PAR. 19. The Commission, therefore, finds that the representations concerning the preparation designated Carter's Little Liver Pills, as set forth in paragraphs 4 and 17 hereof, are misleading in material respects, and that the advertisements thus disseminated by respondent constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. The use of such representations and of the word "Liver" in the name Carter's Little Liver Pills, by respondent 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 to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony, and other evidence introduced before a trial examiner of the Commission theretofore designated by it, the report of the trial examiner upon the facts and the exceptions filed thereto, briefs and supplemental briefs in support of and in opposition to the complaint, and oral arguments; and the Commission having made its findings as to the facts and its conclusion that the respondent therein named has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Carter Products, Inc., 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 of the product now designated Carter's Little Liver Pills, or any other product of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication—

(a) That said preparation represents a fundamental principle of nature in self-treatment;

(b) That said preparation will bring on or restore regularity of bowel movement, or is a cure, remedy, or competent or effective treatment for constipation, or has any beneficial value in the treatment of any of the symptoms thereof in excess of the temporary relief afforded by its laxative action;

(c) That said preparation does not contain strong medicines;

(d) That said preparation is unqualifiedly safe;

(e) That said preparation is an effective treatment for sluggish liver function or that it will have any therapeutic action on any condition, disease, or disorder of the liver;

(f) That said preparation will make bile flow freely, increase or beneficially influence the formation, secretion, or flow of bile, or prevent or overcome discomforts caused by overindulgence in food or other pleasures;

(g) That said preparation will provide two-way relief or that it possesses therapeutic properties in addition to those afforded by laxative action;

(h) That said preparation will cause the proper flow of, or beneficially affect, the gastric juices or digestive juices, or lessen food decay;

(i) That said preparation is based on the fundamental principle of the operation of the digestive system;

(j) That said preparation will help food digestion, or regulate digestion or the digestive system;

(k) That said preparation will have any influence in inducing a state of "bounce," "vigor, or well-being except in those instances in which a lack thereof is due solely to constipation;

(l) That constipation poisons the body;

(m) That said preparation has any value in the treatment of headache, ugly complexion, bad breath, coated tongue, or a bad taste in the mouth, or for those conditions in which an individual feels "down-and-out," "blue," "down-in-the-dumps," "worn out," "sunk," "lody," "depressed," "sluggish," "all-in," "listless," "mean," "low," "cross," "tired," "stuffy," "heavy," "miserable," "sour," "grouchy," "irritable," "cranky," "peevish," "fagged out," "dull," "sullen," "what's-the-use," "bogged down," "grumpy," "run-down," or "gloomy"

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in excess of such temporary relief therefrom as may be afforded by an evacuation of the bowels in those cases in which such symptoms or conditions are associated with and caused by constipation;

(n) That said preparation is a competent or effective treatment for indigestion or retarded digestion;

(o) That said preparation is a competent or effective treatment for biliousness.

(2) Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, in which the word "Liver" is used in the trade name for respondent's preparation.

(3) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraphs (1) and (2) hereof.

If is further ordered, That the charges of the complaint as they relate to respondent Street & Finney, a corporation, be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further action as future conditions may warrant.

It is further ordered, That the respondent, Carter Products, Inc., shall, within 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.

STATEMENT BY COMMISSIONER CARSON, TO ACCOMPANY ORDER AND FINDINGS
OF FACT

Carter Products, Inc., and its predecessor company, have throughout scores of years advertised and sold Carter's Little Liver Pills. They have advertised that the pills would affect the liver, would cause a flow of bile, would remedy and regulate the digestive processes, would invigorate the consumer and give to him "bounce" and "pep" and relieve him of "the blues," et cetera, et cetera.

Carter's Little Liver Pills were and are, as the findings of fact show, nothing more than an irritative laxative compound. They have no effect on the liver, or on bile. They will not regulate the digestive processes, nor invigorate the consumer. They will, in some cases, purge the intestinal trace. As a matter of fact, all they will do is

to give the temporary relief growing out of laxation. The pills cannot be truthfully advertised as being unqualifiedly safe to consume.

This case parades before us the questionable flights of fancy of an advertising agency. Carter Products, Inc., through employing the agency and thus approving and condoning its work, cannot escape from its responsibility. The case is illustrative of scores of cases which flow across this bench, week in and week out. This Commission has encouraged and will encourage lawful business activity to the extent of its authority, that of Carter Products, Inc., as well as that of other corporations. But it is obligated to outlaw such conduct as is in evidence here.

