IN THE MATTER OF

WALTER W. GRAMER

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

Docket 5746. Complaint, Mar. 1, 1950—Decision, June 21, 1951

Where an individual engaged in the interstate sale and distribution of his drug preparation "Sulgly-Minol"; in advertisements through various circulars, including a card with testimonials printed on one side and a statement of said individual on the other—

(a) Falsely represented that said preparation was a cure and remedy for athlete's foot, and an adequate and competent treatment therefor;

(b) Falsely represented that it was a cure and remedy for all types of arthritis and an adequate and competent treatment therefor, and for the manifestations, including pain, soreness, and stiffness, of arthritis of all types; and

(c) Falsely represented that his said preparation was an effective treatment for boils and acne;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statement and representations were true, and thereby into the 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.

Before *Mr. John W. Addison*, trial examiner.
Mr. Joseph Callaway for the Commission.
Mr. Arthur A. Logefeil, of Minneapolis, Minn., 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 Walter W. Gramer, an individual, 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, Walter W. Gramer, is an individual, having an office and principal place of business at 3409 Blaisdell Avenue, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug

product, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product, and the formula and directions for use thereof are as follows:

Designation: "Sulgly-Minol" or "Sul-gly-minol."

Formula:

Sulphur, 3 pounds.
Glycerine, 16 ounces.
Lime, 1½ pounds.
Alcohol, 8 ounces.
Water q. s., 1 gallon.

Directions: Every night, just before retiring, apply Sulgly-Minol to the soles of both feet. That is easily done by tipping the bottle up, while holding palm of hand over open end of bottle and let just enough Sulgly-Minol escape to wet the palm of hand. Then rub in quite vigorously. Twice a week take a hot foot bath with tablespoon of Sulgly-Minol added to water. Bathe feet about twenty minutes, dry, and while still warm from bath, apply Sulgly-Minol as on previous nights. That is all there is to it. Should a rash appear, use foot bath only, mixing two tablespoons of Sulgly-Minol to one gallon of water. For athlete's foot, use foot bath only. If there are no open sores, apply full strength.

The directions given on the 4-ounce bottles in which the product is sold are as follows:

For external use only. For treatment of muscular pains, apply to soles of feet before retiring. Or add to bath water for sulphur bath. Add two tablespoons to one gallon of water for treatment of athlete's foot.

PAR. 3. Respondent causes the said product when sold to be transported from his place of business in the State of Minnesota to purchasers thereof located in various 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 said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in said product in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business respondent, subsequent to April 17, 1945, has disseminated and caused the dissemination of advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase.

These advertisements include but are not limited to a circular headed "Gramer's Sulgly-Minol, price change announcement"; a circular headed "Arthritis, It's Grip Broken"; a circular headed "Copy of Original Letter"; a circular headed "A Light Should Not Be Hid-

den, Testimonials" and a circular headed "Partial List, Users of Sulgly-Minol."

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce directly or indirectly the purchase of respondent's preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of said advertisements, repondent has made directly and by implication the representation's shown in the following subparagraphs identified as (*a*) to (*g*), inclusive. The said advertisements by reason of said representations are misleading in material respects and constitute false advertising as that term is defined in the Federal Trade Commission Act, by reason of the true facts which are set forth in subparagraphs (1) to (7) inclusive.

(*a*) That respondent's said preparation is a cure and a remedy for athlete's foot;

(1) Said preparation is not a cure or a remedy for athletes' foot.

(*b*) That respondent's said preparation is an adequate and competent treatment for athlete's foot;

(2) Said preparation is not an adequate or competent treatment for athlete's foot.

(*c*) That respondent's said preparation is a cure and a remedy for all types of arthritis;

(3) Said preparation is not a cure or remedy for any type of arthritis.

(*d*) That respondent's said preparation is an adequate and competent treatment for all types of arthritis;

(4) Said preparation is not an adequate or competent treatment for any type of arthritis.

(*e*) That respondent's said preparation is a cure and remedy for the manifestations, including pain, soreness, and stiffness of arthritis of all types;

(5) Said preparation is not a cure or remedy for any of the manifestations, including pain, soreness, and stiffness, of any type of arthritis.

(*f*) That respondent's said preparation is an adequate and competent treatment for and will relieve the manifestations, including pain, soreness, and stiffness, of arthritis of all types;

(6) Said preparation is not an adequate or competent treatment for, nor will it relieve any of the manifestations, including pain, soreness, and stiffness, of any type of arthritis.

(*g*) That respondent's said preparation is an effective treatment for boils and acne;

(7) Said preparation is not an effective treatment for either boils or acne.

PAR. 6. The use by respondent of the said false advertisements with respect to his said product has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in the said advertisements were true; and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondent, 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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's Decision of the Commission and Order to File Report of Compliance, dated June 21, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set-out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the first day of March, A. D. 1950, issued and subsequently served its complaint in this proceeding upon respondent, Walter W. Gramer, an individual, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After issuance of the complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the trial examiner on the complaint, the answer thereto, testimony, and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral arguments not having been requested; and the trial examiner, having considered the record herein, finds that this proceeding is in the in-

terest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walter W. Gramer, is an individual, having an office and principal place of business at 3409 Blaisdell Avenue, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug product, as drug is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product, and the formula and directions for use thereof are as follows:

Designation: "Sulgly-Minol"

Formula:

Sulphur, 3 pounds.
Glycerine, 8 ounces.
Lime, 1½ pounds.
Alcohol, 16 ounces.
Water q. s., 1 gallon.

Directions: Every night, just before retiring, apply Sulgly-Minol to the soles of both feet. That is easily done by tipping the bottle up, while holding palm of hand over open end of bottle and let just enough Sulgly-Minol escape to wet the palm of hand. Then rub in quite vigorously. Twice a week take a hot foot bath with a tablespoon of Sulgly-Minol added to water. Bathe feet about twenty minutes, dry and while still warm from bath, apply Sulgly-Minol as on previous nights. That is all there is to it. Should a rash appear, use foot bath only, mixing two tablespoons of Sulgly-Minol to one gallon of water. For athlete's foot, use foot bath only. If there are no open sores, apply full strength.

The directions given on the 4-ounce bottles in which the product is sold are as follows:

For external use only. For treatment of muscular pains, apply to soles of feet before retiring. Or add to bath water for sulphur bath. Add two tablespoons to one gallon of water for treatment of athlete's foot.

PAR. 3. Respondent causes the said product when sold to be transported from his place of business in the State of Minnesota to purchasers thereof located in various 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 said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in said product in said commerce is and has been substantial.

PAR. 4. In the course and conduct of his business respondent, subsequent to April 17, 1945, has disseminated and caused the dissemination of advertisements concerning his said product by the United States mails and by various means in commerce as commerce is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase.

These advertisements include a circular headed "Gramer's Sulgly-Minol, price change announcement"; a circular headed "Arthritis, It's Grip Broken"; a circular headed "Copy of Original Letter"; a circular headed "A Light Should Not Be Hidden, Testimonials" and a circular headed "Partial List, Users of Sulgly-Minol" and a card with testimonals printed on one side and a statement of respondent on the other side.

Respondent has also disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing, and the said advertisements were likely to induce directly or indirectly the purchase of respondent's preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of said advertisements respondent has directly and by implication represented:

1. That respondent's said preparation is a cure and remedy for athlete's foot.

2. That respondent's said preparation is an adequate and competent treatment for athlete's foot.

3. That respondent's said preparation is a cure and remedy for all types of arthritis.

4. That respondent's said preparation is an adequate and competent treatment for all types of arthritis.

5. That respondent's said preparation is a cure and remedy for the manifestations, including pain, soreness, and stiffness of arthritis of all types.

6. That respondent's said preparation is an adequate and competent treatment for and will relieve the manifestations, including pain, soreness, and stiffness of arthritis of all types.

7. That respondent's said preparation is an effective treatment for boils and acne.

PAR. 6. In truth and in fact respondent's said preparation:

1. Is not a cure or a remedy for athlete's foot.

2. Is not an adequate or competent treatment for athlete's foot.

3. Is not a cure or remedy for any type of arthritis.

4. Is not an adequate or competent treatment for any type of arthritis.

5. Is not a cure or remedy for any of the manifestations, including pain, soreness, and stiffness of any type of arthritis.

6. Is not an adequate or competent treatment for nor will it relieve any of the manifestations, including pain, soreness, and stiffness of any type of arthritis.

7. Is not an effective treatment for either boils or acne.

CONCLUSION

The use by respondent of the said false advertisements with respect to his said product has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained in the said advertisements were true; and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief.

The aforesaid 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

It is ordered, That the respondent, Walter W. Gramer, an individual, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the preparation designated as "Sulgly-Minol" or of any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States mail or by any means in commerce as commerce is defined in the Federal Trade Commission Act, any advertisement or other representation which represents, directly or indirectly:

(*a*) That respondent's said preparation is a cure or a remedy for athlete's foot.

(*b*) That respondent's said preparation is an adequate or competent treatment for athlete's foot.

(*c*) That respondent's said preparation is a cure or a remedy for any type of arthritis.

(*d*) That respondent's said preparation is an adequate or competent treatment for any type of arthritis.

(*e*) That respondent's said preparation is a cure or remedy for any of the manifestations, including pain, soreness and stiffness of any type of arthritis.

(*f*) That respondent's said preparation is an adequate or competent treatment for or will relieve the manifestations, including pain, soreness or stiffness of any type of arthritis.

(*g*) That respondent's said preparation is an effective treatment for boils or acne.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined in the Federal Trade Commission Act any advertisement or representation which contains any of the representations prohibited in paragraph 1 above.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of June 21, 1951].

Note.—On June 26, 1951, the Commission issued an order in the matter of Clay Products Association, Inc. et al., Docket 5483, which modified the second paragraph of the conclusion in its April 19, 1951, decision. (See ante, 47 F. T. C. 1256 at 1272.) Said modifying order, as there set out, corrected, for the reasons set forth, the erroneous statement that three respondents included in said proceedings, namely, American Vitrified Products Co., Robinson Clay Product Co., and Clay City Pipe Co. had filed answer admitting all the material allegations set forth in the complaint. Said respondents, as to which the complaint was dismissed in Docket 5483, were joined as respondents in a cease and desist order in a similar proceeding in Docket 5484, in which order issued on August 20, 1951.

Syllabus

IN THE MATTER OF

CONSUMER SALES CORP. ET AL.

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

Docket 5680. Complaint, July 13, 1949—Decision, June 27, 1951

Where a corporation and its two officers, who held all its stock, directed its activities, and formulated and controlled its policies, engaged in the promotion and interstate sale of aluminum cookware, dinnerware, silver plate, and glassware through door-to-door salesmen;

In carrying on their business (1) through said salesmen whom they furnished with a card authorizing them to solicit and accept orders and collect deposits thereon; and sales kits containing, among other materials, order blanks for said products at varying prices, entitled, in large letters, "SPECIAL OFFER," and (2) under a procedure or practice whereby, following the customer's signing of an order requiring down payment of $1.90 and payment of the balance by monthly installments, and the making of a credit check, they delivered the merchandise to the buyer through their delivery man who secured the buyer's signature on a note for the balance due, and gave the buyer a brown manila envelope addressed to said corporation in which to mail to it the collected box tops below referred to—

(*a*) Encouraged, participated in, and benefited by and were responsible for, the representations of their salesmen who, through said order blanks and orally, falsely represented that they were offering said merchandise at a special low price;

(*b*) Encouraged, participated in, and benefited by and were responsible for the representations of their salesmen who also represented falsely that they were connected in some manner with one or more of the prominent soap manufacturing companies, which, in order to prove to the Government that their allocations of fats should be increased, were obtaining soap box tops from housewives as proof of their volume of sales, and that said corporation had been authorized by the soap companies to make such surveys and, in order to secure the necessary cooperation from housewives, had authorized said special offer; and

(*c*) Encouraged, participated in, and benefited by and were responsible for, the false representations of their salesmen that said merchandise was worth from $20 to $50 more than the price at which it was being offered and that such special offering was made on the condition that the buyer collect and turn in to said corporation a certain number of box tops from said soap manufacturers' products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and with capacity and tendency so to do, and thereby induce the purchase of substantial quantities of their said merchandise:

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 above described sales approach, which, as disclosed by the evidence, was the usual and typical sales method of salesmen selling respondents' product, and respondents' contention that their sales representatives were independent contractors, since their applications sought to establish an independent contractor relationship, they acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no reports, submitting only a tally of their commissions, and were not reimbursed for expenses; and that they, the respondents, therefore, were not responsible for said false representations;

Said respondents by furnishing the salesmen with the aforesaid order forms which falsely represented they were making a special offer, by permitting them to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of such box tops, actively encouraged and participated in making said false representations and participated in and received the fruits resulting therefrom and were responsible therefor.

As respects one of the two officers above referred to, who, with the other, actively participated in the establishment and operation of said corporation's sales policies but who severed his connection with the corporation on March 21, 1950, or 8 months after the issuance of the complaint, there was no assurance that he might not at some future time, under some other trade name, engage in the practices found to be illegal unless prohibited from so doing by order to cease and desist.

While the complaint also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's Seal of Approval, and that the aluminum cookware sold and distributed by them was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association, the evidence of record was not sufficient to support any of said allegations.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Murray M. Segal, 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 Consumer Sales Corp., a corporation, Julius J. Blumenfeld and Myron J. Collin, individually and as officers of Consumer Sales Corp., 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. Consumer Sales Corp. is a corporation organized and established under and by virtue of the laws of the State of New York with its office and principal place of business located at 673 Broadway, New York, N. Y. Respondents, Julius J. Blumenfeld and Myron J. Collin, are president, secretary and treasurer, respectively, of respondent corporation with their office and principal place of business located at 673 Broadway, New York, N. Y. Said individual respondents direct and have directed the activities of respondent corporation and have formulated and controlled its policies and affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the promotion and sale of aluminum cookware, dinnerware, and silverware through the medium of door-to-door salesmen.

The respondents cause and have caused their said products when sold to be transported from their place of business in the State of New York to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States and the District of Columbia. Respondents' volume of business in said utensils in such commerce has been and is substantial.

PAR. 3. For some time it has been the custom of various major soap companies such as those mentioned herein to circularize the consuming public, especially housewives, enclosing certain gift certificates which when used by the housewives and taken to the grocery store enable the purchaser of the soap products to obtain a 10- or 15-cent discount on products so bought. It has also been the custom of said soap companies to offer the consuming public in return for a certain number of box tops or wrappers from their products certain articles of silverware, dinnerware, or aluminumware of proven merit at a nominal price. These practices of the major soap companies are well known to the consuming public, especially housewives, who in many instances have received substantial merchandise under the sponsorship of the various soap companies.

PAR. 4. In the course and conduct of their said business and for the purpose of promoting the sale of their said products through the medium of sales agents and sales representatives the respondents have made and are making many statements and representations to

the purchasing public. Among and typical of said statements are the following:

That respondents' salesmen and representatives are in the employment of Consumer Sales Corp., which corporation is an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, and other prominent soap manufacturers;

That said manufacturing companies are interested in proving to the Federal Government that their allocations of fats should be increased. In order to prove to the Government how much soap is actually being used by the housewives, said soap companies are interested in obtaining from housewives the soap-box tops or labels from the soap they use;

That these box tops or labels will be turned in by the soap companies to the Federal Government as proof of the volume of sales;

That corporate respondent has been authorized by the said companies to make surveys to ascertain the extent and usage of soap products by the consuming public in order that the soap companies mentioned may present said data to the Federal Government for the purpose of obtaining additional allocations of fats;

That in order to obtain the cooperation of the public in securing this information and the return of box tops and labels from the public, corporate respondent has been authorized to sell sets of aluminumware, dining ware, and silverware which regularly sells for $100 or more at the nominal price of $56.90—$1.90 down-payment to the agent or representative and 11 monthly payments of $5 each to be sent corporate respondent by mail together with a certain number of box tops or labels from said soap corporations' products.

A further practice on the part of the respondents is that of including with some of the aluminumware sold a guarantee certificate reading as follows:

Guarantee Certificate

The Quality Aluminum

COOKWARE SET

Every Modern Housewife Is Proud to Own!
The quality cookware in this Matched Set is manufactured from Superior Quality Pure Heavy Virgin Aluminum by the most advanced precision manufacturing processes. Every piece in this Matched Cookware Set is guaranteed against defective workmanship or materials. . Any part or parts that may prove defective will be replaced.

REPLACEMENT OR REFUND OF MONEY
Guaranteed by Good Housekeeping
IF NOT AS ADVERTISED THEREIN

Approved ALUMINUM COOKWARE is approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association and the American Hospital Association.

LITHO. IN U. S. A.

The Good Houskeeping guarantee stamp used thereon bears a star and is similar in all respects to the guarantee emblem used by said Good Housekeeping Magazine on its stamp of approval for various products. The tableware sold by respondents is described as Czechoslovakian or of Czechoslovakian origin by their salesmen.

After a customer has made her selection of the articles wanted, she is given an envelope in which to enclose box tops or labels taken from the products of the aforesaid mentioned soap companies which are to be sent to respondents monthly or with the last payment. She is also asked to sign a contract wherein she agrees to pay the sum of $56.90 as hereinabove set-out.

The original signed contract is retained by the salesman and the purchaser is given what is called a "customer copy" which does not bear the customer's signature and is labeled "this is your receipt for $1.90." A few days after the merchandise is delivered to the purchaser and before she has had an opportunity to examine her purchase, she is asked to sign a receipt, which is in fact a promissory note wherein she agrees to pay the balance as hereinabove indicated. Before the first payment of $5 is due, the customer receives a statement of account and notice from a savings bank or finance company that it has purchased her contract note and that payments are to be made direct to it.

PAR. 5. The foregoing statements and representations so made by the respondents and their agents and representatives in connection with the sale of their merchandise is grossly exaggerated, false, and misleading. In truth and in fact said corporate respondent is not an advertising agency for Procter & Gamble, Lever Bros., Colgate-Palmolive-Peet, or other major soap manufacturers. Respondents are not engaged in making surveys for said soap companies on the amount of soap consumed or in gathering statistics regarding the sale and distribution of soap in order to be used with the Federal Government for the allocation of additional fats for said soap companies, nor are they representing said soap companies in the obtaining of said soap-box tops or labels from their various soap products. The box tops or wrappers obtained are not to be turned over to the

Federal Government as proof of the volume of soap being used by the consuming public. The respondents are not agents or representatives of said soap companies and have not been authorized to offer high-quality merchandise at nominal cost in exchange for box tops or wrappers. The aluminum cookware sold and distributed by respondents has not been approved or guaranteed by Good Housekeeping Magazine and the manufacturers of the aluminumware so sold by respondents were never authorized by Good Housekeeping Magazine to use the guarantee bearing its seal of approval. The tableware sold by respondents is not of Czechoslovakian origin but is made of cheap non-china material. None of the tableware, silverware or aluminumware sold by the respondents is worth $100 or more per set and is not sold at a nominal price but at the customary price for which articles of a similar nature and construction are sold. The aluminum cookware sold and distributed by the respondents has not been approved by leading home economists, renowned professional chefs and such recognized authorities as the U. S. Public Health Service, U. S. Bureau of Home Economics, the American Medical Association, and the American Hospital Association.

PAR. 6. The use by the respondents of said false and misleading statements and representations in connection with the sale of their products has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induce a substantial number of the public because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said merchandise.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 13, 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 said act. After the filing of respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Com-

mission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, and other evidence, the recommended decision of the trial examiner and the exceptions thereto by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having disposed of the exceptions to the recommended decision 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, Consumer Sales Corp. is a New York corporation, with its office and principal place of business at 673 Broadway, New York, N. Y. Prior to March 21, 1950, respondents, Julius J. Blumenfeld and Myron J. Collin, with the same address, were the president, and the secretary and treasurer, respectively, of respondent corporation, held all of its capital stock and, with their wives, constituted its board of directors. On March 21, 1950, respondent, Julius J. Blumenfeld, transferred to the respondent corporation his 62½ shares of its common stock and resigned as its president and director. Prior to March 21, 1950, the individual respondents directed the activities of respondent corporation and formulated and controlled its policies and affairs including its sales and advertising policies.

PAR. 2. The respondents are now and for several years last past (with the exception of respondent Julius J. Blumenfeld since March 21, 1950), have been engaged in the promotion and sale of aluminum cookware, dinnerware, silver plate, and glassware, through the medium of door-to-door salesmen, causing the same, when sold, to be transported from their place of business in the State of New York to purchasers thereof in the States of New Jersey and Connecticut and maintaining a course of trade in said products in commerce between the State of New York and the States of New Jersey and Connecticut. Respondents' volume of business in said wares in such commerce has been and is substantial.

PAR. 3. In the conduct of their business, respondents select salesmen to solicit orders from door to door. Respondents furnish these salesmen with a sales kit and a card signed by the respondent corporation authorizing them to solicit and accept orders and to collect de-

posits on such orders. Said sales kit contains, among other materials, order blanks for dinnerware, silver plate, glassware, and alumnium cookware at prices varying from $49.90 to $56.90. Each order blank is entitled in large letters "Special Offer." By the use of such order blanks and of oral statements certain of the respondents' salesmen have represented that they were offering the respondents' merchandise at a special low price. The salesmen have also represented that they were connected in some manner with one or more of the prominent soap-manufacturing companies, that the said companies, in order to prove to the Federal Government that their allocations of fats should be increased, were obtaining soap-box tops from housewives to turn into the Government as proof of their volume of sales, that the corporate respondent had been authorized by the said soap companies to conduct this survey and that, in order to secure the necessary cooperation from housewives in the collection of box tops, it was authorized to make this special offer. The salesmen have also represented the said merchandise as being worth from $20 to $50 more than the price at which it was being offered and that this special offer was made on the condition that the buyer collect and turn in to respondent corporation a certain number of box tops from said soap manufacturers' products. The order signed by the buyer required her to pay the salesman a down payment of $1.90 and to pay the remainder by monthly payments. After a credit check by respondent corporation, the merchandise was delivered to the buyer by respondents' truck. In accordance with respondents' instructions, the delivery man, an employee of respondent corporation, before delivering the merchandise, secured the buyer's signature on a note for the balance due and gave the buyer a brown manila envelope addressed to respondent corporation and requested the buyer to mail the collected box tops to respondent corporation in the envelope so furnished.

PAR. 4. The prices, which respondents have represented as constituting a special offer, were in fact the same as the prices at which they customarily and regularly sold their merchandise. Respondents were not advertising agents for, nor were they connected with or representing in any manner, any soap company. They have not conducted any survey for any soap company, nor have they gathered statistics on soap consumption for use by any soap company in attempting to secure an increased allocation of fats. They have not been authorized by any soap company to collect box tops of their products for any purpose nor have they been authorized by any soap company to offer to sell or sell merchandise at a special low price as a premium for the collection of box tops.

PAR. 5. Respondents contend that their sales representatives are independent contractors and that, therefore, respondents are not responsible for their false representations. Respondents base their contention on the fact that their agents' applications seek to establish an independent contractor relationship, and on the fact that the agents acted independently of respondents in that they were not required to attend sales meetings, were not supervised in their sales, made no sales reports, submitting only a tally of their commissions, and were not reimbursed for expenses. However, by furnishing the salesmen with order forms falsely representing that they were making a special offer, by permitting the salesmen to request purchasers to collect box tops, and by furnishing self-addressed envelopes for the handling of the box tops, respondents actively encouraged and participated in making the said false representations. The evidence shows that the above-described sales approach was the usual and typical sales method of salesmen selling respondents' products. Respondents participated in and received the fruits resulting from such false representations and are responsible for them.

The individual respondents actively participated in the establishment and operation of respondent corporation's sales policies. Respondent, Julius J. Blumenfeld, severed his connection with the respondent corporation on March 21, 1950. This was over 8 months after the issuance of the complaint in this matter. There is no assurance that this respondent may not at some future time under some other trade name, engage in the same practices herein found to be illegal unless he is prohibited from so doing by an order to cease and desist.

PAR. 6. The complaint in this proceeding also alleged that respondents falsely represented that their tableware was of Czechoslovakian origin, that their aluminum cookware was authorized to use Good Housekeeping Magazine's seal of approval, and that the aluminum cookware sold and distributed by respondents was approved by leading home economists, renowned professional chefs, and such recognized authorities as the United States Public Health Service, United States Bureau of Home Economics, the American Medical Association, and the American Hospital Association. The evidence of record is not sufficient to support any of the allegations of the complaint referred to in this paragraph.

PAR. 7. The use by the respondents of the false and misleading statements and representations referred to in paragraphs 3 to 5, inclusive, in connection with the sale of their products, had a tendency and capacity to and did mislead and deceive a substantial portion of

the purchasing public into the erroneous and mistaken belief that such statements and representations were true and to induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said merchandise.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 6) were all to the prejudice and injury of the public 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, respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondents and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Consumer Sales Corp., a corporation, and its officers, agents, representatives, and employees, and the individual respondents, Julius J. Blumenfeld and Myron J. Collin, and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of aluminum, cookware, dinnerware, silverware, or other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That the respondents or any of them are connected with or represent in any manner any soap manufacturer or any other company or organization unless such is the fact.

(2) That the respondents or any of them are making or conducting a survey.

(3) That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, cooperation in furnishing information or participation in any other similar project or activity.

(4) That said merchandise is being sold at a special price when the price at which it is sold is the usual and customary price at which respondents sell such merchandise in the ordinary course of their business.

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

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ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.[1]

BRISTOL-MYERS CO. Complaint, March 16, 1950. Order, July 5, 1950. (Docket 5752.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, scientific or relevant facts, and safety of product; in connection with the manufacture and sale of a drug designated Resistab.

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 Bristol-Myers Co., 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 Bristol-Myers Co. is a corporation organized and doing business under the laws of the State of Delaware with an office and principal place of business at 630 Fifth Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of manufacturing and selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The said drug is designated by respondent as Resistab and is sold in tablet form, each tablet containing as its only active ingredient 25 milligrams of thonzylamine hydrochloride. The directions for use in connection with colds are as follows:

Directions for Use for Adults or Children*

How to relieve cold symptoms fast—At the "first sign" of a cold—running nose, dry, scratchy throat, sneezing, take one Resistab tablet. Follow with one tablet immediately before each meal and at bedtime up to three or four days. Do not exceed recommended dosage. If any drowsiness follows the use of this product, do not drive or operate machinery.

*For dosage of children under 6, consult your physician.

Respondent causes the said drug to be transported from the State in which it is manufactured to purchasers thereof located in other States

[1] During the period covered by this volume, the case of Leo Lichtenstein, et al., trading as Harlich Manufacturing Co., docket 3947, was closed on October 24, 1950, nunc pro tunc as of November 6, 1943, on which date said case, and the case in the matter of Leo Lichtenstein, et al., doing business as Loomis Manufacturing Co., etc., docket 4879 were consolidated and amended complaint, which bore docket No. 4879 was issued, and disposed of through findings and cease and desist order on June 30, 1950, 46 F. T. C. 984.

The case of Borden Novelty Co., Docket 5795, which involved alleged violation of a commercial standard adopted in 1933 by the voluntary participants in a conference to standardize gold-filled or gold-surfaced jewelry other than watches, through respondent's alleged improper marking of certain gold-covered watch bands as "gold-filled" and "gold-filled tops", and in which the Commission on December 3, 1951, announced the fruition on May 16, 1951 of an initial decision dismissing said complaint, will be found fully reported as of the later date in the following volume.

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 the said drug in commerce between and among the various States of the United States, and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, certain advertisements concerning Resistab by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to advertisements in the Washington, D. C., Times-Herald issue of December 1, 1949, and January 25, 1950; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in said advertisements are the following:

Kills colds in one day.

Stop colds fast.

For in clinical tests, those who used Resistab at once got completely rid of their colds in an average of one day.

How Resistab can stop your cold in one day! At the first sign of a cold (or on exposure to someone else's cold) take one Resistab immediately. Don't wait! Then before each meal and at bedtime take another Resistab.

—Resistab to guard my family against colds.

At the first sign of a cold, take one Resistab immediately! Don't wait! For Resistab's spectacular ability to stop colds fast depends on use during early stages of cold. Before each meal—and at bedtime—take another Resistab. Taken this way Resistab strengthens your body's natural defenses against cold.

Resistab is absolutely safe when used as recommended.

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Resistab is an adequate and competent treatment for and will cure the common cold.

(2) That Resistab is an adequate and competent treatment for and will cure all the manifestations of the common cold.

(3) That Resistab will protect the user against invasion by the common cold infection and against the development of the manifestations thereof.

(4) That in persons who have a common cold infection, and who, when it first becomes manifest or in the early stages of such manifestations, take Resistab, such manifestations will not become more severe, other manifestations will not develop, and all manifestations will be cured.

(5) That by taking Resistab the body's natural defenses against cold infections and their manifestations will be rendered more effective.

(6) That Resistab, taken as directed, is always safe, and is incapable of doing injury or harm to the user.

PAR. 6. The advertisements referred to herein are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Resistab is neither a cure nor an adequate or competent treatment for the common cold.

(2) Resistab is neither a cure nor an adequate or competent treatment for the manifestations of the common cold.

(3) Resistab will not protect the user against invasion by the common cold infection nor against the manifestations thereof.

(4) The use of Resistab by persons who have a common cold infection, when such infection first becomes manifest or in the early stages of such manifestations, will not prevent such manifestations from becoming more severe, prevent the development of other manifestations, or result in a cure of all such manifestations.

(5) The use of Resistab in no way contributes to the operation of the defense mechanism of the body against its infection by the cold virus, against infection which has occurred, or against the manifestations of a cold infection.

(6) Resistab, taken as directed, may be unsafe, and produce injury or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented directly and by implication that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and are an adequate basis for, the said representations concerning the prophylatic and therapeutic value of Resistab in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein

concerning the prophylactic and therapeutic value of Resistab in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Bristol-Myers Co., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Resistab, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 8, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Com-

mission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Mr. Isaac W. Diggs, of New York City, for respondent.

ANAHIST CO., INC. Complaint, March 16, 1950. Order, July 5, 1950. (Docket 5753.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results, scientific or relevant facts, safety, and tests of product; in connection with the sale of a drug designated Anahist.

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 Anahist Co., Inc., 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 Anahist Co., Inc., is a corporation organized and doing business under the laws of the State of New York and having an office and principal place of business at Yonkers, N. Y.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said drug, its formula and the directions for use thereof are as follows:

Designation: Anahist

Formula: Each tablet contains:

	Grains
Thonzylamine Hydrochloride	0.3858
Amijel Powder	.126
Potato starch powder	.96
Terra alba	2.529

Directions: For adults or children: one tablet before each meal and at bedtime. Do not use in excess of recommended dosage.

Respondent causes the said drug to be transported from its place of business in the State of New York to 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 the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to September 26, 1949, has disseminated and caused the dissemination of, certain advertisements concerning Anahist by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including, but not limited to, advertisements in the Washington, D. C., Evening Star, issue of January 25, 1950, Washington, D. C., Times Herald, issue of November 17, 1949, various newspapers of general circulation, issues of November 25, 1949, Look magazine, issue of December 6, 1949, Omaha Nebr., Evening World Herald, issue of November 9, 1949, Atlanta, Ga., Constitution, issue of November 27, 1949, New York, N. Y., Sunday News, issue of December 4, 1949, Drug Topics magazine, issue of November 21, 1949, San Antonio, Tex., Express, issue of December 2, 1949, Rochester, N. Y., Times-Union, issue of December 13, 1949, and circulars in the form of large telegrams addressed to "Mr. and Mrs. America"; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

Antihistamine—a clinical experiment by the U. S. Navy Medical Corps. Results were amazing. Marked relief of symptoms! Much shorter colds than usual! Many colds literally "nipped in the bud."

Although this same antihistamine had been prescribed by doctors for hay fever, allergies, and colds in increasing volume for more than three preceding years, it was not until September 2, 1949, that its sale to families everywhere without prescription was made possible.

The common cold usually begins as an allergic response which causes an outpouring of histamine into the cells of your nose and throat. This produces cold symptoms and weakens your natural defense against secondary bacterial invaders. But Anahist successfully combats the destructive histamine.

Medical research indicates that the common cold is initially an allergic response caused by the cold virus.

Anahist—keep intact your natural defenses against colds and their complications.

Anahist—helps maintain your natural defense against the common cold and its complications.

—by using Anahist—avoid—secondary complications and the danger of sinusitis, bronchitis, pneumonitis, or other serious ills resulting.

Furthermore by controlling the cold, Anahist helps to prevent secondary symptoms such as nasal congestion, coughing, fever, and muscular aches and pains due to colds.

Prevents sneezing, coughing, and running noses.

—this new antihistamine's effectiveness in eliminating the misery of colds; sneezing, running nose, watering eyes, coughing, and other symptoms that have plagued cold sufferers for centuries.

New Miracle Drug stops cold symptoms in a single day.

Now say Goodbye to colds with Anahist.

However, there is clinical evidence that in any phase of the common cold Anahist may reduce the complications and reduce the severity even after there has been invasion of the mucous membrane by secondary invaders.

The prophylactic administration of Anahist will in a large percentage of cases, prevent the incidence of the common cold.

Clinically proved effective protection against colds.

—Anahist for colds.

Arthur came home with a cold—Anahist. Next day Arthur hadn't a trace of a cold.

Anahist—dosage clinically proved effective for colds.

—wonderful results in treating colds.

Winning the 'cold' war. Americans suffer 500,000,000 colds a year—Yet until Anahist was made available, the public had no effective answer to this problem.

Yes, Anahist is safe—when taken as directed on the package.

Effectiveness without troublesome side reactions.

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented directly and by implication that:

(1) A clinical experiment was conducted by the United States Navy Medical Corps for the purpose of testing and determining the value of antihistamine drugs in averting or treating the common cold.

(2) That the so-called clinical experiment demonstrated that antihistamine drugs afford substantial relief to the manifestations of, substantially reduce the duration of, and abort the common cold and prevent the development of the common cold with its manifestations.

(3) That prior to September 2, 1949, the antihistamine contained in Anahist was prescribed by physicians for hay fever, allergies and colds in a dosage not significantly different from that which is furnished by Anahist, taken as directed.

(4) That the initial manifestations of a common cold are caused by the presence of excessive or abnormal amounts of histamine in the tissues of the nose and throat.

(5) That the initial manifestations of a cold are an "allergic response" to the presence of a cold virus.

(6) That by taking Anahist the natural defenses against colds, their manifestations and secondary infections and complications incident thereto will be maintained and these conditions averted.

(7) That the use of Anahist will prevent the manifestations of the common cold from making their appearance, and if they have appeared, will cure them.

(8) That by taking Anahist, colds will be averted.

(9) That Anahist will cure the common cold.

(10) That Anahist is an adequate and competent treatment for the common cold and for its manifestations.

(11) That Anahist, taken as directed, is always safe and is incapable of doing injury or harm to the user, and will produce no side reactions.

PAR. 6. The advertisements referred to herein are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact—

(1) The so-called clinical experiment to which respondent refers was not conducted by the United States Navy Medical Corps.

(2) That from the so-called clinical experiment as reported in medical publications it cannot be validly concluded that antihistamine drugs afford substantial relief to the manifestations of, substantially reduce the duration of, or in many instances cure or prevent the development of the manifestations of the common cold.

(3) The usual dosage of antihistamine drugs prescribed by physicians in cases where they are indicated is far greater than that supplied by Anahist taken as directed.

(4) The initial manifestations of a common cold including sneezing, coughing, and discharge from the nose are not due to the presence of excessive amounts of histamine in the tissues of the nose and throat.

(5) The initial manifestations of a common cold, including sneezing, coughing, and discharge from the nose are the almost universal responses to the common cold infection and are in no sense an allergic response or a manifestation of an allergy.

(6) The use of Anahist in no way contributes to the operation of the defense mechanism of the body against its invasion by the cold virus; the body has no natural defense against the manifestations of the common cold except its ability to overcome the causative infection, and this will be in no way assisted by the use of Anahist; the use of Anahist in no way contributes to operation of the defense mechanism of the body against secondary infections or complications consequent to a common cold, nor will it avert them.

(7) The use of Anahist will neither prevent the appearance of, nor cure, the manifestations of the common cold.

(8) The use of Anahist will not avert colds.

(9) Anahist will not cure the common cold.

(10) Anahist is not an adequate or competent treatment for the common cold or for its manifestations.

(11) Anahist, taken as directed, may be unsafe, or may produce side reactions, injury, or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the role of histamine in the common cold and the prophylactic and therapeutic value of Anahist in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the role of histamine in the common cold or the prophylactic or therapeutic value of Anahist in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by means of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Anahist Co., Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Anahist, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall pre-

vent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 8, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Dwight, Royall, Harris, Koegel & Caskey, of New York City, for respondent.

WHITEHALL PHARMACAL CO. Complaint, March 20, 1950. Order, July 5, 1950. (Docket 5754.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, and tests of product; in connection with the manufacture and sale of a drug designated Kriptin.

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 Whitehall Pharmacal Co., a corporation, hereinafter referred to as respondent has violated the provisions of the Federal Trade Commission 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 Whitehall Pharmacal Co. is a corporation organized and doing business under the laws of the State of

Illinois, and having an office and principal place of business at 22 East Fortieth Street, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 3 months last past, engaged in the business of manufacturing and selling a drug, as "drug" is defined in the Federal Trade Commission Act.

The said drug is designated by respondent as Kriptin. It is sold in tablet form, each tablet containing approximately 25 milligrams of Pyranisamine Maleate as its sole active ingredient. The directions for its use in connection with colds are as follows:

For colds: Take 1 tablet at the very first indication of a cold and then 1 every 3 or 4 hours, but not more than 4 in any 24 hours. Continue treatment for 2 or 3 days.

For children: Nine years of age and over—same dosage as above. Six to nine years, ½ tablet 4 times a day. Under 6 years—consult your physician for dosage.

Do not use in excess of recommended dosage. If drowsiness occurs, do not drive your car, but continue to take Kriptin tablets only while remaining at home.

Respondent causes the said drug to be transported from the State in which it is manufactured to 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 the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, certain advertisements concerning Kriptin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to, advertisements in the Washington, D. C., Evening Star, issue of December 12, 1949, and Washington, D. C., Post issue of January 24, 1950, and radio continuities broadcast by the National Broadcasting Co. on December 7, 1949, and respondent has disseminated, and caused the dissemination of, advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

Kriptin—Kills Colds
Stops colds at the start

Kill a cold at the very start—kill it completely—not in days but in hours
Doesn't just "ease" the symptoms, but kills the cold completely
Kriptin tablets taken at the first sign of a cold, can stop the attack like magic! The cold symptoms vanish—you stay on the job
No more sneezing—stopped up nose—aches and pains—no more miserable days in bed trying to "outlast" a cold
Remember, for the most spectacular results—to kill the cold completely—take Kriptin at the very first sneeze, chill or sniffle
For in clinical tests by the United States Navy Kriptin proved remarkably effective and efficient—

PAR. 5. Through the use of the advertisements containing the statements and representations set forth in paragraph 4, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Kriptin is an adequate and competent treatment for and will cure the common cold;

(2) That Kriptin is an adequate and competent treatment for and will cure all the manifestations of the common cold;

(3) That in persons who have a common cold infection, and who, when it first becomes manifest, take Kriptin, such manifestations will not become more severe, other manifestations will not develop, and all manifestations will be cured;

(4) That Kriptin has been tested by the United States Navy.

PAR. 6. The advertisements referred to herein are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Kriptin is neither a cure nor an adequate or competent treatment for the common cold;

(2) Kriptin is neither a cure nor an adequate or competent treatment for the manifestations of the common cold;

(3) The use of Kriptin by persons who have a common cold infection when such infection first becomes manifest, will not prevent such manifestations from becoming more severe, prevent the development of other manifestations, or result in a cure of all such manifestations;

(4) Kriptin has not been tested by the United States Navy.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the therapeutic value of Kriptin in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact respondent does not have

knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the therapeutic value of Kriptin in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Whitehall Pharmacal Co., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Kriptin, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 7, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. Randolph W. Branch and *Mr. Edward F. Downs* for the Commission.

Mr. Gilbert S. McInerny and *Ide & Haigney*, of New York City, for respondent.

UNION PHARMACEUTICAL CO., INC. Complaint, April 7, 1950. Order, July 5, 1950. (Docket 5763.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, and safety of product; in connection with the sale of a drug designated Inhiston.

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

PARAGRAPH 1. Respondent Union Pharmaceutical Co., Inc., is a corporation organized, existing and doing business under the laws of the State of New Jersey, having its office and principal place of business at 400 Bloomfield Avenue, Montclair, N. J.

PAR. 2. Respondent is now, and for more than 3 months last past has been, engaged in the business of selling, among other things, a certain drug, as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said drug, its formula and directions for use are as follows:

Designation: Inhiston Formula:	*Mg. per tablet*
1-phenyl-1-(2-pyridyl)-3-dimethylaminopropane	10.31
TriCalcium Phosphate	98.80
Magnesium Carbonate U. S. P	77.32
Gelatin	14.00
Corn Starch	26.00
Talcum Powder	2.32
Sodium Sterate	.53
Dupanol, M. E	.35

Directions: At the first sign of sneezing or sniffles due to a cold—take 2 Inhiston tablets immediately. Follow with one tablet not oftener than every

four hours until symptoms are relieved, but not over 96 hours. Children 6–12: One Inhiston tablet immediately; one-half tablet thereafter as above.

IMPORTANT: Inhiston tablets are most effective when taken *within the first hour* of a cold's appearance. Carry Inhiston with you at all times. CAUTION: If this drug makes you drowsy at all, do not drive, or operate machinery, and do not take except while staying at home. Do not exceed recommended dosage.

Respondent causes the said drug to be transported from its said place of business in the State of New Jersey to 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 the said drug in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is, and has been, substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated and caused the dissemination of certain advertisements concerning Inhiston by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase including, but not limited to, advertisements in the Washington, D. C., Times Herald, issue of November 7, 1949, the Los Angeles, Calif., Times of the same date, the Chicago, Ill., Daily Tribune of the same date, Trained Nurse Magazine of the December 1949 issue, and radio continuities broadcast on or about January 24, 1950; and respondent has disseminated and caused the dissemination of advertisements including, but not limited to, those referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

After centuries of struggle medical science can

STOP

COLDS.

Man has at last won his first great victory over the common cold * * * 1949 will be an historic year in the annals of medicine * * * this is the year of Inhiston, the antihistamine.

But now you have Inhiston! And now you can at last take real hope—hope of a winter free from colds, by using Inhiston as directed, at the very first sign of a cold.

Colds can be stopped, in the great majority of cases, if antihistamine treatment is begun within an hour after appearance of the first cold symptom.

How *you* can help eliminate colds with Inhiston.

If you now have a cold, take Inhiston immediately to shorten the duration of the cold and reduce the sneezing, sniffling and coughing. That way your family runs less risk of catching your cold.

* * * the Inhiston formula is actually twice as effective in antihistamine action as any other formula offered for public sale.

Inhiston, therefore, is a truly effective antihistaminic for control of the common cold. When taken at the first sign of a cold it can abort the cold.

* * * the reduction of sneezing and coughing usually effected, regardless of the duration of the cold itself, reduces the spread of the common cold by eliminating droplet exposure.

Remember—in scientific research where antihistamine treatment began within an hour of the first cold symptom, the great majority of patients found that all signs of a cold disappeared!

And, Inhiston is safe when used as directed.

PAR. 5. Through the use of the advertisements containing the statements and representations set out in paragraph 4 above, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication:

(1) That Inhiston is a competent and effective treatment for, and will cure, the common cold.

(2) That by using Inhiston as directed, one can expect to prevent colds and to go through the winter without a cold.

(3) That one suffering from a cold can shorten its duration and reduce the symptoms of coughing, sniffling, and sneezing by taking Inhiston, thereby reducing the spread of the cold to others.

(4) That the antihistamine action of Inhiston is effective in curing and preventing colds.

(5) That Inhiston is safe when used as directed.

PAR. 6. The advertisements referred to herein are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Inhiston is not a competent and effective treatment for, and will not cure, the common cold.

(2) Inhiston used as directed will not prevent a cold and will not enable one to go through the winter without a cold.

(3) The use of Inhiston will not result in shortening the duration of a cold and any reduction in sneezing, sniffling, or coughing resulting from its use for a cold will be relatively insignificant and insufficient to exert any influence in preventing or controlling the spread of the cold to others.

(4) The antihistamine action of Inhiston is not effective in curing or preventing colds.

(5) Inhiston, when used as directed, may be unsafe and result in injury or harm to the user.

PAR. 7. By including in the advertisements referred to herein the representations and claims set out above, respondent has represented,

directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the therapeutic value of Inhiston in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the therapeutic value of Inhiston in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Union Pharmaceutical Co., Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Inhiston, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way

prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 7, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. R. P. Bellinger and *Mr. George M. Martin* for the Commission.

Mr. Irving H. Jurow, of Montclair, N. J., *O'Connor & Farber*, of New York City, and *Becker, Maguire & Reich*, of Washington, D. C., for respondent.

THE GROVE LABORATORIES, INC. Complaint, May 1, 1950. Order, July 5, 1950. (Docket 5772.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, scientific or relevant facts, safety of product, and tests; in connection with the sale of a drug designated Antamine.

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 the Grove Laboratories, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission 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 the Grove Laboratories, Inc., is a Delaware corporation which has its office and principal place of business at 2630–2652 Pine Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for more than 3 months last past has been, engaged in the business of selling, among other things, a certain drug, as "drug" is defined in the Federal Trade Commission Act.

Respondent designates the said drug as Antamine. It is sold in the form of a tablet, each tablet containing approximately 25 milligrams of pyranisamine maleate as its sole active ingredient. The directions for use with respect to colds are as follows:

Adults and Children over 12 years: Take one tablet immediately at first sign of distress. Then take one tablet after each meal and one at bedtime. Do not exceed four tablets a day.

For Children 5 to 12 years: ½ tablet after each meal and ½ tablet at bedtime. Do not exceed 4 half tablets per day.

Keep within recommended dosage. If drowsiness should occur, do not drive and take Antamine only at home.

Respondent causes the said drug to be transported from its place of business in the State of Missouri to 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 the said drug in commerce between and among the various States of the United States and the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of its business, respondent, subsequent to November 1, 1949, has disseminated, and caused the dissemination of, advertisements concerning its said preparation Antamine by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase, including but not limited to advertisements in the Washington, D. C., Times-Herald of December 6, 1949, the Washington, D. C., Evening Star of December 7, 1949, and December 13, 1949, the New York Sun of December 13, 1949; also as a Dealer Cooperative Newspaper ad in December 1949; and in radio continuities broadcast over the Mutual network on or about December 4, 1949, and February 5, 1950; and respondent has disseminated, and caused the dissemination of, advertisements including, but not limited to, those referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and claims contained in the said advertisements are the following:

SENSATIONAL NEW DISCOVERY KILLS COLDS IN HOURS.

The new "wonder drug" you've read so much about! Tested and perfected by Navy doctors, the Antamine formula is safe, amazingly effective. In clinical tests 90% of colds were stopped in hours.

Antamine kills colds' sneezes, sniffles, as no other type drug can.

Just think of a winter without a single cold for you—or any one in your family! How wonderful to go from now until June without a sneeze or sniffle in your home.

Now for millions—no lost work or wages! No days out of school.

Don't ever spread your cold to your family. Take Antamine promptly at first sign of a cold.

Compounded after amazingly successful anti-histamine tests, as reported in Time Magazine, Reader's Digest, The U. S. Naval Medical Bulletin.

PAR. 5. Through the use of the advertisements containing the statements and representations set out in paragraph 4 above, and others similar thereto not specifically set out herein, respondent represented, directly and by implication:

(1) That Antamine is a competent and effective treatment for and will cure the common cold;

(2) That Antamine has been tested and perfected by Navy doctors, and is always safe to use, and clinical tests have resulted in colds being cured in 90 percent of cases;

(3) That Antamine will stop the sneezes and sniffles accompanying a cold;

(4) That the use of Antamine will prevent colds, sneezes, and sniffles, and will eliminate the loss of work days and school days due to colds;

(5) That by taking Antamine at the first sign of a cold one can prevent its spread to others.

PAR. 6. The advertisements referred to herein are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) Antamine is not a competent and effective treatment for and will not cure the common cold;

(2) Antamine has not been tested and perfected by Navy doctors, it is not always safe to use, and may be harmful to some users, and no reliable properly controlled tests with Antamine have resulted in curing 90 percent or any other appreciable proportion of colds;

(3) Antamine will not stop the sneezes and sniffles accompanying a cold;

(4) The use of Antamine will not prevent colds nor their accompanying sneezes and sniffles and will exert no influence upon the number of work days or school days otherwise lost by reason of colds;

(5) Antamine taken at any time will not prevent the spreading of colds.

PAR. 7. By including in the advertisements referred to herein the representations and claims set forth above, respondent has represented, directly and by implication, that it has knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, and an adequate basis for, the said representations and claims concerning the role of histamine in the common cold and the prophylactic and therapeutic value of Antamine in connection with the common cold.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondent does not have knowledge and reliable information of facts which are sufficient to constitute adequate proof of the correctness of, or an adequate factual basis for, the representations and claims referred to herein concerning the role of histamine in the common cold or the prophylactic or therapeutic value of Antamine in connection with the common cold.

PAR. 9. The use by respondent of the said advertisements has had the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein and referred to herein were true, and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, the Grove Laboratories, Inc., has executed and tendered to the Commission an offer of settlement of this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated, in commerce, any advertisement which represents, directly or by implication, that its product, Antamine, will cure, prevent, abort, eliminate, stop, or shorten the duration of, the common cold: *Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose, or (*b*) that the product is safe if taken in accordance with the directions on the label; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on June 6, 1950, be approved and accepted.

It is further ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Mr. R. P. Bellinger and *Mr. George M. Martin* for the Commission.

Rogers & Woodson, of Chicago, Ill., and *Mr. William Blum, Jr.*, of Washington, D. C., for respondent.

EDUCATIONAL TRAINING SERVICE, INC., SYDNEY A. WARSOWE, MORTON WIENER, AND SOPHIE MURAWSKI. Complaint, December 1, 1949. Order, July 17, 1950. (Docket 5714.)

Charge: Misrepresenting as to Government connection, job guarantee or employment, refund, special or limited offers, and opportunities in product or service and securing execution of contracts misleadingly; in connection with the sale of correspondence courses for United States Civil Service.

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 Educational Training Service, Inc., a corporation, and Sydney A. Warsowe, Morton Wiener, and Sophie Murawski, individually and as officers of said corporation, 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. Educational Training Service, Inc., is a corporation organized and existing under the laws of the State of New Jersey with its principal office and place of business in the Smith-Austermuhl Building in the city of Camden, State of New Jersey. Respondents Sydney A. Warsowe, Morton Wiener, and Sophie Murawski are president and treasurer, secretary, and vice president, respectively, of said corporation, with their principal place of business at the address of said corporation. Said individual respondents as such officers formulate, control, and execute all of the business policies and practices of said corporation.

PAR. 2. For more than 2 years last past respondents have been and are now engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of courses of study and instruction intended for preparing students thereof for examination for certain Civil Service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondents in the course and conduct of their said business cause said courses of study and instruction to be transported from said place of business in the State of New Jersey into and through States of the United States other than New Jersey and the District of Columbia to purchasers thereof in such other States. There has been at all times mentioned herein a course of trade in said courses of instruction so sold and distributed by respondents in commerce between and among the various States of the United States. The business done by respondents as aforesaid has been and is substantial.

PAR. 3. In the course and conduct of said business and in connection with the sale of said course of study and instruction, respondents employ agents or sales representatives who call upon prospective purchasers of said courses and for the purpose of inducing the sale thereof have made and are making numerous representations and statements to the effect that:

Said agent or representative is a Government employee or has some direct or indirect connection with the United States Civil Service Commission or some other government agency, and by presenting identifications or credentials which in appearance simulate the credentials of government employees, strengthen the representation or implication that he is employed by, or connected with, the United States government;

If a prospective purchaser will enroll for said course, the respondent company will guarantee a position in the United States Civil Service upon the completion by said student of said course;

In order to take a civil-service examination or obtain employment in the United States Civil Service Commission it is a necessary requirement to pursue said course of study;

In the event a student desired to discontinue said course the monies paid by him on account of the purchase price would be refunded by the corporate respondent;

The person solicited has been especially recommended or selected to take said course of study and for employment in the United States Civil Service;

Students may obtain positions in the U. S. Civil Service in localities selected by them.

In addition to the foregoing representations and implications, respondents' sales agents in many instances fail to disclose the terms of the contract of purchase of said course of study and do not afford prospective purchasers an opportunity to read and understand said contract before signing the same. On many occasions said sales representatives urge the execution of said contract upon the grounds that the sales agent is in a great hurry, would not be able to return, and that unless the contract is executed said prospective students will miss or pass up the opportunity of securing life-time employment with the United States Government, including substantial earnings with paid vacations, sick leave, short working hours, and high living standards.

PAR. 4. All of said statements, representations, and implications made orally by respondents' said salesmen are grossly exaggerated, false, and misleading. Neither the corporate or individual respondents nor their sales agents and representatives have any connection whatever with the United States Civil Service Commission or any other government agency. No one, including respondents, can guarantee or promise positions in United States Civil Service or can in any manner be effective in securing positions for any individual desiring to be employed in civil service. Respondents' course of study is not an essential prerequisite for the taking of any civil-service examination or obtaining employment in civil service. Respondents do not refund any monies paid on account of tuition, but as a matter of policy demand that all contracts be paid in full according to the terms thereof, regardless of whether a student completes said course or desires to discontinue it soon after having enrolled. The representations made by said agents in many instances that students have been especially selected or recommended for said course of study to the corporate respondent is without foundation in fact, and prospective students relying upon such false representations have been induced to execute a contract for the purchase of said course on account thereof. Prospective purchasers will not miss the opportunity of a lifetime by failing to enroll for said course.

PAR. 5. The vast majority of prospective students and purchasers consist of high-school graduates and young people who have neither the experience nor the judgment to evaluate the sales approach made by respondents' agents including the implications created by the presentation of credentials and who readily believe the representations made with respect to the contents of the contract which they are invited to execute and, relying fully upon the representations made as to the advantages that may be obtained in United States Civil Service, do not read or analyze the terms of the contract of enrollment.

PAR. 6. The use by respondents of the statements and representations as aforesaid has had and has the tendency and capacity to and does, confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true and to induce them to purchase respondents' courses of study and instruction on account thereof.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on July 17, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by Clyde M. Hadley, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents' testimony and other evidence introduced in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented by counsel and no oral argument requested; and it appearing that the allegations of the complaint have not been sustained by the evidence, that the respondents have discontinued the business on which this case was based, with no indication that the same will be resumed, and that no substantial public interest presently exists:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. William L. Pencke for the Commission.

Mr. John M. Smith, Jr., of Philadelphia, Pa., for respondents.

JACK J. FELSENFELD. Complaint, August 31, 1945. Order, August 25, 1950. (Docket 5375.)

CHARGE: Neglecting, unfairly or deceptively, to make material disclosure as to imported product or parts as domestic; in connection with the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces, cultured pearl necklaces, and other articles of jewelry.

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 Jack J. Felsenfeld, an individual, 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 Jack J. Felsenfeld is an individual with his office and principal place of business located at 15 Maiden Lane, New York, N. Y.

PAR. 2. Respondent Jack J. Felsenfeld is now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearl necklaces, cultured pearl necklaces, and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes and has caused his said merchandise, when sold, to be shipped from his said place of business located in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondent maintains and at all times mentioned herein has maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent, in connection with the sale and distribution of his said products, has imported from Japan, Spain, and other foreign countries large quantities of imitation pearl necklaces and cultured pearl necklaces. During the last several years the respondent has also purchased large quantities of imitation pearls and cultured pearls made into necklaces of foreign origin from importers and others engaged in the sale of said products in the United States. Respondent sells and distributes his imitation pearl necklaces and cultured pearl necklaces of foreign origin in commerce, together with other articles of merchandise.

PAR. 4. At the time of the importation into the United States of the above-enumerated products and at the time the respondent Jack J. Felsenfeld received said products of foreign origin, said products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan," or the word "Spain" or the words "Made in Spain," or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondent causes the words or marks indicating their foreign origin to be

removed therefrom, and thereafter sells and distributes the said products in commerce, as above set forth, without any words or marks thereon indicating their foreign origin, and causes the said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchasers thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearls. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of articles made from imitation pearls, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin, as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of respondent, as aforesaid, of offering for sale, selling, and distributing his products made from said imitation pearls and cultured pearls manufactured as aforesaid of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces and cultured pearl necklaces or parts thereof has had and now has the capacity and tendency to and has and does mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondent's said practice places in the hands of uninformed retailers of respondent's

products made from said imitation pearls and cultured pearls a means and instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that such imitation pearl necklaces and cultured pearl necklaces and all the parts thereof are wholly of domestic origin and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of respondent, 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.

Complaint dismissed by the following order:

This matter regularly came on for final consideration by the Commission upon the complaint, respondent's answer thereto, stipulations of counsel, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel.

The complaint herein charges respondent with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale, and distribution of imitation pearl and cultured pearl necklaces without disclosing the foreign origin of such products. However, by stipulation of counsel approved by the Commission on October 8, 1947, the proof was limited to respondent's acts and practices in connection with the sale of imported cultured pearls made into necklaces and other articles of jewelry. Upon consideration of the entire record herein, the Commission is of the opinion, for the reasons set forth in its opinion accompanying the findings as to the facts and order to cease and desist in the matter of *L. Heller & Son, Inc., et al.*, docket No. 5358,[1] that under the circumstances it should not require that necklaces or other articles of jewelry composed of imported cultured pearls be labeled or marked so as to disclose the foreign origin of the cultured pearls.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for respondent.

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[1] See *ante*, p. 43.

NATIONAL MINERAL CO. trading as HELENE CURTIS INDUSTRIES. Complaint, March 23, 1942. Order, September 7, 1950. (Docket 4738.)

Charge: Advertising falsely or misleadingly as to safety, qualities, properties or results, history, nature and composition of products, neglecting, unfairly or deceptively, to make material disclosure as to safety of product, and using misleading product name; in connection with the sale of certain hair dye cosmetics designated "Helene Curtis True-Tone Color Control Oil Shampoo Tint" and "Helene Curtis Hair Rinse."

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 National Mineral Co., a corporation, trading as Helene Curtis Industries, 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, National Mineral Co., is a corporation, created, organized, and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 2638 North Pulaski Road, Chicago, Ill.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of certain hair dye cosmetics designated "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint" and "Helene Curtis Hair Rinse."

In the course and conduct of its business, the respondent causes said preparations when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various 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 said products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means,

for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of, the false, misleading, and deceptive statements and representations contained in said advertisements, concerning its said preparations, disseminated and caused to be disseminated as hereinabove set forth concerning "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint" are the following:

Helene Curtis has solved the tint problem. We have eliminated, wholly and completely, all uncertainty and hazard which previously existed in the hair tinting field.

Rich, natural shades.
For youthful, natural, glamorous hair.
The greatest hair tint discovery ever made.

and concerning "Helene Curtis Hair Rinse" are the following:

It restores the natural tint to all colors of hair—blends streaked or gray hair into one natural hue—and restores a natural life and vigor that gives the hair a sparkling brilliance and healthy appearance.

A rinse—not a dye.

Remember, Helene Curtis Hair Rinse is a pure vegetable rinse made only of the finest certified food colors.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein respondent represents and has represented that the hazards and dangers which accompany the use of hair dyes are eliminated by the use of its preparation designated and advertised as "Helene Curtis Tru-Tone Color Control Oil Shampoo Tint"; that said preparation imparts a rich, natural shade to the hair; that its use will restore to hair a youthful, natural appearance; that said preparation represents the greatest discovery in hair tints ever made.

In the same manner respondent represents that the preparation advertised and designated as Helene Curtis Hair Rinse is a rinse and not a dye; that said preparation restores all types of hair to its former natural tint; that it transforms streaked or gray hair into one natural hue; and that its use will restore natural life and vigor to hair and give it a sparkling brilliance and healthy appearance.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the hazards and dangers which accompany the use of hair dyes accompany the use of Helene Curtis Tru-Tone Control Oil Shampoo Tint. In fact, said preparation contains para-tolylene-diamine and para-phenylene-diamine, coal tar derivatives, in sufficient quantities to cause, in some cases, skin irritations and other harmful effects. Furthermore, the use of said preparation may cause a dermatitis with vesication and endema about the face and head, and the application of said preparation to the

eyebrows or eyelashes may cause blindness. The aforesaid preparation does not impart a rich natural shade to the hair. The use of said preparation will not restore to hair a youthful, natural appearance. Said preparation is not the greatest hair tint discovery ever made but is in fact an ordinary coal tar hair dye.

Respondent's preparation advertised and designated as Helene Curtis Hair Rinse is in fact a dye which imparts color to the hair. Said preparation does not restore hair to its former natural color or tint. The use of said preparation does not transform streaked or gray hair into a natural hue or color nor restore to it natural life and vigor.

PAR. 6. The respondent's advertisements of the preparation designated and advertised as "Helene Curtis True-Tone Color Control Oil Shampoo Tint," disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact, the aforesaid preparation, as stated above, contains para-tolylene-diamine and para-phenylene-diamine, coal tar derivatives in sufficient quantities to cause, in some cases, skin irritations and other harmful effects. Furthermore, the use of said preparation may cause, in some cases, a dermatitis with vesication and endema about the face and head, and the application of said preparation to the eyebrows or eyelashes may cause blindness.

PAR. 7. Furthermore, the use by the respondent of the word "oil" in its trade designation is false and misleading in that such use of the word "oil" implies that said preparation contains oil when in truth and in fact it contains no oil.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said preparations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparations and to procure the application thereof by beauticians who administer the so-called treatments.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public and constitutes unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on September 7, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by W. W. SHEPPARD, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondent, the motion of attorney in support of the complaint, that the case be closed without prejudice, and the consent of counsel for the respondent that said motion be granted, and it appearing to the trial examiner that the respondent herein had discontinued the manufacture and sale of the product described in the complaint on or about April 1948, and that there is not sufficient public interest to justify proceeding further in the case,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. S. F. Rose, *Mr. Edward L. Smith* and *Mr. George M. Martin* for the Commission.

Mr. Adolph A. Rubinson, of Chicago, Ill., for respondent.

WILLIAM S. LA RUE. Complaint, July 1, 1949. Order, September 14, 1950. (Docket 5672.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of a drug preparation designated "La Rue's Master Scalp Treatment."

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 William S. La Rue, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, William S. La Rue, resides in the city of Omaha, Nebr., with his office and place of business therein at 2309 Ames Avenue.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act. The designation used by respondent for his preparation and directions for use are as follows:

Designation: La Rue's Master Scalp Treatment.

Directions for use:

APPLY La Rue's Master Scalp Treatment, by massaging gently but thoroughly into all parts of the scalp. This done, allow to remain five to ten minutes. Then APPLY La Rue's Lemon Cocoanut Shampoo, adding enough hot water to work up an abundant lather, rinse thoroughly. Again, apply a small amount of Shampoo and rinse thoroughly. (Use every 5 days until Scalp becomes normal.)

Respondent causes said preparation when sold, to be transported from his said place of business in the State of Nebraska to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparation in commerce between and among the various States of the United States. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of his aforesaid business, respondent, subsequent to March 21, 1938, disseminated and caused the dissemination of certain advertisements concerning his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of broadcasts of radio continuities over Station KOWH, Omaha, Nebr., during the last half of 1948 and over Station KFNF, Shenandoah, Iowa, between October 13, 1947, and October 18, 1947, and between September 27, 1948, and October 9, 1948, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said preparation; and respondent disseminated and caused the dissemination of the aforesaid advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

Are you worried about how your hair looks . . . dandruff . . . hair falling out badly . . . an itching scalp? If you dread the thought of growing bald . . . or if you long for the glamorous beauty of thick lustrous hair with the sheen and high lights of true attractiveness . . . try LA RUE MASTER SCALP TREATMENT. * * *

* * * If YOUR hair is falling badly, or if you have a bad case of dandruff . . . if your scalp is irritated and sore . . . this message is for YOU! Send for a bottle of LA RUE MASTER SCALP TREATMENT.

When you combed your hair this morning did you find the comb full of loose hair that had come out? No one likes the thought of becoming bald, but sooner or later . . . unless you do something about it . . . losing a lot of hair every day means baldness. Many folks have faced this same problem until they heard about LA RUE MASTER SCALP TREATMENT. Then they started massaging the scalp regularly with this remarkable hair conditioner. Now those folks say, they are proud of the beauty of their hair . . . excessive losses have stopped and their scalps feel better . . . more alive . . . fresh . . . and clean. There are many irritations of the human scalp . . . many conditions that cause premature

baldness if not corrected . . . that produce showers of dandruff flakes that are unsightly and annoying. Guard your hair and scalp . . . spend a few minutes each week massaging them with LA RUE MASTER SCALP TREATMENT. * * *

When you comb your hair in the morning and find a big mass of hair in the comb after you finish . . . it's time to worry. Perhaps there's a scalp condition there that's bad . . . one that means you'll be bald if you don't correct the trouble. Many people who have faced just such a problem are now using La Rue Master Scalp Treatment and report results that please them immensely. LA RUE MASTER SCALP TREATMENT is a hair and scalp CONDITIONER. * * *

Did you ever hear of a money-back guarantee on any hair tonic or shampoo? Well . . . here's a product that's not a tonic or shampoo, but a HAIR CONDITIONER . . . and it's ABSOLUTELY guaranteed. No matter how severe a case of dandruff you may have . . . no matter how much you may be annoyed by scalp irritations . . . this product is GUARANTEED to produce results that PLEASE and SATISFY you.

Here's an interesting announcement for every man or woman who is worried about the condition of hair or scalp. You may have unsightly dandruff flakes on your shoulders constantly . . . or your hair may be falling out excessively until you're worried for fear you may soon be bald. Perhaps you've tried many kinds of tonics and shampoos but the conditions still exist. Do this! Stop at the drug store today and ask for a bottle of LA RUE MASTER SCALP TREATMENT . . . the hair conditioner that has been developed after more than a quarter-century of study by a scalp specialist who has studied the human scalp and its troubles. LA RUE MASTER SCALP TREATMENT is sold with an ABSOLUTE MONEY-BACK guarantee. No strings tied to it whatever. Use the entire bottle . . . just massage a few drops of the scalp treatment into your scalp once a week until the bottle's empty. Then look in the mirror. If you aren't entirely satisfied that your hair looks better . . . that your scalp FEELS better . . . you may take the empty bottle back to your druggist and he's authorized to refund every cent you paid for it.

A fine head of hair is something to be proud of . . . prized possession for ANY man or woman. If you're fortunate enough to have beautiful hair, guard it carefully. Beware of dandruff or scalp irritations that may come from neglect. Groom your hair and scalp once a week with the aid of LA RUE MASTER SCALP TREATMENT. Massage a few drops of this excellent hair conditioner into the scalp. Rub it in well. You'll feel the tingle and glow as it penetrates the hair cells. There's a feeling of stimulation . . . refreshing . . . pleasant. And you'll be particularly delighted with the well-groomed appearance of your hair and its natural high-lights of beauty. Many people say they've had no trouble with dandruff since they've been using LA RUE MASTER SCALP TREATMENT regularly. Get a bottle from your druggist. Try it! You run no risk whatever, because LA RUE MASTER SCALP TREATMENT is sold on a wide-open money-back guarantee. If you don't feel that it has been beneficial to you . . . if you're not delighted with the improved condition of your hair and scalp after using the entire bottle of LA RUE MASTER SCALP TREATMENT . . . your druggist is authorized to refund every cent you paid for it.

* * * For some reason that man developed a scalp condition that puzzled everybody, even the doctors . . . His hair came out in spots and those spots spread until he had very little hair left . . . He was so embarrassed by his appearance that he never took his hat off when out in public . . . Today, his hair is thick and heavy and it looks fine * * *

* * * "For almost three years my hair had been falling out and I had dandruff and ugly pimples. After using fourteen treatments, one a week, and La Rue Master Scalp Treatment all of these conditions have cleared up."

Imagine how good this man feels now that he no longer has to worry about falling hair, dandruff and scalp pimples . . . The makers of La Rue Master Scalp Treatment guarantee that you, too, will benefit from using their scalp tonic * * *.

PAR. 5. Through the use of the statements in the advertisements above set forth respondent represented that his La Rue's Master Scalp Treatment, used as directed,

(1) will prevent excessive falling hair and baldness;

(2) will stimulate the growth of hair and cause hair to grow on bald heads;

(3) will relieve all itching and irritations of the scalp and cure conditions or diseases causing itching and irritations;

(4) will prevent the formation of dandruff on the scalp and cure the conditions or diseases causing dandruff;

(5) constitutes a competent and effective treatment for pimples and will cure the conditions or diseases causing pimples.

PAR. 6. The aforesaid advertisements are misleading in material respects and are "false" advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's preparation, as directed or otherwise, will not prevent baldness or excessive falling hair nor will it stimulate the growth of the hair or cause hair to grow on bald heads. While said preparation will relieve minor scalp irritations and itching, there are many irritations of the scalp of such severity that its use will not be effective. Its use will not be of value in the treatment of conditions or diseases causing irritations and itching. While the use of said preparation will facilitate the removal of dandruff scales by mechanical means, it will not prevent the formation of dandruff on the scalp and will not be of value in the treatment of and will not cure the conditions or diseases which may cause dandruff. It does not constitute a competent or effective treatment for pimples on the scalp and will not cure the conditions or diseases which may cause such pimples.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, 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 induces a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

PAR. 8. The aforesaid acts and practices of the respondent, 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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on September 14, 1950, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by FRANK HIER, trial examiner.

This proceeding came on to be considered by the above-named trial examiner theretofore designated by the Commission, upon the complaint, the answer of respondent, testimony and other evidence introduced in support of and in opposition to the complaint.

In the trial examiner's opinion, there is stipulated medical opinion in the record indicating that substantially all of the representations made by the respondent in connection with the sale of his hair tonic are exaggerated or untrue and therefore misleading and deceptive. The record also shows that respondent has been a barber for several decades and that the compounding of his hair tonic is incidental to his occupation; that he maintains no factory, laboratory, or staff of employees; that his total gross volume of business in his hair tonic in 1948 was $896.35 and in 1949 was $983.00 and that only half of this volume was in commerce. At 1 dollar per bottle retail this represents approximately 450 bottles sold in commerce outside of Nebraska, most of it being in the immediately adjacent area. In the opinion of the trial examiner this volume is inconsequential and does not support the allegation in the complaint that "respondent's volume of business in commerce is substantial." The trial examiner does not believe that further proceedings are in the public interest. Accordingly,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. J. R. Phillips, Jr., for the Commission.

Swarr, May, Royce, Smith & Story, of Omaha, Nebr., for respondent.

EMERSON DRUG CO. Complaint, January 30, 1943.[1] Order September 21, 1950. (Docket 4854.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties or results of product, and ne-

[1] Amended.

glecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the manufacture and sale of a medicinal preparation known and designated as "Bromo-Seltzer."

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Emerson Drug 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Emerson Drug Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business located at Bromo-Seltzer Tower Building, Baltimore, Md.

PAR. 2. Respondent is now and for some time last past, has been, engaged in the manufacture, sale and distribution of a medicinal preparation known and designated as "Bromo-Seltzer." Respondent causes said preparation, when sold, to be shipped from its said place of business in the State of Maryland and from warehouses in various States, to the purchasers thereof located in various States other than the States of origin of such shipments and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained a course of trade in its said medicinal preparation, 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 the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by use of the United States mails, and by 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 dissemination of false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act.

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

Fight headaches 3 ways: a headache disturbs your nervous system; with jumpy nerves often goes an upset stomach; in turn affecting the pain in your head—thus making a vicious circle.

Bromo-Seltzer helps stop pain, calm nerves, settle the stomach.

Don't just "deaden" a headache—Bromo-Seltzer gives 3-way relief—it helps settle the stomach, calm the nerves in addition to relieving the pain.

Why not avoid morning-after misery? Try this simple before and after way—before bed time, take Bromo-Seltzer to counteract the effects of over-indulgence. While you are sleeping, it settles your upset stomach, soothes jittery nerves and ALKALIZES! After waking, another Bromo-Seltzer relieves the effects of fatigue caused by late bed time. You feel refreshed, more alert.

* * * it not only quickly relieves that *pain* of headaches but gives you 3 important EXTRA benefits. 1: Settles sickish upset stomach. 2: Calms jittery nerves. 3: Helps you feel more alert.

It alkalizes—reduces the excess acidity caused by overindulgence."

PAR. 4. Through the use of the settlements hereinabove set forth, and others similar thereto not specifically set forth herein, all of which purport to be descriptive of the therapeutic value and properties of the respondent's said preparation, respondent represents that overindulgence in food or drink causes excess acidity in the system and that the use of its said preparation counteracts the effects of overindulgence in food or drink, reduces excess acidity and alkalizes the system; that it will calm and soothe the nerves; that it settles a sickish or upset stomach, relieves the effects of fatigue caused by loss of sleep and rest and will make one feel refreshed and more alert.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent are grossly exaggerated, false, and misleading.

In truth and in fact, overindulgence in food or drink will not cause excess acidity in the system and the use of respondents preparation will not counteract the effects of overindulgence in food or drink and will not reduce excess acidity or alkalize the system. It will not calm and soothe the nerves. It will not settle a sickish or upset stomach, relieve the effects of fatigue caused by loss of sleep and rest and will not make one feel refreshed and more alert.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of Bromo-Seltzer under the conditions prescribed in said advertisements, and under such conditions as are customary and usual.

The ingredients of Bromo-Seltzer and the amount of each contained in a heaping teaspoonful, are as follows:

	Grains
Acetanilid	2½
Sodium bromide	5
Caffeine (alkaloid)	0.9
An effervescent base	

The dosage of Bromo-Seltzer and the frequency of its administration recommended on the label of the container, are one heaping teaspoonful, which may be repeated after three hours, not exceeding two doses in 24 hours. Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than the recommended frequency, may cause dependence upon the drug, skin eruptions, mental derangement and collapse, and its administration to children may be dangerous and injurious to their health.

The respondent represents that its product will relieve headaches and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of an analgesic may have worn off. The palliative effect of respondent's product does not extend over a period exceeding 4 hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headaches or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache creating a tendency to take additional and more frequent doses. Respondent's advertisements contain no caution or warning against use of its product in greater amount or greater frequency than as stated on the label.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading advertisements, statements, and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements, statements, and representations are true, and that said preparation is safe and harmless for children, and harmless for use under the conditions prescribed in respondents advertisements, and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

PAR. 8. The acts and practices of the respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Emerson Drug Co., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning "Bromo-Seltzer" or any other preparation of substantially similar

composition or possessing substantially similar properties, whether sold under that name or any other name, by the United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such 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, which represents directly or by implication:

(*a*) by the use of the word "alkalize" or otherwise, that the product has any effect of reducing "acidity" except that of the contents of the stomach;

(*b*) that it will relieve fatigue caused by lack of sleep; or which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 6, 1950, be, and the same hereby is, approved and accepted.

It is furthered ordered, That the amended complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting.

Dissenting Opinion by Commissioner Ayres

I cannot agree with the manner in which the Commission has disposed of this proceeding. The reasons for my disagreement are of such nature that it seems appropriate to state them on the record. This I do with reluctance and with full deference to the views and convictions of my colleagues.

In January 1943 the Commission issued its amended complaint charging respondent with false and misleading advertising in connection with its medicinal preparation "Bromo Seltzer." The charge of principal importance is based upon the allegation that the improper use of Bromo Seltzer may be dangerous. The amended complaint alleges, among other things:

"Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than the recommended frequency, may cause dependence upon the drug, skin eruptions, mental derangement and collapse, and its administration to children may be dangerous and injurious to their health."

The product is offered for the relief of headaches and other pains, and the amended complaint alleges:

"The palliative effect of respondent's product does not extend over a period exceeding four hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent's advertisements contain no caution or warning against use of its product in greater amount or greater frequency than as stated on the label."

The complaint charged that through affirmative representations and through failure to reveal in advertising the dangers which may result from the improper use of the product, the respondent engaged in false and misleading advertising.

Before issuance of the amended complaint, the respondent rejected the opportunity to correct its advertising voluntarily by the stipulation procedure. Since then the matter has been contested long and vigorously. Hearings were held beginning September 20, 1943 and ending August 13, 1948. The transcript of testimony covers more than 4,000 pages and the record includes almost 200 documentary exhibits. On July 7, 1950 the Commission entered an order disposing of pending interlocutory motions. The case was then ready for presentation on the merits to the trial examiner for a recommended decision, and thereafter for presentation to the Commissioner on briefs and arguments for final decision on the merits.

At this stage a stipulation and agreement was submitted by the respondent and accepted by the Commission and on that basis the complaint was dismissed without prejudice. I cannot agree with the Commission's action in thus disposing of the proceeding on a basis which does not give full effect to the record of evidence which is now available.

If the record fails to support the allegations of the complaint, no remedy is warranted by agreement or otherwise, and the complaint should be dismissed. If, on the other hand, those allegations are supported, the remedy should be squarely in accord with the needs of the public interest as disclosed by the evidence and should be binding and enforceable. The provisions of the stipulation involved here, however, have not been weighed against the evidence in the record to deter-

mine whether or not they represent the full extent of the remedy needed.

Although we have proceeded in this matter over a period of years and at great cost, the Commission has not determined the issues on the basis of the evidence which has been developed. On the contrary, it has accepted a stipulation and agreement which is not enforceable, and the violation of which would subject the respondent to nothing more than the possibility that this proceeding may be resumed or that a new proceeding may be instituted. Even so, however, I seriously doubt that strict compliance with the stipulation would materially affect the advertising which was challenged in the complaint or would afford any substantial protection to the consuming public. Such a settlement represents, in my opinion, an unwise substitute for orderly adjudication.

In its published statement the Commission has announced that it is not its policy "to grant the privilege of settling cases through trade practice conference or stipulation agreements to persons who have violated the law where such violations involve * * * false advertisement of foods, drugs, devices or cosmetics which are inherently dangerous or where injury is probable; * * *." The complaint alleges that the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent or larger doses than prescribed, and that when the product is taken more frequently than recommended, serious injury may result. There has been no determination by the Commission that the record fails to support these allegations. On the basis of these allegations it appears that the product involved here is a drug which is dangerous and the use of which may result in injury. It is not the policy of the Commission to settle a case by stipulation when it involves the false advertising of such a product.

On its face the remedy here is, in my opinion, also contrary to the published policy of the Commission. The effect of the stipulation is that respondent will not be required to disclose the dangers which may be inherent in its product provided its advertising contains the statement: "Follow the label—avoid excessive use." The Commission's statement of policy provides:

"In the case of advertisements of food, drugs, cosmetics or devices which are false because of failure to reveal facts material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resulting dangers may be serious or the public health may be impaired, and in such cases to require that appropriate disclosure of the facts be made in the advertising."

In this case the Commission has charged that the respondent's advertising is false because of failure to reveal facts material with

respect to the consequences which may result from use of the commodity. If that charge is not justified there should be no requirement for disclosure in advertising concerning the dangers of the product. If, however, the charge is justified, disclosure is needed and it is the policy of the Commission to require "that appropriate disclosure of the facts be made in the advertising." The cautionary statement provided for in the stipulation fails to disclose any facts, and, in my opinion, is in direct contravention of the Commission's policy statement on this subject.

It is further my opinion that any voluntary settlement of proceedings before the Commission should be consistent with previous action in similar cases. I shall make no effort here to review all instances in which the Commission has previously considered cases involving similar products. For present purposes it is sufficient to refer to the Commission's action in 1946 in Docket 4851, B. C. Remedy Co. [43 F. T. C. 673], and Docket 4855, Stanback Co., Ltd. [43 F. T. C. 678]. Those proceedings were against products similar in their essential respects to the product involved here and the theory of the proceedings was substantially the same. After evidence in support of the complaints had been presented in those matters, the respondents waived presentation of evidence in defense and offered to settle the matters without further litigation. Their offers and the resulting settlements were, however, in sharp contrast with the settlement which has been accepted in this matter.

In those cases the respondents eliminated acetanilid and bromide, both of which are involved in the present proceeding, from the formulae of their respective products, and expressed a firm intention not to use either of those ingredients in their products again. They agreed that if they should ever use acetanilid or bromide in their products in the future the Commission "shall have the right, without further proceedings and upon the evidence now in the record in this proceeding, to make such findings as to the facts, conclusions drawn therefrom, and to issue such cease and desist order as it may deem wise and proper; and from which respondents agree that no appeal will be taken." On that basis the Commission suspended further action in those cases and closed them without prejudice.

The disposition of those cases evidently recognizes the substance in those and in the present case of the Commission's charges and that there is evidence to support them. Those cases, in my opinion, commit this Commission to obtain a remedy in the present case as full and effective as can be supported by the record. What that may be can be satisfactorily determined only by presentation of the case to the Commission in regular course for final decision on the record.

It is not sufficient to say that the respondents in the earlier cases can be put in status quo by being relieved of the conditions of the

settlements in those cases. They made fundamental changes in their products by removing the dangerous ingredients, and have since built their advertising and good will on the new products. These were major changes, doubtless at great cost, for which the Commission was responsible. They were changes, however, which, in the light of the present action, were unnecessary. If the record here supported the action which has been taken, no one could reasonably be heard to complain. It seems most unfortunate, however, for the Commission voluntarily to take such action, with its probable effect upon the broad competitive situation, without testing it by full and judicial appraisal of the record in this proceeding.

I am anxious that needless delays in bringing proceedings to a conclusion should be avoided. My objection here is not to the fact of settlement, but is based upon my opinion that the settlement which has been made in this case is contrary to Commission policy, that at best it will have no binding effect and cannot be enforced in the event of violation, and that it is clearly inconsistent with previous action by the Commission in similar matters.

Before *Mr. Arthur F. Thomas*, *Mr. Clarence T. Sadler*, *Mr. John L. Hornor* and *Mr. Earl J. Kolb*, trial examiners.

Mr. Robt. N. McMillen, *Mr. J. V. Buffington* and *Mr. Randolph W. Branch* for the Commission.

Cook, *Ruzicka*, *Veazey & Gans*, of Baltimore, Md., and *Davies, Richberg*, *Beebe*, *Busick & Richardson*, of Washington, D. C., for respondent.

CAPUDINE CHEMICAL CO. Complaint, January 30, 1943.[1] Order, September 21, 1950. (Docket 4852.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and comparative merits and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the manufacture and sale of a medicinal preparation known and designated as "Hick's Liquid Capudine."

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Capudine Chemical Company, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Capudine Chemical Company, is a corporation organized and existing under and by virtue of the laws of

[1] Amended.

the State of North Carolina, with its principal place of business at Raleigh, in said State.

PAR. 2. Respondent now and for some time last past has been engaged in the manufacture, sale and distribution of a medicinal preparation known and designated as "Hick's Liquid Capudine." Respondent causes said preparation, when sold, to be shipped from its said place of business to the purchasers thereof located in various States other than the State of North Carolina and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said medicinal preparation, 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 has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by use of the United States mails and by 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 dissemination of false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinafter set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities and by pamphlets, circulars and other advertising literature, are the following:

Soothes the nerves. Relieves that tense jittery feeling. Brings relaxation. Imparts a feeling of comfort and well-being. Capudine acts fast because it's liquid. There is nothing to dissolve, so no delay. Reliable because it has been used over forty years.

Capudine soothes tense nerves, relieves pain and brings restful relaxation.

"Morning after" headache—no need to go through the day with a "hangover headache" * * *. Just take liquid Capudine and note how quickly head clears, pep returns and nerves are calmed and steadied.

If travel causes headache, don't let it ruin your trip. Capudine usually gives quick relief. Better still, you may avoid misery by taking Capudine before boarding that train, bus, boat or plane.

PAR. 4. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set forth herein, all of which purport to be descriptive of the therapeutic value and properties of respondent's said preparation, respondent represents that the use of its preparation "Capudine" relieves tense, jittery nerves and brings rest-

ful relaxation and a feeling of comfort and well-being; that because it is in liquid form it acts more quickly than similar remedies in other forms; that it will relieve the after effects of over-indulgence in food and alcoholic liquors by clearing the head, calming and steadying the nerves and restoring energy; that if taken before travel begins it will ward off so-called travel headache and will relieve headache caused by travel.

PAR. 5. The aforesaid representations and advertisements used and disseminated by respondent are grossly exaggerated, false and misleading. In truth and in fact, the use of respondent's said preparation will not effectively relieve tense, jittery nerves nor will it bring restful relaxation. It will not give materially quicker relief, because of its liquid form, than similar remedies in other forms. It will not relieve the after effects of over-indulgence in food or alcoholic liquors in excess of providing temporary relief from the usual accompanying headache. The administration of said preparation before travel cannot be depended upon to ward off so-called travel headache nor relieve headache caused by travel.

PAR. 6. Respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual.

The ingredients of respondent's preparation and the amount of the principal ingredients contained in a recommended dose of said preparation are as follows:

Antipyrene	3 grains
Potassium bromide	7½ grains
Sodium salicylate, caffein, sodium, bicarbonate, ammonia, ammonium carbonate	

The dosage of said preparation and the frequency of its administration, as recommended on the label of the container, are 2 teaspoonfuls, which may be repeated in 3 or 4 hours, not more than two doses to be taken in 24 hours. Its continued use in a quantity exceeding the recommended dose, or with a greater frequency than that recommended, may cause skin eruption, mental derangement and serious blood disturances, and its administration to children may be dangerous and injurious to health.

The respondent represents that its product will relieve headache and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of an analgesic may have worn off. The palliative effect of respondent's product does not extend over a period exceeding four

hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent's advertisements contain no caution or warning against use of its product in greater amount or with greater frequency than as stated on the label.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading advertisements, statements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements, statements and representations are true and that said preparation is safe and harmless for use under the conditions prescribed in respondent's advertisements, and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

PAR. 8. The acts and practices of the respondent, 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.

Complaint dismissed without prejudice, by the following order:

It appearing to the Commission that the respondent, Capudine Chemical Co., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed stipulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning its product "Hick's Liquid Capudine" or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under that name or any other name, by the United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such 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, which represents directly or by implication:

(1) that "Capudine" will give quicker relief because of its liquid form than other medicines for relief of headache pain or nervousness in nonliquid form;

(2) that "Capudine" will restore "pep" or brisk energy to one suffering from the after-effects of alcohol; or

(3) which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 8, 1950, be, and the same hereby is, approved and accepted.

It is further ordered, That the amended complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting for the reasons stated in his opinion in Docket 4854, Emerson Drug Company.[1]

Before *Mr. Webster Ballinger*, *Mr. Andrew B. Duvall*, and *Mr. John P. Bramhall*, trial examiners.

Mr. Robt. N. McMillen, *Mr. J. V. Buffington*, and *Mr. Randolph W. Branch*, for the Commission.

Rogers, *Hoge & Hills*, of New York City, for respondent.

MILES LABORATORIES, INC. Complaint, July 6, 1943. Order, September 21, 1950. (Docket 4993.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts and qualities, properties or results and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of various medicinal preparations, one known and designated as "Dr. Miles Liquid Nervine," another as "Dr. Miles Nervine Tablets" and the third as "Dr. Miles Anti-Pain Pills."

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 Miles Laboratories, Inc., 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:

[1] See ante, p. 1476 at 1480.

PARAGRAPH 1. Respondent, Miles Laboratories, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal place of business at Elkhart, in said State.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of various medicinal preparations, one known and designated as "Dr. Miles Liquid Nervine," another as " Dr. Miles Nervine Tablets," and the third as "Dr. Miles Anti-Pain Pills." The first two of said preparations are sometimes designated as "Dr. Miles Nervine" without distinction between the liquid and tablet forms. Respondent causes said preparations, when sold, to be shipped from its place of business in the State of Indiana to the purchasers thereof located in various 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 said medicinal preparations 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 has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements of and concerning its said preparations by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparations, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among, and typical of statements contained in the false, misleading, and deceptive advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by radio continuities, by advertisements inserted in newspapers and periodicals, by booklets and other advertising media, with respect to Dr. Miles Liquid Nervine and Dr. Miles Nervine Tablets, are the following:

Don't miss out on your share of good times. The next time overtaxed nerves make you Wakeful, Restless, Irritable, try the soothing effect of Dr. Miles Nervine.

Have you ever had a day when you felt tense, jumpy, irritable? A night when you were wakeful and restless? Overtaxed nerves are likely to cause loss of friends, loss of sleep, loss of pleasure, time missed from work, family quarrels, physical and mental suffering. The next time you feel nervous try the soothing effect of one or two Dr. Miles Effervescent Nervine Tablets. Try Dr. Miles Effervescent Nervine Tablets for Sleeplessness due to nervousness, Nervous Irritability, Nervous Headache, Excitability and Restlessness.

Overtaxed nerves lie to you. They fill your mind with imaginary disorders and woes. If (or when) you are nervous why not seek relief as thousands of others do, by taking Dr. Miles Effervescent Nervine Tablets. Dr. Miles Effervescent Nervine Tablets help to quiet jangled nerves, to permit refreshing sleep, to lessen nervous excitability and irritability. * * * Just one or two tablets at the first symptom of nervous tension may save you hours of discomfort.

Next time nerves threaten to give you a hectic day or a wakeful night, take Dr. Miles Liquid Nervine.

When tense nerves interfered with Jim's career, I resolved to do something about it. So, I went to a drug store and got a package of Dr. Miles Effervescent Nervine Tablets. * * * He's not cranky now and he's sleeping a lot better. * * * Now both of us use Dr. Miles Nervine Tablets when we need relief from Sleeplessness, Nervous Headache, Restlessness, Nervous Irritability and Excitability.

Thousands use Dr. Miles Nervine as a mild but effective sedative when tense nerves threaten their calm and peace of mind.

PAR. 4. Through the use of the above statements and others similar thereto, all of which purport to be descriptive of the therapeutic value and effects of respondent's preparations, and descriptive of the symptoms for which, and the conditions under which, said preparations may be used and are recommended by respondent, respondent represents that restlessness, sleeplessness, irritability, jumpiness, imaginary disorders and woes, excitability, and headaches are symptoms of nervousness and that the use of respondent's preparations "Dr. Miles Liquid Nervine" and "Dr. Miles Nervine Tablets" constitute an adequate, proper, and effective treatment for the relief of such symptoms.

PAR. 5. The aforesaid statements and representations contained in said advertisements, used and disseminated by respondent, are misleading and deceptive. In truth and in fact, nervousness is itself only a symptom or manifestation of some underlying condition and while the various symptoms enumerated in paragraph 4 hereof may be the result of nervousness, and may be relieved, in whole or in part, by the use of respondent's said preparations, such relief will be only temporary and the said symptoms will recur until the underlying conditions causing the nervousness and the various symptoms are removed or relieved. These underlying conditions cannot be removed or relieved by the use of respondent's said preparations.

PAR. 6. Respondent's advertisements of and concerning its Liquid Nervine and Nervine Tablets constitute false advertisements within the meaning of the Federal Trade Commission Act for the further reason that they fail to reveal facts material in the light of the representations therein contained and material with respect to the consequences which may result from the use of said preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual.

The active ingredients of respondent's Liquid Nervine and Nervine

Tablets and the amount of each contained in a dose (one teaspoonful or one tablet) are as follows:

Sodium bromide	4.5 grains
Potassium bromide	4.5 grains
Ammonium bromide	0.5 grain

The dosage and frequency of administration recommended on the label of the container are 1 teaspoonful, or 1 tablet, which may be repeated in 1 hour if necessary, not exceeding 3 teaspoonfuls, or 3 tablets, in 24 hours. The continued use of either of said preparations in a quantity exceeding the recommended dose, or with a frequency exceeding that recommended, may cause skin eruptions and mental derangement. Their administration to children may be injurious to health.

The underlying conditions causing nervousness are not relieved by the use of respondent's said preparations and any symptomatic or partial relief afforded through their use is of a temporary nature. As a consequence, the said symptoms may, and are likely to, recur day after day for an extended period of time. Because of these facts, the usual and customary condition, in cases of nervousness and in the presence of the various symptoms thereof, is that there will exist a tendency for the sufferer to take larger and more frequent doses of respondent's preparations than those prescribed and the tendency will exist to continue such use day after day over an extended period.

Respondent's said advertisements do not contain any warning against use of said preparations in greater amount or with greater frequency than that recommended. Further, the representations in said advertisements that said preparations are preventives of the symptoms for which they are recommended have and will have a tendency to cause persons who have been and are subject thereto to take more frequent doses and larger doses than recommended.

PAR. 7. Respondent's advertisements of and concerning its preparation Anti-Pain Pills constitute false advertisements within the meaning of the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations therein contained and material with respect to the consequences which may result from the use of said preparation under the conditions prescribed in said advertisements, and under such conditions are customary and usual.

The active ingredients of said preparation and the amount of each contained in a dose are as follows:

Acetanilid	2 grains
Caffeine	.25 grain

The dosage and frequency of administration recommended on the label of the container are 1 tablet; if not relieved repeat after interval of 3 hours, not exceeding 2 tablets in any 24 hours. The continued

use of said preparation in a quantity exceeding the recommended dose, or with a frequency exceeding that recommended, may cause dependence upon the said active ingredients, or upon the preparation in which they are contained, and may cause blood disturbances and collapse. Its administration to children may be injurious to health.

Respondent represents in its advertisements that its Anti-Pain Pills will relieve headache and other pains. In many cases the headache or other pain will persist for an extended period of time and tend to recur after the palliative effect of the analgesic may have worn off. The palliative effect of said preparation does not extend over a period exceeding 4 hours for each prescribed dose. Because of these facts, the usual and customary condition in cases of persistent headache or other pain is and will be that there will exist a tendency for the sufferer to take more frequent and larger doses than prescribed. Such increased use will in itself tend to cause headache, creating a tendency to take additional and more frequent doses. Respondent's advertisements of and concerning said preparation do not contain any warning against frequency than that recommended.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading advertisements and representations has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said advertisements and representations are true, and that said preparations are safe and harmless for administration to children and safe and harmless for use under the conditions prescribed in respondent's said advertisements and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase said medicinal preparations.

PAR. 9. The acts and practices of the respondent, 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.

Complaint dismissed without prejudice by the following order:

It appearing to the Commission that the respondent, Miles Laboratories, Inc., has executed and tendered to the Commission an offer of settlement in this proceeding in the form of a proposed sitpulation and agreement; and

It further appearing that under the terms of said stipulation and agreement the respondent agrees, among other things, not to disseminate or cause to be disseminated any advertisement concerning its products "Dr. Miles Liquid Nervine," "Dr. Miles Nervine Tablets," or "Dr. Miles Anti-Pain Pills," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under those names or any other names, by the

United States mails or by any other means in commerce as "commerce" is defined in the Federal Trade Commission Act, or disseminate or cause to be disseminated any such advertisement by any means for the purpose of inducing or which is likely to induce the purchase of said products in commerce, which fails to reveal that the taker shall "Follow the label—avoid excessive use"; and

It further appearing that under the terms of said stipulation and agreement the Commission's approval thereof does not in any way prejudice the right of the Commission to resume formal proceedings against the respondent if at any time in the future such action may be deemed warranted; and

The Commission being of the opinion that in the circumstances the public interest will be best served by the settlement of this proceeding through the approval of the proposed stipulation and agreement:

It is ordered, That the proposed stipulation and agreement executed by the respondent on July 8, 1950, be, and the same hereby is, approved and accepted.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Ayres dissenting for the reasons stated in his opinion in Docket 4854—Emerson Drug. Co.[1]

Before *Mr. Webster Ballinger*, *Mr. Andrew B. Duvall* and *Mr. John P. Bramhall*, trial examiners.

Mr. Robt. N. McMillen, *Mr. J. V. Buffington*, and *Mr. Randolph W. Branch* for the Commission.

Rogers, Hoge & Hills, of New York City, for Respondent.

NATIONAL MINERAL CO. TRADING AS HELENE CURTIS INDUSTRIES. Complaint, June 20, 1944. Order, October 23, 1950. (Docket 5182.)

Charge: Advertising falsely or misleadingly as to comparative merits, qualities, properties, or results, test and safety of product and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of certain products used in the process of giving "permanent waves", under the name of "Helene Curtis Cold Waves", including preparations designated as "Preliminary Lotion", "Waving Compound", "Neutralizing Compound", a brush called by it an "Applicator Brush" and "Helene Curtis Protecto Hand Cream".

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 National

[1] See ante, p. 1476 at 1480.

Mineral Co., a corporation, trading as Helene Curtis Industries, 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, National Mineral Company, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 2638 North Pulaski Road, Chicago, Illinois.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of certain products used in the process of giving "permanent waves," under the name of "Helene Curtis Cold Waves," including preparations designated as "Preliminary Lotion," "Waving Compound," "Neutralizing Compound," a brush called by it an "Applicator Brush," and "Helene Curtis Protecto Hand Cream".

In the course and conduct of its business, respondent has caused and now causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various States of the United States and in the District of Columbia. Such purchasers consist largely of hair dressers, beauty parlor operators, and others who are engaged in the business of giving "permanent waves" to women. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said products by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce, as commerce is defined in the Federal Trade Commission Act. Said false advertisements have appeared and do appear in magazines and newspapers, letters, circulars, instruction brochures, and in advertising mats furnished by respondent to the purchasers of its products suitable for use by them in reproducing said advertisements under the names of said purchasers in magazines, newspapers, and circulars. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements are the following:

1. Helene Curtis Cold Wave—Simplicity—Safety—Satisfaction.
2. Absolutely Harmless.
3. You need not wear gloves.
   No gloves needed.
4. Curls right down to the scalp—No protectors or spacers.
   Gets right down to the scalp—No protectors or spacers used.
5. Always under control.
   Always under perfect control by the operator.
6. A method which is simpler, faster, safer.
   Simple to use.
   Does not require special skill.
   Simplest of all methods.
   Simplest to learn.
   Simplest to give.
   Relaxing to operators.
   A method so simple even a novice can produce waves.
7. Foolproof. Tried, tested, 100% perfect.
8. Almost like a shampoo.
9. Comfortable to patrons.
   Pleasant and enjoyable.
   Most comfortable wave ever given.
10. Actually improves the condition of the hair.
    Conditions the hair while it waves.
    Actually a hair conditioner while it waves.
    Kind to ends—they soften, never split.
    A delightfully, comfortable creation—cool, refreshing, gentle liquids—flow with loving care through your hair. And let you have silky-soft, lustrous waves—glowing with vitality and naturalness.
11. Longer lasting than conventional waves.
12. Finest by test.

PAR. 4. Respondent's method of giving a so-called "permanent wave" by use of its preparations, which it calls a "Helene Curtis Cold Wave," as set forth in its instruction brochure, disseminated and distributed by respondent in commerce, as aforesaid, includes the following procedures:

1. Before being wound on rods, the hair is divided into strands, and each strand is moistened with respondent's "Preliminary Lotion" by means of its "Applicator Brush," starting the application about ½ inch from the scalp and stopping 1 inch from the end. Then, by use of a comb, such lotion is combed through the entire strand.

2. Tests are then taken of two curls by pretesting them with respondent's "Waving Compound," followed by application of its "Neutralizing Compound," for the purpose of aiding the operator in establishing respondent's "Processing Time" for its "Processing" procedure. The operator then determines the length of the "Processing Time."

3. The separate strands are wound on rods and cotton is placed under the curls at the edge of the scalp and under the test curls. Each strand is moistened and saturated with said "Waving Compound" in the order theretofore wound on the rods.

4. Cotton is removed and a "Processing Cap" is placed over the hair, which remains over the hair for a period of time called the "Processing Time" or "Processing Period" determined upon by the operator as aforesaid.

5. At the end of the "Processing Time," the "Neutralizing Compound" is applied to the hair, the hair is rinsed with water, the rods are removed, the "Neutralizing Compound" is again applied and the hair is again rinsed with water.

6. In the event the waves thus made are found to be too tight and it is desired "to relax the curl," the "Preliminary Lotion" is brushed into the hair until the hair is saturated, allowed to remain 1½ to 2 minutes, and then the "Neutralizing Compound" is again applied.

PAR. 5. Among and typical of the false, deceptive, and misleading statements and representations, contained in respondent's instruction brochure are the following:

1. In connection with procedure "1" aforesaid during which respondent's "Preliminary Lotion" is applied, the following statements are made:

The hair should be held at the ends of the strand when wetting so hands contact solution as little as possible.

NOTE: All types of permanent waving lotions have a drying action on the operator's hands. Some hands are especially sensitive. As a safeguard against extraordinary sensitivity, and because solutions are in contact with the hands for a longer period under the Cold Wave Method we recommend the application of a light coating of Helene Curtis Protecto Hand Cream over the hands. Practice will also enable you to eliminate most contact between your hands and the solution.

2. In connection with procedure "3" aforesaid in which cotton is placed or packed under certain curls, the following statements are made:

Before applying Waving Compound to the complete head, firmly pack cotton under the curls around the temple, forehead and over the ears to absorb the excess lotion which might otherwise run down the face . . . . This packing should be removed before applying the processing cap and should be changed as it becomes saturated with solution.

3. In connection with procedure "3" aforesaid in which respondent's "Waving Compound" is applied, the following statements are made:

Go over each curl two or three times to make sure each strand has reached the saturation point. Once this point is reached, further wetting is not necessary, and only leads to solution running down on the scalp. By careful handling of the brush, you can avoid getting the waving lotion on your hands or the patron's scalp.

4. In connection with procedure "6" aforesaid in which respondent's "Preliminary Lotion is applied to relax the curl," the following statements are made:

Take a section of hair about three or four inches square and, placing the hair between the fingers, brush the solution into the hair. . . . Never allow the solution to remain on the hair more than one and one-half to two minutes. . . .

5. After the instructions in said brochure with respect to procedure "3" aforesaid in which respondent's "Waving Compound" is applied the following statements are made under the title "Skin Sensitivity":

Improperly applied or over-applied preliminary and waving solutions run down into the patron's scalp, forehead, or cheek. This should be wiped off immediately and never allowed to dry on the skin. Care should also be exercised against saturated cotton contacting the scalp, forehead, or neck any longer than necessary. Should these precautions be overlooked, sensitivity may, but very seldom does, occur. Don't be alarmed if sensitivity develops—it will disappear within one to three days as though nothing happened.

Avoid the temporary inconvenience of sensitivity by: 1. Proper waving technique in application of solutions. 2. Immediately wiping off any solution contacting the skin. 3. Replacing cotton when saturated on scalp, forehead, or test curls.

We suggest you test for possible sensitivity any patron who has been found supersensitive to most services. These women may be given a wave if you apply Helene Curtis Protecto Cream to their forehead near the hair line, back of ears, and neck, before beginning and after finishing the wave. Should sensitivity develop in the absence of such precautions, Protecto Cream will be quite beneficial even when applied afterward.

PAR. 6. By and through the use of the statements and representations set out in paragraph 3 aforesaid, as to the harmless nature of respondent's hair waving preparations, called "Preliminary Lotion" and "Waving Compound" and their safety in use, respondent has represented and represents that said preparations are harmless and incapable of causing harm to the skin and nails of the operators giving such waves, and to the hair, scalp, and skin of the person receiving the wave.

By the representations last aforesaid, and its representations that operators do not need to wear gloves while applying its said hair waving preparations to the hair, as set forth in paragraph 3 aforesaid, respondent represents that said preparations will not cause harm or injury to the hands, skin, and finger nails of such operators, and that for such reason, there is no necessity of shielding or protecting the hands from such preparations by the wearing of gloves capable of affording such a shield and protection and, in fact, that said preparations are harmless and incapable of causing harm either to the operator or the person receiving a "permanent wave" by the use of said preparations.

PAR. 7. By the representations set out in paragraph 3 aforesaid, as to the curling of the hair down to the scalp, without the use of "spacers" or "protectors," respondent represents that said preparations are harmless to the scalp and that for such reason, there is no necessity of shielding or protecting the scalp from said preparations

by the use of devices capable of affording such a shield and protection, and particularly not by the use of devices referred to by respondent as "spacers" and "protectors," being devices made of separate pieces of material, designed to be placed under each strand of hair to be "waved," for the purpose of affording a shield and protection to the scalp from the waving preparations applied to such strands while they are in the process of being given a "permanent wave," and that devices of such character are not needed in the giving of permanent waves by its preparations and method.

PAR. 8. The aforesaid statements and representations are false, misleading and deceptive. Respondent's hair waving preparations called "Preliminary Lotion" and "Waving Compound" both contain the chemicals thioglycolic acid, and ammonium, and the latter compound contains, in addition, the chemical ammonium sulphite. When said waving preparations separately, and as combined and used in the giving of a "Permanent wave" according to respondent's method, come in contact with the hair a softening is brought about by hydrolysis of the keratin which is the principal component of the hair. This hydrolysis of the keratin is usually referred to as Keratolysis. If carried too far, Keratolysis will permanently injure the hair and in fact, from a structural standpoint, some damage results to the hair even though the wave is properly given.

The outer layer of the skin, including the nails is composed largely of keratin and when the waving preparations last mentioned, separately, and as combined in respondent's method, come in contact therewith a similar reaction, as aforesaid, occurs, affecting the keratin, and preparations each have the capacity of causing injury thereto, and upon such contacts being repeated or extended, such preparations each have the capacity of causing, and will cause and do cause, additional injury. The nature and extent of such injury depends upon various circumstances, including the length and number of such contacts and the nature and the condition of the skin exposed. On some persons such exposures will cause chemical burns of varying degrees of severity and painfulness. Where such burns appear on the scalp such condition has the capacity of causing, and may cause blisters, infections on, and a falling out of the hair from the parts of the scalp thus affected. Where such burns appear upon the hands, wrists, and the finger nails, such condition has the capacity of causing, and may cause, a deterioration of the skin of the hands and wrists and the finger nails thus exposed, the drying up, the cracking and loss of finger nails and of the skin thus affected, as well as skin infections and diseases of various degrees of severity and painfulness on the hands and wrists. In order to cause such conditions, said burns need not be severe burns, but need only be the kind which causes the parts of the epidermal tissues of the body thus exposed to become sensitive and thus susceptible to the de-

velopment of such conditions. Repeated exposure of such tissues has the capacity of causing and will and does cause increased sensitivity of the tissues exposed and their susceptibility to the development of the conditions described aforesaid. On some persons exposure of the skin to said preparations will cause a disease of the skin known as "dermatitis" to appear or reappear.

PAR. 9. By the representations set out in paragraph 3 aforesaid as to the action of respondent's waving preparations always being "under control," respondent represents that said preparations are harmless to the hair and that, during the application thereof by respondent's method of giving a "permanent wave," the chemical action of said preparations is always under the control of the operator using them. In truth, and in fact, the operator exercises no control over such chemical action except to limit the period thereof beginning at a time, however, after such action has been going on during varying lengths of time with respect to the different strands of hair. Such length of time is determined by the operator, according to his judgment or lack thereof, and not by a controlled method, upon his examination of the condition of two so-called "test curls" which he has first made, by the use of respondent's preparations, to guide him in such decision. In fact, such test does not afford an exact or controlled method of determining the length of time that each strand of hair should be subjected to said chemical action in order to give a maximum cosmetic effect, with a minimum of danger to the structural composition of the hair. In some instances, the outcome of such chemical action from a cosmetic standpoint, is unsatisfactory, and the hair is again subjected to such chemical action to attain as nearly as is possible by respondent's preparations the desired cosmetic effect. In other instances, the structure of the hair is harmed and changed as a result of improper timing the length of said chemical action. Both of said undesirable results may, and often are, caused by the operators having failed, on account of the respondent's representations as to the simplicity of its method, to take necessary precautions.

PAR. 10. By the representations aforesaid, as to the simplicity of respondent's method of applying its waving preparations, including such representations as "simplest of all methods," "foolproof," and "almost like a shampoo," as well as all of the other representations set forth in subparagraphs "1" to "12" inclusive, of paragraph 3 aforesaid, respondent has given and gives operators using respondent's preparations and their patrons the false and erroneous impression and belief that said preparations are harmless and that no care or only a minimum amount of care need be used in the handling of such products in order to give a "permanent wave" that will have the most desirable cosmetic effect, leave the hair without harm, and cause no harm or injury either to the operator or to the patron. The effect of such

representations on such operators and their patrons is to cause them to have a false sense of security and to minimize erroneously the possibility of injury to the hair of the patron and the health of both the operator and the patron. Such representations also have the capacity and tendency to contribute to laxity and carelessness on the part of operators in the handling and applying of such preparations to the damage and injury of themselves and their patrons.

PAR. 11. By the representations set out in paragraph 3 aforesaid, as to the comfort giving qualities of its waving preparations, respondent represents that the receiving of a "permanent wave" by its waving preparations and method is accompanied by no discomfort to the persons receiving such waves, but on the other hand, is a comfortable, enjoyable, cooling, and refreshing experience to them. The fact is that the receiving of such waves may be accompanied by an uncomfortable, burning sensation on the scalp and is often attended by a feeling of alarm on account thereof.

PAR. 12. By the representations set out in paragraph 3 aforesaid, as to the effect of its waving preparations on the hair, respondent represents that said preparations have various effect on the hair of a desirable nature in addition to that of making the hair wavy. Thus, respondent represents that the effect of said preparations on the hair is to improve the condition of the hair, "condition" the hair "while it waves," to soften the ends of the hair, to leave the ends soft, lustrous, and aglow with vitality and naturalness. These representations and similar representations are all false and deceptive. In truth and in fact, such waving preparations do not have any such effects. On the other hand, when such preparations are used according to respondent's method they may, and often do, have the effect of putting the hair, from a structural standpoint, in a less satisfactory condition, and if they are applied to the hair for a longer period than that required to permit the hair to be "waved," can and will permanently damage and injure the hair. The effect created by and through respondent's method aforesaid, in no sense either is, or looks natural, but in fact, is and looks artificial.

PAR. 3. Respondent's representations aforesaid that its method of giving a "permanent wave" is the finest by test, that it is 100 percent perfect, and that the waves produced by its method are "longer lasting than conventional waves" and others of similar import and meaning are false and deceptive. In truth and in fact, no test has been made warranting or supporting said representations that such method is the finest by test or that it is 100 percent perfect, or that the waves produced by its method last longer than so-called "permanent waves" produced by other methods. Respondent's representations aforesaid by which it has compared and compares its method of giving a "per-

manent wave" with other methods are misleading and deceptive in that its method of giving a wave to the hair, like all "permanent wave" methods, depends on the same chemical reaction, namely, hydrolysis, and results in the same chemical and physical change in the hair. The only difference in such methods is in the agency used and the routine followed.

PAR. 14. By and through the use of the statements and representations set out in paragraph 5 aforesaid, contained in instructions to operators purchasing and using its preparations and to prospective purchasers thereof respondent represents that the contact of its said preparations with the skin results only in a "drying action" and that the only effect which this action may have upon the skin is an effect which is called "sensitivity" and "super-sensitivity"; that such effect seldom occurs and only on skin which is "sensitive or super-sensitive"; that such effect is only a "temporary inconvenience" and is no cause for "alarm."

Such statements and representations are false, misleading, and deceptive. In truth and in fact, the action of said preparations on coming in contact with the skin is not merely a drying action but a chemical action of the kind hereinabove described and the condition of the skin described as "sensitivity" or "super-sensitivity" is a type of chemical burn. While the likelihood of injury and the degree thereof may be greater in the cases of persons who are allergic or sensitive to such preparations, the fact is that such harmful effects may arise in many cases of normal skin, especially when said preparations are carelessly used.

PAR. 15. By the representations set out in paragraph 5 aforesaid, contained in instructions and statements to operators, respondent represents that operators need not wear gloves when handling and applying respondent's preparations used in the giving of a wave to the hair, but that an operator may, if he desires, use as a protection to the hands, its cream called "Helene Curtis Protecto Hand Cream." and that such cream will protect the hands from injury as a result of contact with said preparations. In truth, there are no facts upon which to base a representation that the use of such cream on the hands while in contact with such preparations will sufficiently protect the hands against injuries such as those described aforesaid. In fact, there is no reason to assume that adequate protection against injury to the hands from said preparations can be effected by any means except by the wearing of gloves which will keep the hands from coming in contact with such preparations when the operator is handling and applying said preparation. Also, the use of the name "Protecto," as aforesaid, is deceptive in that it serves as a representation that said cream will afford such protection which is contrary to fact.