The Commission does not believe that an opinion is justified in this case because no precedential issues are involved. But because of the importance of the case to the consumers, the Commission authorized me to make a statement relative to the case and in which would be set forth certain decisions as to future work of the Commission. The findings of fact and the order as approved by this Commission state clearly the inhibitions placed upon this company and its employees. The company will no longer be permitted to use the word "Liver" in its advertisements, will no longer be permitted to advertise that these pills affect the liver, will no longer be permitted to tell the consumer that the pills are unqualifiedly safe, will no longer be permitted to influence the consumer to believe that through taking the pills he will have any relief other than that accomplished through taking an irritant laxative compound.

In this case, as is all too often true when those who are guilty seek for escape, an effort was made to charge that the Commission was opposed to advertising. The Commission is not opposed to advertising. Nor is any Commissioner or employee of the Commission opposed to advertising. No rational man is opposed to advertising or to any other legitimate form of merchandising. Nor is the Commission opposed to self-medication, as was contended. Nor is it opposed to the manufacture and sale of laxative compounds when the consumer is warned and assured of protection against fraud or against any condition or practice which would be inimical to his health or which would result in the pilfering of his pocketbook.

The consumer often is the unjust, and sometimes tragic victim in this general field of self-medication associated with the word "laxatives." There is evidence in this case, and it is impressive, that laxatives should not be taken continuously, or with regularity, and in certain conditions only with extreme caution and only when a skilled physician orders them to be taken. The evidence on this point, how-

ever, does not constitute a preponderance of evidence on which this Commission must proceed. But the Commission has acted, as will be hereinafter stated, to offer its cooperation to other Government agencies in making use of all this evidence to give additional protection to the consumer.

The advertising profession is an honorable profession. It has contributed, tremendously, to the sale and distribution of the products of business and thus has served the public interest.

Likewise, the manufacture and distribution of medical preparations is an honorable business. It has every right to the respect had for the profession of medicine and many will agree that the medical profession is generally and should always be the most honorable of professions. But the time is here, in fact it has long passed, when those engaged in the manufacture and distribution of such preparations and those engaged in associated advertising businesses must take steps again, as they did some years ago, to rid the house of those who have less regard for the truth of their representations to the public. There is every reason to believe that the consumers who are victims of these practices are all too often the less-informed and the less able to protect themselves and their pocketbooks. They are all too often the consumers who are weakened by the fear of illness and burdensome medical expenses, and by unemployment, and who thus become the ready victims of those who would prey upon them by falsely advertising medicinal products.

This Commission is ready and anxious to cooperate in every way and at all times with everyone interested in protecting these honorable professions and businesses from the unlawful practices of the few.

The Commission was asked, in this case, to declare that it was unqualifiedly unsafe to consume this product. The Commission does not believe the evidence thus far adduced justifies such statements. The authority of this Commission extends only to false and deceptive advertising and practices in the sale and distribution in interstate commerce of such products. Other agencies of the Government are concerned with the advancement and welfare of the public health. Often the obligations of the authority conferred on the Commission and those of other agencies of Government become interrelated, and in some degree this case is an example.

The record in this case contains an exceptionally fine body of factual testimony relative to this product and to the effect of laxatives on the human system. Extensive research was done by some of the ablest of physicians and scientists who, without remuneration, contributed their skills that the public might be served. The Commission wishes

to honor them and their service to the public interest by specifically naming them. They are as follows:

Dr. Jesse L. Bollman, professor of physiology at the University of Minnesota and in the graduate school of the Mayo Foundation, as well as assistant director of the experimental research laboratory of the Mayo Foundation at Rochester, Minn.

Dr. Anton J. Carlson, former chairman of the department of physiology of the University of Chicago; author of many books and treatises on the stomach, intestines, salivary glands, digestion, etc.

Dr. James T. Case, professor of radiology and head of the X-ray department of Northwestern University Medical School at Chicago; former president of the American Roentgen-Ray Society, American Radium Society, and American College of Radiology; also an inventor of cholecystography, a method of visualizing the gall bladder by X-ray processes.

Dr. Andrew Conway Ivy, is now vice president of Illinois University Medical School at Chicago, and head of that university's medical school; for many years was head of the department of physiology of Northwestern University, and of pharmacology, materia medica, and toxicology of that University; organizer and director of the Naval Medical Research Institute at Bethesda, Md.; chairman of the section of physiology and pathology of the American Medical Association; managing editor of the *Journal of Gastroenterology*; discoverer of the hormone "cholesystokinin," the substance which causes the gall bladder to contract and evacuate upon ingestion of sufficient quantities of fats or fruit juices.

Dr. John Salem Lockwood, now a professor of surgery at Yale University, formerly assistant professor of research at the University of Pennsylvania and acting director of the Harrison department of surgical research at the University of Pennsylvania.

Dr. Walter Lincoln Palmer, professor of internal medicine at the University of Chicago; vice president of the American Gastroenterological Society.