PAR. 16. By the representations set out in paragraph 5 aforesaid, respondent represents that the wiping off of the waving preparations that may run down onto the scalp, face, and neck of the person receiving a wave by the use of said preparations, and by the placing of cotton at the edge of the scalp and under test curls, and the replacing of such cotton when it becomes saturated with said preparations will be sufficient precautions to take against injury to the scalp, face, and neck of such persons while receiving a permanent wave by the use of said preparations. In truth and in fact, such precautions will not prevent injurious effects from arising of the character described aforesaid. In fact, there is no reason to assume that any precautionary measures will prevent such injurious effect from arising, short of the affixing to the head in some manner of a shield or protector so designed and made that it will shield and protect the scalp and skin from coming in contact with said preparations.

PAR. 17. By the representations set out in paragraph 5 aforesaid, respondent represents that the application of a coating of its cream called "Helene Curtis Protecto Hand Cream" to the "forehead, near the hair line, back of the ears, and neck, before beginning and after finishing the wave," by use of its preparations, will protect the skin of such persons from injury and that if injury results said cream will be effective in treating such injury. Such representations are false, misleading, and deceptive. In truth and in fact, the application of such cream in such manner will not serve as a shield or as a protector from said preparations or their effects, and the use of said cream in such manner or in any manner cannot be relied upon to prevent injurious effects to the skin arising by reason of contact with said preparations, or to effectively treat such injuries after they arise.

PAR. 18. The advertisements and instructions to operators disseminated by respondent as aforesaid constitutes false advertisements for the further reason that they fail to reveal that the use of the preparations "Preliminary Lotion" and "Waving Compound" in the manner described in said advertisements or under such conditions as are customary and usual may result in serious injury to the operators using such preparations in the process of giving a permanent wave and to the persons receiving such waves. In truth and in fact, the presence of thioglycolic acid in said preparations renders them potentially dangerous and likely to result in the injuries hereinabove enumerated. Respondent, at no place in its advertising material or instructions to operators clearly or sufficiently discloses or reveals this potential danger and the nature or the extent of injury which may arise through the use of said preparations or to recommend or disclose a reasonable

or sufficient means for obviating or protecting against such danger and the injury incident thereto.

PAR. 19. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations with respect to its products, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations, and to induce substantial numbers of persons to obtain from such purchasers "permanent waves" in which said preparations are used.

PAR. 20. The aforesaid acts and practices of the respondent, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on October 23, 1950, become the decision of the Commission.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial decision by GEORGE BIDDLE, Trial Examiner

This proceeding regularly came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondent, testimony and other evidence introduced in support of the complaint, and a motion to close the case without prejudice filed by the attorney in support of the complaint.

Respondent is charged with falsely advertising that a chemical solution sold by it to beauty shops for use in giving "permanent waves" is harmless both to the operator and the person receiving the "wave." Typical of the advertisements are:

2. Absolutely harmless.
3. You need not wear gloves.
7. Foolproof. Tried, tested, 100% perfect.

Nearly 5,800 pages of testimony has been taken, the last hearing being held October 11, 1945. Several operators testified to having received severe burns on their hands from handling the product and some 50 women testified to having first or second degree burns after their hair was treated. The great majority of the latter injuries would

appear to be due to carelessness on the part of the operator. The record does not disclose whether the solution has been submitted by the Commission to disinterested dermatologists for the purpose of determining its effect upon the skin.

Counsel supporting the complaint and his immediate superiors are satisfied that respondent has discontinued the advertisements complained of, that they will not be resumed, and that the public interest does not require at this time the further prosecution of this proceeding and the necessarily large expense incident thereto. After considering the whole record, I am not in a position to dispute their conclusion. Accordingly, the motion, to which respondent consents, is granted and

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. D. E. Hoopingarner and *Mr. William L. Taggart* for the Commission.

Mr. Adolph A. Rubinson and *Marshall & Marshall*, of Chicago, Ill., and *Mr. Gilbert Weiss*, of St. Louis, Mo., for respondent.

CANDY BROTHERS MANUFACTURING CO., INC., UNIVERSAL MATCH CORP., ADOLPH H. ROSENBERG AND JOHN FEINSTEIN. Complaint, January 20, 1943. Order, October 24, 1950. (Docket 4889.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and using misleading product name or title as to association, connection, or affiliation with, endorsement, sponsorship, or approval of, and conformance to standards of, Red Cross; in connection with the manufacture and sale of cough drops, under the trade name and brand "Red Cross" and advertising paper book matches.

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 Candy Bros. Manufacturing Co., Inc., a corporation; Universal Match Corp., a corporation; Adolph H. Rosenberg, individually and as president and a director of Universal Match Corp. and a director of Candy Bros. Manufacturing Co., Inc.; and John Feinstein, individually and as president and a director of Candy Bros. Manufacturing Co., Inc., 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 Candy Bros. Manufacturing Co., Inc., is a corporation organized and doing business under and by virtue

of the laws of the State of Missouri, having its principal offices and place of business located at 122 South Eighth Street, St. Louis, Mo. Respondent company was incorporated under the laws of the State of Missouri on November 1, 1937. Respondent corporation had succeeded a nonincorporated common-law trust or agency of commerce which had operated under the same name under the laws of the State of Missouri since October 1, 1920, the common-law trust in turn having succeeded a Missouri corporation which had operated under the name Candy Bros. Manufacturing Co. for some years prior to 1920, each company having been engaged in the manufacture and sale of cough drops. In the year 1936, the then existing business of Candy Bros. Manufacturing Co., operating as a common-law trust, was acquired by respondent Universal Match Corp., whereupon the present Candy Bros. Manufacturing Co., Inc., was organized under the laws of the State of Missouri on November 1, 1937, as alleged.

Respondent Candy Bros. Manufacturing Co., Inc., for more than 5 years last past, has been engaged in the manufacture, offering for sale, sale and distribution of cough drops under the trade name "Red Cross", and causes and has caused its said cough drops, when sold by it, to be transported from its said place of business in the State of Missouri to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cough drops in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent Universal Match Corp. is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, having its principal offices and place of business located at Short Street and the Wabash Railroad tracks in the city of St. Louis, Mo., with a regional sales office located in the Boatman's Bank Building, 314 Broadway, in said city of St. Louis. Respondent Universal Match Corp. was incorporated in the said State of Delaware on March 31, 1937. The original Universal Match Corp. was incorporated under the laws of the State of Missouri on November 19, 1925, being thereafter merged with and succeeded by the Delaware corporation. Upon the creation and organization of the latter in the year 1937, Universal Match Corp. acquired the stock and business of the former Universal Match Corp. Respondent Universal Match Corp. is now and for more than 5 years last past has been engaged in the manufacture, offering for sale, sale, and distribution of paper match books to be used for advertising purposes. Respondent causes its said paper match books, when sold by it, to be transported from its said

place of business in the State of Missouri to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said paper match books in commerce between and among the various States of the United States and in the District of Columbia. Respondent Universal Match Corp. owns the entire capital stock of corporate respondent Candy Bros. Manufacturing Co., Inc.

Respondent Adolph Rosenberg is president of Universal Match Corp. and chairman of the board of directors of Candy Bros. Manufacturing Co., Inc. His principal office and place of business is located at Short Street and the Wabash Railroad tracks, St. Louis, Mo. Respondent Adolph H. Rosenberg is also president of Cash Bros. Drug Co., a Florida corporation located at Jacksonville, Fla., to which more detailed reference will be hereinafter made.

Respondent John Feinstein is president of Candy Bros. Manufacturing Co., Inc., and has his principal office and place of business located at 122 South Eighth Street, St. Louis, Mo. Said individual respondents, acting in their official capacities and in cooperation and conjunction with each other, direct and control the respective policies, affairs, and operations of Universal Match Corp. and Candy Bros. Manufacturing Co., Inc. in carrying out the joint acts, practices, and common enterprises hereinafter described.

PAR. 3. World history records the conclusion of four International Red Cross Conventions. Each one was negotiated and concluded at Geneva, Switzerland, and the dates of such conventions were respectively, August 22, 1864, October 20, 1868, July 6, 1906, and July 27, 1929.

The Government of the United States ratified and adhered to the first, adopted the provisions of the second as a modus vivendi to govern the conduct of the Spanish-American War, and was a party signatory to the last two, officially ratifying and adopting the various provisions thereof and agreeing to observe the same. Each of these conventions stated the purpose for which it was being concluded, each described the cross that was to be the sign and emblem of the convention, and each defined and explained the privileges and prerogatives of those qualified to use the emblem. The third convention, that of 1906, provided specifically that its distinctive flag or emblem could only be displayed over the sanitary formations and establishments which the convention provided should be respected, and the 1929 convention provided that neither the emblem of the Red Cross on a white ground, nor the words "Red Cross" or "Geneva Cross" could be used, whether in time of peace or war, except to protect or designate

sanitary formations and establishments and the personnel and material protected by the convention. By virtue of nearly identical provisions in the 1906 and 1929 conventions each signatory government or power agreed to take or to recommend to its legislature such measures as might be necessary to prevent the use of the Red Cross emblem or the name of the Red Cross or Geneva Cross for commercial purposes in case their legislation might not then be adequate to accomplish such purpose, and agreed further, that after such legislation should go into effect it should be unlawful to use a trade-mark or commercial label contrary to such provision.

On August 8, 1864, an international diplomatic conference was convoked at Geneva, Switzerland, attended by representatives of 12 European governments. The outcome of this conference was the first red cross convention, namely the Geneva Convention of August 22, 1864, for the "Amelioration of the Condition of the Wounded in Time of War."

The purpose of the 1868 Red Cross Convention were thus stated:

The governments * * * desiring to extend to armies on the sea the advantages of the Convention concluded at Geneva the 22d of August 1864, for the amelioration of the condition of wounded soldiers in armies in the field and to further particularize some of the stipulation of the said convention. * * *

The purposes sought to be accomplished by the 1906 Red Cross Convention were:

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864 for the amelioration of the condition of the wounded in armies in the field.

The purposes stated in the 1929 convention were:

* * * equally desirous of diminishing, so far as lies within their power, the evils inseparable from war and wishing to perfect and complete, for this purpose, the provisions agreed upon at Geneva, August 22, 1864, and July 6, 1906, to ameliorate the condition of the wounded and the sick of armies in the field, have decided to conclude a new convention for this purpose. * * *

The flag or emblem designated and prescribed for use in connection with these four red cross conventions was historically described as follows:

The Convention of 1864, article VII:

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must on every occasion be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm badge shall bear a red cross on a white ground.

Convention of 1868, article XII:

The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this convention, is a white flag with a red cross. * * *

Article XIII:

The hospital ships * * * shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

Convention of 1906, chapter VI, Distinctive Emblem, article 18, and convention of 1929, chapter VI, Distinctive Sign, article 19:

Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

Convention of 1906, chapter VI, article 19, and Convention of 1929, chapter VI, article 20:

(The) This emblem appears (shall appear) on flags and brassards as well as upon all material appertaining to the sanitary service, with the permission of the competent military authority.

Convention of 1906, chapter VI, article 20, and Convention of 1929, chapter VI, article 21:

The personnel protected * * * will wear attached to the left arm a brassard bearing a red cross on a white ground. * * *

The use to which this emblem of the red cross on a white ground was to be restricted was defined as follows:

Convention of 1906, chapter VI, article 21, and Convention of 1929, chapter VI, article 21:

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. * * *

Article 27 of chapter VII of the 1906 convention, entitled "Repression of Abuses and Infractions," provided as follows:

The signatory powers whose legislation may not now be adequately engaged to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

Article 30 of the convention provided that it should become operative as to each power, 6 months after the date of deposit of its ratification. Article 31 provided that the convention, when duly ratified, should supersede the convention of August 22, 1864, in the relations between the contracting States, the 1864 convention to remain in force between the parties who signed it but who might not ratify the 1906 convention.

Article 33 of the 1906 convention provided that each of the contracting parties should have the right to denounce the convention, but that this denunciation should only become operative one year after a notification in writing should have been made to the Swiss Federal Council, which should forthwith communicate such notification to all the other contracting parties, such denunciation to become operative only in respect to the power giving it.

The Government of the United States adhered to the original Red Cross convention of 1864 on March 1, 1882. The convention of July 6, 1906, was ratified by the Senate December 19, 1906, ratified by the President January 2, 1907, ratification was deposited February 9, 1907, and the convention was proclaimed August 3, 1907. The 1906 convention became operative as to the United States 6 months from February 9, 1907, that is, in August 1907. This convention was never denounced by the United States either in whole or in part.

Articles 28 to 30 inclusive, of chapter VIII of the convention of July 27, 1929, deal with "The Repression of Abuses and Infractions." Article 28 provides that the governments of the high contracting parties "whose legislation may not now be adequate shall take or shall recommend to their legislatures such measures as may be necessary at all times:

(a) to prevent the use by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or the name of the Red Cross or Geneva Cross, as well as any other sign or designation constituting an imitation thereof, whether for commercial or other purposes.

Subparagraph (b) of article 28 obligates each State to enact legislation prohibiting the use of the arms of the Swiss confederation or any imitation thereof as a trade-mark, label, or in any way contrary to commercial ethics or under conditions wounding Swiss national pride. It is provided in subparagraph (c) that these respective prohibitions shall take effect from the time set in each act of legislation and at the latest 5 years after the convention goes into effect, and that after such going into effect it shall be unlawful to take out a trade-mark or commercial label contrary to such prohibitions.

Article 25 of the 1929 convention stipulates that the provisions of the convention shall be respected by the high contracting parties under all circumstances.

The United States Senate ratified this convention January 7, 1932; it was ratified by the President on January 16, 1932, ratifications were deposited at Geneva February 4, 1932; and on August 4, 1932, the convention was proclaimed by President Hoover "to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Thus the United States in 1906 and in 1929 respectively, if it had not already done so, obligated itself by solemn treaty to enact legislation prohibiting commercial use and exploitation of the Red Cross name and emblem.

The United States on June 20, 1936, carried out the obligation undertaken in paragraph 28 (b) of the convention of July 27, 1929, as to the Swiss flag, by enacting a law prohibiting the commercial use of the coat of arms of the Swiss confederation.

Nearly all countries of the world have now adhered to the Geneva convention as revised in 1906 and 1929 by diplomatic conferences. Conferences held at The Hague in 1899 and 1907 extended to sea warfare the principles of the Geneva Conventions. The white flag bearing the red cross has now become the protecting symbol of the Red Cross throughout the world.

Red Cross societies have been established in all civilized countries as a result of the international conferences at Geneva.

From 1866 on down to the present time, the Red Cross Service has been employed in ministering to sick and wounded military forces throughout the world. The ministrations of this service, particularly in the United States, have also been extended to cover relief and succor to victims of great peacetime disasters.

PAR. 4. The introduction and development of the Red Cross movement into the United States were chiefly due to the zeal and activities of Clara Barton, known as the founder of the American branch of the organization. The American National Association of the Red Cross was incorporated in July 1881 under the laws of the District of Columbia. Among the objects sought to be attained as stated in the original articles of this first American incorporation of the Red Cross were: to secure by the United States the adoption of the treaty of August 22, 1864; to obtain recognition by the Government of the United States, and to hold itself in readiness for communicating therewith at all times, to the end that its purposes might be more wisely and effectually carried out; to organize a system of national

relief and apply the same in mitigating sufferings caused by war, pestilence, famine and other calamities.

The second American incorporation of the Red Cross, this time under the name The American National Red Cross, occurred on April 29, 1893, and again under the laws of the District of Columbia. This corporation, as set forth in its preamble, was instituted to carry on the benevolent and humane work of the Red Cross in accordance with the articles of the international treaty of Geneva, Switzerland, entered into on the 22d day of August 1864, "and also in accordance with the broader scope given to the humane work of said treaty by the American Association of the Red Cross, and known as the American amendment, whereby the sufferings incident to great floods, famines, epidemics, conflagrations, cyclones, or other disasters of national magnitude may be ameliorated by the administration of necessary relief; and being desirous of continuing the noble work heretofore performed by the American Association of the Red Cross, incorporated in the District of Columbia for the purpose of securing the adoption of the said treaty of Geneva by the United States, for benevolent and charitable purposes and to cooperate with the Comite International de Secuors aux Militaires Blesses." Among the stated objects of this Red Cross association in addition to the purposes set forth in its preamble were: To garner and store materials, articles, supplies, moneys, or property of whatsoever name or nature, and to maintain a system of national relief and administer the same in the mitigation of human suffering incident to war, pestilence, famine, flood, or other calamities; to hold itself in readiness for communication and cooperation with the Government of the United States, or any department thereof.

On June 6, 1900, the Red Cross was incorporated by Act of Congress as the American National Red Cross. The act recited that whereas a permanent organization or agency was needed in every nation to carry out and execute the humane objects and purposes contemplated by the Geneva Convention of 1864, with the power to adopt and use the distinctive flag and arm badge provided in article 7 of that Convention, which should be the sign of the Red Cross, it was believed that the importance of the work demanded a reincorporation by the Congress of the United States. The new corporation succeeded to all the rights and property which had been hitherto held, and to all the duties which had theretofore been performed, by the American National Red Cross as a corporation organized under the laws of the District of Columbia, which organization was thereby declared dissolved.

Under the 1900 act it was made a misdemeanor for any person "to falsely and fraudulently hold himself out as, or to represent or pre-

tend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross."

The 1900 act further provided that the American National Red Cross should on the first day of January of each year transmit to Congress an itemized report of all receipts and expenditures and of its proceedings during the preceding year and should also give such information concerning its transactions and affairs as the Secretary of State might from time to time require, and that in respect of all business and proceedings in which it might be concerned in connection with the War and Navy Departments of the Government it should make reports to the Secretary of War and to the Secretary of the Navy, respectively. Congress reserved the right to repeal, alter, or amend this act at any time.

The United States being one of the signatory powers of the Treaty of Geneva guaranteeing the neutrality of persons caring for the sick and wounded and all supplies for the same, and the American National Red Cross being the official organization in the United States existing under this treaty, and so recognized by the International Red Cross Committee of Geneva, it became important to place the American organization under Government supervision, which the charter of June 6, 1900, had not provided. All the well-organized, foreign Red Cross societies had already been placed under government control, being generally subordinate to the war or navy departments of such governments. This was particularly true in the case of Great Britain, France, Germany, Austria, Italy, and Japan.

The American National Red Cross was nationally incorporated by an act of Congress of January 5, 1905, which repealed the prior congressional act of June 6, 1900. The act of 1905 undertook to give statutory protection to the Red Cross emblem which was then being used by the American National Red Cross and the medical societies of the Army and Navy. Among other powers confirmed was that "to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek Red Cross on a white background, as the same has been described in the Treaty of Geneva, August twenty-second, Eighteen Hundred and Sixty-Four, and adopted by the several nations acceding thereto." The society was authorized to act in matters of relief arising under that convention by furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Geneva

Conference, and a provision in the 1905 act extended the national and international relief to be carried on by the society to that of investigating the sufferings caused by pestilence, famine, fire, floods and other great national calamities, and to devising and carrying on measures for preventing the same.

Section 4 of the act of 1905 also made it unlawful for any person within the jurisdiction of the United States "to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross." This section then proceeded to prohibit commercial use of the Red Cross name and emblem by declaring it to be unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever." This section further provided that any one violating its provisions should be guilty of a misdemeanor and be liable to a fine of not less than $1 nor more than $500, or imprisonment for a term not exceeding 1 year, or both, for each and every offense, the fine so collected to be paid to the American Red Cross. The act of January 5, 1905, like the preceding act of June 6, 1900, contained a provision that Congress should have the right to repeal, alter or amend the act at any time.

By act of June 23, 1910, Congress amended section 4 of the Red Cross Statute of 1905 so as to read:

SEC. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely or fraudulently hold himself out as or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. It shall be unlawful for any person, corporation, or association other than the American National Red Cross and its duly authorized employees and agents and the army and navy sanitary and hospital authorities of the United States for the purpose of trade or as an advertisement to induce the sale of any article whatsoever or for any business or charitable purpose to use within the territory of the United States of America and its exterior possessions the emblem of the Greek Red Cross on a white ground, or any sign or insignia made or colored in imitation thereof, or of the words "Red Cross" or "Geneva Cross" or any combination of these words: *Provided, however*, that no

person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods. * * *

This amending act retained the same penalties that had been previously enacted into section 4 of the Red Cross Act of January 5, 1905.

PAR. 5. In pursuance of the organic act of 1905 chartering the American National Red Cross "under Government supervision" the organization became and has continued to be a great charitable association, quasigovernmental in character and in respect of the duties assigned to it. Under that act the society was created as a permanent organization to carry out the purposes of the Geneva Treaty, especially to send supplies and to execute the humane objects contemplated by the treaty.

Under section 5 of the organic act the President of the United States names not only the chairman of the central committee or governing body of the organization but also designates certain members of the committee, one each to be named by him from the Departments of State, War, Navy, Treasury, and Justice.

This organic act designates the Secretary of War to have authority and supervision over the organization and its accounts. A copy of the society's annual report to the Secretary of War must also be transmitted to Congress.

In pursuance to its bylaws the President of the United States shall, upon his acceptance, be exofficio president of the American National Red Cross. He shall preside at the annual meetings and make such appointments and perform such duties as may be prescribed.

Under section 12 of the act the Secretary of War was authorized to permit the Red Cross to erect and maintain on any military reservation within the jurisdiction of the United States, buildings, etc.

The American Red Cross being a quasigovernmental organization, operates under congressional charter, is officered in part, at least, by governmental appointment, disburses its funds under the security of a government audit, and is designed by Presidential order for the fulfillment of certain treaty obligations into which the Government has entered. The American Red Cross owes to the Government which it serves the distinct duty of discharging all those functions for which it was created.

The American Red Cross from its inception in the United States has always been financed and supported and maintained by the general public, including the period of time from the year 1881 on down to the present time. The American Red Cross is now and has always represented, typified and constituted the organized effort of the Amer-

ican public in connection with the amelioration of the condition of the sick and wounded in time of war and the relief and succor of those suffering from national disasters. The American Red Cross has been designated frequently by Congress to disburse public funds appropriated from the United States Treasury for use in the relief of national disasters.

The American Red Cross has been and is a great charitable institution, of both national and world-wide reputation. It has experienced a tremendous growth and development through the years of its history. Its individual membership now comprises nearly 30,000,000 persons; was over 20,000,000 at the close of the World War. It has sent its trained representatives into the United States and throughout the world to aid and succor those who have suffered from such national calamities as war, epidemics, fire, flood, volcanic eruptions, earthquakes, mine disasters, and hurricanes.

The American Red Cross has expended and continues to expend hundreds of millions of dollars on behalf of stricken humanity. In one Mississippi River flood 300,000 homeless individuals were cared for by the American Red Cross. Its chief function at the present time is to serve and it is serving as a medium of communication between the American Armed Forces and the people back home. To that end the American Red Cross maintains field directors in every Army and Navy establishment and has its personnel attached to and as a part of all of the American Army task forces which are now operating in foreign countries.

PAR. 6. The Red Cross name and emblem as provided by the Geneva Convention of 1864 soon became heralded throughout the world. Various manufacturers and commercial houses in the United States were quick to capitalize on its popularity and public appeal. In a few years following the conclusion of the Geneva Convention, American manufacturers began to use trade-marks employing the Red Cross name and emblem, and articles of commerce bearing the Red Cross name and emblem began appearing all over the United States. This practice began as early as 1872, soon became indiscriminate, and has continued. The first registered trade-mark employing the Red Cross name and emblem covered wines, liquors, beers and mineral waters. Then followed throughout the succeeding years Red Cross marks covering such products as hermetically sealed goods, hydraulic hose, oysters, fruits, and vegetables; domestic lye, medicine for skin diseases, Portland cement, bitters, flour, spices, coffee, baking powder, hard soap, crackers, candy; stoves, ranges and furnaces; flavoring extracts, cough syrups, velvets and plushes; wood wool and padding; vinegar, tools, meat extracts, sausage coloring, cotton fabrics; tripe, hocks,

feet and tongues; yarns and thread, kindling wood, pills, malt liquors, button fasteners; boots, shoes and shoelaces; bathrobes, white flour; rubber goods, sheep casings, salt, condensed milk, bicycles, thermometers, peanuts, stationery; pile remedies, elastic goring, antiseptic dressing, plasters, macaroni, brooms, wheeled vehicles, bottles and syringes, shears and scissors, disinfectants, windmills, spoons, whiskey; brushes, insect powder, fishnetting; shirts, collars and cuffs; musical instruments, wiring, olive oil, advertising cabinets, surgical silk, coal, fabric hose, skin preparations, canned fish, mineral paint, cereals, laundry blueing, toilet paper, toothbrushes, beef extract; mattresses, suspensory bandages, catheters, and bougies; safety pins, metal absorbents, fertilizers, washboards, and numerous other articles claimed to be of the same respective class of goods as that for which the user of the Red Cross mark employed it, such use also being claimed to be for the same purpose.

The widespread indiscriminate commercial use of the Red Cross name and emblem early resulted in general confusion and misunderstanding on the part of the public concerning the activities, aims and purposes of the American Red Cross. This situation has continued. Members of the consuming public became convinced thereby that the American Red Cross, herein referred to as the Red Cross, manufactured or was financially backing the manufacture of, products sold under its name, and derived financial benefit therefrom, and that the Red Cross was endorsing, sponsoring or approving products sold in connection with the use of its name and emblem. Great and increasing misconception and confusion on the part of the public have developed with reference to the commercial use of the Red Cross name and emblem, and as to the connection between such commercial use and the Red Cross, resulting in serious detriment to the work the Red Cross is doing on behalf of the general public. Instances and questions involving alleged misuses of the Red Cross name and emblem have become increasingly numerous.

PAR. 7. About the year 1936 respondent John Feinstein, now president of respondent, Candy Bros. Manufacturing Co., Inc. and formerly handling advertising accounts for Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., contacted individual respondent Adolph H. Rosenberg, president of Universal Match Corp., and informed the latter that Candy Bros. Manufacturing Co., Inc., was disposed to sell its business of manufacturing Red Cross cough drops. As a result of negotiations thus initiated, Universal Match Corp., which had desired to obtain control of one or more companies asserting a legal right to make commercial use of the Red Cross name and emblem, purchased the capital stock, business and good will of Candy

Bros. Manufacturing Co., Inc., caused the then existing corporation to be dissolved and on November 1, 1937, as hereinbefore related, organized a new corporation of the same name, of which respondent John Feinstein became president.

Candy Bros. Manufacturing Co., Inc., at this time and for some time prior to 1936 had employed as a trade-mark in connection with the advertising, marking and branding of the cough drops sold by it a trade-mark consisting of a simulated Greek cross with equidistant arms of very narrow proportions, the words "Trade Mark" being superimposed on the horizontal arm of the cross. In the four corners or angles of the cross appeared the words: "Red Cross Cough Drops." On March 30, 1937, following the sale of its corporate stock to Universal Match Corp., but prior to its reorganization, Candy Bros. Manufacturing Co., Inc., registered at the United States Patent Office a trade-mark simulating a Greek red cross with equidistant arms of narrow proportions, the words "Red Cross" appearing in heavy type in the upper right and left corners of the cross. This application recited that the mark had been used for "Cough Drops, a Medical Preparation, in class 6, Chemicals, Medicines and Pharmaceutical Preparations." Said mark, as will be hereinafter shown, has since been abandoned by respondent Candy Bros. Manufacturing Co., Inc., for a red cross mark which is a facsimile of the mark or emblem of the American Red Cross.

On or about February 7, 1940, respondent, Universal Match Corp., acquired by purchase the outstanding shares of the capital stock of two Florida corporations, namely, Cash Bros. Co. and Pure Drug Products, Inc., moving the businesses of said companies from Jacksonville, Fla., to St. Louis, Mo. Said Cash Bros. Drug Co. had been incorporated under the laws of the State of Florida on or about November 7, 1916, for the purpose of conducting the business of manufacturing drug products to be sold under a trade-mark employing the words "Red Cross" and an emblem consisting of a Greek red cross. Said Cash Bros. Drug Co. for many years subsequent to 1916 employed the words "Red Cross" and a Greek red cross, which is a facsimile of the emblem of the American Red Cross Society, in connection with the advertising, branding, labeling and marking of the following products sold by it: "Red Cross Cough Syrup; Red Cross Chill and Fever Tonic; Red Cross Liniment and Rub; Red Cross Laxative Tablets; and Red Cross Liv-O-Med (liver medicine)."

Said Pure Drug Products, Inc., was incorporated in June 1932, under the laws of the State of Florida to function as the sole and exclusive distributor of all Red Cross products put out by Cash Bros. Drug Co. Prior to their acquisition by Universal Match Corp. in 1940,

and subsequent to January 5, 1905, Cash Bros. Drug Co. and Pure Drug Products, Inc., or their alleged predecessors in interest, undertook to assign, transfer or convey to others their asserted right to the commercial use of the Red Cross name and emblem in connection with the advertising, marking, branding, trade-marking and labeling of drug and pharmaceutical products sold or to be sold in commerce.

PAR. 8. In the course and conduct of their aforesaid business, as described in paragraphs 1 and 2 herein, respondents Universal Match Corp., and Candy Bros. Manufacturing Co., Inc., acting in conjunction with each other and under the guidance and direction of individual respondents Adolph H. Rosenberg and John Feinstein, for the purpose of inducing the sale between and among the various States of the United States of cough drops through the use of a Red Cross name and emblem have made and are now making various false, misleading and confusing advertising representations concerning their said cough drops. In advertisements appearing in nationally known newspapers, magazines and trade papers of general interstate circulation, by radio continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to listeners thereto located in the States of the United States other than the State of Missouri, by letterheads, invoices, window signs and posters circulated in commerce, by sample material distributed among wholesale drug, candy and tobacco jobbers and to retail drug, grocery and candy stores throughout the United States, on labels, cartons or containers in which respondents' said cough drops are distributed in commerce among and between the various States of the United States and in the District of Columbia, by the interstate distribution of advertising paper book matches, to which more detailed reference will be hereinafter made, and by other means in commerce, respondents have used, and now use, and presently display and have displayed for more than five years last past, the emblem of the American National Red Cross and the words "Red Cross."

Respondent, Candy Bros. Manufacturing Co., Inc., manufactures and sells three types of cough drops, namely, "Old Reliable," "Menthol" and "Horehound." On the top and one end of cartons and packages for said varieties of cough drops, and on the two sides of the smaller individual packages or boxes for cough drops, appears a large red cross, standing, conspicuously alone. Beneath the bottom arm of the red cross, on one side of the carton or container in very small and inconspicuous type, appears the wording, "Trade Mark Reg. U. S. Pat. Off.". Beneath the trade-mark legend there is printed in either heavy black or red type the words "Red Cross * * * Cough Drops" with a statement of the flavor or type of cough drop

in the center of such legend. This label also appears either below or to the right of the cross which contains no trade-mark legend. On the top end of small boxes or containers for cough drops appear two representations of the Geneva cross, that is, a Greek red cross on a white ground, and between the crosses the direction, "Open This End." On the bottom end of the small box or container only appears the label "Manufactured by Candy Bros. Mfg. Co., St. Louis, Missouri, U. S. A., Open Other End." A legend "Red Cross Cough Drops" appears also on the narrow side of boxes of containers. On the top of display cards appears a large facsimile of the Geneva cross, or emblem of the American Red Cross, with the legend "Trade Mark Reg. U. S. Pat. Off." beneath it and the words "Red Cross * * * Cough Drops" beneath. On one end of the large carton appears a facsimile of a large Geneva cross with the type or flavor of the cough drops printed immediately beneath it.

PAR. 9. Following the acquisition of the control of respondent Candy Bros. Manufacturing Co., Inc., by respondent Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., acting under the direction of Universal Match Corp. and of individual respondents Adolph H. Rosenberg and John Feinstein, embarked upon an extensive campaign of advertising, which included radio advertising in addition to newspaper and trade journal insertions. At the outset radio advertising was limited to short announcements of a cooperative character carried in the name of local dealers in St. Louis and Detroit. In the fall of 1941, respondent Candy Bros. Manufacturing Co., Inc., embarked upon an elaborate program of radio advertising in connection with which 35 radio stations over the United States were employed in interstate advertising of its said Red Cross cough drops. In the course of said radio broadcasts made over such stations, the following, among other representations made by respondent, are typical:

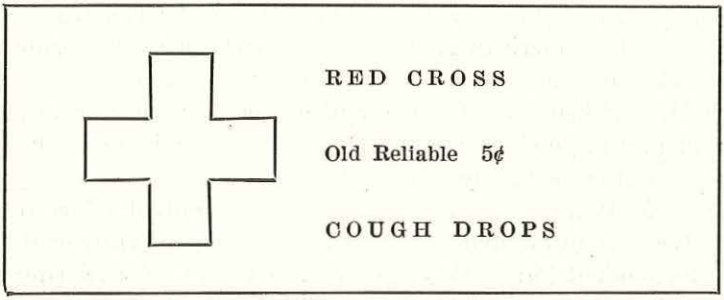
For quick relief and minor coughs and throat irritations use RED CROSS COUGH DROPS * * * Insist on RED CROSS COUGH DROPS * * * RELIEVE THAT TICKLE, ONLY A NICKEL! * * * Millions used. Remember, for that cold, irritated cough, get famous RED CROSS COUGH DROPS * * *

* * * * * * *

* * * Three delicious flavors. * * * Remember, get famous RED CROSS COUGH DROPS for husky, * * *

In none of said radio advertising has the name of respondent Candy Bros. Manufacturing Co., Inc., been identified, mentioned or suggested as the manufacturer of the cough drops, which were invariably, and with emphasis, announced and coupled with the words "Red Cross."

Respondent Candy Bros. Manufacturing Co., Inc., for more than 2 years last past has further distributed many thousand samples of Red Cross cough drops among leading cities of the United States, effecting such distribution through retailers and advertising crews. Said free samples, consisting of two Red Cross cough drops or tablets, are and have been encased in a cellophane-covered paper container, red in color, on which there is superimposed on a white ground the following design and legend:



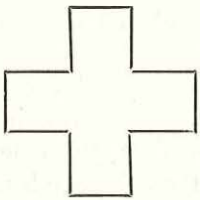
Respondent Candy Bros. Manufacturing Co., Inc., for some years prior to 1941 employed, and continuously since said date, acting in cooperation and conjunction with and under the direction and control of corporate respondent Universal Match Corp. and of individual respondents Adolph H. Rosenberg and John Feinstein, has employed and now employs and causes the Red Cross name and emblem to be employed in connection with the sale and distribution in commerce of paper book matches sold and distributed under the following plan:

Corporate respondent Universal Match Corp. manufactures and sells and distributes to wholesalers and retailers throughout the United States paper book matches. Said paper book matches are either resold by said wholesalers and retailers or distributed by them free to those who purchase various products, particularly tobacco goods. Pursuant to an agreement concluded between respondent Candy Bros. Manufacturing Co., Inc., and Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., has purchased advertising space on paper book match covers from respondent Universal Match Corp. for use in connection with the advertisement, sale and distribution of Red Cross cough drops. Said advertising space on said paper book match covers is sold to respondent Candy Bros. Manufacturing Co., Inc., at a stipulated price and the paper book match covers containing the desired advertising material are sold by respondent Universal Match Corp. at prices averaging from $4.50 to $5 per case of 2,500 book matches each. In connection with the sale and distribution of

said paper book matches, the cough drop manufacturer and the match manufacturer are represented by the same sales agent or representative. Said advertising matches so distributed enjoy a large trade and strong consumer appeal by reason of their manifest usefulness and their attractive design. During the period from January 1939 to December 31, 1941, respondent, Candy Bros. Manufacturing Co., Inc., used 265,105,500 books of matches, and since 1939 Universal Match Corp. has been the sole and only source of book matches used by respondent Candy Bros. Manufacturing Co., Inc.

Said paper match books are prepared in two principal sizes, one holding 20 matches and one 10 matches, and generally white in color. On the two outer covers of the books and on the inner side, opposite the matches, appears a conspicuous Geneva red cross with heavy type printing matter above and below, as follows:

RED CROSS



COUGH DROPS

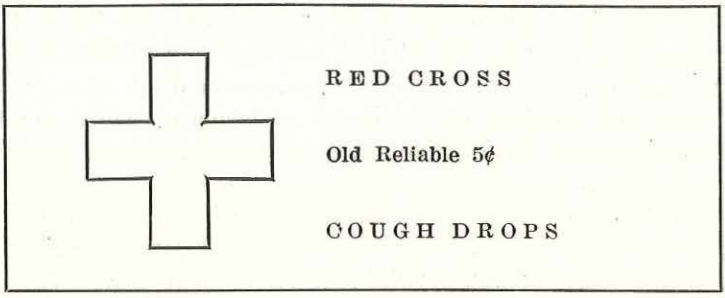
Between the two labels on the outer covers of these match books appears the line: "Famous for Over Fifty Years."

The above advertising material is printed in both red and black letters on the said match books, the Greek red cross standing alone in every instance. The name of the manufacturer for whose benefit the said match books are distributed, namely, Candy Bros. Manufacturing Co., Inc., does not appear on the smaller or 10-match type of match book and is not readily visible on the larger type of match book, due to the fact that it is printed at the bottom of the book behind two rows of matches.

Prior to January 1940, when the capital stock of respondent Candy Bros. Manufacturing Co., Inc., and that of Cash Bros. Drug Co. and Drug Products, Inc., was acquired by respondent Universal Match Corp., respondent Candy Bros. Manufacturing Co., Inc., employed on cartons or boxes of cough drops, on individual boxes or containers of cough drops, and on match books advertising cough drops, a trademark showing a red cross with equidistant arms but of very narrow proportions, in the four corners or quarters of which appeared the four words "Red Cross Cough Drops." Superimposed across the

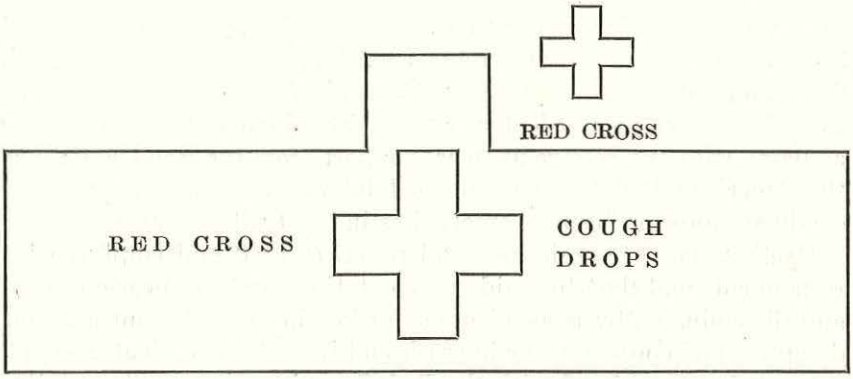
horizontal arm of the red cross the words "Trade Mark" were printed in spaced white lettering. The red cross emblem now employed by respondent Candy Bros. Manufacturing Co., Inc., is at substantial variance with the mark employed by Candy Bros. Manufacturing Co., Inc., prior to 1940. The former narrow proportioned arms have been widened, the descriptive words "Red Cross Cough Drops" have been eliminated from its four corners, and it also fails to carry the words "Trade Mark" on the horizontal arm of the cross. The red cross now employed by respondent Candy Bros. Manufacturing Co., Inc., is a Greek Red Cross standing conspicuously alone, and it is a facsimile of the official emblem of the American Red Cross, printed in a red color that is an exact duplicate of the shade of red used by the American Red Cross on all pamphlets, letterheads, or other printed matter. It is likewise a duplicate or facsimile of the Greek Red Cross which has been employed over a period of years by Cash Bros. Drug Co. and Pure Drug Products, Inc., the stock of which said companies was acquired by corporate respondent Universal Match Corp. in January 1940, as hereinbefore related.

In newspaper advertising carried for the account of respondent Candy Bros. Manufacturing Co., Inc., in newspapers of interstate circulation both types of the hereinabove described red crosses and the words "Red Cross Cough Drops" have been carried in 1- and 2-inch one-column display advertisements. On letterheads employed by said respondent in connection with the operation of its interstate business, appears a pictorial representation of a cough drop box on which the following wording and design appears in connection with a red Greek cross on a white ground with black type lettering:



PAR. 10. During the progress of a Red Cross membership drive in cities of an eastern State in the latter part of the year 1941, sales representatives for respondent Candy Bros. Manufacturing Co., Inc., furnished to wholesale confectioners and others for use in window display photographs of an attractive young lady attired in a costume

resembling that of a Red Cross nurse and displaying a tray across the front side of which appeared a placard of the following design:



The young lady as depicted wore a nurse's costume of pure white, white shoes, a long dark cape thrown back in front so as to fully display the nurse's white costume, stockings to match the cape, and on her head was a nurse's white cap with a regulation red cross at the top of it and below this the words "Cough Drops."

Further, at the instigation and under the guidance and direction of sales representatives of respondent Candy Bros. Manufacturing Co., Inc., young ladies similarly attired passed out samples of Red Cross cough drops in stores and at office buildings in eastern cities of the United States during Red Cross membership drives in the year 1941, and said cities on such occasions were flooded with matches advertising Red Cross cough drops, thereby creating confusion and deception among members of the public and engendering the mistaken impression that the American Red Cross was engaged in the sale of, or was sponsoring, endorsing and approving respondents' Red Cross cough drops.

PAR. 11. Through the use of the above described acts, practices and representations, and others not herein set out, all of which involve the use by respondents of the red cross name and emblem in advertising, trade-marking, branding and selling their said cough drops and book matches advertising the same, respondents variously represent and imply and have represented and implied to customers and to prospective customers:

That there is some connection between the American National Red Cross Society, herein referred to as the Red Cross, and corporate respondents; that the Red Cross is financially interested in the sale of respondents' said cough drops and book matches and obtains a

royalty or percentage thereon; that respondents' said cough drops are endorsed, approved, or sponsored by the Red Cross, and that both said cough drops and book matches are put on the market with the approval of the Red Cross; that respondents' said cough drops and book matches are used by the Red Cross; that respondents' said cough drops and book matches are manufactured in factories operated by the Red Cross; that respondent companies are financially connected or affiliated with and receive financial support from the Red Cross; that the American Red Cross is engaged in business and operates and conducts stores or business enterprises in the United States.

PAR. 12. The aforesaid acts and practices used and employed by respondents and the aforesaid representations and implication made and disseminated by respondents as aforesaid are false, misleading, deceptive and confusing for in truth and in fact respondents are not connected or associated with the Red Cross in any way, financially, contractually, or otherwise. The Red Cross has not endorsed, sponsored or approved respondents' aforesaid products sold and distributed under the Red Cross name and emblem; the Red Cross is not now engaged in and has never been engaged in any commercial enterprise with respondents or otherwise; the Red Cross is not now and never has been interested directly or indirectly in the sale of any product or products sold by respondents under a Red Cross brand or otherwise; the Red Cross does not prescribe and has never prescribed any sanitary or other standard or specification for any article of commerce produced by respondents; no article of commerce manufactured or distributed by respondents is now or ever has been sold with the approval of the Red Cross, and the Red Cross has not been requested to give and has not given respondents permission to use the Red Cross name and emblem for commercial purposes.

In truth and in fact, the American Red Cross has never been engaged in any kind of commercial enterprise directly or indirectly, has never been engaged directly or indirectly in the sale of any product, has never prescribed any sanitary or other standard or specification for any article of commerce not intended for its own use; no article of commerce is now or ever has been sold with the approval of or been sponsored by the Red Cross, and the Red Cross has never given respondents or any other manufacturer, wholesaler, retailer or other dealer, permission to employ the Red Cross name or emblem as a trademark or otherwise, in advertising, trade-marking, branding, labeling or marking any product. Nor has there ever been any connection or business relationship between respondents and the American Red Cross.

PAR. 13. Furthermore, respondents' use of the Red Cross name and emblem is not and does not constitute a lawful use thereof in that, among other things:

Whatever rights corporate respondents Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., may assert or claim in connection with the commercial use of the sign, insignia, or emblem of the Red Cross and of the words "Red Cross," including whatever such rights are or may be claimed through contracts or agreements with or beneficial ownership of Cash Bros. Drug Co. and Pure Drug Products, Inc., are predicated upon and are claimed and asserted through and by virtue of assignments, contracts, transfers or corporate property succession undertakings entered into and concluded by respondents subsequent to January 5, 1905, the date of the national incorporation of the American National Red Cross Society, and subsequent even to the date of June 23, 1910, the date of the act of Congress amending the said act of January 5, 1905.

Respondents herein, acting in concert with each other in carrying out the business aims, plans and program of the common enterprise hereinbefore described, through the medium of said alleged assignments, contracts, transfers, or corporate property succession undertakings have appropriated to their own commercial ends and purposes the Red Cross name and emblem that had theretofore been adopted and employed on behalf of the general public by the Red Cross organization in the United States in carrying out relief work in time of war or national distress, and neither respondents nor any of their alleged assignors in truth and in fact ever sought or obtained from the American Red Cross permission for such use.

Corporate respondents Universal Match Corp. and Candy Bros. Manufacturing Co., Inc., and individual respondents Adolph H. Rosenberg and John Feinstein, further, by their activities, as hereinbefore related, in connection with the use of the Red Cross name and emblem have placed and are now placing in the hands of distributors and outlets over the United States an instrument with which they may mislead, confuse and deceive, have misled, confused and deceived, purchasers and prospective purchasers of cough drops and paper match books.

Respondents further, and quite apart from any considerations involving the validity or legality of alleged assignments or agreements relating to the use of the Red Cross name and emblem, are not now using in marking or labeling their said cough drops and book matches the Red Cross name and emblem as formerly employed by the predecessor corporation, Candy Bros. Manufacturing Co., Inc. Respond-

ents, as hereinbefore alleged, have changed said mark in substantial material aspects, widening and shortening the arms of the Red Cross so that it is now a precise facsimile of the official emblem of the American Red Cross, removing the words "Trade Mark" from the horizontal arms of the cross and placing a substitute trade-mark label at the foot of only some of the red crosses used, and in very small inconspicuous lettering when so used, and have removed from the four angles or corners of the original red cross the words formerly appearing there and reading "Red Cross Cough Drops."

Respondents in truth and in fact now employ, and since January 1940 have employed, a red cross emblem which is a facsimile of and suggests only the emblem of the American Red Cross, without any suggestion of a trade-mark containing, or built around the use of, said emblem.

Furthermore, the extension of the use of the Red Cross name and emblem so as to apply the same to safety matches as well as cough drops is not and never has been a use for the same purpose and for the same class of goods, and is within itself an unlawful use of said name and emblem.

PAR. 14. Respondents' aforesaid acts, practices and representations, in connection with the sale of their aforesaid products, have had and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that respondents have some association, connection or affiliation with the Red Cross, that respondents' products are approved, sponsored or endorsed by the Red Cross, that the Red Cross engages in commercial enterprises and is interested financially in the sale of respondents' products, and that the use by respondents of the Red Cross name and emblem indicates that respondents are manufacturing their said products in accordance with standards or specifications prescribed by the Red Cross. By reason of said beliefs, engendered as above stated, a substantial number of the consuming public have been and are being induced to purchase substantial quantities of respondents' said products.

The acts and practices of respondents and the implications and results flowing therefrom including the manner in which respondents have employed the trade-marks hereinbefore described, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, and are in violation of public law and of the Federal Trade Commission Act.

Order approving stipulation and dismissing complaint without prejudice, follows:

This matter came on to be heard by the Commission upon the motion of counsel supporting the complaint that the Commission approve the stipulation as to the facts and agreement to cease and desist executed by the respondents and dismiss the complaint herein without prejudice to the right of the Commission to issue another complaint and institute such further proceedings against the respondent as may be warranted.

It appears that said stipulation as to the facts and agreement to cease and desist covers substantially all the acts and practices charged in the complaint as being in violation of the Federal Trade Commission Act.

The Commission being of the opinion that in the circumstances the public interest does not require further corrective action at the present time:

It is ordered, That the stipulation as to the facts and agreement to cease and desist be, and the same hereby is, accepted and approved.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to issue another complaint and institute such further proceedings against the respondents as may be warranted if the practices which the respondents have agreed to discontinue should be resumed.

Mr. Marshall Morgan and *Mr. Randolph W. Branch* for the Commission.

Sievers & Reagan and *Mr. Alfred W. Petchaft*, of St. Louis, Mo., for respondents.

SCHNER-BLOCK CO., INC., AND CHARLES SCHNER, JR. Complaint, July 13, 1949. Order and opinion, October 24, 1950. (Docket 5679.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and using misleading product name as to nature and qualities of product; in connection with the wholesale distribution and sale of plastic buttons designated "Aquaperl" and also described as "Synthetic Pearl."

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 Schner-Block Co., Inc., a corporation, and Charles Schner, Jr., individually and as an officer of said 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 Schner-Block Co., 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 386 Fourth Avenue, New York, N. Y. The individual respondent, Charles Schner, Jr., is president of corporate respondent with his office and principal place of business located at 386 Fourth Avenue, New York, N. Y.; and controls and directs the acts, policies, and business affairs of said corporation.

PAR. 2. The respondents are now and since about July 1, 1948, have been engaged in the wholesale distribution and sale of plastic buttons in commerce among and between the various States of the United States and the District of Columbia.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said buttons in commerce among and between the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their buttons, respondents have designated them by the name "Aquaperl"; the said name has been used by respondents in various ways, including its use on containers for the said buttons, on labels, in advertising circulars and invoices; in like manner respondents have used the words "Synthetic Pearl" to describe the said buttons.

PAR. 4. Through the use of the designation "Aquaperl," respondents have represented directly and by implication, that the said buttons are pearl buttons, i. e., buttons made from the shells of mollusks; and through the use of the description "Synthetic Pearl" respondents have represented, directly and by implication, that the said buttons possess the attributes and qualities of genuine pearl buttons.

PAR. 5. The said representations are false and misleading. In truth and in fact the said buttons are not pearl buttons, but are made of plastic; the said plastic does not possess the attributes and qualities of the shells from which pearl buttons are made, nor do the respondents' buttons possess the attributes and qualities of pearl buttons made from shells.

PAR. 6. The use by the respondents of the false and misleading statements and representations hereinabove set out in offering for sale and selling their products has had and now has the capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such false statements and representations are true, that said buttons are pearl buttons, or possess the attributes and qualities of pearl buttons,

and into the purchase of substantial quantities of respondents' buttons on account of such mistaken and erroneous belief induced as aforesaid.

PAR. 7. Respondents' said practices as herein set out places in the hands of sellers of respondents' buttons, and of articles in which said buttons are used, means and instrumentalities for the misleading and deceiving of members of the buying and consuming public into the false and erroneous belief that said buttons are pearl buttons, or possess the qualities and attributes of pearl buttons, and into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. 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.

Complaint dismissed by the following order:

This matter came on to be heard in regular course upon the complaint, respondents' joint answer, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested).

Having duly considered the matter, the Commission, for the reasons set forth in the accompanying opinion, is of the view that the allegations of the complaint have not been sustained by the greater weight of the evidence.

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

AYRES, *Commissioner:*

The complaint issued by the Commission on July 13, 1949, charges that, in connection with the wholesale distribution in commerce of certain plastic buttons, respondents designate such products by the name "Aquaperl," and also as "Synthetic Pearl," and further alleges that these words have the capacity to, and do mislead a substantial portion of the consuming public into the erroneous belief that the buttons are made of pearl obtained from the shells of mollusks and that such products possess the attributes and qualities of pearl buttons.

The sole product involved in this proceeding is a plastic button containing so-called essence of pearl. Essence of pearl is derived from fish scales and has no connection with mollusks from which genuine pearl buttons are made. Respondents' product has an appearance very closely resembling that of pearl buttons and is sold under the trade name "Aquaperl." When "Aquaperl" appears as a product

name on buttons sold by respondents, it is accompanied by the description "Synthetic Pearl" enclosed in parentheses and in relatively fine print. Respondents' only advertising of these buttons has consisted of circulars and sample cards.

Sales by respondents to other button jobbers and to garment manufacturers are in bulk. The boxes in which the buttons are packed for sale bear the name "Aquaperl," and the words "Snythetic Pearl." The buttons sold to garment manufacturers are attached to shirts and other garments, and these labels never reach the eye of the ultimate consumers. There is no evidence in the record tending to indicate that the garment manufacturers who purchase from respondents use these terms in promoting the sale of their merchandise or that the ultimate consumer ever knows that the buttons on the finished garments have, at any time, been designated with the term "Aquaperl" and with the descriptive words "Snythetic Pearl." The record contains no evidence as to how the buttons in question are resold by jobbers purchasing them in bulk, and there is nothing to indicate that the jobbers pass the respondents' designations "Aquaperl" and "Synthetic Pearl" on to their customers or that through them these terms ever come to the attention of the ultimate consumer.

These plastic buttons are sold also by respondents to syndicate chain stores for retail sale to the ultimate consumer. When so sold by respondents, the buttons have been sewed to cards which bear the trade name "Exquisit" instead of the name "Aquaperl" or the words "Synthetic Pearl." They, therefore, are not identified when sold to the ultimate consumer by syndicate chain stores with the designations which are in controversy here.

The record discloses but one instance in which an advertisement for Aquaperl buttons appeared in a publication. This was inserted with the permission of respondents by one of their jobber customers in Woman's Wear Daily, a trade publication which circulates principally among garment manufacturers. The jobber, who sponsored such advertisement, appeared as a witness in this proceeding and testified that he sells only to the garment trade and does not at any time make sales to ultimate consumers. Woman's Wear Daily, according to this witness, has no circulation among the consuming public.

It is, of course, well settled that a company is responsible for putting into the hands of others an instrument by which they may deceive ultimate consumers. In such cases, however, there should be a showing that the deceptive instrument has been used by someone in such a way as to leave a reasonable implication that deception may result from its use. In this case, the record makes it clear that members of the trade, including jobbers and garment manufacturers who buy

such buttons, have not been confused or mislead by the expressions under attack here and that members of the trade are not likely to be deceived by them. Since these are the only classes which, according to the record, come in contact with the questioned designations, it is not reasonable to infer that deception probably has resulted from their use.

Based upon the clear meaning of the word itself, the Commission is of the opinion, however, that "Aquaperl," if used as a designation for respondents' plastic buttons in connection with the sale thereof to the consuming public, may have the capacity and tendency to mislead a substantial portion of the consuming public into the belief that buttons so designated are pearl buttons made from the shells of mollusks. In such circumstances, the Commission doubts that explanation or qualification of the designation "Aquaperl" would suffice to eliminate the confusing and deceptive impressions which such word may engender. For present purposes, however, these are moot questions inasmuch as the evidence in this proceeding does not indicate that the product named "Aquaperl" ever reaches the buying or consuming public. The accompanying order of the Commission, accordingly, provides for a dismissal of the complaint in this proceeding.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Jesse D. Kash for the Commission.

SPORT SHOES, INC. Complaint, January 13, 1950. Order, October 27, 1950. (Docket 5732.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to source or origin of product through failing to disclose foreign source of latter; in connection with the sale of complete roller skating outfits, namely skates which are attached to shoes.

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 Sport Shoes, Inc., 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 Sport Shoes, Inc., is a Delaware corporation with its principal office and place of business at 2043 Milwaukee Avenue, Chicago, Ill.

PAR. 2. Said respondent has been for several years last past engaged in the business of selling complete roller skating outfits, namely, skates which are attached to shoes.

PAR. 3. Respondent causes its said product when sold to be shipped from its place of business in the State of Illinois to jobbers and dealers located in various other States of the United States. Said jobbers and dealers, in turn, sell said roller skating outfits to the general public. Respondent maintains, and at all times mentioned herein has maintained a course of trade in said product in commerce between and among the various States of the United States. Its volume of business in such commerce is substantial.