Dr. Cecelia Riegel, biochemist of the Harrison department of surgical research of the University of Pennsylvania.

This body of factual testimony was obtained through expenditure of public funds, in part, and it should not be permitted to become buried in Government files. The Commission has decided that it will be called to the attention of all other Government agencies which are interested and that the Commission shall thus offer to cooperate in making use of it for the common good. The Commission will, hereafter, seek every opportunity to make use of comparable evidence

so that the maximum of possible contribution shall be made to the consumers. We think the evidence should convince anyone that unrestricted consumption of laxative compounds often invites injury to the health of the consumer; and the advertising columns in many publications now indicate all too clearly that the consumption of laxatives has become a fad or a craze induced by high-pressure advertising practices.

The Commission was asked to include in its order to cease and desist, not only Carter Products, Inc., but the advertising agency, Street & Finney. The evidence seems to indicate that Street & Finney were equally culpable of the unlawful practices involved. The Commission has included advertising agencies in orders on some occasions, and on others it has not done so. The Commission will be asked to instruct its staff that hereafter advertising agencies will be cited in every case when the facts warrant such action.

This case also is an example of the cases and experiences which induced the Commission to declare, as it recently did, that it will seek, in the future, to make every possible use of its authority to enjoin such practices as these whenever such action is warranted in the public interest. This case has been before the Commission for a long time. For some of the delay, the Commission may well be responsible, but the record in this case is a very long one, involved and intricate. The day of judgment and penalty must be brought nearer to the day of commission of fraud. The Commission is continuing to exert its efforts and to make use of its very limited funds to accomplish that purpose.

Syllabus

IN THE MATTER OF

C. HOWARD HUNT PEN CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4918. Complaint, Feb. 20, 1943—Decision, Mar. 29, 1951*

Where a corporation engaged, among other things, in the manufacture and competitive interstate sale and distribution of inexpensive fountain pen points which it sold to manufacturers and assemblers of fountain pens for incorporation into fountain pens to be sold to the consuming public;

- (a) Stamped on certain of its said points such inscriptions as "14 Kt. Gold Plated" or "14 K Gold Plated"; with tendency to deceive the purchasing public into the belief that said points were plated with a substantial amount of 14 karat gold alloy of substantial thickness, the minimum necessary to protect them from the corrosive effects of ink;
- (b) Stamped certain pens "Iridium Point" or "Iridium Tipped," notwithstanding the fact that none of the tipping materials it used contained any iridium, noted for its hardness and wear-resistant properties; with tendency to deceive the purchasing public in such respect; and,
- (c) For a time stamped on certain pen points, in accordance with instructions from a certain company to which it sold them the inscription "Waltham," notwithstanding the fact that the well-known manufacturer of high-grade watches and precision instruments had no connection with the pen points so marked; with tendency to deceive the purchasing public into the belief that said products were those of the Waltham Watch Manufacturing Co.;

With the result of furnishing manufacturers and assemblers of pens with the means of deceiving the public in the aforesaid respects, and with capacity to deceive and mislead a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and thereby into the purchase of substantial quantities of its said pen points, and to divert unfairly to it trade and commerce from its competitors who do not falsely represent their products, to the injury of competition in commerce:

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

As respects respondent's contention that the terms "Iridium Point" and "Iridium Tipped" had acquired a secondary meaning and now mean to the trade and to the public merely that pen points so designated are tipped with a hard, wear-resisting material: the Commission found that said contention was not supported by the record and that respondent's use of said terms to describe its products was erroneous and misleading.

As respects respondent's contention that since the word "Waltham" was inscribed only upon pen points ordered by the company above referred to and upon its instructions, and since respondent's last shipment of pen points thus marked was made about 2 years prior to the issuance of the complaint, no order to cease and desist should be entered as to such representations:

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the Commission found that respondents by thus acting had placed in the hands of said company the means of deceiving the public and, in view of respondent's contention throughout the proceedings that it was not guilty of any deception since it was acting on instructions from its customer in using the name, was of the opinion that there was no assurance that respondent might not resume the practice, and therefore found that an order requiring it to cease and desist from inscribing the name on its pen points, under the circumstances, was in the interest of the public.

As respects respondent's contention that since it had entered into and abided by a stipulation, prior to the issuance of the complaint in the instant matter, to cease and desist representing that its pen points were solid gold, no order to cease and desist should be entered by the Commission as to such representation: the Commission was of the view that respondent's continued representation that its pen points were 14 karat gold plated, when they were in fact coated with such a thin covering, of such minute quantity, of gold alloy as not to constitute 14 karat gold plate as understood by the purchasing public, was so similar to its aforesaid prior false representation that said points were made of 14 karat gold, as to create a doubt as to whether respondent might not in the future resume the practice of falsely so representing, and that therefore an order requiring it to cease and desist from falsely representing that its pen points were made of an alloy of gold was in the interest of the public.

Before *Mr. Andrew B. Duvall* and *Mr. Henry P. Alden*, trial examiners.

Mr. Karl Stecher and *Mr. William L. Pencke* for the Commission.
Synnestvedt & Lechner, of Philadelphia, Pa., for respondent.

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 C. Howard Hunt Pen Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, C. Howard Hunt Pen 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 place of business located in the city of Camden, State of New Jersey.

PAR. 2. Respondent is now and for some years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including cheap fountain-pen points. Respondent causes said

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products, when sold, to be shipped from its said place of business in the State of New Jersey to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said fountain-pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said fountain-pen points, respondent has caused and now causes certain descriptive words, figures, letters, and symbols to be stamped or imprinted upon the pen points which it sells in commerce as aforesaid. Typical of the symbols on respondent's said pen points, all of which pen points have the appearance of gold, are the following:

DURIUM
14 Kt. Gold
Plated
No. 4

ARNOLD
DURIUM
petersburg
va.

Southern Pen

14K (large figures and letter)
gold plated (very small letters)
durium (very small letters)

DURIUM

14K (very large figures and letter)
gold plate (very small letters)

WARRANTED DURIDIUM

14KT. (very large letters and figures)
gold plate (very small letters)

DURIPOINT

14 (very large figures)
KT. (very large letters)
(large space)
gold plate (very small letters)

EVERLAST

MADE
IN
U. S. A.

WARRANTED DURIUM TIPPED

14K (very large figures and letter)
gold plate (very small letters)

DURIUM

14K (very large figures and letter)
gold plate (very small letters)

WALTHAM
DU-O-WAY
TIP
MADE IN
U. S. A.

WALTHAM
DU-O-WAY
TIP
14K
gold plate

DU-O-WAY
TIP
(STAR IN CIRCLE)
14 KT
GOLD PLATE

IRIDIUM
TIPPED

PAR. 4. The words "Durium," "Duridium," and "Duripoint" when used in the manner set forth in paragraph 3 above, either alone or in combination with "tip" or "tipped," constitute a representation

that respondent's pen points thus designated and described are tipped with some special substance of unusual hardness and wearing qualities. Respondent's use of the word "Everlast" as illustrated in paragraph 3 hereinabove constitutes a representation that respondent's pen point thereby referred to is made of especially durable materials and is everlasting or of unusual lasting qualities. The word "Waltham" used by respondent in the manner set forth in paragraph 3 above has the capacity and tendency to create and creates in the minds of a substantial portion of the purchasing public the impression that respondent's fountain pen points thereby referred to are products of the Waltham Watch Co., a long-established and well-known manufacturer of high-grade watches and precision instruments.. The coined word "Du-O-Way" used by respondent in the manner set forth in paragraph 3 above tends to create the impression in the minds of many members of the purchasing public that there is some connection between the pen points so designated and referred to and the "Duo-fold" pen, a favorably known and widely advertised product of the Parker Pen Co. Respondent's use of the words "Iridium tipped" stamped on its said pen points as illustrated in paragraph 3 hereinabove constitutes a representation that said pen points are tipped with a comparatively rare and expensive element known as iridium.

PAR. 5. In truth and in fact the words "Durium," "Duridium," and "Duripoint" are coined and are not known to science or the industry in question and the pen points which they are used to describe are not tipped with any material or element of unusual hardness or wearing qualities. The pen point called "Everlast" is not made of especially durable materials nor has it unusual lasting qualities. The Waltham Watch Co. has nothing to do with the manufacture of the pen point designated "Waltham Du-O-Way" and the Parker Pen Co. has nothing to do with the manufacture of pen points with reference to which the coined word "Du-O-Way" is used in the illustrations shown in paragraph 3 hereinabove. None of respondent's pen points are tipped with the element iridium.

PAR. 6. The inscription "14Kt. Gold" in the first combination of words and figures quoted in paragraph 3 hereof, in appearing on one and the same line, has the capacity and tendency to create and creates the impression in the minds of many members of the purchasing public that respondent's pen point described therein is made of 14-carat gold.

In the other illustrations set forth in paragraph 3 hereinabove the figures and letters "14K" and "14KT" are invariably stamped in large type in a conspicuous place on respondent's pen points and under-

neath the same there is stamped the legend "Gold Plate" or "Gold Plated" in type so small in each instance as to be inconspicuous and even illegible to a large portion of the purchasing public without the aid of a magnifying glass; these words "Gold Plate" and "Gold Plated" are stamped so far down the shank of the pen point that they are hidden from view when the point is properly fixed in the barrel of the pen, so that the purchasing public can see only the symbol "14K" or "14KT" which is a representation, direct or implied, that respondent's said pen points are made of 14-carat gold.