PAR. 4. In the course and conduct of its business respondent purchases shoes imported from Mexico in bulk quantities. A great number of these shoes are stamped "Made in Mexico" on the ball of the sole thereof, and when said roller skates are attached to the shoes, the stamp, brand or imprint "Made in Mexico" is completely covered up and concealed. The skates are a domestic product and carry the stamping "Made in U. S. A." and "Chicago" and the marking on the edge of the wheel of said skates varies with the type of wheel used but all wheels carry the word "Chicago." The cartons in which the respondent's roller skating outfits are packaged have a label pasted on one end which bears the name of the respondent "Sport Shoes, Inc.", and following it, the word "Chicago," but no statement showing that the shoes are of Mexican origin. Respondent also sells said roller skating outfits by salesmen, who, when making sales thereof do not disclose to the purchasers that the shoes to which the skates are attached are of Mexican origin.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the sale of its product in commerce, the respondent in December 1947 made certain statements and representations concerning said product by means of an advertisement, or more than one, inserted in a magazine of national circulation which magazine is distributed primarily to dealers but which may be read by members of the purchasing public. Among and typical of such statements and representations are the following:

* * From top to toe they're built for hard, tough wear. Each shoe is of Goodyear Welt construction! You'll sell them fast and with complete confidence. Your customers—and you too—will see they're the outstanding shoe value in all America. * * Goodyear Welt construction. Top grain leather. With Chicago roller skates attached. * * Sport Shoes, Inc., 2045 Milwaukee Avenue, Chicago, Illinois.

PAR. 6. By virtue of the practice, heretofore and now established, of imprinting and otherwise labeling or marking products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such imprinting, label-

ing or marking, and is influenced thereby, to distinguish and discriminate between products of foreign and domestic origin, including foreign-made and imported shoes. When products composed in whole or substantial part of imported articles are offered for sale and sold in the channels of trade in commerce, throughout the United States without such imprinting, labeling or marking upon the products and their containers and without disclosing in the advertising of such products the material fact that they are of foreign origin, they are taken to be, accepted and purchased as products wholly of domestic manufacture and origin. The advertisement above set out does not make such disclosure and for this reason is misleading and deceptive.

At all times material to this complaint, there has been, and now is, among said members of the buying and consuming public, including purchasers and users of shoes, in and throughout the United States, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin and from products which are in substantial part made of materials or parts of foreign manufacture or origin.

PAR. 7. The aforesaid practices have had and now have the tendency and capacity to mislead and deceive purchasers into the false and erroneous belief that said roller skating outfits are wholly of domestic manufacture and origin and into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondent, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner did, on October 27, 1950, become the decision of the Commission.

Commissioner Spingarn not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial decision by HENRY P. ALDEN, Trial Examiner

This proceeding came on to be considered by the above-named trial examiner, theretofore duly designated by the Commission, upon the complaint of the Commission and a memorandum submitted June 19, 1950, to the Commission by the Chief of the Division of Litigation recommending that the case be dismissed; and it appearing to the

trial examiner that the respondent Sport Shoes, Inc., is and for the past several months has been out of business and that there is not sufficient public interest to justify proceeding further in the case,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Mr. Morton Nesmith for the Commission.

JOSEPH GORDON DOING BUSINESS AS DAWN PRODUCTS CO. Complaint, July 1, 1947. Order, November 6, 1950. (Docket 5504.)

Charge: Advertising falsely or misleadingly and misrepresenting directly as to dealer being a manufacturer, prices, and money raising programs and misrepresenting prices as being wholesale; in connection with the sale, principally, of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to and through religious, patriotic, charitable, and similar societies and organizations, for resale to the public.

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 Joseph Gordon, doing business as Dawn Products Company, 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, Joseph Gordon, is now, and since about January 1944, has been, engaged in the business of selling merchandise, consisting principally of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to religious, patriotic, charitable, and similar societies and organizations, for resale to the public, under the plan and by the methods hereinafter set forth. His principal place of business has been and is at 2147–2149 West Lake Street, Chicago, Ill.

Pursuant to such sales and as a part thereof, respondent ships and causes to be shipped, and has shipped and caused to be shipped, such merchandise from his said place of business, and from other points, to the purchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

PAR. 2. By means of the popular and emotional appeal thereby obtained, respondent contacts and selects, and has contacted and selected, various societies and organizations of the character mentioned in Paragraph 1 hereof in cities and towns throughout the States of the United States as instrumentalities through which, and as fronts by

means of which, he sells and has sold his various products to members of the consuming or purchasing public, principally housewives.

Among the organizations so contacted and so selected to sell respondent's products are and were the Women's Relief Corps, Royal Neighbors of America, War Wives Club, Sons of Union Veterans, American Legion Auxiliary, and others. Underlying the entire sales plan of respondent is the basic approach that the entire profit derived from the sale of the products goes to charity, patriotic and other similar causes.

PAR. 3. Respondent's plan of sale is as follows:

He instructs and trains persons to be known as, and to act as, "supervisors" and enters into a written contract with them whereby he grants to them a "right and license" "to use and operate" his "plan" of sale, limited as to time and exclusive as to a defined territory and to "buy for resale strictly according to said Plan, such products as the seller (respondent) may, from time to time, offer for sale." The supervisor is bound not to deviate from the plan; not to use it for the sale of any products except those furnished by respondent; to submit to respondent for review and approval all printed matter, forms, agreements and advertising; to pay respondent for said products one-half the price at which the products are to be sold at retail, which retail price is fixed by respondent at $1.00 per unit. The contract further provides that the supervisor shall have a right to return, in whole or in part, such products "as may not be taken up by the supervisor's customers"; shipment from the respondent to the supervisor to be on a c. o. d. basis and invoiced to him at 50 percent of the retail price fixed by respondent. The agreement also provides that the supervisor shall devote his full time and efforts exclusively to the "resale" of respondent's products and produce a sales volume of not less than $250 per week "computed at the retail prices."

PAR. 4. When respondent or a supervisor shall have successfully solicited a society or organization of the character referred to in Paragraph Two hereof, hereinafter referred to as the sponsoring organization, respondent presents and enters into a written contract, entitled "Introductory Campaign Agreement," with the sponsoring organization, whereby respondent agress to supply "useful and popular household items at wholesale, for resale or retail to be productive of funds intended for use in Welfare, Patriotic and Charitable work" by the sponsoring organization, "said wholesale price to (be) 50 percent of retail." The contract further provides that respondent guarantees the sponsoring organization a net profit of $10 for each 100 items sold; that respondent will recommend a capable and efficient supervisor to conduct the sales campaign and that the sponsoring

organization shall pay the supervisor $10 from each 100 items sold; that assistance by the organization in the sales campaign is not required; that respondent will give the sponsoring organization full credit for unsold merchandise returned; that the sponsoring organization "can rely on recommended Supervisor to hire and train persons of the local community" to solicit orders for the merchandise to be sold.

PAR. 5. After the execution of this contract and at an agreed time, a supervisor selected and trained and recommended by respondent takes complete charge of the sales campaign, advertises and conducts it in the name of the sponsoring organization, rents office and work quarters, prepares, subject to approval by respondent, and disseminates advertisements and other forms of publicity of and concerning the sale; employs solicitors and instructs and trains them to solicit orders; instructs the solicitors, in accordance with instructions received from respondent, to represent to the public and to prospective purchasers, and the respondent and the supervisor and the solicitors do represent to the public and prospective purchasers, that the profits from the sale are to be used in the sponsoring organization's work. Respondent represents to the public, to the sponsoring organization and to the solicitors that he is the manufacturer of the products he sells, which representation the solicitors pass on to the public.

The merchandise to be sold is ordered by the supervisor from the respondent, is shipped, or caused to be shipped, collect on delivery, to the sponsoring organization in care of the supervisor and is invoiced to the sponsoring organization and the supervisor. The shipment is received by, and the collect charges paid by, the supervisor and no representative of the sponsoring organization ever has knowledge of the amount of the c. o. d. charges or invoice. The price charged the public is $1 per unit, which is five or six times the usual price of products of the same character and quality.

PAR. 6. By the methods and practices and in the manner hereinbefore alleged, respondent represents and causes to be represented to the sponsoring organization and to the public that he is the manufacturer of the products he sells; the price paid by the sponsoring organization for the merchandise is a wholesale price and that all the profits from the sale go to the sponsoring organization. In truth and in fact, the respondent does not manufacture any of the products he sells, but buys them from various manufacturers and wholesalers; the price charged by respondent and paid by the sponsoring organization is not a wholesale price but is the wholesale price plus a profit to respondent of many times the wholesale price, and all the profits derived from the sale do not go to the sponsoring organization but 50 percent of the price paid by the public goes to the respondent, and the

sponsoring organization rarely, if ever, receives more than 10 percent of the price paid by the public.

PAR. 7. The representations, acts and practices of the respondent, as hereinabove set forth, are prejudicial to the public and constitute the use by respondent of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course upon the complaint, answer of the respondent, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel.

The complaint herein charges respondent with the use of unfair and deceptive acts and practices in commerce in connection with the offering for sale, sale, and distribution of his merchandise through false and misleading representations that he is the manufacturer of the products he sells; that the prices at which he sells are wholesale prices; and that all the profits from sales go to religious, patriotic, charitable, and similar societies and organizations.

The Commission having duly considered the matter and it appearing that the charges of the complaint are not sustained by the evidence in the record:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Commissioner Mason not participating.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Edward F. Downs for the Commission.

Dale, Lytton, Haffner & Grow, of Chicago, Ill., for respondent.

THOMAS A. WALSH, JR., AND MARJORIE C. WALSH TRADING AS THOMAS A. WALSH MANUFACTURING CO. Complaint, April 26, 1949. Order, November 6, 1950. (Docket 5654.)

Charge: Aiding, assisting and abetting unfair or unlawful act or practice through supplying lottery devices and using or selling lottery schemes or devices in merchandising; in connection with the manufacture and sale of devices commonly known as push cards and punchboards.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of authority vested in it by said act, the Federal Trade Commission, having reason to believe that Thomas A. Walsh, Jr., and Marjorie C. Walsh, individuals and partners trading as Thomas A. Walsh Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it

appearing to the Commission that a proceeding by them in respect thereof would be in the public interest, hereby issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Thomas A. Walsh, Jr., and Marjorie C. Walsh, are individuals and partners trading and doing business under the name Thomas A. Walsh Manufacturing Co., with their office and principal place of business located at 201 South Tenth Street, in the city of Omaha, Nebr. Respondents are now and for more than 3 years last past have been engaged in the manufacture of devices commonly known as pushcards and punchboards, and in the sale and distribution of said devices to manufacturers of, and dealers in, various articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, and the Territories of the United States, and to dealers in various articles of merchandise located within the several States of the United States, in the District of Columbia, and in the several Territories of the United States.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Nebraska to purchasers thereof at their points of location in the various States of the United States, other than Nebraska, in the District of Columbia, and in the several Territories of the United States. There is now and has been for more than 3 years last past a course of trade in such devices by said respondents in commerce between and among the various States of the United States, in the District of Columbia, and in the several Territories of the United States.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said manufacturers of and dealers in merchandise, pushcards and punchboards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed many kinds of pushcards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said pushcards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said pushcards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the pushcard or punchboard, and when a push or punch

is made, a disc or printed slip is separated from the pushcard or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers, entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said pushcard and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On these pushcards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said pushcard and punchboard devices first hereinabove described. The only use to be made of said pushcard and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said pushcard and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said pushcards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said pushcards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said pushcards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof, many retail dealers have been induced to deal with or trade with manufacturers, whole-

sale dealers and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said pushcards and punchboard devices by respondents as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprise in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms and corporations the means of, and instrumentalities for, engaging unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Record closed by the following order:

This matter came on to be heard by the Commission upon motion to dismiss the complaint, filed on September 18, 1950, by the respondents, and answer thereto, filed on September 28, 1950, by counsel supporting the complaint, which answer does not oppose dismissal of the complaint without prejudice to the right of the Commission to reopen the matter and proceed in regular course in the event such proceedings appear necessary.

The complaint in this matter charges respondents with unfair and deceptive acts and practices through the sale and distribution of lottery devices. Respondents filed an answer admitting the material allegations of fact and waiving further procedure except the right of appeal, subject to the condition that the Commission take no action herein until its final determination of the matter of *Superior Products Company, Inc.*, Docket 5561.

It now appears that the respondent Thomas A. Walsh Manufacturing Co. is no longer engaged in any business whatsoever, that all of its assets have been sold and disposed of, and that neither said company

nor the partners thereof, the individual respondents herein, in any combination or any form, intend to resume the business of manufacturing or selling lottery devices.

The Commission having duly considered the motion and the record herein and being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time, and being of the further opinion that this case should be closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action, instead of the complaint herein being dismissed as requested by the respondents:

It is ordered, That this case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action.

Commissioner Mason not participating.

Before *Mr. Frank Hier*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

WASHINGTON BREWERS INSTITUTE, BREWERS INSTITUTE OF OREGON, CALIFORNIA STATE BREWERS INSTITUTE, IDAHO BREWERS INSTITUTE, THE OFFICERS AND MEMBERS THEREOF, AND BECKER PRODUCTS CO. Complaint, January 17, 1949. Order, November 20, 1950. (Docket 5633.)

Charge: Entering into, and carrying out, an understanding and planned common course of action to suppress and eliminate competition and to create a monopoly in said respondent members and in said individual respondent in the manufacture and sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California, through cooperatively working out uniform price-posting schedules and furnishing the same to respondent Institutes for posting with the State alcohol beverage control boards of the various States in which respondents operate; through cooperating with each other and with the various State control boards to police the industry in order to prevent price cutting, and in other ways as in the complaint set out.

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 the Washington Brewers Institute, a corporation, its officers and members; the Brewers Institute of Oregon, a corporation, its officers and members; the California State Brewers Institute, a corporation, its officers and members; Idaho Brewers Institute, a corporation, its officers and members; and Becker Products Co., a corporation, hereinafter referred to as respondents, have violated the provisions of section 5 of said act,

and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Washington Brewers Institute is a nonprofit corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located in the Hoge Building, Seattle, Wash. The Institute is composed of approximately nine corporations located in the States of Washington and Oregon, which said corporations are engaged in the manufacture, sale and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the present officers of said respondent Institute who, in their individual capacities, and as such officers of said respondent Institute, are named as respondents herein, are: Emil G. Sick, chairman, 3100 Airport Way, Seattle, Wash.; William H. Mackie, vice chairman, 3100 Airport Way, Seattle, Wash.; Gus V. Uhr, treasurer, 615 Columbia Street, Vancouver, Wash.; and Herbert J. Durand, secretary, 284 New Washington Hotel, Seattle, Wash.

The names and addresses of the members of said respondent Washington Brewers Institute, who, individually and as such members of said respondent Washington Brewers Institute are named as respondents herein are: Sick's Seattle Brewing & Malting Co., a corporation, 3100 Airport Way, Seattle, Wash.; Sick's Century Brewery, a corporation, 610 Westlake Avenue North, Seattle, Wash.; Sick's Spokane Brewery, Inc., a corporation, 829 West Broadway, Spokane, Wash.; Columbia Breweries, Inc., 2120 South C. Street, Tacoma, Wash.; Olympia Brewing Co., a corporation, Olympia, Wash.; Interstate Brewery Co., a corporation, 615 Columbia Street, Vancouver, Wash.; Bohemian Breweries, Inc., 1402 West Second Avenue, Spokane, Wash.; Pioneer Brewing Co., a corporation, Walla Walla, Wash.; and Blitz-Weinhard Co., 1133 West Burnside Street, Portland, Oreg.

PAR. 2. Respondent Brewers Institute of Oregon is a nonprofit corporation, organized under the laws of the State of Oregon, with its principal office and place of business located in Suite 8–J, Multnomah Hotel, Portland, Oreg. The membership of said Brewers Institute of Oregon is composed of approximately 14 corporations who are located in various parts of the States of Oregon, Washington, and California, and who are engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the officers of said respondent Brewers Institute of Oregon who, in their individual capacities and as such officers of said respondent Institute are named as respondents herein, are John M. Pipes, chairman and treasurer, Suite 8–J, Multnomah Hotel, Portland, Oreg., and George F. Paulsen, secretary, Suite 8–J, Multnomah Hotel, Portland, Oreg.

The names and addresses of the members of said respondent Brewers Institute of Oregon who, individually and as such members of said respondent Brewers Institute of Oregon are named as respondents herein, are: Acme Breweries, a corporation, San Francisco, Calif.; Blitz-Weinhard Co., 1133 West Burnside Street, Portland, Oreg.; Bohemian Breweries, Inc., 1402 West Second Avenue, Spokane, Wash.; Columbia Breweries, Inc., 2120 South C. Street, Tacoma, Wash.; Golden Age Brewery, Inc., Spokane, Wash.; Interstate Brewery Co., a corporation, 615 Columbia Street, Vancouver, Wash.; Olympia Brewing Co., a corporation, Olympia, Wash.; Regal Amber Brewing Co., a corporation, 675 Treat Street, San Francisco, Calif.; Henry W. Collins, an individual trading as William Roche Brewing Co., Pendleton, Oreg.; Sick's Seattle Brewing & Malting Co., a corporation, 3100 Airport Way, Seattle, Wash.; Sick's Brewing Co., a corporation, 260 South Commercial Street, Salem, Oreg.; Rainier Brewing Co., a corporation, 1550 Bryant Street, San Francisco, Calif.; Golden West Brewing Co., a corporation, Oakland, Calif.; and Pioneer Brewing Co., a corporation, 350 South Second Avenue, Walla Walla, Wash.

PAR. 3. Respondent California State Brewers Institute is a nonprofit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 155 Montgomery Street, San Francisco, Calif. The membership of said respondent California State Brewers Institute is composed of approximately 10 corporations located in various parts of the State of California and engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The names and addresses of the officers of said respondent California State Brewers Institute who, individually and as such officers of said respondent California State Brewers Institute are named as respondents herein, are: Karl F. Schuster, president, 762 Fulton Street, San Francisco, Calif.; Wm. P. Baker, first vice president, 675 Treat Street, San Francisco, Calif.; Eugene S. Selvage, second vice president, 2601 Newhall Street, San Francisco, Calif.; Stewart McKee, third vice president, 666 Gibbon Street, Los Angeles, Calif; Joseph Golbie, treasurer, 1550 Bryant Street, San Francisco, Calif.; James G. Hamilton, secretary, 155 Montgomery Street, San Francisco, Calif; and B. G. Lewis, secretary, southern division, Los Angeles, Calif.

The names and addresses of the members of said respondent California State Brewers Institute, who individually and as such members of said respondent California State Brewers Institute are named as respondents herein, are: Acme Breweries, a corporation, 762 Fulton Street, San Francisco, Calif.; Aztec Brewing Co., a corporation, San Diego, Calif.; Regal Amber Brewing Co., a corporation, 675 Treat Street, San Francisco, Calif.; General Brewing Corp., 2601 Newhall Street, San Francisco, Calif.; Stewart McKee & Co., a

corporation, 666 Gibbon Street, Los Angeles, Calif.; Rainier Brewing Co., a corporation, 1550 Bryant Street, San Francisco, Calif.; Grace Bros. Brewing Co., a corporation, Second and Davis Streets, Santa Rosa, Calif.; Maier Brewing Co., a corporation, 440 Aliso Street, Los Angeles, Calif.; Pacific Brewing & Malting Co., a corporation, 1025 Cinnabar Street, San Jose, Calif.; and San Francisco Brewing Corp., 470 Tenth Street, San Francisco, Calif.

PAR. 4. Respondent Idaho Brewers Institute is a nonprofit corporation, organized and existing under the laws of the State of Idaho, with its principal office and place of business located at 111 North Sixth Street, Boise, Idaho. The membership of said respondent Idaho Brewers Institute is composed of approximately four corporations located in the States of Idaho, California, and Washington, which said members are engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors.

The name and address of the president and secretary of said respondent Idaho Brewers Institute, who, individually and as such president and secretary of respondent Idaho Brewers Institute, is named as respondent herein, is Stephen T. Collins, 111 North Sixth Street, Boise, Idaho.

The names and addresses of the members of said respondent Idaho Brewers Institute who, individually and as such members of said respondent Idaho Brewers Institute are named as respondents herein, are: Acme Breweries, a corporation, 762 Fulton Street, San Francisco, Calif.; Bohemian Breweries, Inc., 111 North Sixth Street, Boise, Idaho; Bohemian Breweries, Inc., Spokane, Wash.; and East Idaho Breweries, Inc., 635 South First Avenue, Pocatello, Idaho.

PAR. 5. Respondent Becker Products Co. is a corporation, organized and existing under the laws of the State of Utah, with its principal office and place of business located at 1900 Lincoln Street, Ogden, Utah. Said respondent Becker Products Co. is engaged in the manufacture, sale, and distribution in interstate commerce of beer and other malt liquors. Said respondent also operates, in addition to its Ogden, Utah, plant, a branch plant located at Evanston, Wyo.

PAR. 6. The members of said respondent Institutes heretofore named in paragraphs 1 to 4, both inclusive, and the individual respondent named in paragraph 5 are located in various States of the United States. The members of said respondent Institutes and the individual respondent are engaged in the business of manufacturing, selling, and distributing beer and other malt liquors to purchasers located in States other than the State in which said respective respondents are located, causing said products, when so sold, to be transported from their respective places of business to the purchasers thereof, and there has been and now is a course of interstate trade and commerce in said products between the members of said re-

spondent Institutes and said individual respondent and the purchasers of said products located throughout the several States of the United States.

Respondent Institutes hereinbefore mentioned in paragraphs 1 to 4, both inclusive, have served and do now serve as State organizations, and have cooperated and do now cooperate with each other, with their respective members, and with the individual respondent hereinbefore named in paragraph 5 in their various activities, as hereinafter set out. The respondent hereinbefore named in paragraph 5 is not a member of any of said respondent Institutes, but said respondent has cooperated with said respondent Institutes in their various activities. Said respondent members of said respondent Institutes named in paragraphs 1 to 4, both inclusive, and said nonmember respondent named in paragraph 5 hereof are now and have been, during all of the times mentioned herein, engaged in competition with other members of the industry in making and seeking to make sales of their said products in said commerce, and but for the facts hereinafter alleged would now be in free, active, and substantial competition with each other in their respective selling areas.

PAR. 7. Said respondent members of said respondent Institutes, acting in cooperation with each other and through and in cooperation with said respondent Institutes and said nonmember respondent for more than 12 years last past, and particularly since January 1, 1936, have entered into an understanding, agreement, combination, conspiracy, and planned common course of action among themselves and with and through said respondent Institutes and said individual respondent to restrict, restrain, and suppress competition in the sale and distribution of beer and other malt liquors to customers located throughout the several States of the United States, as aforesaid, by agreeing to fix and maintain uniform prices, terms, and discounts at which said beer and other malt liquors are to be sold, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent Institutes as to the prices, terms, and discounts at which said respondent members of said Institutes and said individual respondent have sold and are offering to sell said beer and other malt liquors to customers and prospective customers.

PAR. 8. Pursuant to said understanding, agreement, combination, conspiracy, and planned common course of action, and in furtherance thereof, the respondents have done and performed, and still do and perform, among others, the following acts and things:

Have fixed the prices at which beer and other malt liquors are to be offered for sale in accordance with the type of the product and the method of packaging; have cooperatively worked out uniform price-posting schedules and furnished the same to respondent Institutes for

posting with the State alcohol beverage control boards of the various States in which the respondents operate; have agreed upon uniform discounts to be allowed to purchasers of beer and other malt liquors; have standardized the packaging of beer and other malt liquors; have agreed to uniform allowances for the return of empty containers; have discussed and agreed upon uniform zoning areas for the pricing of said beer and other malt liquors; have cooperated with each other and with the various State control boards to police the industry in order to prevent price-cutting, and have disciplined offending members.

PAR. 9. The results of the acts and practices of the said respondent members of said respondent Institutes and of said Individual respondent, as hereinabove set out in paragraph 8, has been and now is to substantially lessen, restrict, restrain, and suppress price competition in the interstate sale of beer and other malt liquors throughout the several States of the United States, and empowers the said respondents to control the market and to enhance the prices of said products above the prices which would prevail therefor under normal, natural, and open competition between said respondents; and also to tend to create a monopoly in said respondent members and in said individual respondent in the manufacture and sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California.

PAR. 10. The acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of beer and other malt liquors in interstate commerce, and have placed in the respondents the power to control prices, have increased the price of beer and other malt liquors paid by the purchasers thereof, and, consequently, the prices paid by the public, have created in the respondents a monopoly in the sale of beer and other malt liquors among and within the States of Washington, Oregon, Idaho, Utah, and California, and have unreasonably restrained such commerce in beer and other malt liquors and constitute unfair methods of competition within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed on behalf of the respondent, Washington Brewers Institute, requesting that the complaint in this proceeding be dismissed, and the answer to such motion filed by counsel in support of the complaint; and

It appearing to the Commission that the illegal activities described in the complaint have not been engaged in by the respondents since May 5, 1941, on which date most, if not all, of said respondents were indicted for conspiracy to violate Sections 1 and 3 of the Sherman Act; and

The Commission having been informed that the States of Washington, Oregon, California, and Idaho possess such laws, rules, and regulations as are necessary to enable said States to prevent the respondents from again engaging in the acts and practices alleged in the complaint to be in violation of the Federal Trade Commission Act, and that the authorities of said States are enforcing said laws, rules, and regulations in such a manner as to accomplish that result; and

The Commission being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding:

It is ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding or to take such further or other action against the respondents, or any of them, at any time in the future as may be warranted by the then existing circumstances.

Commissioner Mason not participating.

Mr. Earl W. Kintner and *Mr. J. D. Sharp* for the Commission.

Mr. W. J. Lindberg and *Lenihan & Ivers*, of Seattle, Wash., for Washington Brewers Institute and its officers and members.

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., also for Olympia Brewing Co.

Chadwick, Chadwick & Mills, of Seattle, Wash., also for Emil G. Sick, William H. Mackie, Sick's Seattle Brewing & Malting Co., Sick's Century Brewery, Sick's Spokane Brewery, Inc. and Sick's Brewing Co.

Mr. D. Elwood Caples, of Vancouver, Wash., also for Gus V. Uhr and Interstate Brewery Co.

Bogle, Bogle & Gates, of Seattle, Wash., also for Columbia Breweries, Inc.

Paine, Lowe & Coffin, of Spokane, Wash., also for Bohemian Breweries, Inc., and

Coleman & Coleman, of Everett, Wash., also for Pioneer Brewing Co.

Mr. John M. Pipes, of Portland, Oreg., for Brewers Institute of Oregon, John M. Pipes and George F. Paulsen.

Mr. Moe M. Tonkon and *Mr. David S. Pattullo*, of Portland, Oreg., for Henry W. Collins.

Laing, Gray & Smith, of Portland, Oreg., for Blitz-Weinhard Co.

Mr. Robert Weinstein, of Spokane, Wash., for Golden Age Brewery, Inc.

Mr. E. R. Hoerchner and *Brobeck, Phleger & Harrison*, of San Francisco, Calif., for California State Brewers Institute and various officers and members thereof.

Hoffman, Davis & Martin, of San Francisco, Calif., for San Francisco Brewing Corp.

Mr. Norman A. Eisner, of San Francisco, Calif., for Acme Breweries and Karl F. Schuster.

Burke, Marshall & Burke and *Sheppard, Mullin, Richter & Balthis*, of Los Angeles, Calif., for Stewart McKee & Co.

Morrison, Hohfeld, Foerster, Shuman & Clark, of San Francisco, Calif., for Golden West Brewing Co.

Mr. C. Stanley Skiles, of Boise, Idaho, for Idaho Brewers Institute and Stephen T. Collins.

Jones, Pomeroy & Jones, of Pocatello, Idaho, for East Idaho Breweries, Inc.

Howell, Stine & Olmstead, Ogden, Utah, for Becker Products Co.

Mr. Smith Troy, attorney general, and *Mr. Joseph P. Lavin*, assistant attorney general of the State of Washington, of Olympia, Wash. for State of Washington, intervenor.

Mr. George Neuner, attorney general, and *Mr. John K. Crowe*, assistant attorney general of the State of Oregon, of Portland, Oreg., for State of Oregon, intervenor.

Mr. Robert E. Smylie, attorney general, and *Mr. Don J. McClenahan*, assistant attorney general of the State of Idaho, of Boise, Idaho, for State of Idaho, intervenor.

Mr. Fred N. Howser, attorney general, and *Mr. J. Albert Hutchinson*, deputy attorney general of the State of California, of San Francisco, Calif., for State of California, intervenor.

ARDEN JEWELRY MANUFACTURING CO., INC., FRED ABROMS AND LEO WEINER. Complaint, February 18, 1946. Order, November 28, 1950. (Docket 5422.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to imported product or parts as domestic; in connection with the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and alabaster base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry.

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 Arden Jewelry Manufacturing Co., Inc., a corporation and Fred Abroms and Leo Weiner, individually and as officers of said 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 Arden Jewelry Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and prin-

cipal place of business located at 99 Stewart Street, Providence, R. I. Individual respondents Fred Abroms and Leo Weiner are president and treasurer, respectively, of respondent corporation. Acting in their said official capacities, said individual respondents formulate and control, and have formulated, directed and controlled the respective acts, policies and business affairs of said corporation.

PAR. 2. The respondents are now and for several years last past have been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds, including imitation pearls and alabaster base beads for the manufacture of imitation pearls made into necklaces and other articles of jewelry in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be transported from their said place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business in connection with the sale and distribution of their said imitation pearl necklaces and other articles of jewelry, respondents have purchased large quantities of imitation pearls and base beads of foreign origin for the manufacture of imitation pearl necklaces from importers engaged in the sale and distribution of said products in the United States.

Respondents operate a factory where they cause domestic base beads as well as base beads of foreign origin to be finished by dipping or spraying said products in a solution, thereby completing the manufacture of said base beads into imitation pearls. After said processing as aforesaid, respondents sell and distribute their imitation pearls made into necklaces in commerce, together with other articles of jewelry.

Respondents also process large quantities of base beads of foreign origin for others who are likewise engaged in the sale and distribution in commerce of imitation pearls made into necklaces and other articles of jewelry.

PAR. 4. At the time of the importation into the United States of the above-enumerated products, and at the time the said respondents received said products of foreign origin from importers, such products have been and are all labeled or marked with the word "Japan" or the words "Made in Japan" or the word "Spain" or the words "Made in Spain" or marked with other word or words indicating the country of origin.

After said products are received in the United States, the respondents cause the words or marks indicating their foreign origin to be removed therefrom and thereafter sell and distribute the said products made into necklaces and other articles of jewelry in commerce as above set forth, without any words or marks thereon indicating their foreign origin, and cause said products to be offered for sale and sold to members of the purchasing and consuming public in that condition, without informing the purchaser thereof that the said products are of foreign origin.

PAR. 5. There is a well-established practice among merchandisers generally to mark or label products of foreign origin and their containers with the name of the country of their origin in legible English words in a conspicuous place. By reason thereof, a substantial portion of the buying and consuming public has come to rely and now relies upon such labeling or marking and is influenced thereby to distinguish and discriminate between competing products of foreign and domestic origin, including imitation pearl necklaces. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for and taken to be products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs the purchaser that said products or substantial parts thereof are of foreign origin.

PAR. 6. There is now and for several years last past has been among members of the buying and consuming public, including purchasers and users of imitation pearl necklaces, a substantial preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin, or from products made in substantial part of materials or parts of foreign origin. During recent years, and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 7. The practice of the respondents, as aforesaid, of offering for sale, selling, and distributing their imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without any labeling or marking to indicate to purchasers the Japanese, Spanish, or other foreign origin of such imitation pearl necklaces, has had and now has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said imitation pearl necklaces and

other articles of jewelry, and all of the parts thereof, are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' imitation pearl necklaces and other articles of jewelry a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said imitation pearl necklaces and all the parts thereof are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on for final consideration by the Commission upon the complaint, respondents' answer thereto, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief of counsel supporting the complaint, no brief having been filed by respondents and oral argument not having been requested.

The complaint herein charges respondents with the use of unfair and deceptive acts and practices in connection with the offering for sale, sale, and distribution of imitation pearl necklaces and other articles of jewelry of Japanese, Spanish, or other foreign origin without disclosing the foreign origin of such products. It appears from the record herein that the respondents do not import imitation pearls, but that they do import alabaster or glass beads. After importation, such alabaster or glass beads are put through a process by which they are converted into imitation pearls and thereafter used in necklaces and other articles of jewelry.

Similar facts to those disclosed by the record herein were before the Commission in the matter of *L. Heller & Son, Inc., et al.*, Docket 5358.[1] In that matter the Commission determined that the imported alabaster or glass beads are only one of the raw ingredients used in the manufacture of imitation pearls and that the imitation pearls so manufactured and necklaces and other articles of jewelry made therefrom are products of American manufacture, and that under these circumstances, disclosure of the foreign origin of the imported alabaster or glass beads should not be required when selling necklaces or other articles of jewelry containing such imitation pearls. The

[1] 47 F. T. C. 34.

reasons for such determination are fully set forth in the opinion of the Commission in that matter. The reasons therein set forth are controlling in this matter.

The Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Commissioner Mason not participating.

Before *Mr. John W. Addison*, trial examiner.

Mr. B. G. Wilson and *Mr. Joseph Callaway* for the Commission.

Mr. Bernard B. Abedon, of Providence, R. I., for respondents.

NATIONAL COAT AND SUIT INDUSTRY RECOVERY BOARD, ITS OFFICERS, EXECUTIVE BOARD MEMBERS AND MEMBERS, ET AL. Complaint, September 26, 1941. Order, December 1, 1950. (Docket 4596.)

Charge: Combining, agreeing, and cooperating to control and regulate the misses', women's, children's and infants' coat and suit industry in the United States in the interest of the respondents, and to restrain trade therein and monopolize the same through establishing so-called uniform standards of fair commercial practices relating to discounts, consignments, delivery charges, advertising subsidies, returns, cancellations, cut, make and trim, incomplete garments, and group showings; through requiring display of respondent board's label on all garments made by members, along with observance of the conditions attached thereto; and through policing and enforcing in coercive and various ways compliance therewith;

Capacity, tendency, and effect of which agreements and conspiracies, and policies, practices, and acts and things done in pursuance thereof were:

To tend to monopolize in the respondent manufacturers the business of manufacturing, selling, and distributing women's, misses', children's and infants' coats, jackets, caps, wraps, riding habits, knickers, suits, ensembles, and skirts in most of the trade areas of the United States;

To tend to monopolize in the respondent manufacturers the opportunity to secure skilled labor for the manufacturers of such garments;

To establish fixed and maintained prices, discounts and various terms and conditions attending the sale of such merchandise in all parts of the country;

To lessen, suppress and restrain competition in the sale of the merchandise, and to suppress, discriminate against and eliminate contractors, submanufacturers and small manufacturers who are or have been engaged in, or who desire to engage in, the manufacture and sale of such merchandise; and

To burden, hamper and interfere with the normal and natural flow of trade in commerce in such merchandise throughout the various States.

Complaint against respondent board, fourteen associations of coat and suit manufacturers, officers thereof as such and as representative of the different members thereof, and the International Ladies Garment Workers Union, their officers, etc., follows:

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 the parties named in the caption hereof, and hereinafter more particularly described, designated and 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 National Coat & Suit Industry Recovery Board, hereinafter referred to as respondent Recovery Board, is a corporation, organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 132 West Thirty-first Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:[1]

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[1] The Commission on November 7, 1941, approved stipulation substituting certain respondents, as follows:

"Whereas the respondents named in the complaint herein, namely, Associated Garment Industries of St. Louis, Inc., and Manufacturers and Wholesalers Association of San Francisco, are not and have not been affiliated with the respondent Recovery Board, and have not participated in any of the practices complained of in the complaint; and

"Whereas it appears that Milton J. Levy, Esq., attorney at law, of New York City, is authorized to and hereby does enter his appearance herein as attorney for the parties to be substituted for the above-named respondents as hereinafter set forth;

"It is therefore stipulated and agreed by and between W. T. Kelley, chief counsel for the Commission, and Allen C. Phelps and George W. Williams, attorneys for the Federal Trade Commission, and Milton J. Levy, attorney for the substituted respondents hereinafter named, that, subject to the approval of the Federal Trade Commission, the following parties be named as respondents in this matter, to wit:

"(a) Associated Suit & Cloak Manufacturers Association of St. Louis, a corporation, and its officers and members:

"Robert Dorfmont, acting chairman,

"Molly Grossman, secretary-treasurer; individually, and as the above officers and as representatives of the entire membership of Associated Suit and Cloak Manufacturers Association of St. Louis;

"(b) Associated Coat and Suit Manufacturers of San Francisco, an unincorporated association, and its officers and members:

"Samuel Bohne, chairman,

"Samuel Farb, vice chairman,

"Capen A. Fleming, executive director; individually, and as the above officers, respectively, and as representatives of the entire membership of Associated Coat and Suit Manufacturers of San Francisco, in the place and stead of the following parties named as respondents in the complaint, herein to wit:

"(a) Associated Garment Industries of St. Louis, Inc., a corporation, and its officers and members:

"Robert Dorfmont, acting chairman,

"Molly Grossman, secretary-treasurer; individually, and as the above officers and as

Gustave I. Aronow, vice chairman, Samuel L. Deitsch, treasurer, Alexander Printz, chairman, F. Nathan Wolf, secretary.

The following named individuals are members of the executive board of said respondent, which is its governing board, and as such are designated as respondents herein:

Gustave I. Aronow, Charles Baker, Morris Bialis, David Dubinsky, Samuel L. Deitsch, Joseph L. Dubow, Julius Edelson, Israel Feinberg, John Frumkes, Morris Goldman, Samuel Klein, Philip Kramer, Louis Levy, Isidore Nagler, Alexander Printz, Henry Rothman, Seymour M. Rivitiz, Bernard D. Rosenberg, Milton G. Rosenfeld, Sol Schott, Charles Sussman, Max E. Weinstock, Adolph G. Zalkus.

The membership of the respondent National Coat & Suit Industry Recovery Board is made up of numerous corporations, partnerships, and individuals engaged in the manufacture, sale or distribution of clothing and merchandise, such as women's, misses', children's, and infants' coats, jackets, capes, wraps, riding habits, knickers, suits, ensembles and skirts, who have either signed a certificate of compliance with the board's constitution and bylaws, or, who are members of associations, including those associations hereinafter named as respondents in paragraphs 2 to 16, inclusive, which, by virtue of their bylaws, are empowered to bind and have bound their members to the board.

The membership of said respondent National Coat & Suit Industry Recovery Board changes from time to time by the addition and withdrawal of members so that all of the members of said organization at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers and executive board members hereinbefore named as respondents as such officers and board members are also made respondents as being truly

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representatives of the entire membership of Associated Garment Industries of St. Louis, Inc.;

"(b) Manufacturers and Wholesalers Association of San Francisco, an unincorporated association, and its officers and members:

"Samuel Bohne, chairman,

"Samuel Farb, vice chairman,

"Capen A. Fleming, executive director; individually, and as the above officers, respectively, and as representatives of the entire membership of Manufacturers and Wholesalers Association of San Francisco.

"It is further stipulated that the changes necessary to effect the above substitution of parties shall be made in the record of this proceeding, and that the attorney for said substituted respondents shall and hereby does waive service of the complaint herein and notice of hearing thereon upon the said substituted respondents, and agrees that this action may proceed against them in all respects as it could have done had such substituted respondents been named in the complaint and served in the first instance. It is further agreed that all of the allegations of the complaint pertinent to the respondents for whom such substitution has been made shall be considered as relating to said substituted respondents in the same manner as though the latter had been named as respondents in the original complaint."

representative of all the members of said association, including those members not herein specifically named.

PAR. 2. Respondent Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal office and place of business located at 225 West Thirty-fourth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

Samuel L. Deitsch, president, Jacques Linker, vice president, Albert Rauch, secretary, George Jablow, treasurer, Samuel Klein, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said corporation, including those members not herein specifically named.

PAR. 3. Respondent Merchants' Ladies' Garment Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 225 West Thirty-fourth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

Gustave I. Aronow, president, Harry Appel, first vice president, Joseph L. Dubow, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondent as such officers are also made respondents as being truly reprepresentative of all the members of said association, including those members not herein specifically named.

PAR. 4. Respondent Infants' & Children's Coat Association, 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-fourth Street, New

York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

Henry Rothman, president; Max P. Sonberg, vice president; Simon A. Penzner, secretary; Morris B. Kahn, treasurer; Charles Baker, executive director.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association including those members not herein specifically named.

PAR. 5. Respondent American Cloak & Suit Manufacturers' Association, 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 450 Seventh Avenue, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein:

S. Schott, president; L. Goldspinner, vice president; A. Finkelstein, secretary; J. Krasner, treasurer; Charles M. Sussman, executive director; Benjamin Schiller, manager.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said association at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 6. Respondent Boston Cloak Manufacturers' Association is a voluntary unincorporated trade association, having its office and principal place of business located at 260 Tremont Street, Boston, Mass. The following named individuals are officers of said respondent association, and as such are designated as respondents herein:

Louis Greenberg, president; Morris Speck, vice president; Maurice Baker, treasurer; Bernard D. Rosenberg, executive secretary.

The membership of said respondent association changes from time to time by the addition and withdrawal of members, so that all of the members of said organization at any given time cannot be spe-

cifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 7. Respondent Boston Coat & Suit Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal place of business located at 75 Kneeland Street, Boston, Mass. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Seymour M. Rivitz, secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 8. Respondent Philadelphia Cloak & Suit Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal place of business located at 248 North Eleventh Street, Philadelphia, Pa. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Julius Edelson, president; S. D. Bass, secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 9. Respondent Cleveland Apparel Manufacturers Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business located at 405 Cleveland Film Ex-

change Building, Cleveland, Ohio. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: A. H. Dettelbach, president; William Printz, vice president; William Altman, vice president; S. N. Berland, secretary; N. N. Goodman, treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 10. Respondent Chicago Cloak & Suit Manufacturers Industrial Council is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business located at 110 South Dearborn Street, Chicago, Ill. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Max E. Weinstock, president.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as being truly representative of all the members of said association, including these members not herein specifically named.

PAR. 11. Respondent Associated Garment Industries of St. Louis, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 1315 Railway Exchange Building, St. Louis, Mo. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Robert Dorfmont, acting chairman; Molly Grossman, secretary-treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make

it impracticable to name them all individually as respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including those members not herein specifically named.

PAR. 12. Respondent Kansas City Garment Manufacturers Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, having its office and principal place of business located at 908 Broadway, Kansas City, Mo. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: Hyman Brand, president; E. D. Carlson, secretary; Max Morgan, treasurer.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 13. Respondent Los Angeles Coat & Suit Manufacturers' Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, having its office and principal place of business located at 846 South Broadway, Los Angeles, Calif. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: A. G. Zalkus, president; Harold O. Silbert, vice president; E. M. Hackel, secretary-treasurer; Lee Gerstein, executive secretary.

The membership of said respondent corporation changes from time to time by the addition and withdrawal of members, so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officers hereinbefore named as respondents as such officers are also made respondents as being truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 14. Respondent Manufacturers & Wholesale Association of San Francisco is a voluntary unincorporated trade association, having its principal place of business located at 74 New Montgomery Street, San Francisco, Calif. The following named individuals are officers of said association and as such are designated as respondents

herein: Samuel Bohne, chairman; Samuel Farb, vice chairman; Capen A. Fleming, executive director.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officer hereinbefore named as respondent as such officer is also made respondent as representing all the members of said association, including all those members not herein specifically named.

PAR. 15. Respondent Associated Cloak & Suit Manufacturers of Portland is a voluntary unincorporated trade association, having its office and principal place of business located at 708 Pittock Block, Portland, Oreg. The following named individual is an officer of said respondent corporation, and as such is designated as a respondent herein: Abe Eugene Rosenberg, secretary.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents herein. Therefore, the officer hereinbefore named as a respondent as such officer is also made a respondent as being truly representative of all the members of said association, including all those members not herein specifically named.

PAR. 16. Respondent members of the Recovery Board who have executed certificates of compliance with the Board, and respondent members of the corporations and associations named as respondents in paragraphs 2 to 15 above, hereinafter referred to as manufacturer respondents, are individually engaged in the manufacture, sale or distribution of the garments and merchandise described in paragraph 1 hereof, with their several shops, plants, and facilities located in many different States of the United States. Most of said individual respondents cause their said merchandise, when so sold, to be transported from the State wherein it is manufactured across State lines into or through other States. Many of said individual respondents import into the States in which their several establishments are located from other States, cloth, fabrics and materials of various kinds used in the manufacture of said merchandise. There has been and now is a continuous current of interstate trade and commerce in said raw materials between the sellers thereof and said individual respondent and in said clothing between said individual respondents and the

purchasers of such merchandise, located throughout the various States of the United States.

PAR. 17. Said manufacturer respondents are in competition with one another in the manufacture, sale, and distribution of said described merchandise in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the practices and methods of said respondents and other respondents, hereinafter set forth. There are other corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of such clothing, in the various localities and trade areas of the United States, in competition with one another and with one or more of said manufacturer respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the use of said respondents and other respondents of the practices and policies hereinafter described.

PAR. 18. Respondent International Ladies' Garment Workers' Union is an unincorporated union of workers in the garment industry, having its principal office and place of business located at 3 West Sixteenth Street, New York City. The following named individuals are officers of said respondent corporation, and as such are designated as respondents herein: David Dubinsky, president-general secretary; Luigi Antonini, first vice president; Frederick F. Umhey, executive secretary.

Said respondent Union is governed and its policies directed and controlled by a General Executive Board. The members of said board, who are likewise designated as respondents herein, are:

Morris Bialis,
Joseph Breslaw,
Max Cohen,
Anthony Cottone,
Israel Feinberg,
Harry Greenberg,
Jacob Heller,
Julius Hockman,
Abraham W. Katovsky,
Philip Kramer,
Charles Kreindler,
Louis Levy,
Isidore Nagler,
Salvatore Ninfo,
Samuel Otto,
Myer Perlstein,
Rose Pesotta,
Elias Reisberg,
George Rubin,
Samuel Shore,
Harry Wander,
Charles S. Zimmerman.

The membership of said respondent association changes from time to time by the addition and withdrawal of members so that all of the members of said corporation at any given time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impracticable to name them all as individual respondents

herein. Therefore, the officers and general executive board members hereinbefore named as respondent as such officers, and board members are also made respondents as being truly representative of all the members of said association, including all those members not herein specifically named. The membership of said respondent International Ladies' Garment Workers' Union is made up of various local unions and their members, consisting of cloak and suit workers engaged in the manufacture of the garments described in paragraph 1 hereof.

Respondents named in this paragraph have been and are engaged in certain unfair acts, practices, and methods, hereinafter described, which hinder, lessen, and restrain competition in interstate commerce in said merchandise among the other respondents and among such other respondents and their competitors not designated as respondents herein.

PAR. 19. The various organizations, other than the Recovery Board, named as respondents herein, and the individual officers and members of said organizations and of the Recovery Board, have been and are concertedly cooperating with the Recovery Board and aiding and assisting it in effectuating the purposes for which it was organized, as hereinafter stated, and in imposing its policies upon all those connected with the coat and suit industry in the United States. The volume of business done by the individual manufacturer respondents belonging to or affiliated with the Recovery Board constitutes approximately 90 percent of the trade in such merchandise throughout the United States, and in many localities it constitutes 100 percent thereof. Respondents jointly have and do dominate and control the policies, practices, terms, and conditions upon which this class of merchandise has been and is manufactured and marketed in this country.

PAR. 20. Respondent Recovery Board was organized in 1935, and has adopted and effectuated a constitution and various bylaws. The constitution divides the coat and suit industry of the country into four areas, each of which is governed as to local matters within the area of a regional board. Each regional board is composed of representatives of the manufacturers, or employer groups, including respondent manufacturer associations and corporations, and of representatives of respondent International Ladies' Garment Workers' Union. The governing body of respondent Recovery Board is designated as the national executive board, and is composed of representatives of the regional boards and of the respondents American Cloak & Suit Manufacturers Association, Inc., the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., the Merchants Ladies' Garment Association, Inc., the Infants' & Children's Coat Association, Inc., and the International Ladies' Garment Workers' Union. Under the constitution the national executive board is authorized to adopt bylaws and take whatever steps are necessary to effectuate the purposes of respondent Re-

covery Board, and it is provided in the constitution that the bylaws shall provide for the establishment and maintenance of uniform standards of fair commercial practice.

PAR. 21. Since the organization of respondent National Coat & Suit Industry Recovery Board, the respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness, and for differing periods of time, have entered into, acquiesced in, or observed various agreements and understandings to hinder and suppress competition in the interstate sale and distribution of the merchandise hereinabove referred to in the United States, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary purpose of such agreements, understandings, combinations, and conspiracies has been to control and regulate the misses', women's, children's, and infants' coat and suit industry in the United States in the interest of the respondents. To further this objective, respondents have sought to compel every coat and suit manufacturer in the country to become a member of respondent Recovery Board and to continue himself in good standing with such board. In furtherance of such objectives, respondent Recovery Board, aided and assisted by the other respondents, has imposed or attempted to impose upon all factors in the coat and suit industry, including one another, and including independent manufacturers, jobbers, wholesalers, selling agents, resident buyers and retailers, rules, regulations and requirements, hereinafter more particularly described, which were designed to bring about and which brought about various restraints and partial restraints upon the freedom of competitive action of many of such factors, and which hindered and suppressed competition in many of its phases in said industry. The nature, scope, purposes, results and effect of such agreements and conspiracies, together with the means used to effectuate the same, are hereinafter more particularly set forth.

PAR. 22. Pursuant to the said agreements and conspiracies and under its constitution, respondent Recovery Board, with the aid and cooperation of the other respondents, has adopted, promulgated, effectuated, and enforced certain so-called uniform standards of fair commercial practice, among which are the following:

It shall be deemed an unfair commercial practice for member concerns to contract to sell or to sell articles to anyone upon terms and conditions other than as are hereinafter provided.

In accordance with and pursuant to article VI of the constitution, any violation of the following shall be deemed to be unfair trade practices:

1. *Terms of discount.*—Terms of discount on seasonal merchandise shall not exceed 8 percent, 10 days, end of month, 7/10/30 end of month, 6/10/60 end of month, or net 5 days after last due date. Anticipation shall not be allowed at a rate in excess of 6 percent per annum.

2. *Consignment sales.*—No merchandise shall be sold on open order subject to return or on memorandum, consignment, or approval, nor on a guarantee of sale basis.

3. *Delivery charge.*—All sales shall be f. o. b. city of manufacture, except that city as used in this section shall mean the metropolitan area.

4. *Advertising subsidies.*—No member of the industry shall pay for any advertising which a retailer may utilize in connection with the sale of merchandise of such member of the industry.

5. *Returns.*—No return merchandise shall be accepted for credit other than for defects of manufacture, delay in delivery, or for nonconformity with order, but in no event shall such returns be accepted unless made within 5 working days of receipt.

6. *Cancellations.*—*a.* No member concern shall accept a cancellation save for failure to make delivery of garments within the time specified on the order.

b. Garments not shipped within the time specified in the order shall, nevertheless, remain on order until cancelled in writing and 3 working days of grace shall be granted for the completion of shipment after the receipt of such notice of cancellation.

7. *Cut, make, and trim.*—No member concern shall make garments from fabrics, trimmings, and/or other materials owned or supplied by a retail distributor or the agent, representative, or corporate subsidiary or affiliate of such retail distributor; nor shall he manufacture garments from fabrics, trimmings, and/or other materials, the purchase of which is made upon the credit of, or the payment for which, is guaranteed by such retail distributor, its agent, representative, corporate subsidiary, or affiliate of such retail distributor, except that manufacturers and/or contractors may make garments on the above basis for mail order firms designated as such by this body, provided that the mail order firm so designated shall designate and file with this body the number and names of the manufacturers and/or contractors actually required by them for any work and shall confine and distribute such work equitably to and among such named manufacturers and/or contractors, provided, further, that any mail order firm operating under this exception shall pay an allowance to the manufacturer and/or contractor for overhead.

8. *Incomplete garments.*—No member concern shall deliver coats to any retailer in incomplete form so that the retailer may complete the garment or attach fur thereto, nor shall any contractor or submanufacturer deliver coats to any jobber or manufacturer for completion in this manner, nor shall any jobber or manufacturer receive such incomplete garments.

9. *Group showing.*—No member concern shall submit any garments to group showings. No samples shall be left at any retail or buying office for comparison purposes.

PAR. 23. Pursuant to the said agreements and conspiracies, respondents have adhered to and made effective through cooperation and concerted action the following provisions of the constitution of the respondent Recovery Board:

All garments manufactured or distributed by members of this body shall bear a label of the Recovery Board to signify to purchasers of said garments the conditions under which they are manufactured.

Each label shall bear a registration number especially assigned to each member concern by the national executive board of the coat and suit industry.

The national executive board shall establish rules and regulations and set up appropriate machinery for the issuance of the label and the inspection, examination, and supervision of the practices of member concerns, using such labels in observing the provisions of this body, for the purpose of ascertaining the right of said member concern to the continued use of said label and of insuring to such individual member concern that the symbolism of such label will be maintained by virtue of the compliance with the practices herein contained by all other member concerns using such labels.

The charge to member concerns for such label shall not exceed an amount to defray actual cost of the label and the cost of maintaining this body and of the regional boards.

Pursuant to said agreements and conspiracies, respondent International Ladies' Garment Workers' Union has followed a policy, in agreement with the other respondents, of not permitting its members to work on any garment in the process of manufacture unless such garment was to bear, and did bear, when completed, one of the above-mentioned labels. The respondents by cooperative and concerted action have coerced and compelled recalcitrant members of respondent manufacturer associations, together with numerous independent coat and suit manufacturers not affiliated with or members of said respondent associations and not theretofore members of respondent Recovery Board, to purchase said labels from respondent Recovery Board and to attach them to all garments manufactured and sold by said manufacturers. Respondent Recovery Board pursued a policy of requiring manufacturers to agree to abide by the constitution and bylaws, including the above-described rules of fair commercial practice, of said Recovery Board, as a prerequisite to securing such labels.

By the means above outlined, respondent Recovery Board has sold many millions of said labels each year since 1935, and has exacted payments therefor from coat and suit manufacturers amounting to several hundred thousand dollars per annum. In addition, said respondent has imposed upon such manufacturers an additional expense of several hundred thousand dollars, representing the cost of attaching said labels to the garments manufactured for sale and distribution by such manufacturers.

PAR. 24. It is customary for most manufacturers of coats and suits to manufacture garments of various grades and to price the various grades for sale to retailers at a usual price level for each grade. As a result, there are and have been in the trade certain classifications of garments based upon the diverse prices at which each classification is sold by the manufacturers. For example, prior to 1937, garments selling at $10.75 each represented a well-known and firmly established price level in the industry. Pursuant to said agreements and conspiracies, respondents, about 1937, acting through respondent

Recovery Board, increased some of said price levels to the extent of $1 for each level and established and fixed a new price level at the increased figure. At the same time and in connection with such increase in the various price levels, respondents established and fixed the maximum amounts which coat and suit manufacturers were permitted to pay for cloth to be made into coats and suits selling at each price level and the maximum permissible cost of all materials required for garments in each classification.

PAR. 25. To effectuate said conspiracy, agreements, and understandings and to attain the ends thereof, said respondent Recovery Board, respondent manufacturer associations and their members and respondent labor union, acting concertedly and cooperatively, have done the following things, among others:

1. Adopted, effectuated, and enforced the above-mentioned so-called uniform standards of fair commercial practice and pricing policies.

2. Set up, under the constitution of said Recovery Board, committees, groups, and officials to enforce the terms and provisions of respondents' said program and agreements, and to discipline and penalize violators thereof.

3. Coerced coat and suit manufacturers into signing agreements to observe the constitution, bylaws, and so-called rules of fair commercial practice, adopted and to be adopted by respondent Recovery Board.

4. Coerced coat and suit manufacturers into agreeing to pay and paying charges set by respondent Recovery Board for the above-described labels, and into agreeing to attach such labels to all garments manufactured and distributed by them.