PAR. 7. As a matter of fact none of respondent's pen points are made of 14-carat gold or gold of any fineness. Respondent's pen points are made of brass or steel thinly electroplated with gold of approximately 22-carat fineness which does not have the hardness and wearing qualities of genuine 14-carat gold.

PAR. 8. Pen points made of gold are considered by many to have exceptional durability and superior writing qualities and many believe that the most satisfactory alloy for high-grade pen points is 14-carat gold. Originally all fountain pen points were made of 14-carat gold.

For years many of the most prominent and largest manufacturers of high-grade fountain pens whose points were made of 14-carat gold put no carat marking at all on their pen points and this practice is still followed by some of said manufacturers of high-grade fountain pens, but the public has generally understood and still understands that said points were and are made of 14-carat gold. Other reputable manufacturers have truthfully stamped and do stamp the symbols "14K" or "14KT" on their pen points and the public has for years associated such symbols with gold pen points.

PAR. 9. Respondent's pen points which are stamped "Gold Plated" or "Gold Plate" are not in fact gold plated as that term is commonly used and understood by a substantial portion of the purchasing public. The amount of gold deposited on said pen points is insignificant both in quantity and value. It is so small as not to be worth the expense of attempting to salvage it from damaged pen points. Less than 8 cents' worth of gold is deposited on each gross of respondent's so-called gold plated pen points.

PAR. 10. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points branded and stamped as hereinabove set out in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points colored, stamped, and branded as

aforesaid, respondent furnishes said manufacturers and assemblers with the means of deceiving the public into the belief that said fountain pen points are made of genuine 14-carat gold and that they are tipped with iridium or some other durable material; that they have unusual lasting qualities; that those stamped with the name "Waltham" are made by the well-known watch manufacturer of that name; and that those points referred to or designated by the word "Du-O-Way" are products of the Parker Pen Co.; and with the further means of deceiving the public with respect to the value and quality of said fountain pens.

PAR. 11. There are among the competitors of respondent many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points that truthfully brand, label, color, and represent their pen points.

PAR. 12. The aforesaid acts, practices, and representations of the respondent have had and now have the capacity and tendency to and did and do deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts, practices, and representations are true and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they thereby have the capacity and tendency to divert unfairly and they have diverted to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 13. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, C. Howard Hunt Pen Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondent's 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. The report of the trial examiner upon the evidence and exceptions to such report having been filed, the proceeding came on for hearing before the Commission upon the record, and the Commission, being of the opinion that the evidence in the record was insufficient to enable it to determine the issues, ordered the proceeding reopened for the introduction of further evidence. In conformity with the directions contained in that order, additional testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a substitute trial examiner of the Commission theretofore duly designated by it, and such additional testimony and other evidence, together with the recommended decision of the substitute trial examiner and exceptions thereto, were duly reported and filed. Subsequently, the proceeding was submitted to the Commission upon the record, including a stipulation of counsel consenting to the issuance by the Commission of an order to cease and desist corresponding in form and substance with the draft of the order set forth in the trial examiner's recommended decision and waiving the filing of briefs and oral argument. The Commission being of the opinion that the said recommended order to cease and desist should be altered in certain material respects, however, declined to dispose of the proceeding by the issuance of the order recommended by the trial examiner and issued a tentative order to cease and desist, with leave to respondent to file a brief in opposition to such order and request oral argument thereon.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony, and other evidence, the report of the original trial examiner upon the evidence and exceptions to such report, the substitute trial examiner's recommended decision and the exceptions thereto of counsel for respondent, briefs in support of and in opposition to the complaint and oral argument thereon, and briefs and oral argument in opposition to and in support of the entry of the aforesaid tentative order to cease and desist; and the Commission having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner 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. Respondent, C. Howard Hunt Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Seventh and State Streets, Camden, N. J.

PAR. 2. Respondent is now and for many years last past has been engaged in the manufacture, sale, and distribution of stationery supplies, including inexpensive fountain pen points. Respondent sold and is now selling such pen points to manufacturers and assemblers of fountain pens who incorporate the said pen points into fountain pens sold by it to the consuming public. Respondent causes its said products, when sold, to be shipped from its place of business in the State of New Jersey to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said fountain pen points, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business respondent is now and for many years last past has been stamping on certain of its said points inscriptions containing representations as to the composition and quality of the said points or the tips thereof. Among and typical of the representations stamped thereon are the following:

14 Kt Gold Plated
14 K Gold Plate
Iridium Point
Iridium Tipped

The use by respondent of the inscriptions "14 Kt Gold Plated" and "14 K Gold Plate" and others of similar import and meaning not set out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked are plated with a substantial amount of 14 carat gold alloy of substantial thickness. In truth and in fact, respondent's fountain pen points so marked are not plated with a substantial amount of gold alloy and the plating on the said points is not of a substantial thickness. Its said points so marked are coated with a gold alloy of a thickness of less than 0.000007 of an inch. Certain of said points manufactured by respondent prior to 1938 were tested by the National Bureau of Standards and were found to be coated with a gold alloy of a thickness of from approximately 0.0000036 to less than 0.000002 of an inch, which gold alloy had a value of approximately 5 cents

per gross of pen points.¹ The coating of gold alloy on the pen points so tested consisted of such a minute quantity that its actual carat fineness could not be determined. There is no evidence that respondent's methods of gold plating their pen points have varied from the time of manufacture of the pen points so tested.

Fourteen carat is a standard of fineness representing that an object so marked consists of an alloy which contains $14\frac{1}{24}$ pure gold by weight. Gold plating of 14 carat fineness is the lowest carat fineness of gold which will successfully resist the corrosive effects of ink. A substantial thickness of gold plating of a fineness of not less than 14 carat is necessary to protect fountain pen points from such corrosion. One of the purposes of gold plating fountain pen points is to protect them from such corrosion. Fountain pen points which are covered with a substantial thickness of gold plating of a fineness of not less than 14 carat have great appeal to the consuming public because of the appearance, intrinsic value and known resistance to corrosion of the gold.

The use by respondent of the inscriptions "Iridium Point" and "Iridium Tipped" and other similar in import and meaning not set-out herein, has the tendency and capacity to deceive and mislead the purchasing public into the belief that the said fountain pen points are tipped with iridium, a metal which is noted for its hardness and wear-resistant properties. Actually, none of the tipping materials used by respondent for its pen points contain any iridium.

Respondent contends that the terms "Iridium Point" and "Iridium Tipped" have acquired a secondary meaning—that these terms now mean to the trade and the public merely that pen points so designated are tipped with a hard, wear resisting material. The Commission finds, however, that this contention is not supported by the record and that respondent's use of these terms to designate and describe its products is erroneous and misleading.

PAR. 4. In the course and conduct of the aforesaid business in 1941 and for several year prior thereto, respondent stamped the inscription "Waltham" on certain fountain pen points which it sold to the Starr Pen Co., of Chicago, Ill., in accordance with instructions from that company. The use by respondents of the inscription "Waltham" had the tendency and capacity to deceive and mislead the purchasing

¹ Although the record is silent as to what would constitute a substantial thickness of gold alloy in gold plating, it is noted that the Commission on October 11, 1948, promulgated trade practice rules for the fountain pen and mechanical pencil industry. These rules provided, among other things, that the term "gold plated" is deceptive when used as descriptive of fountain pen parts which have a covering of gold or of gold alloy of a minimum thickness throughout of less than 0.000007 of an inch.

public into the belief that the said fountain pen points so marked were products of the Waltham Watch Manufacturing Co., a well-known manufacturer of high-grade watches and precision instruments. Actually, the Waltham Watch Manufacturing Co., had no connection with the manufacturing, sale, or delivery of the said fountain pen points so marked.

PAR. 5. In the course and conduct of the aforesaid business for several years prior to 1939, respondent stamped on certain of its pen points the inscription "14 K" or "14 Kt" in large type and underneath stamped the inscription "Gold Plate" or "Gold Plated" in type so small as to be inconspicuous and almost illegible. On certain of these pen points the inscriptions "Gold Plate" or "Gold Plated" were stamped so far down the shank of the pen point as to be hidden from view when the point was properly fixed in the barrel of the fountain pen. The use by respondent of such inscriptions in this manner has had the tendency and capacity to deceive and mislead the purchasing public into the belief that said fountain pen points so marked were made of an alloy of gold. In truth and in fact such pen points were made of other materials coated with an alloy of gold.

On July 31, 1939, respondent entered into an agreement with the Commission to cease and desist from continuing to mark its fountain pen points in any manner having the capacity or tendency to cause the belief that the pen points are of 14 carat solid gold when such is not the fact. Since that agreement, on all pen points manufactured by respondent marked with the inscription "14 K Gold Plate" or "14 Kt Gold Plated," the said numerals and letters thereon have been of the same size, and the words "Gold Plate" or "Gold Plated" have been placed sufficiently far from the base of the pen point so as to always be clearly visible when the point so marked was assembled in the completed fountain pen.