5. Coerced coat and suit manufacturers into agreeing to submit and submitting to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by respondent Recovery Board to enable it to ascertain whether its constitution and bylaws were being observed and complied with.

6. Pursued a policy of investigating all complaints and information received relating to alleged violations of the requirements of respondents' said program and of respondent Recovery Board's so-called standards of fair commercial practices; of coercing such alleged violators into conforming to such requirements and practices; of publishing the names of recalcitrant members or others engaged in the industry, who failed or refused to submit to such coercion; of summoning such alleged violators to hearings before representatives of respondent Recovery Board, and of penalizing them by levying fines and assessments upon them, and by other means.

7. Pursued a policy of investigating business disputes between coat and suit manufacturers and retailer customers; of investigating the business methods and conduct of particular retailers; and of compil-

ing and publishing lists of retailers whose methods or conduct was considered to be unsatisfactory or inconsistent with the requirements of respondents' said so-called standards of fair commercial practices.

8. Placed unreasonable restrictions around the business relationships between coat and suit manufacturers and contractors and submanufacturers, and in many cases prevented contractual relations among them.

9. Respondents, during the period herein mentioned, have done and performed many other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally upon those engaged in the manufacture, sale, and distribution of said merchandise in the United States.

PAR. 26. The capacity, tendency, and effect of the aforesaid agreements and conspiracies and the policies, practices, and the acts and things done and performed by respondents in pursuance thereof are and have been:

1. To tend to monopolize in respondent manufacturers the business of manufacturing and of selling and distributing the above-described merchandise in most of the trade areas of the United States.

2. To tend to monopolize in respondent manufacturers the opportunity to secure skilled labor for the manufacture of such garments.

3. To establish, fix, and maintain prices, discounts and various terms and conditions attending the sale of such merchandise in all parts of the country.

4. To unreasonably lessen, suppress, and restrain competition in the sale of said merchandise throughout the United States and in the District of Columbia, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantages of price, terms, and conditions of sale, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To suppress, discriminate against, and eliminate contractors, submanufacturers and small manufacturers who are or have been engaged in, or who desire to engage in, the manufacture and sale of said merchandise.

6. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said merchandise from, into, and through the various States of the United States and the District of Columbia.

PAR. 27. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tend-

ency to hinder and prevent, and have actually hindered and prevented competition between and among said manufacturers in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; and placed in the member respondents power to control and enhance prices and other terms and conditions in connection with the manufacture and sale of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on for further consideration by the Commission upon its own motion; and

It appearing that the complaint originating the proceeding was issued September 26, 1941, and that the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions which differed materially from those now prevailing; and

It further appearing that the record on which the case was submitted for decision is deficient in a number of respects, and that a correction of the deficiencies would involve a reopening of the proceeding and probably the receipt of substantial additional evidence, all at considerable expense to the Commission and to the respondents; and

The Commission being of the opinion that the public interest will be better served by a dismissal of the complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Andrew B. Duvall* and *Mr. Webster Ballinger*, trial examiners.

Mr. George W. Williams for the Commission.

Mr. Milton J. Levy, *Klein & Weinberger*, *Goldwater & Flynn*, *Mr. Max H. Zuckerman*, *Mr. Emil Schlesinger* and *Willkie, Owen, Farr, Gallagher & Walton*, of New York City, and *Mr. Max Uviller*, of Brooklyn, N. Y., for respondents.

THE PROCTER & GAMBLE CO. Complaint, April 2, 1943. Order, December 4, 1950. (Docket 4937.)

Charge: Advertising falsely or misleadingly as to comparative merits, competitive products, qualities, properties or results, safety and scientific or relevant facts, and disparaging or misrepresenting competitors or their products as to qualities, properties, or results and safety of products; in connection with the manufacture and sale of a liquid dentifrice designated as "Teel."

COMPLAINT:[1] 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 The Procter and Gamble Co., a corporation, hereinafter referred to as the 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office and place of busines located in Cincinnati, Ohio.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture and sale of a liquid dentifrice designated as "Teel." Said dentifrice is a solution of glycerine, sugar, alcohol, water, and sodium alkyl sulphate, together with coloring, flavoring, and thickening agents. Its principal cleansing ingredient is sodium alkyl sulphate, which is a sulphated higher alcohol having detergent qualities similar to those of soap. "Teel" is advertised, sold, and offered for sale by respondent for daily home use as a dentifrice to be used with a toothbrush in the cleaning of teeth.

In the course and conduct of its business, the respondent causes said product, when sold, to be transported from its place of business in the State of Ohio to the purchasers thereof located in various 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 said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, during the times mentioned herein, has been

[1] The Commission on July 21, 1943, issued an order amending complaint, as follows:

"This matter coming on to be heard by the Commission upon the motion of Richard P. Whiteley, assistant chief counsel, and Merle P. Lyon, trial attorney, that the complaint in this proceeding be amended by inserting the word 'The' before the corporate name of the respondent wherever it appears in the complaint, and that the answer heretofore filed to the complaint stand as answer to the amended complaint, and it appearing that the correct name of the respondent is 'The Procter & Gamble Co.,' and the Commission having duly considered the matter, and being now fully advised in the premises;

"It is ordered, That the complaint herein be amended by inserting the word 'The' before the corporate name of the respondent wherever it appears in the complaint.

"It is further ordered, That the answer filed herein on May 15, 1943, stand as answer of the respondent to the complaint, as amended."

and is now in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of tooth powders and tooth pastes intended and used for cleansing teeth, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, and pamphlets, by means of radio continuities and other advertising literature, are the following:

Scientific research has proved that this damage to teeth is caused by regular brushing with dentifrices containing abrasives. Recent clinical studies show that 8 out of 10 adults examined risk this tooth injury because the softer part of one or more teeth is left exposed with no hard enamel to protect it. This exposure is usually due to shrinking gums—a condition which becomes more serious as time goes on. Every dentifrice tested containing an abrasive will gradually cut cavities in this softer part of teeth. You can avoid this serious trouble by changing to Teel Liquid Dentifrice because it contains absolutely no abrasives of any kind.

Scientific Tests Show How Amazing New Liquid For Brushing Teeth Avoids This Injury. Millions are Risking This Injury to Their Teeth—Be Safe! Brush your Teeth The Liquid Way! New Liquid Dentifrice Cannot Injure Teeth—Contains Absolutely No Abrasives. Yes, literally millions of people are unknowingly causing serious damage to their teeth which Nature can never repair. This injury is caused—not by the tooth brush itself—but by regular brushing with dentifrices containing abrasives. Gradually as the months go by, these abrasives cut cavities into the soft part of teeth along the gum line exposed by shrinking gums, where there is no hard, protective enamel. In fact, among people who brush their teeth regularly, a very large percentage of all cavities along the gum line that require filling are probably the result of this injury. These startling facts—long known to many dentists—were recently confirmed by scientific research. Eminent independent scientists made laboratory tooth-brushing tests with a number of dentifrices containing abrasives. Every one cut cavities into the soft part of the teeth.

Millions of People Are Slowly Brushing Cavities in the Exposed Softer Parts of Their Teeth.

(Enlarged Photo of Three-Pronged Molar Tooth with Groove in Side) illustrating injury When Soft Part of Tooth is Exposed. 8 out 10 Adults Examined Risk this Damage. Naturally, you want to save your precious teeth from the injury pictured above. Liquid Dentifrice—because it contains no abrasives—cannot do this to your teeth.

See that cavity? Brushing did it. Serious Injuries Disclosed! Reporting on studies at leading research foundation clinic, a recognized dental authority says that of all patients regularly using tooth pastes or powders, 58 percent had actually brushed cavities into softer parts of teeth exposed by receding gums, and also that—8 out of 10 run this risk constantly.

Millions Abuse Teeth Right While They Try to Clean Them! New Safe Teel Way—Only One Extra Minute a Week! Teel Brightens Safely! You may be destroying your beauty—without even knowing it! In fact, according to dental research, the chances may be 8 in 10 you're inviting ugly cavities that may need filling. Most adults have receded gums—exposing softer parts of teeth. Gradually, cavities are worn in these soft parts by the abrasives in popular dentifrices. But—Teel protects teeth because it contains no abrasives. And—note particularly—Teel is the Only Leading Dentifrice That Contains No Abrasives. The new Teel way reveals sparkling beauty *fast*—makes your teeth look their loveliest. So refreshing too! So easy to use! Simply brush with Teel twice daily—then for one extra minute a week brush with Teel and plain baking soda. Get Teel Today. There's beauty in every drop.

HOW TO END this Important cause of TOOTH INJURY. Stop cutting cavities like this in your teeth by changing to liquid dentifrice—it cleans teeth utterly without abrasives.

Save Your Teeth From This Injury by Changing to Liquid Dentifrice—it beautifies teeth without abrasives.

Yes, it's Scientific Fact! Abrasives contained in dentifrices are causing millions of people to slowly injure their teeth. These abrasives consist of tiny, insoluble particles so small that you can't see or feel them. Yet they are so hard that, as you brush them back and forth, they gradually wear away the softer part of your teeth whenever this part is exposed by shrinking gums. You can save your teeth from this appalling injury simply by changing to the revolutionary new liquid dentifrice—Teel.

New Wonder-Liquid takes place of Tooth Paste and Powders . . . Cleans Teeth Safely.

Make This Test—it reveals any abrasive in your dentifrice. Tonight, put some of your regular dentifrice in a glass of water and stir thoroughly. Let it stand overnight. When you see a white sediment in the bottom of the glass, you know your dentifrice contains an abrasive. Teel, however, leaves no sediment, proving it contains no abrasives which could injure exposed, softer parts of your teeth along the gum line.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented and now represents, directly and by implication, that most of the popular tooth pastes and tooth powders contain abrasives and in the course of normal use cut cavities which require filling in the softer portions of the tooth structure exposed by receding gums; that abrasion caused by the use of such tooth pastes and powders is one of the most common causes of dental cavities along the gum line

which require filling; that a large proportion of the public are constantly exposing their teeth to serious damage and injury through the use of the tooth pastes and powders generally sold and used for tooth cleaning purposes; that Teel is a revolutionary discovery in dental science, cleans teeth "utterly" or to the highest degree, is a complete and satisfactory substitute for the popular brands of tooth pastes and powders; and that the insolubility, in water, of the ingredients in tooth pastes and powders is evidence of the presence of harmful abrasives.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, while most dentifrices in common use contain abrasives, they do not as normally and customarily used, cut cavities, which require filling, in any portion of the tooth structure. Abrasion arising through the use of the popular brands of tooth pastes and powders does not commonly cause dental cavities which require filling, and no large proportion of the public expose their teeth to serious damage or injury by the use of tooth pastes and powders in popular use. Respondent's product is not a revolutionary discovery in dental science as liquid dentifrices possessing similar properties have been on the market for many years. Said product does not and cannot clean teeth "utterly" or to the highest degree as it cannot be depended upon to prevent the depositions of stains and mucin plaques on the teeth. It is not a complete and satisfactory substitute for tooth pastes and powders in common use since, having no abrasive qualities, it cannot as effectively clean teeth and is inferior as a cleansing and polishing agent to many of the popular brands of tooth pastes and powders on the market Furthermore, the use of said product permits discoloration of the teeth, which can only be removed by a substance having abrasive qualities. It is not possible to determine whether a dentifrice contains harmful abrasives by means of the solubility test advocated by respondent. Practically all tooth pastes and tooth powders contain insoluble matter, but whether this matter is of such a nature as to be harmful by abrasive cannot be disclosed by this test and such test has no relation to, and is no satisfactory proof of, the superiority of respondent's product as compared with competitive tooth pastes and powders. In truth and in fact, a mild abrasive such as is contained in most tooth pastes and powders is desirable and necessary as an ingredient in a satisfactory and effective dentifrice.

The aforesaid statements contained in respondent's advertisements are not only false, misleading, and deceptive to the purchasing public, but unfairly defame and disparage the products of respondent's competitors in that it is represented that most widely sold and used tooth

pastes and tooth powders are harmful to the teeth, and are unsafe and dangerous to use, when such is not the fact.

PAR. 7. The use by the respondent of the foregoing false, misleading, deceptive, and disparaging representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's product because of such erroneous and mistaken belief. As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 8. 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, requesting that this case be closed without prejudice to the right of the Commission to reopen the same and to take such further action in connection therewith at any time in the future as may be warranted; and

It appearing from the record that the complaint charges the respondent with having disseminated in advertising a number of false and deceptive statements and representations concerning its liquid dentifrice designated "Teel;" and

It further appearing from the aforesaid motion and from the affidavit attached thereto that the respondent by 1946 had discontinued the use of most of said advertising statements and representations, and that since October 1949 the preparation Teel has not been advertised at all; and

It further appearing that the respondent has disclaimed any intention of ever again using any of the challenged advertising representations in promoting the sale of Teel or any similar preparation, and has further stated that any future advertising which refers to the cleansing qualities of any such product will indicate prominently and plainly that said product should be supplemented by the use of soda or other abrasive material; and

The Commission being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right

of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. J. E. Cox* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph Callaway for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

JOSEPH A. KOVAC AND LUCILLE R. KOVAC, INDIVIDUALLY AND AS TRUSTEE FOR ELISE M. KOVAC AND JUDITH A. KOVAC DOING BUSINESS AS PURITY BRAND PRODUCTS, INC., ETC. Complaint, April 13, 1949.[1] Order, December 4, 1950. (Docket 5476.)

Charge: Advertising falsely or misleadingly and misrepresenting business status, advantages, or connections as to business being a Nation-wide wholesale or jobbing business; as to prices being wholesale; and as to proceeds of local operations and projects going entirely to the patriotic, or religious, or public welfare of the local organizations; in connection with the sale of merchandise, consisting of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations.

AMENDED COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Joseph A. Kovac, individually, and Lucille R. Kovac, individually and as trustee for Elise M. Kovac and Judith A. Kovac, partners doing business as Purity Products and Purity Brand Products, Inc., 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Purity Products is the name and style of a partnership composed of Joseph A. Kovac, individually, and Lucille R. Kovac, individually and as trustee for Elise M. Kovac and Judith A. Kovac, with their principal place of business at 130 North Wells Street, Chicago, Ill. As such partners, respondents, since about September 12, 1942, have been engaged in the business of selling merchandise, consisting of flavoring extracts, cosmetics, silver polish, furniture polish, and other household preparations, to religious, patriotic, charitable, and similar societies and organizations, for resale to the public, under the plan and by the methods hereinafter set forth.

Respondent Purity Brand Products, Inc., is a corporation organized April 17, 1946, under, and now exists by virtue of the laws of the State of Illinois with its principal office and place of business at 17

[1] Amended.

North Wabash Avenue, Chicago, in said State. Marion M. Koenigs is its president, whose address is Bismarck Hotel, Chicago, Ill. Otto Donath is its vice president and treasurer, whose address is 4333 West Armitage, Chicago, Ill., and Thomas Riordan is its secretary, whose address is 10059 Damen Ave., Chicago, Ill.

The individual respondents named as members of respondent partnership own and control all the capital stock of respondent corporation and actively participate in the control of respondent corporation, in the election of its directors and officers and control of its policies and practices. The president and treasurer of respondent hereinabove named, were formerly employees of respondent partnership during the time it operated the business as hereinafter set forth.

Pursuant to the sales set forth in paragraph 1 and as a part thereof, respondents ship and cause to be shipped, and have shipped and have caused to be shipped, such merchandise from their said places of business, and from the respective places of business of various manufacturers from whom they purchase said merchandise, to the purchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

PAR. 2. By means of the popular and emotional appeal thereby obtained, respondents contact and select, and have contacted and selected, various patriotic, charitable, civic, and religious organizations in cities and towns throughout the States of the United States as instrumentalities through which, and as fronts by means of which, they sell and have sold their various products to members of the consuming or purchasing public, principally housewives living in said cities and towns of the various States of the United States. Among the organizations so contacted and so selected to sell respondent's products are Veterans of Foreign Wars, American Legion Post Auxiliaries, Spanish American War Veterans, Home Service Clubs, Service Star Legions, and others. Underlying the entire sales plan of respondents is the basic approach that the entire proceeds derived from the sale of products go to war veterans, charity, and other similar worthy causes.

Respondents' plan of sale is and has been as follows: Respondents place "distributors" in charge of defined areas or "regions." It is the duty of a distributor, among other things, to promote markets for and supervise the marketing of respondents' merchandise and to select and train sufficient supervisors of sales campaigns to supply respondents' need for same as hereinafter set forth. Respondents designate their customers as "campaigners," and they will be hereinafter so referred to.

An organization desiring to conduct a "campaign" enters into an agreement with respondents, on a printed form furnished by respondents, consisting of an offer by respondents, which the campaigner

accepts by signing, to sell the campaigner sufficient merchandise to conduct a designated sales campaign. One form of the agreement sometimes used provides that if the campaigner will (a) hire an experienced person to conduct the sales campaign, one who has proven reliable, competent and successful in the conduct of similar campaigns for others, and (b) give that person genuine cooperation and support, respondents will guarantee that the campaigner's net profit on Purity Brand Products will be not less than at the rate of $11 for each one hundred (100) units (proportionately for fractions of 100 units) of merchandise sold by the campaigner. The campaigner is given the option of foregoing conditions (a) and (b), but in that event the net profit guarantee does not apply and respondent will forward price quotations prior to the start of your sales campaign. The campaigner indicates in its acceptance whether it accepts with or without the guarantee, and whether it wants respondents to recommend a campaign sales supervisor. This form does not quote the prices at which respondents will sell to the campaigner but gives the campaigner the "assurance that our prices will be then reasonable and competitive."

In another form of this agreement sometimes used, the profits guaranteed and the matter of prices at which respondents will sell to the campaigner are covered as follows: "If you will (a) hire a person we can recommend to take complete charge of your campaign—one who has proven competent, reliable and successful in conducting campaigns for others, (b) give that person full authority and your genuine cooperation and support, (c) adhere to the retail prices found effectual in other similar campaigns, and (d) retail none but merchandise purchased from us, we will sell you at 50 percent of those retail prices and guarantee your net profit will be not less than 10 percent of the gross receipts of your campaign. If less, we will make up the deficiency. If more, the excess over this 10 percent will also be yours. We are moved to make this generous proposal by your statement that your profits from this campaign will be used for ----------, that the public will be so informed, * * *."

The next step is an agreement between the campaigner and a supervisor recommended by respondents, which agreement is on a printed form furnished by respondents. One copy of this agreement goes to respondents. The supervisor, usually a woman, undertakes to "assume full charge of all phases" of the campaign and, among other things, arranges for effectual means of selling contact with customer prospects, selects and trains sales and delivery personnel, makes the selections and types and items of merchandise to be sold, makes the purchases thereof, maintains adequate stocks and establishes the retail prices at which goods are to be sold, handles all financial details, and further undertakes "if need be to advance supervisor's own funds in

connection with the foregoing duties. Among other things, the campaigner agrees to refrain from interference or dictation as to the merchandising, selling and delivery methods or mediums or prices chosen by the supervisor so long as they are not violative of the spirit and intent of this agreement or violative of the law. As compensation, the supervisor is to receive $2.50 for each full day devoted by the supervisor to actual selling * * * plus a sum equal to 10 percent of the retail price of each item of merchandise sold during that campaign. The supervisor is authorized to withhold her compensation from the proceeds of each sale as made.

PAR. 3. In actual practice, the supervisors are under the control of the distributors for their regions and of the respondents by reason of their dependence upon the recommendation of respondents for their employment as supervisors and by reason of additional compensation received from respondents as hereinafter set out. The supervisor takes full charge of the campaign; orders all merchandise for the sales campaign, receives it, collect-on-delivery, and pays the amount thereof; employs and trains all local sales people; fixes the retail selling price as directed by respondents through their distributors; incurs and settles all expenses of the sales campaign; disseminates all advertising and other publicity in the name of the campaigner, in form and substance as prepared and furnished by respondents. This advertising and other publicity represents that all profits of the campaign are to be used for the welfare, patriotic and other public purposes of the campaigner.

The price to the campaigner is always at the rate of $0.55 per unit, and the retail price of the merchandise is always $1.10 per unit. When the supervisor orders merchandise from the factory or other source of supply for a sales campaign, it is shipped to the campaigner collect-on-delivery, "care" the supervisor and, by direction of respondents, invoiced to the campaigner at the rate of $0.55 per unit. The carrier is directed by the shipper, upon the authority of the respondents, to deliver it to the supervisor at a discount from the invoice, which discount varies with different supervisors. The supervisor collects the full amount of the invoice from the campaigner, and the difference between the amount she pays to take up the c. o. d. shipment and the amount of the invoice she collects from the campaigner constitutes secret compensation from the respondents in addition to the compensation she receives from the campaigner. The amount of the invoice less the supervisor's discount is remitted to respondents.

The prices which the manufacturer charges respondents for the merchandise are their usual prices to wholesalers or jobbers. The price at which the merchandise is invoiced to the campaigner constitutes a markup of from more than 200 percent to more than 870

percent, depending upon the product, on the price respondents pay the manufacturer. The usual markup by wholesalers and jobbers to the retailer on merchandise of this character and quality is between 10 percent and 40 percent.

PAR. 4. In their advertising to and contacts with prospective customers, respondents represent to them and lead them to believe that they are a large, national wholesale concern; that they have branches with warehouses as follows: Eastern Coast Office at New York City; Southeastern Office at Atlanta, Ga.; Pacific Coast Office at Los Angeles, Calif.; and Southwestern Office at Oklahoma City, Okla.; and that the prices charged the campaigner are wholesale prices.

PAR. 5. In truth and in fact, respondents' only business as hereinabove described, is with religious, patriotic, charitable and similar organizations, usually composed of and directed by women of little business experience. Respondents maintain no branch offices, and their so-called branch offices and warehouses are but the places of business of the manufacturers and other suppliers of the merchandise handled by them. The prices at which respondents sell campaigners are not wholesale prices but are many times the usual wholesale prices customarily charged for merchandise of the same quality and character, and the retail price fixed by the supervisor and at which the merchandise is sold to the public is many times, up to over 700 percent, more than the usual retail selling price of merchandise of similar kind and quality. Only a small part of the real profits from the sale go to the campaigner's purposes.

PAR. 6. In the manner and by the means hereinabove set forth, the respondents mislead their customers into the false belief that their business is a Nation-wide wholesale or jobbing business and that they sell their customers at wholesale prices, and mislead their customers and the purchasing public into the false belief that all proceeds from sales go to the patriotic or religious or public welfare of the local organizations.

PAR. 7. The representations, acts and practices of the respondents, as hereinabove set forth, are prejudicial to the public and constitute the use by respondents of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission in regular course upon the amended complaint, answer of the respondents, testimony and other evidence, recommended decision of the trial examiner with exceptions thereto, and briefs and oral argument of counsel.

The amended complaint herein charges the respondents with the use of unfair and deceptive acts and practices in commerce in connec-

tion with the offering for sale, sale, and distribution of their merchandise through false and misleading representations that their business is a Nation-wide wholesale or jobbing business; that the prices at which they sell are wholesale prices; and that all proceeds from sales go to patriotic, religious, or public welfare organizations.

The Commission having duly considered the matter and it appearing that the charges in the amended complaint with respect to respondents' sales plan or method of sale are not sustained by the evidence in the record, and that there is insufficient public interest in the charge in the amended complaint pertaining to the respondents' representations that they have warehouses or branch offices in various cities other than Chicago, Ill., to warrant corrective action solely on this charge, particularly since such representations appear to have been made only on stationery and invoices not coming to the attention of customers until after contracts had been executed:

It is ordered, That the amended complaint herein be, and the same hereby is dismissed.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Edward F. Downs for the Commission.

Riordan, Linklater & Butler and *Mr. Henry Junge*, of Chicago, Ill., for respondents.

CASIMIRO MUOJO, TRADING AS ALVI CO. AND AS ALVI, INC. Complaint, April 5, 1941. Original findings and order, August 7, 1941. 33 F. T. C. 935. (Docket 4484.) Order reopening proceeding and setting aside, etc., December 29, 1950.[1]

Charge: Advertising falsely or misleadingly as to composition, qualities, properties or results and safety of product and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of a certain hair dye cosmetic, variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," "Vitale Rapid," "Vitale Hair Coloring," "Vitale Hair Dye," and as "Vitale."

Order reopening proceedings and setting aside findings as to the facts, conclusion and order to cease and desist follows:

This matter coming on to be heard by the Commission upon a motion filed April 20, 1950, by a member of the Commission's trial staff, requesting that this proceeding be reopened and that the order to cease and desist issued herein on August 7, 1941, be modified, which said motion was concurred in by the respondent; and

It appearing from the motion and from the record that the Commission, in its findings as to the facts, found, among other things, that the respondent's advertisements concerning his hair dye prep-

[1] See modified findings at p. 769.

aration variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," "Vitale Rapid," "Vitale Hair Coloring," "Vitale Hair Dye," and as "Vitale," constituted false advertisements because of their failure to reveal that said preparation, when applied to the skin or to the face and head, is potentially dangerous by reason of its paraphenylenediamine content; and

It further appearing that on the basis of said findings as to the facts the Commission, in its order to cease and desist, prohibited, among other things, the dissemination by the respondent of any advertisement of the aforesaid preparation which fails to reveal the potential dangers thereof, with the proviso that advertisements relating to said preparation need contain only the statement "Caution: Use only as directed on label" if and when the label contains warnings of said dangers and adequate directions for preliminary tests; and

It further appearing that since the date of issuance of said order to cease and desist the Commission's policy with respect to the necessity of requiring disclosure of the potential dangers of coal tar hair dye preparations of the "para" type has been changed so that the respondent would not now be required to reveal in advertising the potential dangers of his hair dye preparation if the label thereon bears the statement:

> Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. The product must not be used for dyeing the eyelashes and eyebrows; to do so may cause blindness.

and if the accompanying labeling bears adequate directions for such preliminary testing before each such application; and

It further appearing that the label on the container in which the respondent's preparation is sold does bear such a statement and that the accompanying directions are in all respects adequate to enable purchasers of the preparation to make the preliminary tests referred to in said statement; and

The Commission being of the opinion that in the circumstances it will be in the public interest for this proceeding to be reopened for the purpose of modifying its findings as to the facts and order to cease and desist to make them conform with the Commission's present policy:

It is ordered, That this proceeding be, and it hereby is, reopened for such purpose.

It is further ordered, That the Commission's findings as to the facts, conclusion, and order to cease and desist issued herein on August 7, 1941, be, and they hereby are, set aside.

Mr. B. G. Wilson for the Commission.

Mr. Alfred C. Ditolla, of New York City, for respondent.

UNITED ARTISTS CORP., EDWARD C. RAFTERY, MARY ROGERS, BETTER KNOWN AS MARY PICKFORD, CHARLES CHAPLIN, AND DAVID SELZNICK. Complaint, June 11, 1947. Order, December 29, 1950. (Docket 5500.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to subsequent condensation or abridgement of original production; in connection with the continued advertisement, exploitation, and sale of the complete motion picture "The Life and Death of Colonel Blimp."

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 United Artists Corporation, a corporation, Edward Raftery, individually and as president of said corporation, and Mary Rogers, better known as Mary Pickford, Charles Chaplin, and David O. Selznick, individually and as controlling stockholders in said corporation, 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. Respondent United Artists Corp., hereinafter referred to as respondent corporation, is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 729 Seventh Avenue, New York, N. Y.

Respondent Edward C. Raftery, is now, and at all times hereinafter mentioned has been, the president and general manager of respondent corporation, with his business address at 152 West Forty-second Street, New York, N. Y.

Respondents Mary Rogers, better known as Mary Pickford, Charles Chaplin, and David O. Selznick, whose respective places of residence are at Beverly Hills, Calif., constitute and have constituted substantially all the stockholders in respondent corporation and, acting in conjunction and cooperation with individual respondent Edward C. Raftery, direct and have directed the activities of respondent corporation and formulate and control, and have formulated and controlled, its policies, practices and affairs, including the advertising representations made in connection therewith.

PAR. 2. Respondents have been and are engaged in the business of distributing motion picture films. Such distribution is and has been carried on by respondents entering into contracts with motion picture exhibitors whereby, for a consideration, respondents "lease" picture films to exhibitors for showing in their respective theaters over a specified period. Pursuant to such contracts, the said films are shipped from respondent corporation's place of business in New York to its various branch offices, of which there are some 26, located in various

cities of the United States, for delivery to those exhibitors who have contracted for the showing of said films, who are located in the territories which the respective branch offices serve. In many instances the contracting exhibitors are located in States other than the State of New York and other than the State of the location of the branch offices from which said exhibitors receive delivery.

PAR. 3. In the course of their said business and for the purpose of inducing exhibitors to enter into contracts for the showing of such films, and for the purpose of inducing the public to patronize the theaters which show such films, respondents advertise and have advertised the said films by various means and through various media.

The first step, or one of the first steps, in advertising a film is its "premiere" showing, to which are invited, among others, critics and reviewers and representatives of motion picture magazines and other publications connected with and featuring matters of interest to exhibitors and to the motion-picture-going public, including representatives of the metropolitan daily newspapers. Further publicity is given the film by the National Board of Review of Motion Pictures, Inc., an independent, citizen organization claiming to represent the interests of the motion picture public. Said organization reviews films and disseminates information about selected pictures in advance of their general showing to the public. Its reviews and recommendations appear in various publications.

PAR. 4. In November 1944, respondents entered into a 5-year contract with General Film Distributors, Ltd., of Westminster, London, England, for the distribution by respondents in the United States of a British motion picture entitled "The Life and Death of Colonel Blimp," a story carrying the British Colonel Blimp through the Boer War and the First and Second World Wars. As produced and exhibited in England the said picture had a film length of about 14,676 feet, consuming about 2 hours and 30 minutes in the showing thereof.

Following the execution of the contract above mentioned, respondents put this picture through the usual publicity routine, had a premiere showing at which were invited representatives of the press who would give it publicity. The picture received almost universally favorable comment, which comments were collected and compiled and disseminated through various advertising media employed by respondents. By June 1945 respondents had obtained some six thousand contracts for the showing of said picture and about half of them had been "played off."

PAR. 5. About October 1945, without disclosing that such changes were being made, respondents cut out various portions of the film,

reducing its original length of approximately 14,700 feet, with a running time of 2½ hours, to a length of approximately 8,400 feet, with a running time of approximately 1½ hours, thereby substantially and materially changing the film and the story it carried. Thereafter respondents nevertheless continued to advertise and distribute the film without any announcement of the above-mentioned change and used in advertising the said cut and deleted film the highly favorable and laudatory comments which were contained in reviews originally made and disseminated of and concerning the complete original film.

PAR. 6. The aforesaid representations and implications made by respondents in connection with their failure to publicly announce and to reveal in their advertising material and other publicity that the film had been materially shortened and changed, as hereinbefore alleged, and the continued use by respondents of advertising material, comments and reviews made of and concerning the complete picture as originally produced, has had and does have the capacity and tendency to mislead and has misled exhibitors and members of the public into the erroneous and mistaken belief that said representations and implications so made and induced were and are true, and that the materially shortened and curtailed issue of the motion picture, "The Life and Death of Colonel Blimp" was and is the original, complete, full length picture of that name, when in truth and in fact, the picture so advertised, represented and described is a materially revised, shortened and abridged production of the said complete original picture.

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

Record closed without prejudice by the following order:

This matter having come on to be heard by the Commission upon the joint motion of counsel supporting the complaint and counsel for the respondents to close the case growing out of the complaint herein, without prejudice to the right of the Commission to reopen the case or to take such action as future facts may warrant; and

It appearing to the Commission from said motion and the record herein that the respondents have voluntarily discontinued the acts and practices alleged in the complaint to be in violation of the Federal Trade Commission Act, with no apparent likelihood of a resumption thereof; and that there is insufficient public interest in the subject matter of the complaint to warrant a continuation of the proceeding:

It is ordered, That the case be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should future facts warrant such action.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Edward F. Downs for the Commission.

O'Brien, Driscoll, Raftery & Lawler, of New York City, for respondents.

Mr. Richard Hungate, of Culver City, Calif., also appeared for David O. Selznick.

WILLIAM E. MOORE AND HARRY J. RICKERT. Complaint, August 16, 1949. Order, January 5, 1951. (Docket 5690.)

CHARGE: Misrepresenting directly or orally by self or representatives as to special or reduced prices, quality, value, preparation of product, terms and conditions, and sample, offer or order conformance, coercing dealing, failing to make material disclosures, and assuming or using misleading trade or corporate name as to individuals owning, operating, or controlling art studios; in connection with the sale of colored enlargements of photographs and frames and glasses therefor.

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 William E. Moore and Harry J. Rickert, 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, William E. Moore, for some years prior to about January 1, 1948, traded and did business as an individual under the name of Imperial Art Co. with his business address at 411 Washington Trust Building, 529 Fifth Avenue, Pittsburgh, Pa. His present residence and mailing address is 210 Good Drive, Perrysville, Pa.

Respondent, Harry J. Rickert, prior to about January 1, 1948, traded and did business as an individual under the name of Rickert Art Co. with his place of business located at 6 East North Avenue, Room 6, Pittsburgh, Pa. His present mailing address is the same.

Since about January 1, 1948, the said respondents have traded and done business as individuals in a joint enterprise under the name of Rickert Art Co. with their place of business located at 6 East North Avenue, Room 6, Pittsburgh, Pa.

PAR. 2. Respondents during all of the times mentioned in paragraph 1 hereof were engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs and frames and glasses therefor. Respondents caused their said products, when sold, to be transported from the State of Pennsylvania to purchasers thereof located in various other States of the United States and said respond-

ents maintained a course of trade in said products, in commerce, between and among the various States of the United States.

PAR. 3. Respondents' products are sold by means of house-to-house solicitation and they have adopted and put into use a sales plan or method as follows:

(*a*) Respondents, and their duly authorized agents, when calling upon prospective purchasers, state that they are offering hand-painting enlargements of photographs for the special or reduced prices of $3.98 or $2.98 and inquire if the prospective customer does not have a photograph which he or she wishes to have enlarged and hand painted. In some instances respondents and their agents exhibit enlarged colored pictures as illustrative of the type of work done and state that if an enlargement is purchased it will be of the same quality as the samples exhibited. If a purchase is made, a part or all of the purchase price is collected and a receipt or certificate given. Respondents and their agents state that the photograph which is to be enlarged will be returned in good condition together with the enlargement in 3 weeks or a month and that another agent will call in a short time with the enlargement to obtain information as to the colors which the customer desires to be used.

(*b*) Subsequently, respondents or their agents call upon the customers, exhibit the enlargement, collect the balance due, and inquire as to the desire of the customers with respect to colors. At this point and for the first time respondents or their agents mention a frame and glass for the enlargement stating that if the enlargement is not framed it will become "discolored, faded, cracked, and worthless" and call to the attention of the customers for the first time that the enlargement is convex in shape, point out that it will not fit into a regular frame provided with regular flat glass and state that a frame and glass into which it will fit can be purchased only from respondents as such frames and glasses are not available at stores. At this time respondents and their agents represent further that it is necessary to purchase a frame with a convex glass for the further reason that the enlargement is baked into the frame and further represent that the glass is of a special construction and unbreakable. Respondents and their agents at this time exhibit sample framed colored enlargements and state that the colored enlargement and frame will be of the same quality as those exhibited.

(*c*) If a frame is ordered, a part or all of the purchase price is collected and afterward the framed colored enlargement is delivered and the balance due, if any, collected.

PAR. 4. The sales plan, as above outlined, used by respondents and the statements and representations made by them and their authorized agents in connection therewith, constitute misleading and deceptive

acts and practices in the following particulars: the prices of $3.98 and $2.98 charged for the colored enlargements are not special or reduced prices but are the regular and usual prices charged for the merchandise. The enlargements are not hand painted but the color is applied by an air brush and while the receipt or certificate so states, it is not delivered or shown to the customer until all or a part of the purchase price has been paid and the receipt or certificate provides that the order cannot be countermanded. Frequently, the enlargements are greatly inferior in quality to those exhibited as samples, and customers' photographs used for making the enlargements are in some instances returned in a damaged condition.

Respondents, by failing to disclose that the enlargements are of a convex shape, prior to the sale thereof and collection of a part or all the purchase price, lead purchasers into the erroneous belief that such enlargements are the usual and conventional type of enlarged photographs, that is, having a flat surface and suitable for framing in an ordinary frame, and the failure to disclose such fact constitutes an unfair and deceptive act and practice. The enlargements are not baked into the frame but are merely placed in the frame in the conventional manner. The glass provided with the frames is not of special construction but is common glass in a convex shape and may be easily broken. In case a frame is ordered the completed frame enlargement is usually delivered within a reasonable time but when a frame is not ordered, respondents unreasonably delay the delivery of the colored enlargement far beyond the time delivery has been promised and in many instances refuse or delay delivery until pressure is brought to bear by Better Business Bureaus and in other ways.

In truth and in fact, while the public is led to believe through the statements and representations made by respondents and their agents, that respondents are engaged in selling hand-painted enlargements, the entire selling scheme and plan is designed and put into operation for the sole purpose of selling frames and glasses therefor, in which transactions respondents make a handsome profit, rather than the sale of enlargements which sales result in an actual financial loss to respondents.

PAR. 5. Respondent, William E. Moore, by the use of the word "art" as a part of the trade name Imperial Art Co. and both respondents William E. Moore and Harry J. Rickert by the use of the word "art" as a part of the trade name Rickert Art Co. in connection with their said businesses, thereby represented that said respondents owned, operated, or controlled art studios in which photographic experts and artists were employed and that the enlargements sold by them were made and colored in said studios. In truth and in fact, the respondents or either of them did not and do not own, operate, or control a

studio of any kind and did not and do not employ experts or artists of any nature but on the contrary their colored enlargements are and were purchased on a contract basis from others.

PAR. 6. The use by the respondents of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of their said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondents propose to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly place purchasers in the position where they are required to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices have led and do lead purchasers erroneously to believe that the representations so made and used by the respondents and the implications arising therefrom were true and cause and have caused a substantial number of the purchasing public to purchase substantial quantities of said products.

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.

Complaint dismissed by the following order:

This matter having come on to be heard by the Commission upon the motion filed on April 4, 1950, by counsel supporting the complaint, requesting that the complaint herein be dismissed, which motion has been certified to the Commission by the trial examiner in this proceeding with the recommendation that it be granted; and

It appearing to the Commission from said motion, affidavit attached thereto, and the record herein that the respondents discontinued and abandoned the business in connection with which the alleged unlawful acts and practices were engaged in, prior to the issuance of the complaint herein, with no apparent intention of again engaging in such business; and that there is insufficient public interest to warrant a continuation of this proceeding:

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. Maurice B. Wechsler, of Pittsburgh, Pa., for William E. Moore.

BIBB MANUFACTURING CO. ET AL. Complaint, March 3, 1949. Order, January 8, 1951. (Docket 5644.)

CHARGE: Combining and conspiring between and among themselves and others to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture and sale of twine products in commerce, as below set out.

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 the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of section 5 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 as follows:

PARAGRAPH 1. The charges as hereinafter set forth are to the effect that the respondents named and described herein have combined and conspired to lessen and eliminate competition and to restrain trade and commerce, as commerce is defined in the Federal Trade Commission Act, in the sale of twine, hop twine, sash, cordage, and rope, hereinafter referred to as twine products; that said respondents accomplished the combination and conspiracy through agreements, understandings, and concerted action among themselves and with others; and that each respondent named herein has used and uses trade restraining and unfair methods and practices in furtherance of, and to make more effective, the objectives of the combination and conspiracy as alleged.

PAR. 2. The following is a description of the corporate respondents, including their respective corporate status and principal office and place of business:

(1) Bibb Manufacturing Co., a Georgia corporation, Main and Water Streets, Macon, Ga.; (2) California Cotton Mills Co., a California corporation, 1091 Kennedy Street, Oakland, Calif.; (3) A. A. Shuford Mills Co., a North Carolina corporation, East Hickory, N. C.; (4) Granite Falls Manufacturing Co., a North Carolina corporation, Granite Falls, N. C.; (5) Highland Cordage Co., a North Carolina corporation, East Hickory, N. C.; (6) Granite Cordage Co., a North Carolina corporation, Granite Falls, N. C.; (7) Hickory Spinning Co., a North Carolina corporation, West Hickory, N. C. [Respondent corporations herein identified as numbers (3) to (7) inclusive, and respondent Shuford Mills, Inc., all operate under the trade name Shuford Mills and will hereinafter be referred to collectively as Shuford Mills]; (8) Yakima Hardware Co., State of incorporation unknown; 230 South First, Yakima, Wash., wholesaler and retailer; (9) Schermerhorn Bros. Co., a Nebraska corporation, 211 West Wacker Drive, Chicago, Ill., mill agents; (10) Schermerhorn Bros. Co., an Illinois cor-

poration, 211 West Wacker Drive, Chicago, Ill., mill agents; (11) Ames, Harris & Neville Co., an Oregon corporation, 1506 Northwest Hoyt, Portland, Oreg., jobbers and wholesalers; (12) Blake, Moffitt & Towne, a California corporation, 599 Eighth, San Francisco, Calif., jobbers and wholesalers; (13) Oakdale Cotton Mills, a North Carolina corporation, Jamestown, N. C.; (14) Cleveland Mill & Power Co., a North Carolina corporation, Lawndale, N. C.; (15) January & Wood Co., a Kentucky corporation, Maysville, Ky.; (16) Puritan Cordage Mills, Inc., a Kentucky corporation, 1205 Washington Street, Louisville, Ky.; (17) Rockford Manufacturing Co., a Tennessee corporation, Rockford, Tenn.; (18) Rocky Mount Mills, a North Carolina corporation, Rocky Mount, N. C.; (19) Orange Cotton Mills, a South Carolina corporation, Orangeburg, S. C.; (20) Callaway Mills, a Georgia corporation, La Grange, Ga.; (21) Silver Lake Co., a Georgia corporation, 3200 Duncan, Chattahoochee, Ga.; (22) Whittier Mills Co., a Georgia corporation, 3200 Duncan, Chattahoochee, Ga.; (23) Southern Mills Corp., a Delaware corporation, Oxford, Ala.; (24) Mount Vernon-Woodberry Mills, Inc., a Maryland corporation, Trust Building, Baltimore, Md.; (25) Wm. E. Hooper & Sons Co., a Pennsylvania corporation, 1319–23 Cherry Street, Philadelphia, Pa.; (26) Houston Cotton Mills Co., a Texas corporation, 8100 Washington Avenue, Houston, Tex.; (27) Linen Thread Co., Inc., a New York corporation, 60 East Forty-second Street, New York, N. Y.; (28) Dan River Mills, Inc., a Virginia corporation, Danville, Va.; (29) Samson Cordage Works, a Massachusetts corporation, 89 Broad Street, Boston, Mass.; (30) J. P. Stevens & Co., Inc., a Delaware corporation, 350 Fifth Avenue, New York, N. Y.; (31) Turner-Halsey Co., a New York corporation, 40 Worth Street, New York, N. Y., all manufacturers, except Nos. 8 to 12, incusive, whose capacities are separately and respectively hereinabove specified; and (32) the Carded Yarn Association, Inc., a North Carolina corporation, Johnston Building, Charlotte, N. C., hereinafter referred to as respondent association; and (33) the Cotton-Textile Institute, Inc., a New York corporation, 271 Church Street, New York, N. Y., hereinafter referred to as respondent Institute, their officers and directors, and the executive committees of the Carded Yarn Association, Inc., and the Cotton-Textile Institute, Inc. The respondents hereinabove identified as Nos. (3) to (7), inclusive, now operate under the corporate control and direction of Shuford Mills, Inc., a North Carolina corporation, with office and principal place of business at Hickory, N. C. Said Shuford Mills, Inc., is hereby designated and made a party respondent in this proceeding.

The following are individual respondents: (34) Carl E. Nelson and (35) Mrs. Alice G. Brown, a partnership, trading as Clifford W. Brown Co., 117 Front Street, Salem, Oreg., distributor for respondent

California Cotton Mills Co.; (36) Arthur J. Toupin, an individual, trading as Toupin Hardware Co., Moxee City, Wash., agent for respondent Bibb Manufacturing co.; (37) Bascom B. Blackwelder, an individual, care of Quaker Meadow Mills, Inc., Hildebran, N. C., who was formerly president of respondent corporations A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., and Granite Cordage Co.; (38) Arthur J. Cooley, vice president and general manager of Schermerhorn Bros. Co., 113 King Street, Seattle, Wash.; (39) R. C. Frost, manager of Schermerhorn Bros. Co., 24 First Avenue SW., Portland, Oreg.; (40) Edward Hase, sales manager, Schermerhorn Bros. Co., 100 Howard Street, San Francisco, Calif.; (41) William C. Hood, representative of California Cotton Mills Co., Pacific Terminal Building, Seattle, Wash.; (42) Burton A. Olsen, general manager and vice president of California Cotton Mills Co., 1091 Kennedy Street, Oakland, Calif.; (43) E. Owen Fitzsimons, president and treasurer, the Carded Yarn Association, Inc., Johnston Building, Charlotte, N. C.; (44) Paul B. Halstead, secretary-treasurer, the Cotton Textile Institute, Inc., 271 Church Street, New York, N. Y.

PAR. 3. All of the aforesaid respondents, with the exception of respondent association, respondent institute and individual respondents, E. Owen Fitzsimons, and Paul B. Halstead in the course and conduct of their business, have regularly sold and shipped and do now sell and ship their twine products to purchasers at points in the several States of the United States, and in the District of Columbia, other than the State of origin of the shipment, in a regular current and flow of commerce, as commerce is defined in the Federal Trade Commission Act.

Because of the adoption and use of methods, practices, and policies hereinafter described, active and substantial competition between respondents and between respondents and others engaged in the manufacturing and selling of twine products has been lessened or eliminated.

Respondent association, respondent institute, and individual respondents, E. Owen Fitzsimons and Paul B. Halstead, and the executive committees of said association and institute, though not engaged in commerce, are now and have been for many years engaged in cooperating as coconspirators with the respondents named herein in carrying out the unlawful acts in commerce as hereinafter alleged.

The terms "twine," "hop twine," "sash," "cordage," and "rope" fairly describe the general classification of commodities manufactured by respondent manufacturers. However, all respondent manufacturers do not manufacture all kinds of commodities in each of the above classifications. Where similarity of product is absent, common interest between manufacturers is minimized. However, where there is and has been similarity of products and hence common interest

among any of the respondents, the cooperative activities herein alleged have transpired and accomplished the results sought by said respondents.

PAR. 4. Respondents have unlawfully combined and conspired and are now parties to an unlawful combination and conspiracy between and among themselves and others to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture, sale, and distribution of twine products in commerce.

Among the acts, methods, practices, and policies engaged in by the respondents pursuant to and in furtherance of the combination and conspiracy hereinabove alleged are the following:

1. Respondents have agreed to fix and maintain and have fixed and maintained prices at which twine products have been and are sold and offered for sale.

2. Respondents have agreed to eliminate and have eliminated certain trade discounts in connection with their sale of twine products.

3. Respondents have agreed to eliminate and have eliminated certain weights and grades of their various products as a part of and in furtherance of their price-fixing policies and practices.

4. Respondent manufacturers have agreed to reduce, and in pursuance thereof did reduce, the number of hours and shifts for work in their respective plants, for the purpose and with the effect of curtailing production in furtherance of a program of concerted action to create scarcity of their products so as to further facilitate their practice of fixing, raising, and stabilizing prices for twine products.

5. Respondents agreed to adopt and in pursuance thereof did adopt certain arbitrary freight charges on shipments of twine products as a further step in perfecting their price-fixing policies and practices.

6. Respondents agreed upon and adopted uniform terms and conditions of sale for use in connection with their sale of twine products.

7. Respondent manufacturers entered an agreement and in pursuance of said agreement required their respective agents and distributors to sell the twine products manufactured by respondent manufacturers, at prices fixed collusively by respondent manufacturers, in order to accomplish their price-fixing and practices.

8. Respondent manufacturers and individual respondents have used and are now using respondent association and respondent institute and the executive committees and other committees of said association and said institute as instruments or vehicles for their joint and cooperative acts and practices and to make more effective the conspiracy herein alleged.

9. Respondents, by agreement and understanding, have adopted and used, and now use, a price-leadership plan whereby generally, depending upon the location of the market, either Bibb Manufacturing

Co., Shuford Mills, or California Cotton Mills Co., among the dominant manufacturers of twine products, lead in the announcement and publication of price changes for twine products. Pursuant thereto, such prices and price changes as announced by any one or more of said respondent manufacturers, and imparted by them to other respondents, have been and are adopted and followed by other respondents.

10. Respondent manufacturers have concurrently adopted, maintained, and used uniform differentials, descriptions, and specifications for twine products for pricing purposes, and have concurrently fixed, established, and maintained substantially standard differentials in prices between products of uniformly varying descriptions and specifications.

11. While each and all respondents named as parties within this complaint have engaged in practices and performed acts heretofore alleged in furtherance of the conspiracy to fix and maintain prices, the following respondents—Bibb Manufacturing Co.; California Cotton Mills Co.; Shuford Mills; Schermerhorn Bros. Co., a Nebraska corporation; Schermerhorn Bros. Co., an Illinois corporation; Yakima Hardware Co.; Ames, Harris & Neville Co.; Blake, Moffitt & Towne; Arthur J. Toupin; Carl E. Nelson; Mrs. Alice G. Brown; William C. Hood; Arthur J. Cooley; R. C. Frost; Burton A. Olsen; and Edward Hase—pursuant to and in furtherance of the combination and conspiracy hereinbefore alleged, have committed additional acts as alleged in this subparagraph 11 of paragraph 4, as follows:

(*a*) They agreed upon and fixed trade-restraining prices for hop twine sold to hop growers which were located principally in the States of Oregon and Washington.

(*b*) They agreed to reduce and did reduce the prices for hop twine to unreasonably low levels for a brief period of time with the intent and for the purpose of destroying competition and eliminating a competitor.

PAR. 5. The inherent effects of the adoption and use by respondents of the practices and activities in their sale of twine products, as hereinabove alleged, are that:

1. They eliminate price competition and restrain trade between respondents.

2. They result in substantially identical prices, discounts, terms, and conditions of sale, freight charges, and standards of products among respondents.

3. They result in unlawful resale price maintenance and restrain trade among respondent manufacturers' purchasers.

4. They result in an unreasonable hardship and burden being placed upon the purchasing public by depriving the public of the right and opportunity to purchase twine products from one respondent at prices

competitive to, at variance with, and lower than the prices of other respondents.

5. In the sale of hop twine, the unlawful and collusive course of conduct pursued by the respondents named in subparagraph 11 of paragraph 4 accomplished the elimination of a competitor, and deprived purchasers of hop twine of the right and opportunity to purchase said commodity from the competitor that was eliminated at such prices as were set by him independently and without respect to the arbitrary prices that were agreed upon and used by said respondents.

PAR. 6. The combination, conspiracy, agreements, and understandings of the respondents and the acts, practices, pricing methods, devices, and policies alleged herein are unfair and to the prejudice of the public; deprive the public of the benefit of competition; have dangerous tendencies and capacities to unlawfully restrain commerce in the said products; have actually hindered, frustrated, suppressed, and eliminated competition in said products in commerce, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Commissioner Ferguson not participating.

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon its own motion; and

It appearing that the complaint originating the proceeding charges the respondents named therein with having unlawfully combined and conspired between and among themselves, and with others, to hinder, frustrate, suppress, restrain, and eliminate competition in the manufacture and in the sale and distribution of twine products in commerce; and

It further appearing from the record and from the Commission's investigational files that the allegations of the complaint purporting to set forth the acts and practices of the respondents, and particularly to describe the classifications of commodities manufactured by the respondent manufacturers, are inaccurate in certain respects; and

The Commission being of the opinion that the subject matter of the proceeding may be disposed of more satisfactorily and more expeditiously by a dismissal of the present complaint and a restatement of the Commission's charges against the respondents in two separate complaints:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to issue new complaints stating its charges against all or any of the respondents and to take such further or other action against such respondents as to the Commission may seem proper.

Mr. L. E. Creel, Jr., *Mr. Leslie S. Miller* and *Mr. J. Wallace Adair* for the Commission.

Jones, Jones & Sparks, of Macon, Ga., for Bibb Manufacturing Co.

Pillsbury, Madison & Sutro, of Washington, D. C., for California Cotton Mills Co., Alice G. Brown and William C. Hood.

Mr. Young M. Smith, of Hickory, N. C., for A. A. Shuford Mills Co., Granite Falls Manufacturing Co., Highland Cordage Co., Granite Cordage Co., Hickory Spinning Co., and Shuford Mills, Inc.

Brown & Hawkins, of Yakima, Wash., for Yakima Hardware Co.

Litsinger, Gatenbey & Spuller, of Chicago, Ill., for Schermerhorn Bros Co., of Nebraska, and Schermerhorn Bros. Co., of Illinois.

Heller, Ehrman, White & McAuliffe, of San Francisco, Calif., for Ames, Harris & Neville Co.

Cushing, Cullinan, Trowbridge, Duniway & Gorill, of San Francisco, Calif., for Blake, Moffit & Towne.

Brooks, McLendon, Brim & Holderness, of Greensboro, N. C., for Oakdale Cotton Mills.

Pierce & Blakeney, of Charlotte, N. C., for Cleveland Mill & Power Co.

Mr. William D. Cochran, of Maysville, Ky., for January & Wood Co.

Mr. David W. Richmond, of Washington, D. C., and *Mr. John Marshall, Jr.*, of Louisville, Ky., for Puritan Cordage Mills, Inc.

Kramer, McNabb & Greenwood, of Knoxville, Tenn., for Rockford Manufacturing Co.

Battle, Winslow & Merrell, of Rocky Mount, N. C., for Rocky Mount Mills.

Mr. Thomas B. Bryant, Jr., of Orangeburg, S. C., for Orange Cotton Mills.

Mr. Charles W. Allen and *Mr. Stokes Walton*, of La Grange, Ga., for Callaway Mills.

Weekes & Candler, of Decatur, Ga., for Silver Lake Co. and Whittier Mills Co.

Knox, Jones, Woolf & Merrill, of Anniston, Ala., for Southern Mills Corp.

Venable, Baetjer & Howard, of Baltimore, Md., for Mount Vernon-Woodberry Mills, Inc. and Turner-Halsey Co.

Edmonds, Obermayer & Rebmann, of Philadelphia, Pa., for Wm. E. Hooper & Sons Co.

Vance & Wagner, of Houston, Tex., for Houston Cotton Mills Co.

Kirlin, Campbell, Hickox & Keating, of Washington, D. C. and New York City, for Linen Thread Co., Inc.

Mead & Talbott, of Danville, Va., for Dan River Mills, Inc.

Herrick, Smith. Donald, Farley & Ketchum, of Boston, Mass., for Samson Cordage Works.

Gardner, Morrison & Rogers, of Washington, D. C., for J. P. Stevens & Co., Inc.

Tillett, Campbell, Craighill & Rendleman, of Charlotte, N. C., for the Carded Yarn Association, Inc., and E. Owen Fitzsimons.

Dorr, Hammond, Hand & Dawson, of New York City, for the Cotton-Textile Institute, Inc., and Paul B. Halstead.

LaBerge & Lyon and *Mr. Richard L. Kohls*, of Yakima, Wash., for Arthur J. Toupin.

Mr. Barrie Blackwelder, Jr., of Hickory, N. C., for Bascom B. Blackwelder.

King, Wood Miller & Anderson, of Portland, Oreg., for R. C. Frost.

HENRY CLAY GARRETT TRADING AS TRADERS SALES & LUCKY CHICKS. Complaint, October 18, 1948. Order, January 26, 1951. (Docket 5594.)

CHARGE: Misbranding or mislabeling as to an individual being a United States record of performance breeder and an operator of a poultry-breeding plant or hatchery, under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture in cooperation with the official State agency in charge of the plan in the State of Minnesota; in connection with the sale of baby chicks.

COMPLAINT: Pursuant to 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 Henry Clay Garrett, trading as Traders Sales & Lucky Chicks, hereinafter referred to as respondent, has violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Henry Clay Garrett, is an individual trading as Traders Sales & Lucky Chicks with his office and principal place of business located at Rochester, Minn. His address is Post Office Box 622, Rochester, Minn.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of baby chicks in commerce, said baby chicks being purchased by him from various hatcheries located in the State of Minnesota. Respondent causes said baby chicks when sold to him to be transported from various locations in the State of Minnesota to purchasers thereof located in various other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business, the respondent is now and has been at all times herein referred to in substantial competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution in commerce of baby chicks.