PAR. 6. The evidence of record is not sufficient to sustain the allegations of the complaint that respondents use of the words "Durium," "Duridium," and "Duripoint," either alone or in combination with the words "tip" or "tipped," has the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into believing that its pen points so marked were tipped with some special substance of unusual hardness and wearing qualities; that respondents use of the word "Du-O-Way" tends to create an impression in the minds of a substantial portion of the purchasing public that there is some connection between the pen points so marked and pen points inscribed with the word "Duofold," a mark used on pens manufactured and sold by the Parker Pen Co.; that the Parker Pen Co. used the

word "Duofold" before respondent used the word "Du-O-Way," or has any superior rights to the word; that respondent's pen points marked with the word "Everlast" were not made of especially durable materials and were not of unusual lasting qualities; or that the public has been misled, or is likely to be misled or deceived, by the golden color of respondent's pen points, into falsely believing that such points are either made of gold alloy or are gold-plated.

PAR. 7. Many purchasers of respondent's fountain pen points referred to in paragraph 2 hereof use said fountain pen points stamped and inscribed, as set out in paragraph 3, 4, and 5 hereof, in manufacturing and assembling fountain pens sold by them to the consuming public.

By placing in the hands of manufacturers and assemblers of fountain pens its fountain pen points stamped and inscribed as aforesaid, respondent has furnished said manufacturers and assemblers with the means of deceiving the public into the belief that certain of the said fountain pen points were made of genuine 14 carat gold, that certain other fountain pen points were plated with a substantial quantity of 14 carat gold of substantial thickness, that certain other fountain pen points were tipped with iridium and that certain other pen points were products of the Waltham Watch Manufacturing Co.

PAR. 8. Respondent contends that, inasmuch as the word "Waltham" was inscribed only upon its pen points ordered by the Starr Pen Co. upon its instructions, and inasmuch as the respondent's last shipment of pen points so marked was made in July of 1941, approximately 2 years prior to the issuance of the complaint herein, no order to cease and desist should be entered as to these representations. The Commission having found that by so acting respondent placed in the hands of the Starr Pen Co. the means of deceiving the public, and because respondent has contended throughout these proceedings that it was not guilty of any deception because it was acting on instructions from its customer in using the name "Waltham," it is of the opinion that there is no assurance that respondent may not resume this practice and therefore finds that an order requiring respondent to cease and desist from inscribing "Waltham" on its pen points, under the circumstances, is in the interest of the public.

Respondent further contends that, inasmuch as it entered into a stipulation with the Commission prior to the issuance of the complaint in this matter wherein it agreed to cease and desist from representing that its pen points are of solid gold, and inasmuch as it has complied with that agreement, no order to cease and desist should be entered by the Commission as to such representation. The Com-

mission has found that respondent has continued to represent that its pen points are 14 carat gold-plated when in fact they are coated with such a thin covering of such a minute quantity of gold alloy as to not constitute 14 carat gold plate as that term is understood by the purchasing public. In the view of the Commission the respondent's false representation that its pen points are plated with 14-carat gold and its prior false representation that the pen points are made of 14-carat gold are so similar as to create a doubt as to whether the respondent may not in the future resume the practice of falsely representing that its pen points are made of 14-carat gold. The Commission therefore finds that an order requiring respondent to cease and desist from falsely representing that its pen points are made of an alloy of gold is in the interest of the public.

PAR. 9. Respondent in the course and conduct of its aforesaid business has been and is now in active competition with many persons, partnerships, and corporations that manufacture, sell, and distribute fountain pens and fountain pen points and who truthfully brand, label, and represent their pen points.

PAR. 10. The acts, practices, and representations as found in paragraphs 3, 4, and 5 of these findings have had and now have the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive acts, practices, and representations are true, and into the purchase of substantial quantities of respondent's fountain pen points, because of such erroneous and mistaken belief so induced, and they hereby have the capacity and tendency to divert unfairly to the respondent trade in commerce from its said competitors who do not falsely represent their products, and the capacity and tendency to cause injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's

answer thereto, testimony, and other evidence introduced before trial examiners of the Commission theretofore duly designated by it, the report of the original trial examiner upon the evidence and exceptions to such report, the recommended decision of the substitute trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint and oral argument thereon and briefs and oral argument in opposition to and in support of a tentative order to cease and desist attached to the Commission's order of May 22, 1950, rejecting the trial examiner's recommended order to cease and desist and affording the respondent an opportunity to show cause why said tentative order should not be entered as the Commission's order to cease and desist; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and 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, C. Howard Hunt Pen Co., 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 fountain pen points, do forthwith cease and desist from:

(1) Representing, through the use on fountain pen points of the term "14 Kt. Gold Plated" or "14 K. Gold Plate," or any other term or mark, that such points are coated or covered with an alloy of substantial thickness and not less than $1\frac{1}{24}$ by weight of gold, when such is not the fact; or misrepresenting in any manner the quantity or quality of the gold coating or covering on any fountain pen points.

(2) Representing in any manner, direct or by implication, that fountain pen points are made of an alloy of gold when such points are in fact made of other materials and are merely coated or covered with an alloy of gold.

(3) Using the word "Iridium" or the words "Iridium Tipped," or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any fountain pen points which are not in fact tipped with the element iridium.

(4) Using the word "Waltham" as an imprint on or in connection with the sale of any fountain pen points; or otherwise representing that any of the respondent's fountain pen points are the products of the Waltham Watch Manufacturing Co. of Waltham, Mass.

It is further ordered, That the respondent shall, within 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.

Complaint

47 F. T. C.

IN THE MATTER OF
FASHION TOWNE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5678. Complaint, July 12, 1949—Decision, Apr. 3, 1951

Where a corporation and two officers thereof who dominated its affairs, engaged in the introduction into commerce, and in the offer, sale, transportation, and distribution therein of wool products subject to the Wool Products Labeling Act and to the rules and regulations promulgated thereunder—

Misbranded certain ladies two-piece suits in violation of the provisions of said act in that coats of said suits were labeled as 100 percent wool when they contained 81½ percent wool and 18½ percent cotton, and the skirts thereof were not labeled in any manner nor provided with other means of identifying their fiber content:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and rules and regulations, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Jesse D. Kash for the Commission.

Posner, Berge, Fox & Arent, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, individually and as officers of Fashion Towne, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary and treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-

seventh Street, New York, N. Y. Said individual respondents dominate the affairs of corporate respondent and are responsible for its acts and practices including those hereinafter referred to. Respondents Fashion Towne, Inc., a corporation, and Morton Davis and Anna Davis, are engaged in the manufacture for introduction and in the introduction into commerce, and in the sale, transportation and distribution in commerce of wool products, as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

PAR. 2. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation, and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported, and distributed in commerce by respondents are ladies' suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

Findings

47 F. T. C.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on July 12, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer was filed by the respondents. On April 21, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a recommended decision by the trial examiner. The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and the respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the complaint and stipulation, said stipulation having been approved, accepted, and filed; 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. Respondent Fashion Towne, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y.

Respondents Morton Davis and Anna Davis are president and secretary-treasurer, respectively, of respondent corporation, with their office and principal place of business located at 225 West Thirty-seventh Street, New York, N. Y. Said individual respondents dominate the affairs of the corporate respondent and are responsible for its acts and practices, including those hereinafter referred to.

PAR. 2. The respondents are engaged in the introduction into commerce, and in the offering for sale, sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products as such products are defined in said Wool Products Labeling Act of 1939. Certain of respondents' said products are composed, in whole or in part, of wool, reprocessed wool, or reused wool as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. During the months of February and March 1949, respondents violated the provisions of said act and rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. During the months of February and March 1949, respondents introduced into commerce, and sold, transported, and distributed in commerce, ladies' two-piece suits, styles 512 and 523, both pieces of which contained woolen fibers. The coats of these suits contained 81½ percent wool and 18½ percent cotton, but were labeled by respondents as 100 percent wool. The skirts of these suits were not labeled by respondents in any manner, nor did respondents provide any other means of identifying their fiber content. Both the coats and skirts of such suits were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling

Act of 1939 and the rules and regulations thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into by and between Daniel J. Murphy, chief, Division of Litigation, of the Commission, and respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Fashion Towne, Inc., a corporation, and its officers, and Morton Davis and Anna Davis, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the aforesaid acts, of ladies' suits or other wool products as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such ladies' suits or other products by failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

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 this order.

IN THE MATTER OF
EARL ARONBERG ET AL. TRADING AS THE RONALD CO.

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

Docket 5729. Complaint, Dec. 22, 1949—Decision, Apr. 5, 1951

Where two individuals engaged in the interstate sale of their "Shadz Color Shampoo"; in advertising in various periodicals and otherwise—

Falsely represented, directly and by implication, that their said product, used as directed, colored gray hair jet black and other colors; when in fact an acid medium is required to color hair, whereas the ingredients in said product produce an alkaline medium;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce its purchase of substantial quantities of said product:

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

As regards the charge in the complaint that respondents falsely represented their product to be a new discovery, no evidence was introduced with respect to such allegation, and no findings, consequently, were made with respect thereto.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Frank E. & Arthur Gittleman, of Chicago, Ill., and *Mr. James B. Goding*, of Washington, D. C., 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 Earl Aronberg and Lewis Potter, individuals trading as The Ronald Co., 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, Earl Aronberg and Lewis Potter, are individuals trading as The Ronald Co. with their office and principal place of business located at 6605 Cottage Grove, Chicago, Ill.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the business of selling and distributing a cosmetic