PAR. 4. In the course and conduct of his aforesaid business hereinabove described, the respondent, in the course of shipping baby chicks from various points in the State of Minnesota to purchasers located in other States of the United States, has caused certain labels to be affixed to said shipments, copies of such labels being as follows:

From: ROCHESTER, MINNESOTA
BABY CHICKS
H. C. GARRETT

* Produced as provided by law, under official supervision of Minnesota Poultry Improvement Board in the breeding stages, and the Minnesota Live Stock Sanitary Board in the pullorum control. *

For:

Cooperating in THE NATIONAL POULTRY IMPROVEMENT PLAN administered by the official agencies, U. S. Dept. of Agriculture.

*Asterisks indicate a symbol bearing the words "U. S. PULLORUM TESTED N. P. I. P." and a symbol bearing the words "U. S. APPROVED N. P. I. P.," also bearing a pictorial representation of the baby chick.

Special Handling

(Picture of two baby chicks)

From: H. C. Garrett, Rochester, Minn.

To: _____

No. CHICKS _____ BREED _____ HATCHED _____*

STR RUN _____ SEX _____ ACCURACY GUARANTEED _____%

U. S. APPROVED and U. S. PULLORUM TESTED
For dependable results

CONTENTS: Merchandise 4th Cl.
NOTICE: If not deliverable immediately wire shipper collect.

*Indicates stamp with words "PILLSBURY'S BEST FEEDS."

PAR. 5. By the use of the statements and representations contained on said labels hereinabove set forth, respondent represented that he is a United States record of performance breeder and operates a poultry-breeding plant or hatchery, under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture in cooperation with the official State agency in charge of the plan in the State of Minnesota.

PAR. 6. The foregoing acts and practices, statements, and representations are false and misleading. In truth and in fact, respondent is not a United States record of performance breeder and does not operate a hatchery under the supervision of an official for the agency supervising the national poultry improvement plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of said plan in the State of Minnesota.

PAR. 7. The use by the respondent of the foregoing false and misleading statements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true and by reason of such erroneous and mistaken beliefs so engendered, cause, and has caused, a substantial portion of the purchasing public to purchase substantial quantities of respondent's baby chicks. As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from his competitors, engaged in the sale in commerce, between and among the various States of the United States and in the District of Columbia, of baby chicks, who do not misrepresent their baby chicks. In consequence thereof, injury has been done by respondent to competition in commerce in such products among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged were 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.

Record closed without prejudice by the following order:

This matter coming before the Commission upon the motion of counsel supporting the complaint to dismiss the complaint herein without prejudice and upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is orderd, That the case growing out of the complaint herein be and the same hereby is closed without prejudice to the right of the

Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Jesse D. Kash for the Commission.

EVER-LASTING PRODUCTS CO., ET AL. Complaint, April 5, 1948. Order, February 8, 1951. (Docket 5533.)

Charge: Advertising falsely or misleadingly and furnishing means and instrumentalities of misrepresentation and deception as to attributes and qualities of respondents' product, through representing pictorially and otherwise in trade publications that respondents' products will last forever and will assure perpetual protection against the deteriorating elements of time; in connection with the manufacture and sale of caskets.

COMPLAINT: [1] 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 Ever-Lasting Products Co., a corporation, and A. R. Christian and Nancy Kelly, individually and as officers of the aforesaid corporation, herein 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 Ever-Lasting Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with offices and principal place of business at 847 North Troy Street, Chicago, Ill.

Respondents A. R. Christian and Nancy Kelly are officers of the aforesaid corporation and have their principal office at the above stated address.

Said respondents are now and for more than 1 year last past have been engaged in manufacturing and selling caskets.

The respondents have caused and now cause their said caskets, when sold by them, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various States of the United States and into the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said caskets in commerce

[1] The Commission on October 27, 1949, issued an order granting motion to amend complaint, as follows:

This matter coming on before the Commission upon motion of counsel supporting the complaint to amend the complaint herein by adding as a party respondent Ever-Lasting Products, Inc., a corporation, without the issuance and service of a formal amended complaint or notice with reference thereto, and it appearing to the Commission that counsel for respondent has assented to said motion, and the Commission having duly considered the matter and the record, and being now fully advised in the premises;

It is ordered, That the motion to amend the complaint by adding as a party respondent Ever-Lasting Products, Inc., a corporation, be, and the same hereby is, granted.

among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents advertise their said caskets in the "American Funeral Director" and the "Casket and Sunnyside," monthly trade publications that circulate throughout the United States. Respondents aforesaid advertisements featured their trade-mark which consists of a shield bearing the words "Ever-Lasting" and the outline of a pyramid in the background and, in conjunction therewith, pictorial representations of several outstanding creations of nature such as the Mountain of the Holy Cross, unusual rock formations, Mount Hood, Niagara Falls, the Grand Canyon, and a Sphinx and Pyramid, all of which were referred to in said advertisements as Ever-Lasting. In some instances, the terms "enduring" and "perpetual" are also used in said references.

PAR. 3. In immediate conjunction with the aforesaid picturizations appear comparative statements with reference to respondents' caskets such as the following:

The stoic magnificence of the Sphinx stands today, after thousands of years, the symbol of enduring resistance to the ravages of time. * * * There is no better comparison for the enduring protection that is to be found in Ever-Lasting Caskets.

No creation by mankind can ever remotely compete with the magnificence of Grand Canyon. * * * Here is a monument by nature to her own timeless endurance. * * * The same quality of timeless endurance is an important feature in Ever-Lasting Caskets.

Aside from a significance of design, the white snow insignia on the Mountain of the Holy Cross is of interest because of its Ever-Lasting symbolism. * * * Of interest to funeral directors are the enduring qualities of Ever-Lasting Caskets.

Thousands of years are of little importance to rock formations such as these found in Colorado. * * * Of significance to funeral directors are the enduring qualities of Ever-Lasting Caskets.

King of waterfalls is the gigantic Niagara, one of the outstanding wonders of the Western hemisphere. An Ever-Lasting source of power and beauty, this spectacular hydro-phenomenon is as ageless and enduring as the rocks on which it pounds its tons of water. Ever-Lasting Caskets are ageless and enduring, too, in the protection they offer against the elements of time.

No creation of mankind can ever remotely compete with the magnificence of Grand Canyon. * * * Here is a monument by nature to her own timeless endurance. The same quality of timeless endurance is an important feature in Ever-Lasting Caskets. Ever-Lasting precision manufactured from fine materials assures the ultimate in perpetual protection against the deteriorating elements of time.

PAR. 4. Through the use of the aforesaid statements and picturizations, the respondents have represented and now represent that their caskets will last forever and will assure perpetual protection against the deteriorating elements of time. Said statements and claims with

reference to respondent's caskets are false and misleading, and the use by respondents of the pictorial representations, in the manner aforesaid, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' caskets. In truth and in fact, said caskets are not ever-lasting and they will not assure perpetual protection against the deteriorating elements of time.

PAR. 5. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to their said caskets, in the manner aforesaid, has had, and now has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of said caskets with reference to the attributes and qualities of said caskets and, as a result thereof, to cause such purchasers and prospective purchasers to purchase respondents' said caskets in the erroneous belief that said statements and representations are true. By said acts and practices, respondents also placed in the hands of funeral directors and other purchasers of the aforesaid caskets for resale, a means and instrumentality whereby they may mislead and deceive the purchasing public as to the qualities and characteristics of said caskets.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Amended complaint dismissed without prejudice by the following order:

This proceeding having come on for final consideration by the Commission upon the amended complaint, respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief of counsel supporting the complaint, no brief having been filed by respondents and oral argument not having been requested; and

It appearing to the Commission that the amended complaint herein charges respondents with the use of false and misleading statements in advertising in connection with the offering for sale, sale, and distribution of burial caskets by representing that the said caskets will last forever and will assure perpetual protection; and

It further appearing from the record herein that the complained of false representations did not cause the purchase of respondents' caskets by any of the members of the public ultimately buying the said caskets, said caskets having been sold by respondents in an unfinished condition to jobbers only, which jobbers finished the caskets and affixed thereto their own names and labels, thus keeping the ultimate buyer from identifying the casket as having been manufactured by the respondents; and

It further appearing from the record that the complained of false representations were made in trade publications which were circulated to members of the trade only and that said representations were discontinued more than a year prior to the issuance of the complaint herein; and

The Commission having no reason to believe that the complained of representations will be resumed, and it being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the amended complaint be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action at any time in the future with respect to the subject matter of said complaint as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger* and *Mr. Randolph Preston*, trial examiners.

Mr. DeWitt T. Puckett and *Mr. Russell T. Porter* for the Commission.

Giachini, Cerza & Ley, of Chicago, Ill., for respondents.

ANETSBERGER BROS., INC. ET AL. Complaint, November 1, 1949. Order, March 5, 1951. (Docket 5707.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product; in connection with the sale of an article of equipment for restaurants and hotels for use in frying various foods designated as "Anets Filter-Fryer."

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 Anetsberger Bros., Inc., a corporation, and Frank Anetsberger, Andrew M. Bornhofen, and Leroy Schlickenmaier, individually and as officers of said corporation, and Ben Silver, individually and as director of said 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, Anetsberger Bros., Inc., is an Illinois corporation with its principal place of business located at 180 West Anets Drive, Northbrook, Ill. Respondents Frank Anetsberger, Andrew M. Bornhofen, Leroy Schlickenmaier, and Ben Silver are the president, vice-president, secretary, and a director, respectively, of said corporation. The address of said individual respondents is the same as that of the corporate respondent. As such officers and director, said individuals formulate, direct, and control the acts and practices of the corporate respondent.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale and distribution of an article of equipment for restaurants and hotels for use in frying various foods designated by them as "Anets Filter-Fryer." Respondents cause, and have caused, said product, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and at all times mentioned herein have maintained and now maintain a course of trade in said products in commerce, among and between the various States of the United States. Respondents' volume of business in said product in such commerce is, and has been, substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of said product in commerce, respondents have made certain statements and representations with respect to the usefulness and functions of said product, by means of advertisements inserted in trade journals, periodicals, and catalogs. Among and typical of the statements and representations appearing in said advertisements are the following:

Anets Filter-Fryer.
Filter as you Fry Fryer.
Anets New Streamline CGS 11" Filter Fryer.
The Anets Filter Fryer is the only fryer equipped with the patented (Pat. No. 2061533) lift-out crumb tray that lets you filter the fat even during the frying period.

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, respondents represented that their said product acts as a filter; that is, that by its filtering action all crumbs, wastes, and impurities are removed from the hot grease in which food is fried and that it restores the grease to its original purity, all during the cooking process.

PAR. 5. The use by the respondents of the word "Filter" as a part of the trade name "Anets Filter-Fryer" in and of itself serves as a representation that said product is a filter and operates and performs the functions as set out in paragraph 4.

PAR. 6. The said representations are false, misleading, and deceptive. In truth and in fact, said product does not operate as a filter as such operation is hereinabove described, its only utility being that of a sieve or strainer which holds within itself particles of food or other materials too large to go through the interstices of the screen. It will not purify or have any other effect upon the hot grease.

PAR. 7. The use of the aforesaid false, misleading, and deceptive statements and representations including the word "Filter" as a part of the trade name for said product has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representa-

tions were and are true and into the purchase of respondents' said product because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This proceeding coming on to be heard by the Commission upon the complaint of the Commission, the respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, and the trial examiner's initial decision, which decision was vacated and set aside by the Commission upon an appeal therefrom prosecuted by counsel in support of the complaint and opposed by the respondents; and

It appearing to the Commission that the allegations of the complaint have not been sustained by the greater weight of the evidence in the record; and

The Commission, for this reason, being of the opinion that the complaint should be dismissed without prejudice:

It is ordered, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute another proceeding or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Clark Nichols for the Commission.

Sheridan, Davis & Cargill, of Chicago, Ill., for respondents.

ROBERT SALAZAR DOING BUSINESS AS LOS ANGELES PHARMACAL CO. AND HIDALGO PHARMACY. Complaint, July 16, 1943. Order, April 5, 1951. (Docket 5006.)

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of products and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the sale of certain medicinal preparations designated as "Pulmotol," "Femovita," "Renatone Pills" sometimes referred to as "Runaton" and "Stomavita."

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 Robert Salazar, an individual trading and doing business as Los Angeles Pharmacal Co. and Hidalgo Pharmacy, hereinafter referred to as the 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 Robert Salazar is an individual trading and doing business as Los Angeles Pharmacal Co. and Hidalgo Pharmacy with his principal office and place of business located at 204 North Main Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and distribution of certain medicinal preparations designated as "Pulmotol,' "Femovita," "Renatone Pills" sometimes referred to as "Runaton" and "Stomvita.' Respondent causes and has caused said preparations when sold to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his aforesaid business has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations designated "Pulmotol," "Femovita," "Renatone Pills" or "Runaton" and "Stomavita" by the United States mails and by various means in commerce, as "commerce" is defined by the Federal Trade Commission Act, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined by the Federal Trade Commission Act.

Among, and typical of, the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by radio continuities with respect to the preparations "Pulmotol," "Femovita," and "Renatone Pills" or "Runaton," all in the Spanish language, of which the following are English translations.

Statements and representations with respect to "Pulmotol":

If you notice a danger detrimental to your health, it is logical that you find some manner of avoiding it. It is also logical that when you feel weak you will want to feel better again. You can do so with PULMOTOL. PULMOTOL, at invigorating the organism, puts a strong barrier against the maladies of the chest. PULMOTOL is sold at all drug stores.

If winter is a terrible adversary for all the organisms, PULMOTOL is a defense against the winter because with PULMOTOL the organism fortifies itself

and it combats all the effects of the respiratory system that causes all the colds. Avoid from today on the illness that comes with winter, drink PULMOTOL.

The tonic PULMOTOL has become famous because it combats the bronchial effects and fortifies the nervous system. If you are weak and wish to avoid the troubles of the illness that winter brings us, drink the tonic PULMOTOL immediately. We are sure that if you do this you will never forget the benefits of the results of this famous composition.

Statements and representations with respect to "Femovita":

A growing number of women use by preference the vegetable compound Femovita because every day the feminine sex becomes more convinced that Femovita is composed of fluid extracts of herbs and roots of well-known medicinal value for over 50 years. The excellence of this preparation rests on the great help and relief that can be obtained by women under those circumstances in which medical science prescribes its fine ingredients.

Nervousness and musclar pains and other ailments common in women due to their irregularities in the functions of their sex, can be helped with the Vegetal composition FEMOVITA.

There are many tragedies in the life of a woman, but none comparable to the tragedy of aging prematurely and losing natural, youthful charm due to ailments beyond control. Control your feminine organisms and health. Take Femovita, the tonic for women, an admirable vegetable compound with sure results.

Statements and representations with respect to "Renatone Pills" or "Runaton":

Many persons use daily as a diuretic, combination Runaton pills, for kidney trouble, washing out all acidity, Runaton sells at all best drug stores.

Many people who suffer with kidney trouble may need a stimulant to increase the flow of the urine. This is the result you will obtain from Runaton Pills. Runaton is composed of various medical ingredients that have been proven and prescribed by a number of doctors for more than 50 years. Try them today. Buy them at your drug store.

The kidneys are very delicate filters which take from the blood all impurities. Be sure to keep your kidneys healthy and clean by taking Renatone Pills. So you may avoid ailments such as rheumatism, lumbago, arthritis, nervousness, skin eruptions and some others that may arise from impurities in your blood due to faulty kidneys.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's preparations "Pulmotol," "Femovita" and "Renatone Pills" or "Runaton," respondent represents, directly and by implication, that "Pulmotol" is a competent and effective treatment for a weakened bodily condition, is a preventive of colds and bronchial infections, fortifies the nervous system and acts as a general tonic for the system. That the preparation "Femovita" constitutes a competent and effective treatment for diseases and conditions common to women. That the preparation "Renatone Pills" or "Runaton" is an effective diuretic, will wash out all acids from the kidneys and is a competent and effective treatment for kidney trouble.

PAR. 5. The foregoing statements and representations contained in respondent's advertisements are grossly exaggerated, false, and misleading. In truth and in fact, the preparation "Pulmotol" is not a competent and effective treatment for a weakened bodily condition. Its use will not prevent colds or bronchial infections and it has no value in the treatment of or in fortifying against the disturbances of the nervous system. It is not a general tonic and will afford no significant tonic effect to the system. The preparation "Femovita" is not a competent and effective treatment for diseases and conditions common to women and has no significant therapeutic value in the treatment of any of such diseases or conditions. The preparation "Renatone Pills" or "Runaton" is not an effective diuretic. It will not wash out all or any significant portion of acids from the kidneys and is not a competent and effective treatment for kidney trouble.

PAR. 6. The respondent herein, in the manner set out in paragraph 3 hereof, disseminates or causes the dissemination of advertising matter with respect to his preparation "Stomavita" wherein it is represented that said preparation is effective in relieving constipation and its symptoms. These advertisements constitute false advertisements and the advertisements hereinabove set out with respect to the preparation "Renatone Pills" or "Runaton" constitute false advertisements for the reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparations to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual. In truth and in fact, said preparations are irritant laxatives and the use thereof may be dangerous in the case of persons suffering from abdominal pains, stomachache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations in respect to his said preparations has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's preparations.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act.

Record closed without prejudice by the following order:

This proceeding came on for final consideration by the Commission upon the complaint, respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel supporting the complaint, and brief of counsel supporting the complaint (no brief having been filed by respondent and oral argument not having been requested).

The record herein shows that on September 16, 1941, the respondent entered into an agreement with the Commission to cease and desist from making certain representations in connection with the sale of certain medical preparations. Respondent in 1942 violated the said agreement in certain respects, whereupon the Commission on July 16, 1943, issued its complaint herein alleging that respondent had disseminated false advertisements in commerce in violation of the Federal Trade Commission Act.

The record shows that respondent in 1942 falsely represented that its preparation, Pulmotol, prevents chest colds and bronchial infections and acts as a tonic and stimulant, that its preparation, Femovita, constitutes a competent and effective treatment for ailments and conditions common to women, and that its preparation, Runaton, constitutes a competent and effective treatment for kidney troubles and will clean out accumulations of acid from the kidneys. In fact, Pulmotol has no beneficial effect except as a mild expectorant, Femovita does not constitute a competent and effective treatment for ailments and conditions common to women, and Runaton has no beneficial effect upon the kidneys and will not clean out accumulations of acid from the kidneys.

The facts of record show that respondent has long since abandoned the practice of disseminating advertisements containing the said false representations and has at all times made a good faith attempt to conform its representations to the agreement to cease and desist.

The Commission, therefore, being of the opinion that in these circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Randolph W. Branch and *Mr. R. P. Bellinger* for the Commission.

Mr. Kenneth E. Grant and *Mr. Richard A. Perkins*, of Los Angeles, Calif., for respondent.

POPULAR PRICED DRESS MANUFACTURERS GROUP, INC., DRESS RETURNS CONTROL BUREAU, INC., AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AND MEMBERS. Complaint, May 1, 1939. Order, April 13, 1951. (Docket 3778.)

Charge: Agreeing, combining, and conspiring to hinder and suppress competition between and among manufacturers of respondents' products in the interstate sale and distribution thereof to retailers, and to create a monopoly in such manufacure and sale through compelling and coercing members to confine their sales to such retailers as conform to the rules promulgated by respondent dress manufacturers group for the government of its members; and through other coercive acts and practices, including the compelling of its members to agree upon uniform terms of sale and discounts and to abide by other rules and regulations, under penalty, with the result of prejudicing and hindering manufacturers of women's and misses' dresses from selling their merchandise in interstate commerce to retailers therein who, but for the existence of such agreements, etc., would purchase said products, and with other results as specified in the complaint as follows:

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 Popular Priced Dress Manufacturers Group, Inc., Dress Returns Control Bureau, Inc., and their respective officers, directors, and members, 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. Respondent, Popular Priced Dress Manufacturers Group, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 1440 Broadway in the city of New York in said State. The membership of said respondent, Popular Priced Dress Manufacturers Group, Inc., is composed of individuals, partnerships, and corporations who are located in the city of New York, N. Y., and who are engaged in the manufacture and sale in interstate commerce of women's and misses' dresses which sell at wholesale in the price range of less than $5.

Respondent, Dress Returns Control Bureau, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York with its principal office and place of business located at 1440 Broadway in the city of New York in said State. The membership of said respondent, Dress Returns Control Bureau, is composed of individuals, partnerships, and corporations who are located in the city of New York, N. Y., and who are engaged in the

manufacture and sale in interstate commerce of women's and misses' dresses which sell at wholesale in the price range of less than $5.

Since January 13, 1938, respondent, Dress Returns Control Bureau, Inc., has functioned as a branch of, and has maintained joint offices with respondent, Popular Priced Dress Manufacturers Group, Inc. Membership in respondent, Popular Priced Dress Manufacturers Group, Inc., results automatically in membership in respondent, Dress Returns Control Bureau, Inc., and since January 13, 1938, the membership of both of said respondents has been identical.

Each of said corporate respondents was organized for the ostensible purpose of establishing fair trade practices among its members, to foster and promote better relations between its members and allied branches of the dress industry and to promote the general welfare, progress, and development of the popular-priced dress industry. Said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., are hereinafter for convenience referred to as "respondent associations."

PAR. 2. The names and addresses of the officers of said respondent, Popular Priced Dress Manufacturers Group, Inc., who, in their individual capacities and as such officers of said respondent, are named as respondents herein, are: Ben B. Hirsch, president, 501 Seventh Avenue, New York, N. Y.; Saul Lieber, vice president, 463 Seventh Avenue, New York, N. Y.; H. William Avrutine, second vice president, 463 Seventh Avenue, New York, N. Y.; Barnett B. Joseph, secretary, 224 West Thirty-fifth Street, New York, N. Y.; Albert Greene, treasurer, 237 West Thirty-fifth Street, New York, N. Y.; and Louis Rubin, executive director, 1440 Broadway, New York, N. Y.

The names and addresses of the officers of said respondent, Dress Returns Control Bureau, Inc., who, in their individual capacities and as such officers of said respondent, are named as respondents herein, are as follows: Morris Posner, president, 1440 Broadway, New York City; Harry Sterngold, secretary, 1440 Broadway, New York City; Albert Greene, treasurer, 1440 Broadway, New York City; and Louis Rubin, executive director, 1440 Broadway, New York City.

PAR. 3. The following named individuals are or have been members of the Board of Directors of said respondent, Popular Priced Dress Manufacturers Group, Inc., and of said respondent, Dress Returns Control Bureau, Inc., and are named as respondents herein in their individual capacities and in their capacities as members of the Board of Directors of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc.: George Edelstein, 1950 Andrews Avenue, Bronx, N. Y.; Al Green, 1400 Ocean Avenue, Brooklyn, N. Y.; Sam Altman, 300 Central Park, West, New York City; Moe S. Newman, 1419 Shakespeare Avenue,

Bronx, N. Y.; Harry Cohen, 1445 Saint Johns Place, Brooklyn, N .Y.; Edward Cohen, 91–10 Seventy-seventh Boulevard, Queens, L. I.; David Goldberg, 20 West Eighty-sixth Street, New York City; Jimmie Cohen, 605 West One hundred and seventieth Street, New York City; Elliott Kahn, 300 Riverside Drive, New York City; Louis Lipshitz, 510 West One hundred and twelfth Street, New York City; Samuel Wexler, 125 West Twelfth Street, New York City; Julius Goldberg, 25 Central Park, West, New York City; Samuel Abrams, 2121 Westbury Court, Brooklyn, N. Y.; William Aronson, 67 Hanson Place, Brooklyn, N. Y.; Sam Gordon, 246 East Fifty-first Street, New York City; Harry H. Greenberg, 1580 East Seventeenth Street, Brooklyn, N. Y.; Dave Harmarkz, 1329 College Avenue, Bronx, N. Y.; Sam Javer, 237 West Thirty-fifth Street, New York City; Sidney Blauner, 710 West End Avenue, New York City; Ben Ross, 145 West Ninety-sixth Street, New York City; Murray Schneidman, 2136 Crotona Parkway, Bronx, N. Y.; Max Rothstein, 656 West One hundred and seventy-first Street, New York City; Ben B. Hirsch, 501 Seventh Avenue, New York City; Saul Lieber, 463 Seventh Avenue, New York City; Benjamin Green, 1558 Clifford Place, Bronx, N. Y.; George Prince, 2675 Grand Concourse, Bronx, N. Y.; Fred Pomerantz, 40 West Eighty-sixth Street, New York City; Maurice Ribner, 300 Central Park, West, New York City; Louis Rosen, 240 West Thirty-fifth Street, New York City; Mike Reiter, 150–82 Eighty-seventh Avenue, Jamaica, L. I.; Meyer Pusar, 2840 West Thirty-sixth Street, Brooklyn, N. Y.; Henry A. Trussel, 1057 New McNeil Avenue, Lawrence, L. I.; Jack Wasserman, 336 West End Avenue, New York City; Al Wienberg, 300 Central Park, West, New York City; and S. J. Weiss, 135 Eastern Parkway, Brooklyn, N. Y.

The said officers and directors of respondents Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., named in paragraphs 2 and 3 hereof, are hereinafter for convenience referred to as "individual respondents."

PAR. 4. The membership of said respondent, Popular Priced Dress Manufacturers Group, Inc., and of said respondent, Dress Returns Control Bureau, Inc., constitute a class so numerous and changing as to make it impractical to specifically name them all as respondents herein. The following concerns, all located in the city of New York within the State of New York, among others, are members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., are fairly representative of the whole membership of said respondents and are named as respondents herein independently and severally and as members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., and as representatives of all members of said respondents, Popular Priced Dress Manufacturers Group, Inc.,

and Dress Returns Control Bureau, Inc., as a class, including those not herein specifically named who are also made respondents herein; A & B Dress Co., Inc., 463 Seventh Avenue; Alpine Dance Frocks, Inc., 491 Seventh Avenue; Bernstein & Blatter, Inc., 1359 Broadway; Chatham Dress Co., Inc., 306 West Thirty-eighth Street; Max Cohen, 463 Seventh Avenue; Cohen & Klausner, Inc., 501 Seventh Avenue; Dunbar Frocks, Inc., 148 West Thirty-seventh Street; Excellent Dresses, Inc., 501 Seventh Avenue; Fo-Mar Dress Corp., 501 Seventh Avenue; Sam Gordon, Inc., 501 Seventh Avenue; Halperin Frocks, Inc., 254 West Thirty-fifth Street; Integrity Dresses, Inc., 501 Seventh Avenue; Jomax Frocks, Inc., 501 Seventh Avenue; Lombardi Frocks, Inc., 134 West Thirty-seventh Street; Melba Dress Co., Inc., 501 Seventh Avenue; Noxall Waist & Dress Co., Inc., 463 Seventh Avenue; Plymouth Frocks, Inc., 237 West Thirty-fifth Street; L. Rosen Dress Co., Inc., 240 West Thirty-fifth Street; Smart Maid Dresses, Inc., 253 West Thirty-fifth Street; Trussel Dress Co., Inc., 501 Seventh Avenue; Venus Dress Corp., 213 West Thirty-fifth street; and Winfred Dress, Inc., 1375 Broadway. Said respondents are hereinafter for convenience referred to as "respondent members."

PAR. 5. The aforesaid members of said respondent associations, consisting of approximately 215 individuals, copartnerships, and corporations, are located in the city of New York in the State of New York. Most of said members are engaged in the manufacture and sale of women's and misses' dresses which sell in the wholesale price range of less than $5. Said members cause said products when so sold to be transported from their respective places of business in the city of New York, N. Y., to the purchasers thereof located at various points in the several States of the United States other than the State of New York and in the District of Columbia, and there has been, and now is, a constant course of trade and commerce in said products between the members of said respondent associations and retail dealers in said products located throughout the several States of the United States and in the District of Columbia. Except for the acts and practices engaged in by the respondent members of respondent associations as hereinafter set forth, said respondent members would be in free, open, and active competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States and in the District of Columbia. At all times mentioned herein said respondent members have been in competition with other corporations, partnerships, and individuals likewise engaged in the manufacture and sale of women's and misses' dresses in said commerce.

PAR. 6. Respondent members of respondent associations, acting in cooperation with each other and through and in cooperation with said respondent associations and their officers and directors, and each of

them, on or about January 13, 1938, entered into an understanding, agreement, combination, and conspiracy among themselves and with and through said respondent associations and said individual respondents to hinder and suppress competition between and among manufacturers of women's and misses' dresses in the interstate sale and distribution of their said products to retail dealers therein; and also to restrain interstate trade in said products; and also to create a monopoly in the manufacture and interstate sale of said products in the said members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc. Pursuant to said understanding, agreement, combination and conspiracy, said respondents have respectively and cooperatively performed, and are now so performing the following acts and practices, to wit:

(*a*) Said respondent, Popular Price Dress Manufacturers Group, Inc., has coerced and compelled, and now coerces and compels, its members to confine the sales of their merchandise to such retail dealers in women's and misses' dresses as conform to, and abide by, the rules promulgated by said respondent for the government of its members under penalty of fine or suspension for failure so to do;

(*b*) Said respondent, Dress Returns Control Bureau, Inc., has coerced and compelled, and now coerces and compels, retail dealers of women's and misses' dresses to refrain from returning garments to manufacturers thereof except in accordance with regulations promulgated by said respondent under penalty of being blacklisted and boycotted by the members of said respondent, Popular Priced Dress Manufacturers Group, Inc., as more particularly described in subparagraph (*c*);

(*c*) Said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., have employed and now employ, investigators to investigate the return by retailers of all ladies' dresses to the manufacturers thereof and to ascertain whether or not said returns are in accordance with the rules and regulations promulgated by said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc. Where retailers refuse to keep and pay for dresses received by them from the manufacturers thereof and return the same to said manufacturers in violation of the rules and regulations promulgated by said Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., said respondent, Dress Returns Control Bureau, Inc., thereupon places the name of such noncooperating retail dealer on a blacklist and circulates said blacklist among the members of said respondent, Popular Priced Dress Manufacturers, Inc., who thereupon and thereafter refuse to sell ladies' and misses' dresses designed and manufactured by them to such noncooperating

retail dealers; and since the date of its organization said respondent, Dress Returns Control Bureau, Inc., has blacklisted, and said members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., have refused to sell their products to retail dealers located throughout the several States of the United States.

(*d*) Said respondent, Popular Priced Dress Manufacturers Group, Inc., has coerced and compelled, and now coerces and compels, its members to agree upon uniform terms of sale and discounts and to abide by its other rules and regulations, all under penalty of being required to pay to said respondent, Popular Priced Dress Manufacturers Group, Inc., fines in a substantial amount of money and of being expelled from membership in said respondent, Popular Priced Dress Manufacturers Group, Inc.

PAR. 7. The result of the said understanding, agreement, combination and conspiracy, and the acts and practices performed thereunder by said respondents, as hereinabove set forth, has been, and now is (*a*) to prevent and hinder manufacturers of women's and misses' dresses from selling their merchandise in interstate commerce to retail dealers in such garments who, but for the existence of said agreement, combination, or conspiracy, would purchase said products; (*b*) to prevent retail dealers in women's and misses' dresses from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (*c*) to force many retail dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (*d*) to substantially increase the price of women's and misses' dresses to the manufacturers, retail dealers and to the consuming public; and (*e*) to place in the hands of the respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., control over the business practices of the manufacturers and distributors of women's and misses' dresses and the power to exclude from this industry those manufacturers and distributors who do not conform to the rules and regulations established by said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc., and thus to tend to create a monopoly in the members of said respondents, Popular Priced Dress Manufacturers Group, Inc., and Dress Returns Control Bureau, Inc.

PAR. 8. The foregoing alleged acts and practices of the said respondents have been, and still are, to the prejudice of the buying public generally and the customers and competitors of the members of said respondent associations in particular, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on for consideration and it appearing that the record in this proceeding contains a stipulation entered into on October 10, 1947, between Everette MacIntyre, then Assistant Chief Trial Counsel of the Federal Trade Commission, and counsel for certain of the respondents, which stipulation provides, among other things, that service of any order to cease and desist in this proceeding will not be made until the Commission has entered its order disposing of the proceeding, entitled, *In the Matter of National Coat & Suit Industry Recovery Board et al.*, docket No. 4596; and

The Commission having on December 1, 1950, entered its order in docket No. 4596 dismissing, for the reasons stated therein, the complaint in that proceeding without prejudice to the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action in the future as may be deemed warranted by the then existing circumstances, which order also recites that the action of the Commission does not constitute an adjudication of the issues involved;[1] and

There having been no adjudication of the issues of that proceeding on the merits as contemplated by the respondents in this proceeding who were parties to the stipulation of October 10, 1947, and it further appearing in this proceeding that the acts and practices referred to in the complaint issuing on May 1, 1939, occurred more than 12 years ago under economic conditions differing materially from those now prevailing; and

The Commission being of the opinion that the public interest will be best served by dismissal of the complaint in this proceeding, it being understood, however, that such action does not constitute an adjudication of the issues involved or prejudice the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. William L. Pack*, trial examiner.

Mr. George W. Williams for the Commission.

Hartman, Sheridan & Tekulsky and *Phillips, Nizer, Benjamin & Krim*, of New York City, for Popular Priced Dress Manufacturers Group, Inc., Dress Returns Control Bureau, Inc., and various officers, directors, and members thereof.

[1] 47 F. T. C., p. 1552.

Mr. Benjamin Greenspan, of New York City, for the Estate of Saul Lieber and Noxall Waist & Dress Co., Inc.

Mr. Harry Lyons, of New York City, for Jimmie Cohen.

Mr. Marcus Katz, of New York City, for Max Rothstein.

ASSOCIATED FUR COAT & TRIMMING MANUFACTURERS, INC., ET AL. Complaint, September 10, 1940. Findings as to the facts and order to cease and desist, December 1, 1950.[1] Order vacating findings as to the facts and order to cease and desist, and dismissing complaint without prejudice, April 13, 1951.

Charge: Agreeing, combining, and conspiring to hinder and suppress competition in the sale and distribution of fur coats, other fur garments, and fur trimmings through arranging for and carrying into effect a system of uniform discounts, refusing to sell or deliver on memorandum or on consignment, and certain other practices, with the result that customers and users were forced to buy and receive said products on uniform, arbitrary and fixed terms, and deprived, to their detriment, of free and normal competition among members in the course of interstate commerce; as set forth in said complaint as follows:

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 the individuals, firms, and corporations named and referred to in the caption or title hereof, and more fully described hereinafter and referred to as respondents, and the other members of said respondent Associated Fur Coat and Trimming Manufacturers, Inc., of which the named respondent members are representative, 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. Respondent, Associated Fur Coat and Trimming Manufacturers, Inc., hereinafter referred to as "Association," is a membership corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its office at 224 West Thirtieth Street, New York, N. Y. It was organized in 1911, or thereabouts, and is composed of a membership of approximately 700 corporations, partnerships, firms, and individuals, including the named respondent members, all of whom are engaged in the manufacture of fur coats, other fur garments and fur trimmings. Said respondent Association was formed with the purpose and effect of creating a clearing house and agency for obtaining the joint cooperation of its members, who, through respondent Association have, and still do, engage in the combination hereinafter alleged.

[1] Not published. See footnote, 47 F. T. C. 671.

PAR. 2. Respondents Julius Green, Benjamin Morsoff, Julius B. Gross, Sol Rosenberg, Alexander Abrams, and Louis Fenster are president, first vice president, second vice president, third vice president, secretary, and treasurer, respectively, individually and as officers of said Association.

PAR. 3. Alexander Abrams and Alexander Winkler, respondents, are copartners trading as Alexander Abrams & Winkler, with their principal office and place of business at 214 West Twenty-ninth Street, New York City.

Harry Fuchs, Manuel Fuchs, and Joseph Deutsch, respondents, are copartners trading as Harry Fuchs & Deutsch, with their principal office and place of business at 345 Seventh Avenue, New York City.

Abe Grauer and Herman Herskowitz, respondents are copartners trading as Grauer & Herskowitz with their principal office and place of business at 357 Seventh Avenue, New York City.

Max Kotuck, Elias Chavin, and Samuel Mednick, respondents, are copartners trading as Kotuck, Mednick & Chavin, with their principal office and place of business at 236 West Thirtieth Street, New York City.

Louis Rose, Benjamin Pack and Howard M. Pack, respondents, are copartners trading as Rose & Pack with their principal office and place of business at 305 Seventh Avenue, New York City.

Jonas Weinig and Alexander Weinig, respondents, are copartners trading as J. Weinig & Son, with their principal office and place of business at 333 Seventh Avenue, New York City.

Barney Wollman and Herman Wollman, respondents, are copartners trading as B. Wollman & Bro. with their principal office and place of business at 352 Seventh Avenue, New York City.

Anna Walzer and Charles Walzer, respondents, are copartners trading as A. Walzer & Son, with their principal office and place of business at 330 Seventh Avenue, New York City.

Arnheimer, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 347 Seventh Avenue, New York City.

Geo. J. Baruch, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

I. & A. Berger, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City.

S. & H. Berger, Inc., respondent is a corporation organized, existing, and doing business under the laws of the State of New York,

with its principal office and place of business at 333 Seventh Avenue, New York City.

Brand & Brody, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business at 150 West Thirtieth Street, New York City.

J. DeLeo & Co., Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 130 West Thirtieth Street, New York City.

Feinberg & Freeman, respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 333 Seventh Avenue, New York City.

Julius Green Fur Company, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Harry & Jack Grossman, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 345 Seventh Avenue, New York City.

Ben Kahn, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 20 West Fifty-seventh Street, New York City.

M. M. Loinger Company, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 352 Seventh Avenue, New York City.

Lenkowsky Bros. Furs, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Chauncey I. Rice, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 330 Seventh Avenue, New York City.

Schwartz & Bluestein, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 345 Seventh Avenue, New York City.

Louis Stein & Son, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New

York, with its principal office and place of business at 350 Seventh Avenue, New York City.

Lou White, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

Zimmerman & Scher, Inc., respondent, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 150 West Thirtieth Street, New York City.

All of the above-named respondents are, and have been for some time, members of respondent Association.

As the membership of respondent Association is so large, and is changing from time to time, and cannot be joined as parties respondent in this proceeding without manifest inconvenience and delay, prejudicial to the public interest, respondent members are, therefore, made parties respondent hereto, individually, and as representatives of each and every member of respondent Association.

PAR. 4. The members of respondent Association are now, and have been, during the time hereinafter mentioned, engaged in the sale and distribution in the regular course of trade of said products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said members have regularly shipped, and do ship, and cause to be delivered, their said products to customers located at various points in the several States of the United States other than the State in which said members' places of business are located, and in the District of Columbia, and there is now and has been for more than 3 years last past a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 5. The members of respondent Association, in the course and conduct of their respective businesses, as hereinbefore described, but for the combination and conspiracy as to matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or with other corporations, partnerships, firms, and individuals, also engaged in the business of manufacturing fur coats, other fur garments and fur trimming, and in the sale and delivery thereof, to customers located throughout the several States of the United States and in the District of Columbia.

The volume of trade and commerce done by the members of respondent Association constitutes an important part of the trade and commerce between and among the United States in fur coats and other fur garments and trimmings particularly in the vicinity of New York City.

PAR. 6. Respondent Association and the members thereof, during the last 3 years, and to the date of the complaint, have entered into and carried out an agreement, combination, and conspiracy among themselves and with each other, to hinder and suppress competition in the sale and distribution of said products between and among the various States of the United States, other than the State of origin, and in the District of Columbia, and to create a monopoly in the manufacture and sale of said products in the United States and in the District of Columbia. Respondent Association and the members thereof, pursuant to said agreement, combination and conspiracy, and in furtherance thereof, have collectively and cooperatively done and performed, and still do and perform the following acts and practices, to wit:

(*a*) Arranged for and carried into effect a system of uniform discounts in connection with the sale or other disposition of their said products;

(*b*) Members of respondents Association refuse to sell or deliver their said products on memorandum or on consignment;

(*c*) Members of respondent Association refuse to accept the return of said products sold and delivered on memorandum or on consignment, except in accordance with uniform, specific, and definite arrangements agreed upon by and between them;

(*d*) Enforced adherence to said discounts, terms and conditions and other practices by means of fines, suspensions, and expulsions by the respondent Association.

PAR. 7. As a result of said agreement, combination, and conspiracy and the acts and practices performed thereunder and pursuant thereto, by said respondents Association, the members thereof, the customers and users of said products, in order to obtain them from the members of respondent Association, have been, and are now, forced and compelled to buy and receive the same on said uniform, arbitrary, definite, and fixed terms, and have been, and are now, deprived, to their detriment, of free and normal competition between and among said members in the course of interstate commerce.

PAR. 8. The acts and practices of the respondents and the other members of respondent Association, as herein alleged, are all to the prejudice of the public, and have a dangerous tendency to injure, hinder, and prevent, and have actually injured, hindered, and prevented, competition, in the respects above referred to, between and among said members in the sale of their said products in commerce, within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to create in respondents a monopoly in said product in said commerce; have unreasonably restrained such commerce in their said products and constitute unfair methods of com-

petition in commerce within the intent and meaning of the Federal Trade Commission Act.

Said findings and cease and desist order were vacated and the complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon the respondents' petition for an order vacating the findings as to the facts and order to cease and desist issued in this proceeding on December 1, 1950, and dismissing the complaint herein, and the answer to such petition filed by Everette MacIntyre, Chief, Division of Investigation and Litigation, of the Commission's Bureau of Antimonopoly; and

It appearing to the Commission that on May 4, 1948, a stipulation was entered into by and between counsel for the respondents and counsel in support of the complaint, which stipulation provided, among other things, that no order to cease and desist prohibiting the principal trade practices involved in this proceeding should be served upon the respondents "unless and until the Commission has entered an order disposing of allegations concerning similar practices" set forth in the complaint in the matter of National Coat and Suit Industry Recovery Board, et al., docket No. 4596; and

It further appearing from the respondents' petition and from the memorandum in support thereof that said stipulation was entered into upon the understanding that the Commission would withhold its decision on the merits of the issues in this proceeding until such time as the merits of the like or similar issues in docket No. 4596 were disposed of; and

It further appearing that the Commission, on December 1, 1950, issued an order dismissing the complaint in docket No. 4596 without prejudice to the right of the Commission to take such further action against the respondents therein as may be warranted by future circumstances, thus disposing of the complaint in said docket No. 4596 without a decision on the merits of the issues therein; and

The Commission being of the opinion that because of the understanding upon which the stipulation herein was executed, the disposition of the complaint in docket No. 4596 without a decision on the merits of the issues therein necessitates a reconsideration of the disposition of this proceeding; and

The Commission being of the further opinion that because of the fact that the complaint originating this proceeding was issued September 10, 1940, and that the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions differing materially from those now prevailing, the public interest will be better served by a dismissal of the complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of

the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

It is ordered, That the findings as to the facts and order to cease and desist issued in this proceeding on December 1, 1950, be, and they hereby are, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Frank Hier*, trial examiner.

Mr. George W. Williams and *Mr. George M. Martin* for the Commission.

Mr. Manfred H. Benedek, of New York City, for respondents.

MILLINERY STABILIZATION COMMISSION, INC., ET AL. Complaint, September 26, 1941. Order denying appeal of counsel in support of complaint from ruling of trial examiner, and dismissing complaint without prejudice, April 13, 1951. (Docket 4597.)

Charge: Agreeing, combining, and conspiring to hinder and suppress competition in the interstate sale and distribution of millinery in the United States, and to promote a monopoly therein and control and regulate said industry, through seeking to compel every millinery manufacturer in the New York Trade Area to become a member of respondent Stabilization Commission, or to maintain himself in good standing therewith, under penalty of being deprived of the right or opportunity to purchase equipment and materials, employ union help, find selling agents, etc., and through imposing upon all factors in said industry, rules and regulations and requirements designed to bring about various restraints; and through a variety of other practices; on the part of said respondent Stabilization Commission, nine corporate trade associations, three unincorporated labor unions, and the officers of the several organizations, individually and as representatives of the organizations' members; all as in detail set out in the complaint as follows:

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 each and all of the parties named in the caption hereof and hereinafter more particularly described, designated, and 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. Respondent Millinery Stabilization Commission, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business located at 1450 Broadway, in the city of New York, in said State. The following named individuals of 1450 Broadway, in the city of New York, are officers of said respondent corporation and as such are designated as respondents herein:

Max Meyer	Chairman.
Paul F. Brissenden	Commissioner.
Mrs. Richard J. Bernhard	Commissioner.
Joseph Lipshie	Auditor.

The membership of said corporation is made up of some four hundred manufacturers of women's headwear, most of whom are likewise members of respondent Eastern Women's Headwear Association, Inc., or the National Association of Ladies' Hatters, Inc., hereinafter referred to. At one time the membership of respondent Millinery Stabilization Commission, Inc., also included certain manufacturers of blocks and dies used in the manufacture of women's headwear, who were members of respondents Hat Block and Die Makers Association, Inc., and Wood Hat Block Manufacturers Association, Inc., hereinafter referred to.

The said respondent Millinery Stabilization Commission, Inc., was organized in 1936 for the ostensible purpose of establishing and effectuating certain so-called fair trade practices, not only among its members, but among all persons, firms, and corporations engaged in the importation, manufacture or sale of raw materials, supplies or equipment used in the manufacture of millinery; millinery manufacturers, importers, distributors, and jobbers; manufacturers' sales representatives; resident buyers, and retailers.

PAR. 2. Respondent Eastern Women's Headwear Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business at 1440 Broadway in the city of New York, in said State.

The following individuals are or have been the officers of said Eastern Women's Headwear Association, Inc., and as such are designated as respondents herein:

Walter K. Marks	President.
Jack Newman	Second vice president.
George Lesser	Third vice president.
David Steinberg	Fourth vice president.
Sam Grubard	Treasurer.
David Rubenstein	Secretary.
Louis N. Margolin	Executive director.

The membership of said respondent corporation is made up of some 325 manufacturers of women's headwear. From time to time the

membership of said Eastern Women's Headwear Association, Inc., is changed by the addition and withdrawal of members, so that all the members of said Association at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers are also made respondents as representing all members of said Association, including those members not herein specifically named.

PAR. 3. Respondent National Association of Ladies Hatters, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 452 Fifth Avenue in the city of New York, in said State. The following individuals are or have been the officers of said National Association of Ladies Hatters, Inc., and as such are designated as respondents herein:

G. Howard Hodge	Vice president.
Nathan J. Garfunkel	Vice president
Theodore Walther	Treasurer.
Samuel D. Seideman	Secretary.

The membership of said respondent corporation is made up of approximately 60 manufacturers of women's headwear. From time to time the membership of said National Association of Ladies Hatters, Inc., changes by the addition and withdrawal of members so that all of the members of said Association at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 4. Respondent Millinery Manufacturers of New Jersey, Inc., is a membership corporation, organized and existing under and by virtue of the laws of the State of New Jersey and having its office and principal place of business located at 245 Fourth Street, Passaic, N. J.

The following named individuals are or have been the officers of said Millinery Manufacturers of New Jersey, Inc., and as such are designated as respondents herein:

Harry A. Baum	President.
Al. Hoffman	First vice president.
Harold Ruben	Second vice president.
Rupert Musyl	Treasurer.
Alexander Grossman	Executive secretary.

The membership of said respondent corporation is made up of approximately 25 manufacturers of women's headwear. From time to time the membership of said Millinery Manufacturers of New Jersey, Inc., is changed by the addition and withdrawal of members so that all the members of said corporation at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinabove named as respondents as such officers, are also made respondents as representing all members of said corporation, including those members not herein specifically named.

PAR. 5. The aforesaid members of said Eastern Women's Headwear Association, Inc., National Association of Ladies Hatters, Inc., and Millinery Manufacturers of New Jersey, Inc., consist of approximately 410 individual copartnerships and corporations located principally in the city of New York and in the States of New York and New Jersey. Said members individually are engaged in the business of designing and manufacturing women's hats and in the sale of said hats to distributors, jobbers, and retail dealers, many of whom are located in States other than the States of New York and New Jersey, causing said products, when so sold, to be transported from their respective places of manufacture across State lines to the purchasers thereof, and there has been and now is a continuous current of interstate trade and commerce in said products between respondent members of said membership corporations and jobbers, distributors, and retail dealers in said millinery located throughout the several States of the United States.

PAR. 6. In the course and conduct of their said respective businesses, respondent members in the said Eastern Women's Headwear Association, Inc., National Association of Ladies Hatters, Inc., and Millinery Manufacturers of New Jersey, Inc., except for the matters and things hereinafter set forth, would be naturally and normally in competition with each other, and are in competition with other individual copartnerships and corporations also engaged in the manufacture of women's hats and in the interstate sale of said products to jobbers, distributors, and retail dealers. Said respondent members above referred to, together with some 150 other manufacturers located in or near New York City, produce approximately two-thirds of the total production of the millinery industry in the United States. The said hats designed, manufactured, and sold by the members of the corporations above mentioned are in such demand by the trade and public that the retail dealers of ladies' hats attempting to offer a full line of ladies' millinery to the public are required to stock and handle at least some of the lines of said manufacturers.

PAR. 7. Respondent United Hatters, Cap and Millinery Workers International Union is an unincorporated labor union of millinery workers, affiliated with the American Federation of Labor and having its office and principal place of business located at 245 Fifth Avenue, New York, N. Y. The following named individuals are or have been officers of said respondent and as such are designated as respondents herein:

Max Zaritsky	President.
Michael F. Green	Secretary-Treasurer.

The membership of said United Hatters, Cap and Millinery Workers International Union is made up of various local unions of millinery workers engaged in the manufacture of ladies' hats in various parts of the United States.

PAR. 8. Respondent Local No. 24 of United Hatters, Cap and Millinery Workers International Union is a local labor union of millinery workers, having its office and principal place of business located at 31 West 37th Street, New York, N. Y. The following individuals are or have been officers of such local union and as such officers are designated as respondent herein:

Nathaniel Spector	Manager.
Abraham Mendelowitz	Assistant manager.
Alexander Rose	Secretary and treasurer.

The membership of said Local No. 24 of said International Union is made up of workers engaged in the manufacture of ladies' hats as well as other kinds of headwear. From time to time the membership of said Local No. 24 of said International Union is changed by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without inconvenience and delay and also said respondent membership constitutes a class so numerous as to make it impractical to name them all as individual respondents herein, wherefore, the officers hereinabove named as respondents as such officers are also made respondents as representing all members of said Union, including those members not herein specifically named.

PAR. 9. Respondent Local No. 42 of United Hatters, Cap and Millinery Workers International Union is a local labor union of millinery workers, having its office and principal place of business located at 31 West Thirty-seventh Street, New York, N. Y. The following individuals are or have been officers of such local union and as such officers are designated as respondents herein:

Max Goldman	Business manager.
Mac Gross	Treasurer.

The membership of said Local No. 42 of said International Union is made up of workers engaged in the manufacture of ladies' hats as

well as other kinds of headwear. From time to time the membership of said Local No. 42 of said International Union is changed by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without inconvenience and delay and also said respondent membership constitutes a class so numerous as to make it impractical to name them all as individual respondents herein, wherefore, the officers hereinabove named as respondents as such officers are also made respondents as representing all members of said Union, including those members not herein specifically named.

PAR. 10. Respondents named in the three preceding paragraphs, being the United Hatters, Cap and Millinery Workers International Union and Locals Nos. 24 and 42 of said Union, and their officers and members are and have been engaged in certain unfair practices and methods hereinafter described, which directly affect and restrain competition in interstate commerce in headwear among the other respondents named herein and among said respondents and their competitors not named herein as respondents.

PAR. 11. Respondent Ribbon, Silk and Velvet Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway, in the city of New York in said State. The following individuals are or have been the officers of said Ribbon, Silk and Velvet Association, Inc., and as such are designated as respondents herein:

Sigmund Klein	President.
Erwin E. Weber	First vice president.
Edward E. Ziskind	Second vice president.
Andrew J. Edgar	Treasurer.
David Hirsch	Executive secretary.

The membership of said respondent corporation is made up of importers, manufacturers, and suppliers of raw materials, supplies, or equipment used in the manufacture of millinery. From time to time the membership of said Ribbon, Silk and Velvet Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 12. Respondent Hat Block and Die Makers Association, Inc., is a membership corporation organized and existing under and by

virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway in the city of New York in said State. The following individuals are or have been the officers of said Hat Block and Die Makers Association, Inc., and as such are designated as respondents herein:

Irving Samis	President.
Jack Cuming	Vice president.
Eugene Pohlman	Treasurer.
Louis Mehlman	Executive secretary.
David Hirsch	Executive chairman.

The membership of said respondent corporation is made up of manufacturers and suppliers of blocks and dies used for the manufacture of millinery. From time to time the membership of said Ribbon, Silk and Velvet Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 13. Respondent Wood Hat Block Manufacturers Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1440 Broadway in the city of New York in said State. The following individuals are or have been the officers of said Wood Hat Block Manufacturers Association, Inc., and as such are designated as respondents herein:

Jack Nyman	President.
Joseph Buxbaum	Vice president.
Morris Aaronson	Treasurer.
Louis Mehlman	Executive secretary.
David Hirsch	Executive chairman.

The membership of said respondent corporation is made up of manufacturers and suppliers of blocks and dies used for the manufacture of millinery. From time to time the membership of said Wood Hat Block Manufacturers Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made re-

spondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 14. Respondent New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 270 Broadway in the city of New York, in said State. The following individuals are or have been the officers of said New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and as such are designated as respondents herein:

Max Greenberg	President.
Paul Schuman	Vice president.
Ben Creiner	Secretary.
Isaac L. Sable	Treasurer.

The membership of said respondent corporation is made up of wholesale distributors and jobbers of ladies' and children's hats. From time to time the membership of said New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 15. Respondent New York Buyers Association, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 991 Sixth Avenue, in the city of New York in said State. The following individuals are or have been the officers of said New York Buyers Association, Inc., and as such are designated as respondents herein:

Arthur Mincer	President.
Everett Martin	Chairman of the board.
Joseph D. Barzilay	Vice president.
Leon Mittenthal	Treasurer.
Theodore Averbach	Secretary.

The membership of said respondent corporation is made up of buyers of millinery who are residents of New York City who purchase millinery for certain retail dealers located in various parts of the country whom such buyers represent as purchasing agents. From time to time the membership of said New York Buyers Association, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be

named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 16. Respondent Millinery Manufacturers Representatives, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at 65 West Thirty-ninth Street in the city of New York in said State. The following individuals are or have been the officers of said Millinery Manufacturers Representatives, Inc., and as such are designated as respondents herein:

Archie Berman	President.
Harry Feuer	First vice president.
Benjamin Tuerk	Second vice president.
Sidney Loeb	Secretary and treasurer.

The membership of said respondent corporation is made up of sales representatives of various millinery manufacturers engaged in selling millinery as representatives of said manufacturers to the retail trade. From time to time the membership of said Millinery Manufacturers Representatives, Inc., is changed by the addition and withdrawal of members so that all of the members of said Association at any given time cannot be named as respondents herein without inconvenience and delay and also said respondent members constitute a class so numerous as to make it impractical to name them all as respondents herein. Wherefore, the respondents hereinbefore named as respondents as such officers are also made respondents as representing all the members of said Association, including those members not herein specifically named.

PAR. 17. The principal area in which millinery is manufactured in the United States is the area in and around New York City and Northern New Jersey. In this area herein referred to as the New York trade area, are located more than half of the millinery manufacturers of the country, producing a majority of the women's and children's hats marketed commercially in the United States. Factory-made millinery reaches the ultimate consumer through various channels of distribution, the most common of which are sales by the manufacturer direct to the retail dealer, often through the medium of the manufacturer's sales representative or the purchaser's resident agent. Many articles of millinery are also sold by manufacturers to wholesalers or jobbers, who in turn resell to retailers. Some retailers are chain organizations, owning or controlling a considerable number of stores, and some are syndicates leasing the millinery departments of large department stores dealing in many lines of merchandise.

PAR. 18. Respondent Millinery Stabilization Commission, Inc., was originally organized as a result of agreements, entered into in January 1936, between respondents Eastern Women's Headwear Association, Inc., and National Association of Ladies Hatters, Inc., and respondent Labor Unions. These agreements contemplated that said Stabilization Commission should be vested with power to formulate and enforce so-called fair trade practices in the millinery industry, and this power was included among the powers of said Stabilization Commission in its certificate of incorporation.

The bylaws of said Millinery Stabilization Commission, Inc., provide for an advisory board, exercising the usual power of a board of directors of a corporation, consisting of seven members selected by respondent Eastern Women's Headwear Association, one member selected by respondent National Association of Ladies Hatters, Inc., two members selected by respondent Millinery Manufacturers of New Jersey, Inc., and seven members selected by the Labor Unions named as respondents herein.

PAR. 19. The respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness and for differing periods of time, from about January 1936 to date, have entered into, acquiesced in, or observed various agreements and understandings to hinder and suppress competition in the interstate sale and distribution of millinery in the United States, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary purpose of such agreements, understandings, combinations, and conspiracies has been to control and regulate the millinery industry in the United States in the interest of the respondents. To further this objective, respondents have sought to compel every millinery manufacturer in the New York trade area to become a member of respondent Millinery Stabilization Commission, Inc., or to maintain himself in good standing with such commission, under penalty of being deprived of the right or opportunity of purchasing equipment and materials necessary for the manufacture of hats, of employing Union help, of finding selling agents willing to sell his products, or of finding jobbers, retailers, or their representatives willing to purchase his line of merchandise. In furtherance of such objectives respondent Millinery Stabilization Commission, Inc., and respondent manufacturers have imposed or attempted to impose upon all factors in the millinery industry, including one another, and including suppliers of raw materials, blocks and dies, independent manufacturers, jobbers, wholesalers, selling agents, resident buyers and retailers, rules, regulations, and requirements hereinafter more particularly described, which were designed to bring about and which brought about various restraints and partial restraints

upon the freedom of competitive action of many of such factors, and which hindered and suppressed competition in many of its phases in said millinery industry. The nature, scope, purposes, results, and effect of such agreements and conspiracies, together with the means used to effectuate the same, are hereinafter more particularly set forth.

PAR. 20. Pursuant to the said agreements and conspiracies, on or about July 8, 1937, respondent Millinery Stabilization Commission, Inc., with the aid and cooperation of many of the other respondents, adopted, promulgated, and effectuated certain so-called trade practice provisions and rules and regulations, among which were the following:

TRADE PRACTICE PROVISION I

It shall be unfair competition to sell merchandise except in accordance with the following uniform conditions of sale, and they shall be incorporated in each contract of sale by each member:

SECTION 1. Merchandise shall be shipped only f. o. b. city or area of manufacture.

SEC. 2. No advertising allowance shall be made either directly or indirectly except for advertising in which the name or trade mark of the manufacturer is prominently displayed.

SEC. 3. A reasonable charge in addition to the ordinary selling price must be made for furnishing or attaching labels, tags, or special linings which bear the customer's name, trade mark, factory number, or identification mark.

SEC. 4. Orders shall not be subject to cancellation and cancellation shall not be accepted until after the specified delivery date. When no delivery date is specified, they shall not be subject to cancellation until 2 weeks from date of order.

SEC. 5. No goods shall be sold on open order subject to consignment or approval or by any other method which has the effect of selling on consignment or memorandum or guaranteeing retail turn-over.

SEC. 7. No millinery manufacturer shall sell merchandise through a commission resident buyer, unless the commission resident buyer either (1) displays written authorization from the retailer for the specific order placed before the merchandise is placed in work, or (2) has on file with the Millinery Stabilization Commission, Inc., a standing written authorization to buy merchandise for said retailer.

SEC. 9. No return merchandise shall be accepted for credit except that merchandise not in accordance with purchaser's specifications expressed in the order or having defective workmanship or material shall be subject to return within five days of receipt by the purchaser.

SEC. 10. Terms of sale shall not include any discount in excess of 7 percent, 10 days, E. O. M., except that merchandise shipped on and after the 25th of the month may be dated as the first of the following

month. Anticipation shall not be allowed at a rate less than 6 percent per annum.

SEC. 11. All disputes shall be submitted to arbitration under the procedure of the Millinery Stabilization Commission, Inc.

TRADE PRACTICE PROVISION VI

It shall be unfair competition to manufacture, sell, ship, or deliver merchandise unless it bears a consumer's protection label under the existing authorization from the Millinery Stabilization Commission, Inc. No such label shall be attached except in accordance with said authorization and the label rules and regulations of the Commission.

TRADE PRACTICE PROVISION VII

SECTION 1. It shall be an unfair trade practice for any member of the millinery manufacturing industry either to loan or sell blocks or dies to anyone other than the original seller to him.

SEC. 2. It shall be an unfair trade practice for the millinery manufacturing industry to give out duplicates of blocks or dies other than to the block and die manufacturers who manufactured or sold the original to said millinery manufacturers.

RULES AND REGULATIONS APPLYING TO MILLINERY MANUFACTURERS

1. Each and every millinery manufacturer shall confine purchases of blocks, dies, parts thereof or other equipment used in connection therewith to those manufacturers of said equipment who are registered and in good standing with the Millinery Stabilization Commission, Inc.

2. Each and every manufacturer shall compute the cost of each item in his line before putting it in work by means of the uniform cost accounting system recommended by the Millinery Stabilization Commission, Inc.

3. No consumers' protection labels shall be attached to so-called ashcan or second-hand made-over hats.

4. No so-called sales merchandise shall be offered, manufactured or delivered in any season before a reasonable date fixed for that season by the Millinery Stabilization Commission.

BLOCK AND DIE DIVISION RULE AND REGULATION NO. 1

Each and every block and die manufacturer shall confine sales of blocks, dies, parts thereof or other equipment used in connection therewith to those manufacturers of millinery who are registered and in good standing with the Millinery Stabilization Commission, Inc.

On or about March 2, 1938, the above rules and regulations applying to millinery manufacturers Nos. 1 and 4 and the above block and

die division rule and regulation No. 1 were eliminated from the above so-called trade practice provisions.

On or about February 27, 1939, the above so-called provision I, section 3 was amended as of March 10, 1939, to read as follows:

No labels, tags, or special linings which bear the customer's name, trade mark, factory number, or identification mark shall be attached to hats unless they are furnished to manufacturer by the customer at the customer's expense.

PAR. 21. Respondent Millinery Stabilization Commission, Inc., respondent manufacturers and respondent labor unions have since about 1936 conspired together and entered into various agreements whereby said manufacturers covenanted that they were affiliated with respondent Millinery Stabilization Commission, Inc., and that each article of millinery manufactured by them would bear the so-called Consumers' Protection Label issued by said Stabilization Commission. In said agreements respondent labor unions covenanted that they would not permit their members to work on any millinery which was not to bear and which did not bear, when completed, such so-called Consumers' Protection Label. Pursuant to such agreements and such conspiracy, respondent manufacturers and respondent labor unions have coerced and compelled reclacitrant members of respondent Millinery Stabilization Commission, Inc.; and of respondents Eastern Women's Headwear Association, Inc.; National Association of Ladies Hatters, Inc.; and Millinery Manufacturers of New Jersey, Inc.; together with numerous independent millinery manufacturers not affiliated with or members of said respondent associations last above mentioned, to purchase said labels from respondent Millinery Stabilization Commission, Inc., and to attach them to all hats manufactured and sold by said manufacturers. Respondent Millinery Stabilization Commission, Inc., pursued a policy of coercing manufacturers into agreeing to comply with the so-called fair trade practices rules hereinabove described before it would sell such labels to such manufacturers. In the event of a failure on the part of a manufacturer to purchase and attach such labels to his product, either because of a denial of the opportunity to purchase such labels on account of a refusal on his part to conform to the Stabilization Commission's program for the government of the millinery industry or because of his refusal to purchase such labels, respondent labor unions by agreements and understandings with the Stabilization Commission proceeded by means of strikes, walkouts or stoppages of work, or threats of strikes, walkouts or stoppages of work, engaged in by the members of respondent labor unions, to compel all manufacturers employing said members to procure the labels issued by such Stabilization Commission and to place them upon all articles of millinery manufactured by them.

By the means above outlined, respondent Millinery Stabilization Commission, Inc., has exacted payments from millinery manufacturers amounting to approximately $115,000 per annum and has imposed upon such manufacturers an additional expense of $200,000 per year or more, representing the cost of attaching said labels to the hats manufactured for sale and distribution by such manufacturers.

PAR. 22. To effectuate said conspiracy and agreements and to attain the ends thereof, said respondent Millinery Stabilization Commission, Inc., respondent manufacturers and respondent labor unions, acting concertedly or in groups with the active or passive cooperation or consent of the other respondent, have done the following things, among others:

(1) Adopted, effectuated and enforced the so-called trade practice provisions, and rules and regulations set forth in paragraph 21 above;

(2) Set up an enforcement body known as an advisory board, composed of seven members selected by respondent Eastern Women's Headwear Association, Inc., one member selected by respondent National Association of Ladies Hatters, Inc., two members selected by respondent Millinery Manufacturers of New Jersey, Inc., and seven members selected by respondent labor unions;

(3) Coerced millinery manufacturers into signing agreements to observe the bylaws, trade practice provisions, and rules and regulations (adopted or to be adopted) of respondent Millinery Stabilization Commission, Inc.;

(4) Coerced millinery manufacturers into agreeing to pay "as dues" charges set by said Stabilization Commission for so-called "Consumers' Protection Labels" and into agreeing to attach such labels to all hats manufactured and distributed by them;

(5) Coerced millinery manufacturers into agreeing to submit and submitting to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by said Stabilization Commission to enable it to ascertain whether its so-called trade practice rules were being complied with;

(6) Coerced millinery manufacturers into agreeing that they would abide by all decisions of said Stabilization Commission in all matters in which it claims jurisdiction;

(7) Coerced millinery manufacturers into agreeing with the respondent labor unions that workers would not be permitted to work on hats which did not bear the so-called "Consumers' Protection Label" attached "under the then existing authorization from the Millinery Stabilization Commission, Inc.";

(8) Held meetings and discussed means and methods of compelling recalcitrant manufacturers to purchase and attach said labels to hats produced by them;

(9) By letters and oral statements, demanded by various millinery manufacturers that they purchase and use said labels and threatened reprisal in the form of strikes, walkouts and work stoppages if said demands were not met and complied with;

(10) Respondent Millinery Stabilization Commission, Inc., adopted and effectuated the following resolution: "*Resolved*, That beginning Monday morning, May 4, 1936, no hats shall be shipped by any manufacturer that do not have attached thereto a Consumers' Protection Label, and that the union shall notify its shop chairman to that effect. In association shops should the manufacturer refuse to use such labels, such manufacturer shall be cited to the Impartial Board within 24 hours for violation of the agreement. In the independent shops such manufacturer shall be given 24 hours in which to attach such labels and, in the event of his refusal to do so within 24 hours, the union will instruct its workers not to continue working in such shop";

(11) Respondent Millinery Stabilization Commission, Inc., summoned various millinery manufacturers to appear at so-called hearings and imposed fines on such manufacturers for a failure to purchase and attach said labels to hats manufactured and sold by them and for a failure to abide by certain of the Stabilization Commission's so-called fair trade practice rules;

(12) Respondent labor unions threatened various millinery manufacturers with strikes, walkouts, and stoppages of work, called such strikes, walkouts, and stoppages of work, and by such means compelled said manufacturers to subscribe to and observe respondent Millinery Stabilization Commission's so-called trade practice rules and buy such so-called "Consumers' Protection Labels" and attach them to their products;

(13) Said respondents compelled millinery manufacturers to pay varying amounts to respondent Millinery Stabilization Commission, Inc., to cover or adjust purported or claimed "shortages" in the number of said labels purchased by such manufacturers;

(14) Respondent Millinery Stabilization Commission, Inc., and respondents Hat Block and Die Makers Association, Inc., and Wood Hat Block Manufacturers Association, Inc., entered into an agreement, under the terms of which respondent block and die manufacturers agreed that they would not sell blocks or dies to any millinery manufacturer who was not registered and in good standing with respondent Millinery Stabilization Commission, Inc. In said agreement respondent block and die manufacturers also agreed that they would abide by all the rules and regulations adopted by respondent Millinery Stabilization Commission, Inc., and that they would abide by all decisions of said commission with reference to all matters pertaining to the functions thereof;

(15) Respondent Millinery Stabilization Commission, Inc., coerced and compelled respondent Ribbon, Silk and Velvet Association, Inc., and its members, into agreeing that they would not sell their merchandise, directly or indirectly, to millinery jobbers, retail syndicates or commission salesmen, nor to any customer in the metropolitan area of New York and New Jersey, except to millinery manufacturers registered and in good standing with the Millinery Stabilization Commission, and that they would not accept assignments of accounts receivable or guaranties of indebtedness from any of their customers;

(16) Respondent Millinery Stabilization Commission, Inc., sent letters to and called meetings of millinery body manufacturers, importers, and suppliers and proposed and demanded that, and attempted to induce them to agree that, they would not sell millinery bodies or supplies to any millinery manufacturer who was not registered and in good standing with said Millinery Stabilization Commission and that they would not sell such merchandise to jobbers, retail syndicates or commission salesmen.

(17) Respondent Millinery Stabilization Commission, Inc., and respondent labor unions coerced millinery jobbers and wholesalers, including respondents New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and its members, into agreeing that they would not engage in the business of contracting with others for the manufacture of millinery, and that they would not purchase such merchandise in any case unless the same bore the so-called consumers protection label.

(18) Respondent Millinery Stabilization Commission, Inc., coerced commission agents selling millinery for manufacturers, including respondents Millinery Manufacturers Representatives, Inc., and its members, into agreeing that they would not engage in the contracting business, that all hats handled within the New York trade area should bear the so-called consumers protection label, and that all millinery should be sold on the basis of said so-called Trade Practice rules of said respondent commission.

(19) Respondent Millinery Stabilization Commission, Inc., coerced resident buyers of millinery, including respondent New York Buyers Association and its members, into agreeing that all orders for hats placed by them should incorporate and include a provision that such hats should bear the so-called consumer protection label, and a stipulation that the transaction was to conform to the conditions of sale theretofore promulgated by said respondent commission.

(20) Respondent Millinery Stabilization Commission, Inc., has sought to and attempted, in some cases successfully, to impose upon retailers purchasing millinery from respondent manufacturers, and upon organizations of retailers, recognition of and adherence to the

so-called trade practice rules and the requirement that all hats bought and sold by such retailers shall bear the so-called consumer protection label, and published and circulated lists of those retailers refusing to subscribe to and observe such rules and requirement.

(21) Respondents, during the period herein mentioned, have done and performed many other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally upon those engaged in the manufacture, sale, and distribution of millinery.

PAR. 23. The capacity, tendency, and effect of the aforesaid agreements, conspiracies, policies, practices, and acts and things, done and performed by respondents in pursuance thereof are and have been:

(1) To tend to monopolize in respondent manufacturers the business of manufacturing and of selling and distributing millinery in the New York trade area, and from that area to the country at large.

(2) To tend to monopolize in respondent manufacturers the opportunity to purchase and secure raw materials and skilled labor for the manufacture of millinery in said trade area.

(3) To fix and maintain discounts and various terms and conditions attending the sale of millinery to buyers in all parts of the country.

(4) To unreasonably lessen, suppress, and restrain competition in the sale and distribution of millinery throughout the United States and in the District of Columbia, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantages in price, terms, and conditions of sale, service, and other consideration which they would receive, have, and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to and detriment to the freedom of fair and legitimate competition in such trade and industry.

(5) To suppress, discriminate against, and eliminate contractors and small manufacturers who are or have been engaged in, or desire to engage in, the manufacture and sale of millinery.

(6) To burden, hamper, and interfere with the normal and natural flow of trade and commerce in millinery from, into and through the various States of the United States and the District of Columbia.

PAR. 24. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition in price, terms of sale and services, between and among said respondents, between and among other millinery manufacturers and distributors, and between the latter and the respondents, in the sale of their said products in commerce within the intent and mean-

ing of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

The order denying appeal of counsel in support of complaint from ruling of trial examiner and dismissing complaint without prejudice follows:

This matter is before the Commission for its consideration of an appeal filed by counsel in support of the complaint from a ruling of the trial examiner granting in part and denying in part the respondents' motion for dismissal of the complaint. An appeal from the same ruling was filed on behalf of the respondents also, but in view of the disposition of the case hereinafter made no decision of that appeal or of the questions raised therein is required.

In granting in part the respondents' motion for dismissal, the trial examiner held, in substance, (1) that the complaint fails to allege facts sufficient to bring the respondent associations and their respective members within the Commission's jurisdiction, and (2) that the attempt to make the members of the several associations and labor unions parties respondent by naming the officers of said associations and unions as representatives of the members is insufficient in law. The trial examiner therefore dismissed the complaint, without prejudice, however, to a continuation of the proceeding in the event the complaint should be amended in the respects mentioned.

The complaint herein names as parties respondent Millinery Stabilization Commission, Inc., a membership corporation, nine corporate trade associations, three unincorporated labor unions, and the officers of the several organizations, individually and as representatives of the organizations' members. None of the business concerns which is a member of any of the organizations was otherwise named and none was served with process. Also, there is no allegation that any of the associations or labor unions was organized to carry on business for profit or that any of them is engaged in interstate commerce. Additionally, the complaint contains no allegation that any of the officers named as a representative of the membership of his organization is himself either a member of the organization of which he is an officer or that he is engaged in any kind of business in commerce.

In the absence of a showing that the Millinery Stabilization Commission, Inc., and the other respondent associations were organized to carry on business, either for their own profit or for the profit of their members, such associations are not themselves subject to the

Commission's jurisdiction. Any corrective action against these organizations necessarily must be accomplished by reaching their respective members; and the members of the organizations obviously are not before the Commission. The complaint on its face shows not only that the officers named as representatives of the association members are not of the same general class as the unnamed members, but also that such named officers do not have the same general interests as the members and that they do not in fact represent the members.

The Commission's jurisdiction over the parties referred to not having been shown, the trial examiner's ruling on this point was correct. Accordingly, it is ordered that the appeal from the aforesaid ruling filed by counsel in support of the complaint be, and it hereby is, denied.

The Commission does not agree, however, that this proceeding should be continued even under an amended complaint. This complaint was issued September 26, 1941, and the acts and practices alleged to have been in violation of the Federal Trade Commission Act all occurred more than 10 years ago under economic conditions differing materially from those now prevailing. Whether or not such acts and practices have been continued is, of course, not shown, and in the circumstances the Commission feels that the public interest will be better served by a dismissal of the proceeding than by a continuation thereof even under an amended complaint, it being understood, however, that this action does not constitute an adjudication of any of the issues involved (other than those specifically ruled on herein) or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise.

It is therefore further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. George W. Williams, *Mr. George M. Martin* and *Mr. Rufus E. Wilson* for the Commission.

Giddings, *Keating & Reid*, of New York City, for Millinery Stabilization Commission, Inc., National Association of Ladies Hatters, Inc., Millinery Manufacturers of New Jersey, Inc., Hat Block and Die Makers Association, Inc., Wood Hat Block Manufacturers Association, Inc., and their respective officers and members, and along with—

Liebowitz & Schuman, of New York City, for New York Association of Wholesale Distributors of Ladies' and Children's Hats, Inc., and its officers and members;

Mr. Lewis Dworsky, of New York City, for Millinery Manufacturers Representatives, Inc., and its officers and members.

Lopin & Jacobson, of New York City, for Eastern Women's Headwear Association, Inc., and its officers and members.

Mr. Charles H. Green, of New York City, for United Hatters, Cap and Millinery Workers International Union, Local No. 24 of United Hatters, Cap and Millinery Workers International Union, Local No. 42 of the United Hatters, Cap and Millinery Workers International Union, and their respective officers and members.

Lamb & Lerch, of New York City, for Ribbon, Silk and Velvet Association, Inc., and its officers and members.

Mr. Irving I. Friedman, of New York City, for New York Buyers Association, Inc., and its officers and members.

NATIONAL ASSOCIATION OF BLOUSE MANUFACTURERS, INC., ET AL. Complaint, October 23, 1943. Order, April 13, 1951. (Docket 5068.)

Charge: Entering into, acquiescing in, or observing agreements or understandings to hinder and suppress competition in the interstate sale and distribution of clothing and merchandise such as blouses, blousettes, waists, gilets, vestees, and tunic blouses, and joining or participating in combinations and conspiracies to restrain such trade and promote monopoly therein, with the primary object of controlling and regulating all the manufacture and distribution of such products, through imposing on manufacturers, jobbers, and other rules, regulations, and requirements designed to bring about various restraints upon the freedom of competitive action of many such factors, and through various other undertakings, acts, and practices directed to furthering respondents' objects and purposes, including the fixing and maintaining of various coercive and other practices directed toward the accomplishment of such objectives; on the part of respondent National Association of Blouse Manufacturers, respondent Greater Blouse, Skirt and Neckwear Contractors Association, Inc., and respondent union, and on the part of various individuals and concerns as officers, members, etc., of aforesaid respondent organizations; as set forth in detail in the complaint in said matter as follows:

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 the parties named in the caption hereof, and hereinafter more particularly described, designated, and referred to as respondents, together with those of whom they are representative, 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 National Association of Blouse Manufacturers, Inc., hereinafter referred to as respondent Manufacturers Association, 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-fourth Street, New York, N. Y.

The following named individuals are officers of said respondent Manufacturers Association and as such as designated as respondents herein: Abraham Rosenthal, president; Sidney Heller, first vice president; William Schneider, second vice president; Emil Adelaar, secretary; and Benjamin H. Lerner, executive director. Said respondents discharge the usual functions of the officers of a corporation.

The following named individuals are members of the Board of Directors of said respondents Manufacturers Association and as such are designated as respondents herein: Emil Adelaar, Lou Brecher, Morris Cederbaum, Nathan Cumsky, Marcus Helitzer, Alfred Kolodny, Leo Levy, Samuel Mitchell, Sam Nadler, Vincent Sica, Herman Steinfeld, and Albert Weiner. Said Board of Directors is the governing body of said Association.

PAR. 2. The membership of the respondent Manufacturers Association is made up of various corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution of clothing and merchandise such as blouses, blousettes, waists, gilets, vestees, and tunic blouses.

Among the members of said Manufacturer Association are the following:

Respondent Opera Dress and Blouse, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Sidney Heller Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

William Schneider, trading as Vanity Blouse and Sportswear, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Adelaar Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Venida Blouse Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Morris Cederbaum, trading as Abalene Blouse and Sportswear, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Helitzer Brothers & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Blousecraft Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Mitchell & Weber, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent National Blouse Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Sica Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 141 West Thirty-sixth Street, New York, N. Y.

Respondent Steinfeld Blouse and Sportswear, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 525 Seventh Avenue, New York, N. Y.

Respondent Crysler Products Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 19 West Thirty-fourth Street, New York, N. Y.

Respondent New York Mfg. Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1372 Broadway, New York, N. Y.

Respondent Sports Guild, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 550 Seventh Avenue, New York, N. Y.

Respondent Society Sportswear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 1359 Broadway, New York, N. Y.

Respondent Tuxedo Blouse Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 132 West Thirty-sixth Street, New York, N. Y.

Respondent Variety Blouse & Sportswear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business located at 142 West Thirty-sixth Street, New York, N. Y.

The membership of said respondent Manufacturers Association changes from time to time by the addition and withdrawal of members so that all the members of said organization at any given time cannot be specifically named as respondents herein without considerable inconvenience and delay; also said respondent members number approximately 100 and constitute a class so numerous as to make it impracticable to name them all individually as respondents herein. The members hereinabove named as respondents are made respondents as being fairly representative of the entire membership of said respondent Association.

PAR. 3. Respondent Greater Blouse, Skirt & Neckwear Contractors Association, Inc., hereinafter referred to as respondent Contractors Association, is a corporation having its principal office and place of business located at 225 West Thirty-fourth Street, New York, N. Y.

The following named individuals are officers and members of the board of directors of said Association and as such are designated as respondents herein: Joseph Aigen, president; Charles Bader, M. Finkelstein, and William Monticelli, vice presidents; Jack Levine, secretary; and Abraham Ormut, treasurer.

Said Contractors Association is composed of persons, firms, and corporations engaged in the making of the articles described in paragraph 1 hereof from materials supplied by the members of the Manufacturers Association.

PAR. 4. Respondent Blouse and Waist Makers Union, Local 25, hereinafter referred to as respondent Union, is an unincorporated Union of workers in the garment industry, having its principal office and place of business located at 134 West Thirty-second Street, New York, N. Y.

The following named individuals are officers and members of the executive committee of said respondent Union and as such are designated as respondents herein: Charles Kreindler, manager, and Carrie Franco, chairman; Bertha Bookspoon, Lee Bashoff, Josephine Conti, Betty Epstein, Winifred Gittens, Betty Kramer, Irene Lazare, Esther Lehman, Mae Monachelli, Edna Haynes, Matilda Pinsker, Minnie Rubenstein, Ethel Siegel, Alex Sosne, and William Podnos, members of the executive committee.

The membership of said respondent Union changes from time to time by the addition and withdrawal of members so that all the members of said Union at any given time cannot be specifically named as respondents herein without considerable inconvenience and delay; also said respondent members constitute a class so numerous as to make it impracticable to name them all individually as respondents herein; therefore, the officers and members of the executive committee, hereinabove named as respondents as such officers and members of the executive committee, are also made respondents as members being fairly representative of the entire membership of said respondent Union.

PAR. 5. Respondent members of said respondent Manufacturers Association, named as respondents in paragraph 2 hereof, sometimes hereinafter referred to as manufacturing respondents, together with the unnamed members, are individually engaged in the manufacture, sale, and distribution of the garments and merchandise described in paragraph 1 hereof, with their several shops, plants, and facilities located principally in the city of New York, State of New York.

Most of said manufacturing respondents cause their said merchandise, when sold, to be transported from the State wherein it is manufactured across State lines into or through other States to purchasers located in the several States of the United States. Many of said manufacturing respondents import into the State in which their establishments are located from other States, cloth, fabrics, and materials of various kinds used in the manufacture of said merchandise.

There has been and now is a continuous current of interstate trade and commerce in said raw materials between the sellers thereof and the said manufacturing respondents and in said clothing between said manufacturing respondents and the purchasers of said merchandise located as aforesaid.

Said manufacturing respondents are in competition with one another in the manufacture, sale and distribution of said described merchandise, except insofar as their said competition has been hindered, lessened, and restrained, or potential competition among them forestalled by the practices and methods hereinafter set forth. There are other corporations, partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of such clothing in various localities and trade areas of the United States in competition with one another, and with one or more of said manufacturing respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled, by the use by said manufacturing respondents and other respondents of the practices and policies hereinafter described.

PAR. 6. The respondents named in paragraphs 3 and 4 hereof, have been and are engaged in certain unfair acts, practices, and methods

hereinafter described, which hinder, lessen, and restrain competition in interstate commerce in said merchandise among the other respondents, and among such other respondents and their competitors not designated as respondents herein.

These respondents have been and are concertedly cooperating with said respondent Manufacturers Association and aiding and assisting it in effectuating the purposes for which it was organized and for which it has been conducted, as hereinafter stated.

PAR. 7. The volume of business done by the manufacturing respondents belonging to or affiliated with respondent Manufacturers Association constitutes approximately 90 percent of the trade in such merchandise in the city of New York, which is by far the largest trading area in the country. The manufacturing respondents enjoy, dominate, and control the policies, practices, terms, and conditions upon which this class of merchandise has been and is manufactured and marketed in said area.

PAR. 8. Respondent Manufacturers Association was organized in 1933 and has adopted and effectuated various bylaws. The governing body of said respondent Association is the board of directors, which governing body adopts such bylaws and rules and regulations and takes whatever steps are necessary to effectuate the purposes of said respondent Association. It is provided in the certificate of incorporation, among other things, that the purposes and objects of the formation thereof are to bring together and associate in one cohesive union persons, firms, and corporations engaged in the blouse and allied industries and to establish uniform trade practices and to promulgate uniform trade rules and regulations.

PAR. 9. Since the organization of respondent Manufacturers Association, the respondents hereinabove named and described, and each of them, under varying circumstances and degrees of cooperation and willingness have for different periods of time entered into, acquiesced in, or observed various agreements or understandings to hinder and suppress competition in the interstate sale and distribution of the merchandise hereinabove referred to in the United States and in the District of Columbia, and have joined in or participated in combinations and conspiracies to restrain such trade and to promote a monopoly therein among themselves. The primary object of such agreements, understandings, combinations, and conspiracies has been to control and regulate all the manufacture and distribution of said products in the United States, in the interests of respondents. In furtherance of such objectives said respondent Manufacturers Association, aided and assisted by the other respondents, has imposed or attempted to impose on the manufacturers engaged in said industry, including one another and including independent manufacturers, jobbers, and others, rules, regulations, and requirements hereinafter

more particularly described, which were designed to bring about and which brought about various restraints and partial restraints upon the freedom of competitive action of many of such factors and which hindered and suppressed competition in many of its phases in said industry. The nature, scope, purposes, results, and effects of such agreements and conspiracies, together with the means used to effectuate the same, are more particularly hereinafter set forth.

PAR. 10. Pursuant to the said agreements and conspiracies respondent Manufacturers Association, with the aid and cooperation of the other respondents, adopted, promulgated, and effectuated and enforced certain so-called uniform standards of fair commercial practice, among which are the following:

SECTION 1. *Terms.*—It shall be unfair trade practices to sell merchandise at a cash discount in excess of eight percent (8%) ten (10) days E. O. M. (end of month) except that merchandise shipped after the twenty-fifth (25) day of any month may be dated as of the first (1st) day of the following month. Anticipation shall not be allowed at a rate in excess of six percent (6%) per annum.

SEC. 2. *Unjust returns.*—No member of the industries shall accept for credit returned merchandise except for defects in manufacture, delay in delivery, errors in shipment, or failure to conform to specifications. No returned merchandise shall be accepted for credit if returned after five (5) days from date of receipt by customer except on account of failure to conform with specifications or on account of defects in manufacture not discoverable by reasonable inspection. No member of the industry shall accept for credit any returned merchandise which is not accompanied by a written statement containing the reasons for such return.

SEC. 3. *Consignments.*—Merchandise must not be sold on consignment or memorandum under any circumstances whatsoever.

SEC. 4. *Collect telegrams.*—Accepting charges for telegrams or long distance telephone messages from customers with reference to purchase or sale of goods.

SEC. 5. *Selling at retail.*—No members of the Blouse and Skirt Manufacturing Industries normally selling to the trade for resale, may sell merchandise to anyone except to wholesale or retail distributors. This shall not prevent, however, bona fide sales by members to their own employees of merchandise which is for the personal use of such employees, or to retail buyers at not less than the regular wholesale prices, provided the buyers are employed in the department in which the merchandise of the member of the industry is usually sold.

SEC. 10. *Advertising subsidies.*—No member of the Association shall pay, or cause to be paid, directly or indirectly, for advertising

that a retailer may utilize in connection with the sale of the merchandise of such member.

PAR. 11. In order to further effectuate their objects and purposes the respondents have agreed to, and have—

1. Fixed or maintained certain price levels for the various products mentioned in paragraph 1 and have established or maintained prices for each price level, and at times have changed the prices for one or more of said price levels;

2. Required that there should be no submission of samples for group buying or for comparative purposes to any retailer;

3. Required that there should be no encroachment insofar as values or prices are concerned of any price level group on any other such group, and that stability in the market should be maintained as to the manufacturer, retailer, and consumer price levels;

4. Required that there should be a curtailment of production in order to obtain the prices desired by the industry.

PAR. 12. In order to further effectuate their objects and purposes, respondent Manufacturers Association and the respondent Union, have entered into collective undertakings and therein, among other things, agreed to create and establish a stabilization board with power and authority to make rules and regulations with the same force and effect as if they were a part of said collective agreement, and such board was actually created and established and has actually functioned in the above industry to aid and assist in effectuating the various agreements, understandings, and conspiracies herein set forth.

PAR. 13. The respondent Manufacturers Association entered into a collective agreement with the respondent Greater Blouse, Skirt and Neckwear Contractors Association, Inc., by the terms of which it was agreed that the members of respondent Manufacturers Association would pay, and the members of respondent Contractors Association would accept, not less than certain specified prices for the making of blouses and other articles of clothing from materials furnished by the manufacturers, thereby collectively fixing uniform costs for the making of such garments to the manufacturers.

PAR. 14. To further effectuate said conspiracies, agreements, and understandings, and to attain the ends thereof, said respondent Associations and the members thereof and respondent Union, acting concertedly and cooperatively have done the following things, among others:

1. Coerced manufacturers into becoming members of respondent Manufacturers Association.

2. Adopted, effectuated, and enforced the above-mentioned so-called uniform standards of fair commercial practice and pricing policies.

3. Set up committees, groups, and officials to enforce the terms and

provisions of said respondents' said program and agreements, and to discipline and penalize violators thereof.

4. Coerced respondent manufacturers into agreeing to submit, and submitting, to investigations, examinations, and audits of their books, records, merchandise, premises, and practices by representatives of said respondent Manufacturers Association and said respondent Union to enable them to ascertain whether said practices and policies were being observed and complied with.

5. Pursued a policy of investigating all complaints and information received relating to alleged violations of the requirements of respondents' said program and standards of fair commercial practices; of coercing such alleged violators into conforming to said practices and policies; of publishing the names of recalcitrant members, or others, engaged in the industry, who failed or refused to submit to such coercion; or otherwise complying with said requirements; of summoning such alleged violators to hearings before respondent Manufacturers Association, and of penalizing them by levying fines and assessments upon them, and by other means.

6. Pursued a policy of investigating business disputes between respondent manufacturer members and also between said manufacturer members and retail customers; of investigating the business methods and conduct of particular retailers; and of compiling and publishing lists of retailers whose methods or conduct was considered to be unsatisfactory or inconsistent with the requirements of respondents' said so-called standards of fair commercial practices.

7. Placed unreasonable restrictions around the business relationships between respondent manufacturer members and contractors and subcontractors, and, in some instances, prevented contractual relations among them, as hereinabove set forth.

PAR. 15. Respondents during the period herein mentioned have done and performed other acts and things to carry out the purposes of and to further the objects of said agreements and understandings, to enforce and effectuate the same, and to impose the requirements thereof generally on those engaged in the manufacture, sale, and distribution of said merchandise in the United States.

PAR. 16. The capacity, tendency, and effect of the aforesaid agreements and conspiracies and the policies, practices, and the acts and things done and performed by respondents in pursuance thereof are and have been:

1. To tend to monopolize in said respondent manufacturers the business of manufacturing, selling, and distributing the above-described merchandise in the area in the United States in which they operate.

2. To tend to monopolize in respondent manufacturers the opportunity to secure skilled labor for the manufacture of such garments.

3. To establish, fix, or maintain prices, discounts, and various terms and conditions attending the sale of such merchandise.

4. To unreasonably lessen, suppress, and restrain competition in the sale of said merchandise, and to deprive wholesalers, jobbers, selling agents, resident buyers, retailers, and the purchasing public of the advantage of prices, terms, and conditions of sale, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in said merchandise from, into, and through the various States of the United States and in the District of Columbia.

PAR. 17. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said manufacturers in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; and placed in the member respondents' power to control and enhance prices and other terms and conditions in connection with the manufacture and sale of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This matter coming on for consideration and it appearing that the substitute answer admitting all the allegations of fact set forth in the complaint except as stated in such answer filed by certain of the respondents on March 21, 1947, has been submitted on the condition that service in this proceeding of any order to cease and desist prohibiting certain of the practices which are alleged in the complaint to be unlawful shall not be made unless and until the Commission has entered its order disposing of similar charges forming the basis of the proceeding then pending before it, entitled, *In the Matter of National Coat & Suit Industry Recovery Board et al.*, docket No. 4596; and

The Commission having on December 1, 1950, entered its order in docket No. 4596 dismissing, for the reasons stated therein, the complaint in that proceeding without prejudice to the right of the Commission to conduct a further investigation into respondents' business

practices and to take such further action in the future as may be deemed warranted by the then existing circumstances, which order recites also that the action of the Commission does not constitute an adjudication of the issues involved;[1] and

There having been no adjudication of the issues of that proceeding on the merits as contemplated by the respondents in this proceeding who are parties to the substitute answer previously referred to, and it further appearing in this proceeding that the acts and practices referred to in the complaint issuing on October 23, 1943, occurred more than 12 years ago under economic conditions differing materially from those now prevailing; and

The Commission being of the opinion that the public interest will be best served by dismissal of the complaint in this proceeding, it being understood, however, that such action does not constitute an adjudication of the issues involved or prejudice the right of the Commission to conduct a further investigation into respondents' business practices and to take such further action as the Commission may consider warranted as a result of such investigation, or otherwise:

Accordingly, it is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. George W. Williams and *Mr. George M. Martin* for the Commission.

Klein & Weinberger, of New York City, for National Association of Blouse Manufacturers, Inc., its officers, board of directors, and various corporate respondents as representative members of said Association.

Mr. George J. Beldock, of New York City, also represented Samuel Mitchell and Mitchell & Weber, Inc.

Adler & Schwartz, of New York City, for Greater Blouse, Skirt & Neckwear Contractors Association, Inc., and its officers, board of directors, and representative members of said Association.

Mr. Elias Lieberman, of New York City, for Blouse and Waist Makers Union, Local 25, its officers, executive committee, and representative members of said Union.

BELTRACTION CO. AND HARVEY C. DEVEREUX. Complaint, October 24, 1949. Order, May 8, 1951. (Docket 5705.)

CHARGE: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties or results and composition of

[1] See p. 1552.

products; in connection with the sale of two industrial belt dressings designated as "Beltraction" and "Pulmore".

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 Beltraction Co., a corporation, and Harvey C. Devereux, individually and as an officer of said 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, herein issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Beltraction Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Harvey C. Devereux is president of the corporate respondent. The individual respondent formulates, directs and controls the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondent is located at 1813 Winona Street, Chicago 40, Ill.

PAR. 2. Respondents are now and have been for several years last past, engaged in the business of offering for sale, sale and distribution of two industrial belt dressings designated as "Beltraction" and "Pulmore," for use on canvas, leather, rubber and fabric belting.

The formula for each of said products is as follows:

Ingredient	Beltraction	Pulmore
	Gallons	*Gallons*
Alcohol	274	289
Resin	246	231
Neatsfoot oil	74	74
Balsam (pine derivative)	5	5
Total	599	599

PAR. 3. The respondents caused and have caused the aforesaid products, when sold, to be transported from their aforesaid place of business to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

The respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said belt dressings, said respondents have made and now make, by means of circulars and folders and upon the labels on the containers of said products, many statements and representations concerning the nature and quality of their

said belt dressings and the results that may be expected from the use thereof. Among and typical of such statements and representations are the following:

Representations with respect to Beltraction:

It cleans, softens and preserves belts * * *.
Beltraction is guaranteed of uniform quality and contains no harmful ingredients.
It contains nothing that is harmful to leather, rubber or canvas.

Representations with respect to Pulmore:

Pulmore is guaranteed uniform quality and contains no harmful ingredients.
Prolongs life of belts.
If it is used regularly, it will preserve and prolong the life of belts. * * *.

PAR. 5. Through the use of the statements above set forth and others of the same import not specifically set out herein, respondents represented that the use of said products will soften, preserve and prolong the life of belts and that said products contain nothing harmful to leather, canvas, or rubber belts.

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact said products will not preserve or prolong the life of belts. While they may initially soften belts, they tend to stiffen them on aging. Said products contain ingredients which are harmful to leather, canvas, and rubber belts.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their said products 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 such statements, representations and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said products.

PAR. 8. The aforesaid acts and practices of respondent, 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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 8, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT

Initial Decision by William L. Pack, trial examiner: This matter is before the trial examiner for final consideration upon the complaint of the Commission, the answer of respondents, testimony and other

evidence introduced in support of and in opposition to the complaint, proposed findings and conclusions submitted by counsel, and oral argument of counsel.

Respondents who are located in Chicago, Ill., are engaged in the manufacture and interstate sale of a product designated by them as Beltraction, the product being designed for use as a dressing or treatment for belts which drive machinery and convey materials in manufacturing plants and other industrial establishments. The identical product is also sold by respondents to a much lesser extent under the name Pulmore, the latter name being used chiefly in connection with sales of the product to farmers for use on farm machinery belts.

The principal ingredients of the product are rosin, neatsfoot oil, and alcohol. The purpose of the rosin is to reduce slippage of the belt on the pulley and thereby increase traction. The purpose of the neatsfoot oil is to soften the belt (make it more pliable and flexible) and otherwise act as a preservative. The purpose of the alcohol is to act as a carrier or penetrant for the rosin and oil also to assist in cleaning the belt.

The product is intended for use only on belts which are in actual use. Under the directions for use supplied by respondents, a few drops of the product are sprinkled on the underside of the belt, that is, the side which comes in contact with the pulley, and the process is repeated at intervals of a few minutes until that side of the belt is covered with a thin film or coating of the product. Further applications are made from time to time as needed.

Respondents' advertising is confined to leaflets and circulars which are distributed among prospective purchasers by salesmen and through the mail, and to statements appearing upon the cans in which the product is packaged. In this advertising material respondents have represented that the product will preserve and prolong the life of leather belts, that it softens the belt, and that it contains nothing which is harmful to belts. The complaint challenges these representations, charging that they are false and misleading. Specifically, the complaint alleges: "In truth and in fact said products will not preserve or prolong the life of belts. While they may initially soften belts, they tend to stiffen them on aging. Said products contain ingredients which are harmful to leather * * * belts."

While respondents' advertising and the complaint referred to canvas and rubber belts as well as leather belts, there is no evidence in the record with respect to canvas belts. The only evidence with respect to rubber belts was introduced by respondents and is favorable to respondents' position. The only issues which remain are with respect to leather belts.

The Government's case rests upon the results of certain tests of respondents' product made by the National Bureau of Standards and

upon the testimony of two of the Bureau's experts, one being the employee who made the tests and the other being the chief of the leather section of the Bureau, who is the immediate superior of the employee making the tests. The Bureau's report on the tests indicates that the use of the product will increase slightly the tensile strength of belts and that it will very greatly reduce slippage, giving the belt some 10 to 18 times more traction, but that it will make belts stiffer on aging, that is, reduce their flexibility. The probative value of the tests is materially weakened by reason of the fact that the laboratory notes or original data made while the tests were in progress and upon which the Bureau's conclusions were based were not available at the hearing for examination by respondents' counsel and possible use in the cross-examination of the expert who made the tests. It appears that the notes were borrowed by another employee of the Bureau and in some way were lost.

In addition to these tests there is testimony from the Chief of the Bureau's Leather Section that it is his opinion, based upon his general knowledge and experience, that respondents' product will stiffen belts on aging and that the product is harmful to belts. As his basis for the latter conclusion, the witness stated that rosin is an oxygen carrier and that it therefore causes oxidation and consequent deterioration of the leather. The alcohol in the product, according to the witness, accelerates this action in that it tends to dissolve the tanning materials in the leather, causing them to migrate to the surface where they are more easily oxidized.

Respondents introduced in evidence the results of certain tests of their product made by three independent testing laboratories and the testimony of the four experts who made the tests. These tests, like the Government's tests, indicate that the product will greatly reduce slippage and will to some extent increase the tensile strength of leather belting, and they also indicate that the product will make belts softer, that is, more pliable or more flexible. While the probative value of the tests was unquestionably weakened to some extent as a result of testimony given in rebuttal by experts of the Bureau of Standards, who criticized the technique and procedure used in some of the tests, the tests, in the examiner's opinion, are still of substantial value. In this connection, it should be stated that the criticisms of the Government's experts were to some extent satisfactorily answered by respondents' experts when they were subsequently recalled as witnesses.

Respondents' experts were of the opinion that the product will preserve or prolong the life of belts, that it will soften belts, and that it contains nothing harmful to belts. One of the experts, who appears to have attained an outstanding position in the field of leather chemistry, disagreed with the Government's expert with respect to the effect of rosin on leather. While he recognizes that in its dry, powdered

state rosin may tend to stiffen, oxidize, and deteriorate leather, he is of the opinion that this is not true when rosin is combined with a suitable oil as in the present case. This opinion is based not only upon his general knowledge and research but upon long experience in the handling, tanning, and preserving of leather. While rosin is not as widely used in the leather industry now as formerly, it still is used to a considerable extent.

This same expert disagrees with the Government's expert as to the effect of the alcohol in respondents' product. In his opinion the alcohol could not have any substantial tendency to dissolve the tanning materials in the leather and cause them to migrate to the surface, because alcohol evaporates very rapidly, particularly when it is subjected to the motion and heat of a moving belt. Unquestionably the alcohol in respondents' product does evaporate after the product is applied to the belt; the only issue between the experts is as to the rate of the evaporation.

In addition to their tests and expert testimony respondents introduced in evidence testimony from some 42 users of the product. Eleven of these users appeared and testified at the hearings and the testimony of the remaining 31 was stipulated into the record. The users were maintenance engineers, shop superintendents, etc., from 42 different business establishments in Chicago, the establishments including many different kinds of plants, such as meat packing plants, steel mills, laundries, textile mills, woodworking mills, optical plants and glue factories. The various plants use many belts both for driving machinery and conveying materials, and the belts are used under a wide variety of conditions, such as unusual heat, moisture, dust, etc. The testimony of these witnesses, based upon their own use and observation of respondents' product in their respective plants for period ranging from five to ten years, is to the effect that they have observed that the product decreases slippage, cleans and softens the belt, and makes belts last longer, and that the witnesses have observed no deterioration or harm to the belts from the use of the product.

All of the experts, both for the Government and for respondents, who were questioned about the matter agree that slippage is one of the principal causes of belt deterioration. The primary reason for this appears to be that slippage generates heat, and heat, in turn, accelerates oxidation of the materials composing the belt. It is undisputed that respondents' product greatly reduces slippage. The reasonable conclusion would therefore appear to be that the product does preserve or prolong the life of belts. In this connection, it should also be noted that both the Government's tests and respondents' tests indicate that the product will to some extent increase the tensile strength of belts.

The issue of injury or harm to the belt would appear to be closely related to that involving the prolonging of the life of the belt. If, as appears to the fact, respondents' product does prolong the life of the belt, it is difficult to see how it can reasonably be said that the product causes harm to the belt. Assuming that the rosin and alcohol in the product may tend to cause oxidation, there is nothing in the record to indicate that such harmful effects approach in extent or degree the undisputed and very substantial benefit resulting from the reduction in slippage. It seems to the examiner that it is the over-all effect or end result from the use of the product which must be looked to.

Somewhat the same situation would appear to be presented with respect to the issue as to whether the product will soften belts. Assuming that the rosin in the product will tend to stiffen belts on aging, the product also contains neat's-foot oil, which has long been in almost universal use for the purpose of keeping leather soft and pliable. As to which of the two ingredients would prevail the record does not afford a conclusive answer, but the testimony of the users would indicate that the softening properties of the neat's-foot oil will more than offset the stiffening properties of the rosin. In considering this phase as well as the other phases of the case, it must be remembered that respondents' product is designed and sold for use only on belts which are in actual use and that repeated applications of the product to the belt are made from time to time.

It is axiomatic that the burden of proof in the proceeding is upon the Government, and the examiner being of the opinion that the charges in the complaint are not supported by the greater weight of the evidence.

It is ordered, That the complaint be, and it hereby is, dismissed.

Before *Mr. William L. Pack*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Ralph J. Gutgsell, of Chicago, Ill., for respondents.

FRED S. HIRSCH AND WILLIAM W. HIRSCH trading as INNERCLEAN MANUFACTURING CO. AND W. C. JEFFRIES CO. Complaint, September 28, 1942. Order, May 11, 1951. (Docket 4839.)

CHARGE: Advertising falsely or misleadingly as to qualities, properties or results, safety, scientific or relevant facts, and comparative merits of product, neglecting, unfairly or deceptively, to make material disclosure as to safety of product, and using misleading product name; in connection with the sale of a preparation designated "Innerclean Intestinal Laxative" sometimes designated "Innerclean Herbal Laxative".

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 Fred S.

Hirsch and William W. Hirsch, individuals, trading and doing business under the style and firm name of Innerclean Manufacturing Co., and Wilbur C. Jeffries, an individual, doing business under the style and firm name of W. C. Jeffries Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Fred S. Hirsch and William W. Hirsch are individuals trading and doing business as copartners under the style and firm name of Innerclean Manufacturing Co., with their principal office and place of business located at 846–848 East Sixth Street, Los Angeles, Calif.

PAR. 2. These respondents are engaged in the sale and distribution of a preparation designated "Innerclean Intestinal Laxative" sometimes designated "Innerclean Herbal Laxative," in commerce among and between the various States of the United States and of the District of Columbia.

These respondents cause their aforesaid preparation when sold to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

These respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Wilbur C. Jeffries is an individual engaged in the advertising business under the style and firm name of W. C. Jeffries Company with his principal office and place of business located at 165 North La Brea Avenue, Los Angeles, Calif. This respondent is engaged in formulating, preparing, writing, editing, selling and placing advertising copy as well as advising his clients on advertising matters.

This respondent is the advertising representative of respondents Fred S. Hirsch and William W. Hirsch and as such formulates, prepares, writes, edits and places all advertising copy used by the respondents Fred S. Hirsch and William W. Hirsch, trading as Innerclean Manufacturing Co., in the sale and distribution of their aforesaid preparation, designated as aforesaid, in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 4. These 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 preparation, "Innerclean Intestinal Laxative," these respondents have

disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid preparation "Innerclean Intestinal Laxative" 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, are now causing the dissemination of, false advertisements concerning the said preparation as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of "Innerclean Intestinal Laxative" in commerce as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations, contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, newspapers, radio, circulars, form letters, pamphlets and other advertising media, as aforesaid, are the following:

7 REASONS WHY
Thousands prefer
INNERCLEAN INTESTINAL LAXATIVE

1. Aids in stimulating sluggish intestinal muscles.
2. Helps rid intestines of accumulated waste.
3. Made only of herbs in their natural state.
4. Pleasant and easy to take.
5. No fuss, no brewing, no bother.
6. Gentle in action, when taken in small doses.
7. Economical . . . a 50¢ package lasts months.

At all leading druggists, or write for

FREE GENEROUS TRIAL SUPPLY
Innerclean Co. Dept. 666
Los Angeles, California.

INNERCLEAN
Intestinal Laxative.

(Picture)

ACID INDIGESTION
MADE ME MISERABLE—
UNTIL I LEARNED
ABOUT HERBS FOR
IRREGULARITY.

When simple intestinal sluggishness is making you suffer from offensive bad breath, bloating, acid indigestion, coated tongue, loginess—relieve your distress with INNERCLEAN HERBAL LAXATIVE. * * *

Are you being poisoned
by CONSTIPATION?
(Picture)

If your system is weakened by the toxic effects of constipation, start taking Innerclean Intestinal Laxative at once. Thanks to this amazing blend of natural herbs you may now enjoy blessed relief without resorting to harsh cathartics. * * *

Intestinal

INNERCLEAN

Laxative

ARE YOU POISONED BY CONSTIPATION?

If your system is weakened by the toxic effects of constipation, do not look for relief from ordinary habit-forming laxative. Do as thousands are now doing, take Innerclean Intestinal Laxative to free the bowels from poisons. * * *

Perfected by Prof. Arnold Ehrit, Innerclean is a scientifically proportioned blend of Nature's herbs in their natural state. It is so different so certain in effect that you'll bless the day you learned of it.

Innerclean Herbal Laxative relieves constipation without making you depend on it. * * *

Innerclean Co.
346 E. Sixth St.
Los Angeles.

"Honestly I feel as if I'm being POISONED by constipation."

"TAKE INNERCLEAN HERBAL LAXATIVE TONIGHT YOU'LL FEEL DIFFERENT TOMORROW".

Innerclean is a most unusual laxative—a pleasant-tasting compound of eight herbs in their natural state. It is gentle, sure and thorough, yet free from distressing after-effects and is not habit-forming * * *.

"I scolded the children needlessly before I learned about HERBS for irregularity."

When occasional constipation makes you cranky and irritable don't wait a day—try INNERCLEAN HERBAL LAXATIVE.

ASK YOURSELF THIS QUESTION

"Am I being poisoned by constipation?"

Most people in this age of refined foods and sedentary living are subject to constipation. Absorption of poison from undigested, decomposing food and uneliminated waste matter in the digestive tract sometimes causes many human ailments. Those who bathe frequently would be shocked if they were aware of their intestinal uncleanliness. This uneliminated filth sometimes produces poisons which weaken the body; foods fail to nourish and sour stomach, heartburn, headache, colic and cramps due to gas, etc., are often traceable to poisons generated from uneliminated waste matter. REMOVE THE CAUSE, AND FREE YOURSELF OF THESE AILMENTS.

BEWARE OF CONSTIPATION

Many so-called physics used for constipation aggravate the very condition they are meant to correct. Usually they are drug extracts whose action is violently stimulating and with repeated use, they become less and less effective.

INNERCLEAN INTESTINAL LAXATIVE
IS DIFFERENT.

The great value of Innerclean is that the impurities clinging to the intestinal walls become loosened gradually and started on the road to elimination.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic prop-

erties of the preparation "Innerclean-Intestinal Laxative," sold and distributed by respondents Fred E. Hirsch and William W. Hirsch, as aforesaid, respondents represent, directly and by implication, that "Innerclean Intestinal Laxative" is a cure and remedy and constitutes a competent and adequate treatment for constipation, acid indigestion, bad breath, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache, colic and cramps due to gas, etc.; that it will aid in stimulating sluggish intestinal muscles and provide pep; that it will free the bowels from poisons and remove toxic impurities; that it is safe to use, non-habit forming and free from distressing after effects; that it is different, unusual and a blend of natural herbs constituting it an ideal laxative.

Respondents further represent, in the manner and method aforesaid, that acid indigestion, bad breath, bloating, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache , colic and cramps due to gas, are symptoms of constipation and that the existence of one or more of such symptoms indicates that constipation in the basic cause of such disorders and conditions; that constipation produces poisons in the system whose toxic effect poisons and weakens the system; that impurities cling to the walls of the intestinal tract and that "Innerclean Intestinal Laxative" will gradually loosen such impurities and start them on the road to elimination.

Respondents further represent, in the manner and method aforesaid, that the preparation "Innerclean Intestinal Laxative" is superior to the various chemical or nonherbal laxative preparations or compounds sold on the market for self administration in that it is safer to take, it is not a harsh catharic, it is nonhabit forming, its repeated use will not lessen its effect or cause weakness and the relief afforded by it is much superior.

PAR. 7. The foregoing statements and representations, and others of similar import, not specifically set out herein, are grossly exaggerated, false and misleading.

The preparation "Innerclean Intestinal Laxative," sold and distributed by Fred S. Hirsch and William W. Hirsch, as aforesaid, is not a cure or remedy, nor does it constitute a competent and adequate treatment for constipation, acid indigestion, bad breath, coated tongue, logginess, crankiness, irritability, weak system, sour stomach, heartburn, headache, colic or cramps due to gas. It will not aid in stimulating sluggish intestinal muscles or provide pep. It will not free the bowels from poisons or remove toxic impurities. It is not safe to use. It is free from distressing after effects. It is not a different or an unusual or an amazing blend of natural herbs which constitute it the ideal laxative. It is habit forming.

The disorders and conditions such as acid indigestion, bad breath, bloating, coated tongue, logginess, crankiness, irritability, weak sys-

tem, sour stomach, heartburn, headache, colic and cramps due to gas, are not typical symptoms of constipation, and the existence of one or more of such disorders or conditions are not generally recognized as manifestations that constipation is the basic cause thereof.

Acid indigestion, logginess, irritability, weak system, sour stomach and heartburn are conditions or disorders that are not recognized by competent medical authority as bearing a causal relationship to constipation, and the preparation "Innerclean Intestinal Laxative" will have no generally recognized therapeutic effect in the treatment thereof.

The disorders such as colic and cramps due to gas may and often do accompany an attack of appendicitis, and the layman suffering from such conditions is not capable of determining whether such conditions are due to appendicitis. When such disorders accompany an attack of appendicitis, a laxative is not safe treatment therefor, and the use of the preparation "Innerclean Intestinal Laxative" under such circumstances may be dangerous.

When the disorders or conditions such as bad breath, bloating, coated tongue, headache, colic and cramps due to gas are due to causes other than constipation, the use of the preparation "Innerclean Intestinal Laxative" in the treatment thereof would have no therapeutic value. To the extent that constipation is the contributing factor to, or the basic cause of, such disorders or conditions, the preparation "Innerclean Intestinal Laxative" would have no generally accepted therapeutic value in the treatment thereof in excess of that furnished by an evacuation of the bowels.

The contents of the intestinal tract do not cling to the intestinal walls. It is normal for the intestinal tract to contain food and food residue in various stages of digestion and decomposition. The products produced by these changes are not poisons. Constipation does not poison or weaken the system and the use of "Innerclean Intestinal Laxative" will not loosen impurities from the intestinal walls and will not cleanse the intestinal tract.

The preparation "Innerclean Intestinal Laxative," sold and distributed by Fred S. Hirsch and William W. Hirsch, as aforesaid, is as harsh a cathartic and as habit forming as various chemical or nonherbal laxative preparations or compounds sold on the market for self administration. The repeated use of this preparation will lessen its effectiveness and result in weakness to the same extent as the repeated use of any laxative. This preparation is not superior in its action, nor is the relief afforded by its use superior, to that obtained by the use of chemical or nonherbal laxative preparations or compounds sold on the market for self administration.

PAR. 8. In addition to the false and misleading statements and representations hereinabove set forth, the respondents by the use of

the word "Innerclean" in the trade name "Innerclean Intestinal Laxative" have represented and are now representing that the preparation "Innerclean Intestinal Laxative" will cleanse the intestinal tract.

The preparation "Innerclean Intestinal Laxative" will not cleanse the intestinal tract.

PAR. 9. The advertisements disseminated by the respondents as aforesaid, constitute false advertisements for the further reason that they fail to reveal the facts material in the light of such representations, or material with respect to consequences which may result from the use of the aforesaid preparation, "Innerclean Intestinal Laxative," under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The preparation "Innerclean Intestinal Laxative," sold and distributed by respondents, Fred S. Hirsch and William W. Hirsch, as aforesaid, is an irritant cathartic and is potentially dangerous when taken by one suffering from abdominal pains, stomach-ache, cramps, colic, nausea, vomiting, or other symptoms of appendicitis. The frequent or continued use of this preparation may result in dependence on a laxative.

PAR. 10. The use by said respondents of the foregoing false advertisements and deceptive and misleading statements and representations, and others of similar import, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that the preparation "Innerclean Intestinal Laxative" sold and distributed by respondents Fred S. Hirsch and William W. Hirsch, as aforesaid, will accomplish the results claimed for it and that it is harmless and safe to use and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the aforesaid preparation disseminated as aforesaid.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This proceeding having come before the Commission upon respondents' motion to dismiss and the answer of counsel supporting the complaint not opposing said motion; and

It appearing to the Commission that the complaint herein charges respondents with disseminating false and misleading advertising in connection with the offering for sale and sale of a preparation designated as "Innerclean Intestinal Laxative" or "Innerclean Herbal

Laxative," and that the complaint also charges that the use of the word "Innerclean" in connection with the trade name of the preparation is in and of itself false and misleading; and

It further appearing from the record herein that all of the alleged false and misleading advertising other than the use of the word "Innerclean" in the respondents' trade name was discontinued from 1 to 4 years prior to the issuance of the complaint herein over 8 years ago; and

It further appearing that the allegations of the complaint that the use of the word "Innerclean" in the trade name of respondents' preparation creates in the minds of the members of the purchasing public a belief that the use of such preparation will cleanse the intestinal tract other than to the extent ordinarily accomplished by the use of a laxative such as respondents' preparation have not been sustained by the weight of the evidence; and

The Commission having no reason to believe that the dissemination of the alleged false and misleading representations which has been discontinued by respondents will be resumed, and it being of the opinion that in the circumstances the public interest does not require further corrective action in this matter at this time:

It is ordered, That the complaint herein be, and it hereby is, dismissed.

Before *Mr. James A. Purcell* and *Mr. Clarence T. Sadler*, trial examiners.

Mr. John W. Carter, Jr., and *Mr. William L. Pencke* for the Commission.

Cosgrove, Cramer, Diether & Rindge, and *Mr. F. B. Yoakum, Jr.*, of Los Angeles, Calif., for respondents.

WOLF-RAIT, INC., HERMAN BERMAN, AND GERSON B. WOLF. Complaint, May 14, 1946. Order, May 17, 1951. (Docket 5438.)

CHARGE: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of products, in violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; in connection with the manufacture and sale of wool products, principally women's coats and suits, and of women's garments composed in whole or part of rayon.

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 Wolf-Rait, Inc., a corporation, Herman Berman, an individual and president of Wolf-Rait, Inc., and Gerson B. Wolf, an individual and secretary and treasurer of Wolf-Rait, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and the 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. Wolf-Rait, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 142 West Thirty-sixth Street, New York, N. Y. Respondent Herman Berman is an individual and president of said corporate respondent Wolf-Rait, Inc. Respondent Gerson B. Wolf is an individual and secretary and treasurer of said corporate respondent. Each of said individual respondents also has his office and place of business at 142 West Thirty-sixth Street, New York, N. Y. Said individual respondents Herman Berman and Gerson B. Wolf control and direct the acts and practices of the corporate respondent and all of said respondents cooperated and participated in the performance of the acts and practices hereinafter alleged.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce as "commerce" is defined in said Act, and in the Federal Trade Commission Act.

Respondents cause their said products, when sold, to be transported from their 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.

Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Many of said respondents' said products are composed in whole or in part of wool and many of 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 introduction and manufacture for 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 rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and sold, transported and distributed in said commerce as aforesaid, were women's coats and suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid

products in violation of the provisions of said act and said rules and regulations by failing to affix to said 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 products, exclusive of ornamentation not exceeding 5 percentum 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 was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents 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.

PAR. 4. Among the products offered for sale and sold by the respondents in commerce as aforesaid are some which are composed wholly or in part of rayon.

Rayon is a chemically manufactured fiber which may be manufactured so as to simulate either silk or wool in texture and appearance. Garments manufactured from such rayon fibers have the appearance and feel of silk or wool garments and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk or wool. Consequently such rayon garments are readily accepted by some members of the purchasing public as silk or wool products.

PAR. 5. The respondents sell in commerce as aforesaid women's garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed wholly or in part of silk, or wool. In making such sales in commerce respondents do not inform the purchasing public of the fact that the women's garments which resemble silk or wool in texture and appearance are made wholly or in part of rayon and not of silk or wool.

PAR. 6. Products manufactured from silk, the product of cocoon of the silk worm, and products made from pure or genuine wool, have for many years been held and are still held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 7. The practices of respondents in offering for sale and selling such women's garments manufactured wholly or in part of rayon which resembles in texture and appearance garments manufactured from silk or wool in commerce as aforesaid without disclosing in words

familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that said garments are composed wholly or in part of silk, or wool. The use by the respondents of the acts and practices as alleged in paragraph 5 hereof has had and now has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers as to the fiber content of their said products, and as a result of said deception substantial quantities of respondents' products are purchased in the belief that they are composed of silk, or wool.

PAR. 8. The aforesaid acts, practices and methods of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 17, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

Initial Decision by James A. Purcell, trial examiner:

This proceeding came on to be considered by the above-named trial examiner theretofore duly designated by the Commission, upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, no proposed findings and conclusions having been presented by counsel, oral arguments not having been requested; and further upon consideration of a motion to dismiss the complaint on the several grounds therein set forth, filed herein on January 19, 1951, by the attorney in support of the complaint, concurred in by the attorneys representing the respondents.

The respondent, Wolf-Rait, Inc., ceased doing business as of July 1, 1946, although not formally dissolved by operation of law insofar as the record discloses. On the last-mentioned date a corporation, known as Carole Wren, Inc., was organized under the laws of the State of New York, and acquired and continued the business of respondent Wolf-Rait, Inc., at the same address, 142 West Thirty-sixth Street, N. Y.; respondent Gerson B. Wolf is president and principal stockholder of Carole Wren, Inc.; respondent Herman Berman has no official connection with the last-named corporation and severed his connection with Wolf-Rait, Inc., on July 1, 1946.

Prior to September, 1944, the above-named respondents had affixed to certain of their manufactured articles of wool, consisting of women's coats and suits, certain tags and labels not in accord with the requirements of the Wool Products Labeling Act of 1939, as well also of the rules and regulations promulgated thereunder. It further appeared that since September 1944, respondents (and for the purpose of this initial decision Carole Wren, Inc., as the successor to the business of Wolf-Rait, Inc., while not a named respondent, is adverted to because of the principal stock ownership thereof by respondent Gerson B. Wolf and of his executive capacity as president thereof), have uniformly made use of labels and tags, sewn to each manufactured article, and conforming to the provisions of said Wool Labeling Act and the rules and regulations issued by virtue thereof.

An investigation of Carole Wren, Inc., conducted at the instance of this Commission in January, 1950, failed to disclose that Carole Wren, Inc., or respondent Gerson B. Wolf, were, at that time, violating the provisions of the said act.

By reason of the foregoing it is the opinion of the trial examiner that no substantial public interest presently exists in the issues raised by the instant proceeding, wherefore:

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

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

Mr. J. W. Brookfield, Jr., *Mr. George M. Martin*, *Mr. DeWitt T. Puckett* and *Mr. Randolph W. Branch* for the Commission.

Conrad & Smith, of New York City, for respondents.

GAY TIME FROCK CO. OF SCRANTON, ET AL. Complaint, July 3, 1945. Findings and cease and desist order, June 22, 1950. 46 F. T. C. 952. Order vacating, setting aside, dismissing, etc., as to named respondents, May 24, 1951. (Docket 5350.)

CHARGE: Misbranding or mislabeling as to composition and source or origin of product, and neglecting, unfairly or deceptively, to make material disclosure as to composition of product; in connection with the sale of women's wearing apparel and other articles.

Order vacating and setting aside findings as to the facts, conclusion, order to cease and desist, and dismissing the complaint with respect to Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjamin F. Rosner, follows:

Whereas the Federal Trade Commission has reconsidered its action in this proceeding with respect to the activities of the respondents, Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjamin F. Rosner, and now specifically finds (1) that with the exception of certain mail-order business the said respondents' mer-

chandise comes to a complete rest at respondents' retail stores where it is offered for sale and sold without previous orders to the general public; that said merchandise, after it leaves said retail stores, is not destined for shipment to another State, or for delivery to retail purchasers whose needs are constant and readily anticipated and the offering for sale and sale thereof are not in interstate commerce; (2) that respondents' mail-order business was discontinued long prior to the issuance of the complaint herein and there is no reason to believe that it will be resumed; and (3) that the Commission has no jurisdiction over said respondents since their activities as prohibited in the order to cease and desist, issued herein on June 22, 1950, were not in connection with the offering for sale, or the selling of merchandise in commerce as "commerce" is defined by the Federal Trade Commission Act; and

Whereas the Commission having reconsidered the entire record herein and being now fully advised in the premises:

It is ordered, That the findings as to the facts, conclusions drawn therefrom, and the order to cease and desist issued June 22, 1950, covering the activities of the respondents Gay Time Frock Co. of Scranton, Gay Time Frock Co., Leo Simon and Benjiman F. Rosner, be and the same hereby are vacated and set aside, and the complaint issued July 3, 1945, against said respondents, be and the same hereby is dismissed with prejudice to the Federal Trade Commission.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Fein & Altersohn, of Chicago., Ill, for respondents.

NOTE.—The findings in the case as respects the four respondents as to which the findings, etc., were vacated by the above order, as above stated (but without disturbing the same as respects the findings and order with regard to violation of the Wool Products Labeling Act by respondents Selden and Lieberman) set forth that the two corporations concerned and the two individuals, officers, and directors thereof, engaged in the sale and distribution of women's wearing apparel and other articles through retail stores operated by them in Indiana, Illinois, Pennsylvania, and Virginia, sold "in commerce, as aforesaid garments composed wholly or in part of rayon, which garments simulate the texture and appearance of garments composed of natural fibers," without informing "the purchasing public of the fact that the garments which resemble natural-fiber garments in texture and appearance are made wholly or in part of rayon and not of natural fibers"; and the order to cease and desist required the respondents herein concerned, "in connection with the offering, sale and distribution of women's wearing apparel and other articles in commerce" to "cease and desist from advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content."

HOLEPROOF HOSIERY CO. Complaint, June 2, 1944. Order, May 25, 1951. (Docket 5169.)

CHARGE: Advertising falsely or misleadingly as to manufacture or preparation, comparative merits, qualities, properties or results, com-

position and unique nature or advantage of product; in connection with the sale of ladies hosiery.

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 Holeproof Hosiery 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, Holeproof Hosiery Co., is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at 404 West Fowler Street, Milwaukee, Wis.

PAR. 2. For more than 2 years last past, respondent has been engaged, and is now engaged, in the sale and distribution of ladies' hosiery to members of the public. In the course and conduct of said business, respondent has caused, and now causes, said hosiery, when sold, to be transported from its place of business in the State of Wisconsin, to numerous purchasers thereof located in various States of the United States and in the District of Columbia. Respondent, heretofore, and at all times mentioned herein, has maintained, and now maintains, a course of trade in said hosiery among and between the various States of the United States and in the District of Columbia. Among said purchasers from respondent are retailers who purchase said hosiery for resale to members of the public.

PAR. 3. In the course and conduct of said business, and for the purpose of inducing the purchase by members of the public of said hosiery, respondent, by means of advertisements in magazines, periodicals, and newspapers and by letters, circulars and other means, has made and makes various representations with respect to said hosiery. Said representations have been made by respondent in advertising mats furnished by it to retailers, who purchase said hosiery for resale, and such retailers have used and followed said mats in reproducing said representations in advertisements under their own names in magazines, newspapers, and circulars. Among and typical of the representations thus made are the following:

1. Luxuria Crepes in Holeproof Fine Stockings——

No need to sacrifice beauty to practicality! These flattering Holeproof Fine Stockings wear exceptionally well because the high crepe twist makes them stronger, more snag-resistant. 2 Thread Chiffon in Holeproof's exclusive "Recreation Colors."

2. Luxuria Crepes——

Fine Stockings made more beautiful by Holeproof's exclusive Beauty Lock process which seals tiny silk filaments into sleek strands . . . making hose

clearer, legs lovelier. Give these snag-resistant stockings care in washing and you'll get *extra wear* . . . because of the high crepe twist! 3 lengths in a flattering 3-thread chiffon.

3. Holeproof . . . Luxsheer Rayons——

Exclusive Beauty Lock process preserves first wear beauty! High twist—the secret of increased elasticity, resistance to snagging! Sheerer! Duller! Three lengths—each properly proportioned to exacting standards for perfect fit, supreme comfort, better wear.

4. Holeproof's exclusive finishing process, Beauty Lock, makes colors clearer, textures sheerer, preserves first wear beauty.

5. Be Carefree and forget the danger of ugly runs in NON-RUN Holeproof Chiffons——

*Go on your way serenely . . . blithely . . . in lovely Non-Run Chiffons by Holeproof. No worrisome, ugly leg runs to bother about . . . for the special lock-stitching method of knitting * prevents them! Sheer . . . flattering . . . lacy . . . ever so practical 3-thread Chiffons. In charming colors. * Pat. No. 1470490.

PAR. 4. Hosiery of the kind referred to by respondent in its advertisements as "Luxuria Crepes" and "Luxsheer Rayons," as set forth in subparagraphs 1 to 3, inclusive, of paragraph 3 aforesaid, which is made with a weave recognized as the conventional weave, is normally made on knitting machines of a more or less standard design out of strands of yarns made of silk, rayon, and other fibers which are first turned or twisted a number of times according to standardized practices, the greater the number of twists the higher the twist of the yarn is said to be, and which, either before being knitted or after the hosiery is made, are treated with chemicals for the purpose of attempting to make such hosiery less susceptible to certain types of damage and hosiery failures, and, also, to give it other desired effects.

Some hosiery of the kind referred to by respondent in its advertisements as "Non-Run" hosiery, as set forth in subparagraph 5 of paragraph 3 aforesaid, which is made in whole or in part with a weave recognizable by its web-like appearance, is made on knitting machines, with a certain type of stitch or weave for the purpose of attempting to make such hosiery less susceptible to certain types of damage and hosiery failures, and, also, to give it other desired effects.

When hosiery is being handled or worn during normal use, it may, and often will, come in contact with some jagged, barbed, or other rough or pointed surface on wood, metal, or other materials, or on the hands, which will catch onto, or pentrate, or snag the fabric in such a way as to dislocate or spread the stitch or weave of the fabric, or pull the stitch or yarn or thread of the fabric so that the yarn or thread is looped above the surface of the fabric, or break or sever the yarn or thread, all of which conditions are called "snags," and are observable as rough and uneven places and as holes.

When a snag is one in which one or more of the stitches, yarns, or threads of the fabric is broken or dropped, a run, that is, a ravel in, or a raveling out of, the fabric, running the way of, or the direction of, the weave, may, and often will, appear in the fabric, and may be long or short, depending on whether it is arrested by the weave or type of stitch or by some other means.

PAR. 5. By the representations made by respondents, as set forth in subparagraphs 1 to 3, inclusive, of paragraph 3 aforesaid, as to the hosiery made by it with a conventional weave and referred to by it as "Luxuria Crepes" and "Luxsheer Rayons," being "snag-resistant," and particularly by the use of the word "resistant," respondent has represented and implied and represents and implies that such hosiery is made of such materials and by such method that it is able to withstand and repel the action of such surfaces as those described aforesaid, which normally cause snags, so as to prevent the action of such surfaces making snags appear in such hosiery when being handled or worn during normal use, that such hosiery effectively does and will resist snags, that it does not and will not snag, and that snags do not and will not appear therein when such hosiery is being handled or worn during normal use.

While hosiery made of some materials and by some methods of manufacture may be more susceptible to snagging than hosiery made of other materials and by other methods, yet, the fact is that the hosiery referred to aforesaid made by respondent has not been made and is not made of materials or by a method that enables it to withstand or repel the action of snag producing surfaces, so as to prevent snags from appearing in such hosiery when being handled or worn during normal use. The fact is that said hosiery is susceptible to being snagged and having snags produced in it upon being subjected to the action of snag producing surfaces, and such hosiery will and does snag when being handled or worn during normal use.

The use by respondent of high twist yarn, in the making of the hosiery described last aforesaid, which it has represented and represents it uses in the making of such hosiery, and the use by it of chemicals in treating such hosiery, which it calls its "Beauty Lock" process, will not make, and neither of them will make, such hosiery "snag-resistant." While one of the results of the use of high twist yarn, and a chemical treatment of the character used by respondent, may be to make hosiery less susceptible to some types of snagging or to snagging by some types of snagging actions, in some instances, under some laboratory tests conditions, yet, the truth is that such seeming advantages are of little practical value when hosiery is being given normal use and wear, and such seeming advantages are insufficient and wholly inadequate to warrant, and do not warrant, a representation that such high twist yarn or such chemical treatment, or both,

will make hosiery "snag-resistant." Such representations were and are all false and deceptive.

PAR. 6. By the representations made by respondent, as set forth in subparagraph 4 of paragraph 3 aforesaid, as to its "exclusive finishing process, Beauty Lock," respondent has represented and implied and represents and implies that hosiery made by other manufacturers is not subjected to a finishing process of the type used by respondent. Said representations and implications were and are false and deceptive. To many persons familiar with knitting terms, the use by respondent of the word "lock" would, and does, imply that said process is a type of knitting in which a certain type of stitch is employed. The fact is that respondent's so-called "Beauty Lock" process is a process by which its hosiery is treated with certain chemicals and is not a process in which a certain type of stitch is employed. While the hosiery of other manufacturers may not be treated with the same chemicals that respondent uses in said process, yet, the fact is that the hosiery of many manufacturers is treated with chemicals that have substantially the same effects on hosiery as the chemicals used by respondent. By such representations respondent has given and gives purchasers of its hosiery the false and erroneous impression and belief that its hosiery, by reason of such process, is superior in quality to the hosiery of other manufacturers, and that such superiority is achieved by some process or method of knitting not used by other manufacturers in the making of their hosiery.

PAR. 7. By the representations set out in subparagraph 5 of paragraph 3 aforesaid, as to certain hosiery made by respondent being "non-run" hosiery, respondent has represented and represents that runs, as described aforesaid, will not appear in said hosiery, when being given normal use. Said representations were and are all false and deceptive. The fact is that runs, as described aforesaid, do and will appear in such hosiery, in the same manner and for the same reasons, as in the other hosiery hereinbefore described which have a conventional weave and, in like manner, such runs will not stop until they are arrested by the weave or stitch, or by some other means. Also, parts of said so-called "non-run" hosiery are made with a conventional weave. In such parts runs will and do appear the same as in hosiery made with a conventional weave.

PAR. 8. The aforesaid representations and implications made and published by respondent as aforesaid were and are grossly exaggerated, false, misleading and deceptive.

PAR. 9. The foregoing acts and practices used by respondent in connection with the offering for sale, and the sale and distribution, in commerce, of respondent's hosiery, have misled and deceived, and have the capacity and tendency to, and do, mislead and deceive purchasers of said hosiery into the erroneous and mistaken belief that the repre-

sentations and implications alleged aforesaid are true, when, in fact, they are not true, and to induce them to purchase said hosiery on account thereof for resale and use.

PAR. 10. The aforesaid acts and practices of the respondent, 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.

Complaint dismissed by the following order:

This matter came on to be heard by the Commission upon the complaint of the Commission, the respondent's answer thereto, together with respondent's amendments to said answer, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, exceptions of counsel supporting the complaint to such recommended decision, and the motion of counsel supporting the complaint for permission to withdraw the said exceptions to the trial examiner's recommended decision (filing of briefs having been waived and oral argument not having been requested).

The complaint alleges, and the respondent, Holeproof Hosiery Co., a manufacturer of ladies' full-fashioned hosiery, admits, that it has represented that certain of its hosiery is snag resistant, that it uses an exclusive finishing process called "Beauty Lock," and that certain of its hosiery is nonrun. The complaint alleges and respondent denies that the term "snag resistant" means extremely resistant to snags or snag-proof, that "exclusive finishing process" means that other hosiery manufacturers do not employ a finishing process of the same type as that used by respondent, and that the term "Beauty Lock" used in connection with hosiery implies that a lock stitch is employed in its construction. Respondent contends that its hosiery so represented is snag resistant, that it is finished by an exclusive finishing process, that "Beauty Lock" as used by respondent does not imply the use of a lock stitch, and that its hosiery represented as being nonrun will not run.

It appears to the Commission from the record herein that while respondent has represented that certain of its hosiery is snag resistant, said representations do not imply that such hosiery will not snag but only claim that the said hosiery is less susceptible to snagging due to special processes and construction. Because of its high crepe twist construction and its "Beauty Lock" process, which process consists of treating the hosiery with chemical solutions to bind the threads and filaments more closely together, respondent's hosiery, so represented, does tend to be less susceptible to snagging than is hosiery not made of high twist material and which has not been so chemically treated. Therefore, the falsity of respondent's claim that its hosiery so manufactured is snag resistant has not been sustained by the evidence.

It further appears to the Commission, from the evidence of record, that while other manufacturers do treat their hosiery with chemicals of the same general class as those used by respondent in its "Beauty Lock" process, the mixtures and proportions of the chemicals and the methods of application used by the hosiery manufacturers vary among them according to their individual experience and research. The chemical components of this process are purchased from chemical manufacturing concerns which issue special instructions for their use. Respondent's formula and methods of application vary considerably from these instructions. Such variations result in substantial differences in the qualities of the hosiery so treated. The evidence does not establish that any other hosiery manufacturer uses or has used the same formula or methods of application used by respondent. Therefore, the falsity of respondent's claim that its chemical finishing process is an exclusive process has not been established.

It further appears to the Commission that the evidence of record does not establish that by the use of the term "Beauty Lock" respondent has represented that its hosiery so referred to is constructed with a type of stitch commonly known as the lock stitch. A lock stitch is a method of knitting which forms a barrier against runs in the hosiery. An examination of respondent's advertisements containing the term "Beauty Lock" in their full context shows that respondent represents it to be a process which gives an improved appearance and longer wearing qualities to hosiery so treated. Respondent in no way implies that its "Beauty Lock" process will prevent runs or is a method of knitting. Therefore, the allegation of the complaint that respondent's use of the term "Beauty Lock" is false and misleading has not been sustained by the evidence.

It further appears to the Commission that the evidence of record does not sustain the allegation of the complaint that respondent has falsely represented that certain of its hosiery will not run. Where a break occurs in hosiery of conventional weave, the application of tension will frequently cause the hosiery to unravel for its entire length. Respondent's hosiery represented as nonrun employs at intervals a type of stitch, known as a lock stitch, which forms a barrier against such runs. When a thread is broken in said hosiery, it disengages only as far as the lock stitch unless unusual pressure is applied. These lock stitches appear at intervals of approximately one-fifth of an inch in one direction and one-tenth of an inch in the other direction in respondent's said hosiery. Therefore, if a thread is broken in this type of hosiery, the damage is usually confined to an area of approximately one-fifth of an inch or less. The evidence of record does not establish that a hole in hosiery of a length permitted by this type of construction is considered by the purchasing public to be a run.

It is therefore ordered, That the complaint herein be, and it hereby is, dismissed.

It is further ordered, That the motion of counsel supporting the complaint to withdraw his exceptions to the trial examiner's recommended decision be, and it hereby is, granted.

Before *Mr. George Biddle*, trial examiner.

Mr. D. E. Hoopingarner, *Mr. Edward L. Smith* and *Mr. George M. Martin* for the Commission.

Miller, Mack & Fairchild, of Milwaukee, Wis., and *Mr. A. M. Brown*, of Wyomissing, Pa., for respondent.

ALAN WRIGHT TRADING AS WADALON SALES. Complaint, May 26, 1950. Order, May 26, 1951. (Docket 5780.)

CHARGE: Using or selling lottery schemes or devices in merchandising and misrepresenting business status, advantages or connections as to dealer being manufacturer; in connection with the sale of novelty merchandise and other articles of merchandise.

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 Alan Wright, an individual trading as Wadalon Sales, 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Alan Wright is an individual trading as Wadalon Sales with his principal office and place of business located at 2108 North Western Avenue, Chicago, Ill. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of novelty merchandise and other articles of merchandise to dealers. Respondent causes and has caused said merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in the various States of the United States, other than Illinois, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to members of the consuming public. One of said assortments is and has been sold and distributed to the purchasing public in substantially the following manner:

This assortment consists of a large cardboard carton in which is contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said

smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reserve side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponds to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and the prospective purchasers until selections have been made and the tabs have been separated or removed from the said card.

The value of said articles of merchandise varies substantially. The fact is that the question as to which of said articles the purchaser receives, and whether he receives an article of greater or less value than the amount to be paid therefor, is thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his merchandise, together with devices for use in the sale or distribution of such merchandise, to the purchasing public by means of a game of chance, gift enterprise or lottery scheme but the sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise, either directly or indirectly, expose for sale and sell the same to the purchasing public in accordance with the aforesaid sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said sales plans or methods in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of

chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in and ultimate consumers by said merchandise are attracted by said sales plans or methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein and are thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade to respondent from his said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. By use of the phrase "manufacturers" on its letterheads and other stationery, respondent has represented that he manufactures the merchandise which he sells. In truth and in fact, respondent does not manufacture any of the articles of merchandise which he sells but buys the same from the manufacturers thereof and assembles them into his lottery merchandise deal.

There is a preference on the part of dealers and members of the purchasing public to purchase from the manufacturers and because of the misleading representations that he is a manufacturer, dealers and others have purchased respondent's products.

PAR. 6. The aforesaid acts and practices of 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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, the attached initial decision of the trial examiner shall, on May 26, 1951, become the decision of the Commission.

ORDER CLOSING CASE WITHOUT PREJUDICE

Initial Decision by William L. Pack, trial examiner.

This matter is before the trial examiner upon a motion filed by counsel supporting the complaint to close the proceeding without prejudice. No answer to the complaint has been filed by respondent, nor has any evidence been introduced in the proceeding.

The motion recites that a recent investigation discloses that respondent has discontinued the business which gave rise to the proceeding and has moved to another location where he is now engaged in an entirely different type of business. In the circumstances there would not appear to be sufficient public interest in the matter to warrant further proceedings at the present time.

It is therefore ordered, That the motion be granted and that this proceeding be, and it hereby is, closed without prejudice to the right of the Commission to reopen it and take such further action therein in the future as may be warranted by the then existing circumstances.

Before *Mr. William L. Pack*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

UNIVERSAL EDUCATIONAL GUILD, INC. ET AL. Complaint, December 5, 1949. Order, June 12, 1951. (Docket 5718.)

CHARGE: Advertising falsely or misleadingly and misrepresenting directly or orally by self or representatives as to connections with others, nature of business, reduced, special, or introductory prices, special or limited offers, free service, value of service, new, most modern, unabridged, comparative merits, quality, refunds and reimbursements, indorsements, sponsorship, or approval of product and sample, offer or order conformance and furnishing means and instrumentalities of misrepresentation and deception; in connection with the publication and sale of a work known as World Scope Encyclopedia.

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 the respondents named and referred to in the caption hereof, acting in the respective capacities set forth and described in said caption, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Universal Educational Guild, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 17 Smith Street, Brooklyn 2, N. Y. Its officers are now and for more than 1 year last past, have been the following respondents; namely, Abe Halperin, president, S. Leslie Schwartz, vice president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary.

PAR. 2. Book Distributors, 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 at the aforesaid 17 Smith Street, Brooklyn 2, N. Y. Said respondent and respondent, Universal Educational Guild, Inc., share the same offices. Among its officers who are also officers of respondent Universal Educational Guild, Inc., are the following, to wit: Abe Halperin, president, Myron C. Gelrod, treasurer, and Lily Berkowitz, secretary. The following respondents are also officers of respondent Book Distributors, Inc.: Isidore J. Halperin, second vice president, and Mac Gache, vice president.

PAR. 3. Respondent, Publishers Shipping Corp. 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 at the aforesaid 17 Smith Street, Brooklyn 2, N. Y., where it shares common offices with respondent Universal Educational Guild, Inc., and respondent Book Distributors, Inc. Its officers, to wit: Respondents Abe Halperin, president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary, are also officers of respondent, Universal Educational Guild, Inc., and of respondent Book Distributors, Inc. Respondent, S. Leslie Schwartz, is vice president of respondent Publishers Shipping Corp.

PAR. 4. Respondent, Public Distributors, 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 at the aforesaid 17 Smith Street, Brooklyn 2, N. Y., where it shares common offices with respondents Universal Educational Guild, Inc., Book Distributors, Inc., and Publishers Shipping Corp. Respondent, Public Distributors, Inc., has also had the corporate names Independent Surveys, Inc., and Public Surveys, Inc. The officers of respondent Public Distributors, Inc., to wit: Respondents, Abe Halperin, president, Lily Berkowitz, assistant treasurer, and Myron C. Gelrod, secretary, are also officers of respondents Universal Educational Guild, Inc., Book Distributors, Inc., and Publishers Shipping Corp. Respondent, S. Leslie Schwartz, vice president of respondent Public Distributors, Inc., is also vice president of Universal Educational Guild, Inc., and of Publishers Shipping Corp., respectively.

PAR. 5. The following-named respondents are corporations organized, existing, and doing business under and by virtue of the laws of the States hereinafter mentioned, with their offices and principal places of business in the following designated cities, and have as their officers the following hereinafter named respondents:

Corporation	Officers	State	Place of business
Empire State Guild, Inc.	Seymour Ross, president; Murray Green, vice president; Daniel Green, secretary; Nathan Kaplan, treasurer.	New York	180 State St., Albany, N. Y.
New England Home Educators, Inc.	Samuel Holtz, president; Irving Rosenfeld, secretary; Emmanuel H. Morgan, treasurer.	Massachusetts	739 Boylston St., Boston, Mass.
Eastern Guild, Inc.	Jack Weinstock, president; Robert K. Bertin, vice president; Jack Gerstel, secretary; Louis Tafler, treasurer; Nat Leroy, second vice president.	Pennsylvania	1649 N. Broad St., Philadelphia, Pa.
Keystone Guild, Inc.	Robert K. Bertin, president; George Nusbaum, vice president; C. W. Lockyer, secretary; J. H. Smith, treasurer.	do	336 4th Ave., Pittsburgh, Pa.
Capitol Guild, Inc.[1]	Robert K. Bertin, president; George Nusbaum, vice president; C. W. Lockyer, secretary; J. H. Smith, treasurer.	Maryland	200 W. Saratoga St., Baltimore, Md.
National Distributors, Inc.	Harry S. Cooper, president; Jack Marcus, vice president; Samuel Levitt, secretary; Maurice Mendelson, treasurer; Seymour Schwartz, assistant treasurer.	Michigan	1307 Industrial Bank Bldg., Detroit, Mich.
Central Guild, Inc.	Louis Katz, president and assistant treasurer; Nathan H. Schwartz, secretary; Irving Jacobson, treasurer.	Illinois	63 E. Adams St., Chicago, Ill.
To-Dor Service Corp.	Louis Katz, president; Martin Ressner, secretary; Jack Katz, treasurer.	do	Do.
World Surveys, Inc.	Isidor Buckbinder, president; Martin Morse, vice president; William Lache, second vice president; Murray Moss, treasurer; David B. Singer, secretary.	New York	Room 908, 165 W. 46th St., New York, N. Y. (home office). 707 S. Broadway, Los Angeles, Calif. (principal business address).
Pacific Guild, Inc.	Murray Moss, president and treasurer; David B. Singer, vice president; William Lache, secretary.	California	110 Market St., San Francisco, Calif.

[1] These are the same persons as are officers of respondent Keystone Guild, Inc.

Where the name of a respondent appears as an officer of more than one of the corporations hereinabove described in paragraphs 1 to 5, inclusive, that name applies to the same person.

PAR. 6. Respondent, Universal Educational Guild, Inc., was organized in December 1943, and then acquired the business theretofore conducted by a partnership known as Universal Educational Guild, and also acquired, and still owns, the copyright to and ever since its organization has been the publisher of a work known as World Scope Encyclopedia. By the use of franchise agreements, said respondent, since its organization, has been engaged, through respondent Book Distributors, Inc., its wholly owned subsidiary, in the distribution at wholesale of said World Scope Encyclopedia to those of the respondents hereinafter more particularly mentioned. Through the use of said franchise agreements said encyclopedia has also been handled and sold by other distributors, both wholesale and retail, employing house-to-house solicitors, and by other wholesale and retail distributors not employing house-to-house solicitors.

PAR. 7. Respondent, Publishers Shipping Corp., also a wholly owned subsidiary of respondent Universal Educational Guild, Inc., is now and since May 1946, has been engaged in the assembly of various volumes of World Scope Encyclopedia as such volumes are received from various printers thereof and in the shipping of such volumes as orders therefor are received by respondents Universal Educational Guild, Inc. and Book Distributors, Inc.

PAR. 8. All of the respondents are now, and for more than 1 year last past have been engaged in the sale of the aforesaid World Scope Encyclopedia in commerce between and among the various States of the United States and in the District of Columbia, and cause said World Scope Encyclopedia, when sold, to be transported from their respective places of business to the purchasers thereof located in the various States of the United States and in the District of Columbia, and there is now, and has been for more than 1 year last past, a constant current of trade and commerce by all the respondents in said World Scope Encyclopedia, between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 9. In the course of such commerce, all of the respondents are now and for more than 1 year last past have been in substantial competition with other corporations and with firms and partnerships engaged in the sale of encyclopedia and other books in commerce aforesaid.

PAR. 10. Pursuant to and in furtherance of mutual understandings, agreements, and practices, respondents named in paragraphs 1, 2, 3, and 4 hereof, acting in concert and cooperation with each other, and with the respondents named in paragraph 5 hereof, in carrying out a common enterprise, have engaged in various unfair and deceptive acts and practices in commerce, and various unfair methods of competition in commerce as will be more fully hereinafter described and shown. In the course and conduct of said common enterprise, corporate respondents named in paragraphs 1, 2, 3, and 4 hereof, and their officers in their respective individual and official capacities have dominated, directed, and controlled, and now dominate, direct, and control the corporate policies, affairs, and activities of said respondents named in paragraph 5 hereof, and directly or indirectly, exercise and have exercised, a substantial measure of direction and control over the organization, management, sales policies and practices, and the operation and financing of the said respondents named in paragraph 5 hereof, in carrying out the unfair methods of competition and the unfair and deceptive acts and practices herein alleged in connection with the said common enterprise in which all of the respondents named in this complaint are and have been engaged. Respondents named in paragraph 5 hereof, and hereinafter referred to as Franchise Distributors are in fact and effect the agents of the respondents named in paragraphs 1, 2, 3, and 4 hereof, and each of the said respondents named herein has

cooperated with all other respondents named in the performance of the acts and practices hereinafter set forth.

The respondents named in paragraphs 1, 2, 3, and 4 hereof, supply the aforesaid respondent franchise distributors with sets of World Scope Encyclopedias when and as ordered from them by said franchise distributors; furnish said respondent franchise distributors with advertising literature, sales kits, transcribed radio programs, and other advertising media, and information and instructions intended to be used, and used, by the aforesaid franchise distributors in making door-to-door sales of said World Scope Encyclopedia through salesmen and representatives of said respondent franchise distributors. For the purpose of further directing, aiding, and assisting the said franchise distributors in the sale of the aforesaid World Scope Encyclopedia, the respondents named in paragraphs 1, 2, 3, and 4 hereof, have conducted sales campaigns for the benefit of the aforesaid franchise distributors and have sponsored contests among the salesmen of franchise distributors in which contests said respondents, named in paragraphs 1, 2, 3, and 4 hereof, have offered and awarded prizes.

PAR. 11. In the course and conduct of the business of the said franchise distributors, and to induce the purchase by the public of the aforesaid World Scope Encyclopedia, said franchise distributors have been using the following means, methods, acts, and practices:

Their agents, in a door-to-door solicitation of orders, represent that they are engaged in making surveys in behalf of newspapers, radio stations, and other organizations; that they are making such surveys to determine what newspapers are read by parents and by their children of school age; that such surveys are being made also to ascertain what are the most favored radio programs and what radio programs are listened to; that they are making such surveys for school boards or boards of education and other official agencies of similar nature and for industrial organizations; that they are making surveys for a broadcast of a radio program known as Ask Dr. Cyclo; that they are making a survey of radio and television programs through what the call Opinion Poll Sponsors, the results of which they represent are to be published in the magazine Radio and Television Best; that they are connected with local newspapers for which they are making such surveys and in connection therewith exhibit mastheads of such papers.

Respondent franchise distributors, through their said sales agents represent and have further represented that because newspaper advertisers or advertising agents are sponsoring the sale and distribution of said World Scope Encyclopedia, such work may be purchased for approximately one-half of the regular advertised price; that such newspaper advertisers or advertising agents are paying the difference

between the regularly advertised prices and the claimed reduced price at which the work is being offered to the purchaser; that such aforesaid saving can be effected by the purchaser clipping World Scope Encyclopedia advertisements from newspapers, or by clipping the mastheads from newspapers, and by accompanying them with small weekly payments over a period of time; that the World Scope Encyclopedia is offered at the aforesaid reduced special or introductory prices only to persons with children or only to a limited number of, or a selected group of persons in the area or community where the prospective buyer lives; that such offer is limited to a short period of time; that a 10 year consultation service offered with such work is "without charge" and "free," and that the 10 year consultation service is worth $10 per year if purchased separately and that therefore, buyers are effecting a saving when they buy such work. Said franchise distributors further represent that the annual yearbook or supplement to said World Scope Encyclopedia offered to buyers on presentation of coupons, at a price of $2.98, has a sales value of $10 if purchased separately, and that buyers of World Scope Encyclopedia effect thereby a saving of $7 or more; that the said World Scope Encyclopedia is new, most modern, unabridged, better than all other encyclopedias, and is the foremost work in America; that the lettering on the volumes of such work is gold stamped or embossed and stamped in gold; that deposits made by purchasers of such work would be refunded to such purchasers if they later decided not to purchase the work or if said World Scope Encyclopedia proved to be unsatisfactory to purchasers upon their inspection and examination; that the said World Scope Encyclopedia is endorsed and recommended by boards of education and by parent-teacher associations in the area in which the prospective purchaser lives.

It is and has been the practice of agents of respondent franchise distributors to exhibit to purchasers and prospective purchasers what they claim to be pages of said World Scope Encyclopedia, and numerous illustrations and pictures which they represent to be contained in such work, the printing so exhibited being of superior quality and on an excellent grade of paper. It is, and has been the custom and practice of such agents also to exhibit to purchasers and prospective purchasers a sample volume of said work with a binding of gold embossing and with paper and printing of superior quality. It is, and has been the practice of such agents to represent to prospective purchasers that such work, if purchased, will be delivered to the purchaser, in contents, illustrations, paper, pictures, printing, and binding the same as said samples and as orally and visually represented.

PAR. 12. All of the aforesaid representations and statements as alleged in paragraph 11 hereof and many others similar thereto, but not specifically set forth herein, are false, misleading, and deceptive.

In truth and in fact, all of the respondents are engaged in the sale of the World Scope Encyclopedia for their own profit. None of them is connected or affiliated in any manner whatsoever with any newspaper, radio station, publication (other than World Scope Encyclopedia), or other organization. Respondents are not engaged in making surveys in behalf of newspapers, radio stations, or of any other organization. The representations regarding the surveys made by agents of the respondents as alleged in paragraph 11 hereof are made for the purpose of securing the interest of prospective buyers of World Scope Encyclopedias. The prices at which said World Scope Encyclopedias are offered are not reduced, special, or introductory prices but are the regular prices at which the said World Scope Encyclopedia is regularly sold; nor does any newspaper advertiser nor anyone else pay the difference between what respondents claim to be the regularly advertised price and the aforesaid claimed reduced price. Said offers are not limited to persons with children or only to a limited number of a select group in the area or community where the prospective buyer lives but such World Scope Encyclopedia is offered at such prices to anyone anywhere, and the aforesaid offers are not limited to any period of time. The aforesaid 10 year consultation service is not without charge and is not free but the buyer pays therefor by paying the purchase price of said World Scope Encyclopedia. The aforesaid 10 year consultation service is not worth $10 per year and for the reason hereinabove mentioned, buyers are not effecting a saving when they buy World Scope Encyclopedia. The said World Scope Encyclopedia is not new, most modern, unabridged, better than all other encyclopedias, nor is it the foremost work in America. In truth and in fact, said World Scope Encyclopedia comprises reprints of other works, it has no index, its pages are not numbered, it has articles divided by being partly in one volume and partly in another, and is in other respects inferior to encyclopedias sold by competitors of the respondent in the commerce aforesaid. The lettering on the volumes of World Scope Encyclopedia is not gold stamped or embossed and stamped in gold. Respondents refuse to make refunds of deposits to purchasers when they later decide not to purchase the said World Scope Encyclopedia or when proved to be unsatisfactory to purchasers upon their inspection and examination of it. Said World Scope Encyclopedia is not and never has been endorsed or recommended by any board of education or by any parent-teachers association.

The aforesaid World Scope Encyclopedia does not contain all of the printed material or the illustrations and pictures represented by agents or franchise distributors, orally and by means of samples, to be contained in said World Scope Encyclopedia, nor is the printing contained therein of the quality nor the grade of paper therein of the grade of that exhibited to purchasers and prospective purchasers as

alleged in paragraph 11 hereof. The volumes of World Scope Encyclopedia when delivered to purchasers do not have the binding or gold embossing of the quality of the sample volume shown to purchasers and prospective purchasers as alleged in paragraph 11 hereof.

PAR. 13. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, and of the aforesaid methods, acts, and practices, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and induces a substantial portion of the purchasing public to purchase said World Scope Encyclopedia, 10-year consultation service, and annual yearbook or supplements, because of such erroneous and mistaken beliefs. Thereby trade is diverted to respondents from their competitors engaged in the commerce aforesaid and substantial injury is done to substantial competition in interstate commerce.

The respondents named in paragraphs 1, 2, 3, and 4 hereof further, by reason of the acts, practices, and policies employed by them in directing and dealing with and through respondents named in paragraph 5 hereof, have supplied and placed in the hands of said respondents named in paragraph 5, means and instrumentalities designed to enable, and capable of enabling said respondents to mislead and deceive members of the public in connection with the purchase of the said books and publications sold by and for the account of all the respondents named herein.

PAR. 14. The aforesaid acts and practices of respondents are all to the injury of the public 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.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, the attached initial decision of the trial examiner shall, on June 12, 1951, become the decision of the Commission.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY ABNER E. LIPSCOMB, TRIAL EXAMINER

This proceeding came on to be considered by the above-named trial examiner, heretofore duly designated by the Commission, upon the complaint of the Commission, the answers of respondents, and the motion by the attorney in support of the complaint that the complaint in this proceeding be dismissed without prejudice for the reasons that respondents' method of doing business described in the complaint was

abandoned by respondents prior to 1948 and a new method instituted which is not within the scope of the complaint; that certain of the corporate respondents have been dissolved or are in process of dissolution, and are no longer engaged in the sale of World Scope Encyclopedia; that some of the officers of various corporate respondents have died and others have been changed; that two revised editions of the encyclopedia have been published since 1948, to which the charges in the complaint are not applicable; that many of the affirmative representations charge in the complaint were abandoned at the time respondent's method of doing business was changed in 1948; that other charges in the complaint cannot be sustained by substantial evidence; and that a proceeding in support of the present complaint would not be in the public interest.

It appears that the reasons presented by the attorney in support of the complaint in the above-described motion are sufficient to warrant the disposition of the proceeding in the manner requested, and that all of the respondents who have been engaged in the business of selling and distributing the World Scope Encyclopedia since 1948 have waived the filing of an answer to the above-described motion, and have consented to the issuance forthwith, without further notice, of the trial examiner's decision. Accordingly, said motion is hereby granted, and

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings, should future facts warrant.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Harry H. Harris, of New York City, for Universal Educational Guild, Inc., Book Distributors, Inc., Publishers Shipping Corp., Public Distributors, Inc., Abe Halperin, S. Leslie Schwartz, Lily Berkowitz, Myron C. Gelrod, Mac Gache, and Isidore J. Halperin.

Mr. Jules Aronson, of New York City, for Empire State Guild, Inc., Seymour Ross, Murray Green, Daniel Green, Nathan Kaplan, Central Guild, Inc., and To-Dor Service Corp.

Mr. William J. Wallace, of Boston, Mass., for New England Home Educators, Inc., and Samuel Holtz.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for Eastern Guild, Inc., Keystone Guild, Inc., Capitol Guild Inc., Jack Weinstock, Robert K. Bertin, Nat Leroy, Jack Gerstel, Louis Tafler, George Nusbaum, C. W. Lockyer, and J. H. Smith.

Rosenberg & Grebs, of Detroit, Mich., for National Distributors, Inc., Harry S. Cooper, Jack Marcus, and Seymour Schwartz.

Mr. Maxwell S. Boas, of Los Angeles, Calif., for World Surveys, Inc., Pacific Guild, Inc., Isidor Buckbinder, Martin Morse, William Lache, Murray Moss, and David B. Singer.

STIPULATIONS

DIGEST OF STIPULATIONS [1] EFFECTED AND HANDLED THROUGH THE COMMISSION'S DIVISION OF STIPULATIONS [2]

02484.[3] **Shoe Polish and Dye and White Shoe Cleaner—Qualities, Unique Nature and Competitive Products.**—Stipulation No. 02484 has been amended so that it now reads:

Barton Manufacturing Co., Inc., a corporation, 4157 North Kingshighway, St. Louis, Mo., vendor-advertisor, engaged in selling a shoe polish and dye designated Dyanshine and a white shoe cleaner designated Barton's White Glaze Polish, entered into an agreement, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dyanshine will eliminate scratched and marred areas from shoe leather or do more than render such areas less conspicuous to casual observation by supplying thereto a color similar to that of the leather wherein they occur.

(*b*) That the process of recoloring, redyeing, and imparting a highly polished, lively finish to used shoe leather with Dyanshine is a process of restoring color to such leather, or that this process is an exclusive feature found only in Dyanshine.

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[1] The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, July 1, 1950, to June 30, 1951, inclusive, with the exception of stipulations S. 8151–8172, inclusive, which involved use of such words, concepts and claims as "orthopedic", "corrective", or "health" in connection with the offer and sale of shoes. Said stipulations, while *accepted* by the Commission during the period in question, were not put into *effect* until June 30, 1952, and are therefore reserved for publication in the following volume.

Digests of previous stipulations of the kind herein involved accepted by the Commission may be found in vols. 10 to 46 of the Commission's Decisions.

[2] Under a reorganization of the Commission's internal structure, effective June 1, 1950 (see annual report for that year at p. 6), the former Bureau of Trade Practice Conferences and the Bureau of Stipulations were consolidated into the Bureau of Industry Cooperation, and a Division of Stipulations was created, under said Bureau, to handle such work.

For an account of a prior reorganization, effective August 12, 1946, under which the Division of Stipulations, then created, was charged with the handling of all matters considered appropriate for settlement by stipulation, including both such matters as had theretofore culminated in the false and misleading advertising stipulations effected through the Commission's Radio and Periodical Division, as it theretofore functioned, and those theretofore effected through the Trial Examiner's Division, see footnote in volume 45 at p. 845.

[3] Amended.

(*c*) That Dyanshine or the oils thereof will render shoe leather impervious to water or keep it in its original condition.

(*d*) That Dyanshine causes shoes or the leather of which they are composed to retain the appearance they had when new; take on the appearance of new shoes after being repaired one or more times; or remain in their original, new condition while being used.

(*e*) That shoe dyes, pastes or polishes other than Dyanshine cause shoes to become marred by unsightly cracks or in any manner whatsoever damage or detract from the appearance of the shoe leather on which they are used.

(*f*) That Dyanshine exerts any influence or control in any manner whatsoever over the number of times a shoe may be repaired or half-soled.

(*g*) That Dyanshine will cause shoes to wear better or last longer than they would if Dyanshine had not been used thereon.

(*h*) That when shoe dyes, pastes or polishes other than Dyanshine are used on the shoes, the upper leather thereof will dry out, become cracked, lose its original appearance, become dull and lusterless, or that such shoes are apparently worthless as soon as the soles become worn.

(*i*) That Dyanshine will have any effect whatsoever on the outer sole, insole, box-toe, lining, welting, and other parts of a shoe, excluding the upper shoe leather, by making unqualified statements relative to its effect upon "shoes."

(*j*) That Barton's White Glaze Polish will not rub off shoes after its application thereto.

Barton Manufacturing Co., Inc., further agreed that as thus amended Stipulation No. 02484, approved September 23, 1941, shall remain in full force and effect. (1–14409, June 26, 1951.)

2494.[4] **American Lobster—Nature.**—Stipulation No. 2494 has been amended so that it now reads:

Hudgins Fish Co., a corporation, engaged in the sale and distribution of fish and crustacea in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The American lobster, also known as the Northern lobster, is found only along the North American Coast from North Carolina to Labrador. It is more abundant and attains its greatest size in the northerly part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustaceans of the genus Homarus. Another type of marine macrurous crustacean

[4] Amended. See 29 F. T. C. 1441.

of the genus Palinurus is found in Southern waters and variously referred to as Sea Crayfish, Spiny Lobster, Rock Lobster, and Southern Lobster. The term "Lobster" has long been associated in the minds of the consuming public with the genus Homarus.

Hudgins Fish Co. in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use in its advertising of the word "Lobster" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus Homarus; provided, however, that this agreement is not to be construed as prohibiting use of the common names "Spiny Lobster" and "Rock Lobster" as descriptive of a species of crawfish (Palinurus interruptus) so long as the word "spiny" or the word "rock" appears in direct connection with the word "lobster" and in type of equal size and prominence.

Hudgins Fish Co. also agreed that should it ever resume or indulge in any of the aforesaid methods, acts or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to.

Hudgins Fish Co. also stipulated and agreed that this amended stipulation cancels Stipulation No. 2494 executed by Hudgins Fish Co. and approved by the Federal Trade Commission on July 14, 1939. (1–12672, Jan. 8, 1951.)

2519.[5] **Bread—Composition and Certification.**—Stipulation No. 2519 has been amended so that it now reads:

Columbia Baking Co., a corporation, engaged in manufacture, sale and distribution of bakery products from some 15 branch establishments in Southern States which it operates, selling and distributing its products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Columbia Baking Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing directly, inferentially, by picturization or in any other way that the bread sold by it contains whole milk, or pure rich milk or certified milk, when such is not the fact;

(*b*) The use of the word "Certified" as applied to its products, except under the following conditions:

[5] Amended. See 29 F. T. C. 1456.

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly shown.

Columbia Baking Co. further agreed that all terms and provisions of Stipulation No. 2519 shall remain in full force and effect. (1–13263, Apr. 13, 1951.)

2600.[6] **Chicks—Quality and Certification.**—Stipulation No. 2600 has been amended so that it now reads:

Milton Johnson and Mark Johnson, copartners, trading as Trail's End Poultry Farm, engaged in the chick hatchery business and in the sale and distribution of chicks incubated at their place of business from eggs, certain of which were purchased by the said copartners from nearby farm flocks owned or controlled and operated by others, pursuant to contracts existing between such flock owners and the aforesaid copartners, in interstate commerce, in competition with other partnerships and with corporations, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Milton Johnson and Mark Johnson, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use in advertising or printed matter of whatever kind or character, or in any other way, of the words "300-egg double pedigree White Leghorn breeding males" or of any other words of similar implication, either alone or in connection with the words "finest bred chicks," "finest breeding cockerels," or with any other words, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the chicks supplied by said copartners in filling orders therefor are or have been hatched from eggs laid by stock of the 300-egg or pedigreed type, when such is not the fact. Said copartners also individually agree to cease and desist from the use of the word "Certified" or any other word or words of similar meaning as descriptive of their chick products except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller any connection between the certifier and seller be clearly shown;

[6] Amended. See 30 F. T. C. 1396.

(4) That a certificate be given to the purchaser and the qualities to which the certificate appertains be clearly disclosed.

Milton Johnson and Mark Johnson further agreed that, as thus amended, all the terms and provisions of Stipulation No. 2600 shall remain in full force and effect. (1–12370, Apr. 13, 1951.)

2707.[7] **American Lobster—Nature.**—Stipulation No. 2707 has been amended so that it now reads:

East Coast Fisheries, Inc., a corporation, engaged in the sale and distribution of fish and crustacea in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The American lobster, also known as the Northern lobster, is found only along the North American Coast from North Carolina to Labrador. It is more abundant and attains its greatest size in the northerly part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustaceans of the genus Homarus. Another type of marine macrurous crustacean of the genus Palinurus is found in Southern waters and variously referred to as Sea Crayfish, Spiny Lobster, Rock Lobster, and Southern Lobster. The term "lobster" has long been associated in the minds of the consuming public with the genus Homarus.

East Coast Fisheries, Inc., in connection with the sale and distribution of seafood products in commerce, as defined by said act, agreed to cease and desist from the use in its advertising of the word "Lobster" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus Homarus; provided, however, that this agreement is not to be construed as prohibiting use of the common names "Spiny Lobster" and "Rock Lobster" as descriptive of a species of crawfish (Palinurus interruptus) so long as the word "spiny" or the word "rock" appears in direct connection with the word "lobster" and in type of equal size and prominence.

East Coast Fisheries, Inc., also agreed that should it ever resume or indulge in any of the aforesaid methods, acts or practices which it has herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondent as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to. (1–13631, Jan. 8, 1951.)

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[7] Amended. See 30 F. T. C. 1464.

2971.[8] **Diamonds—Certification.**—Stipulation No. 2971 has been amended so that it now reads:

Joseph Hagn Co., engaged as a wholesaler in the sale and distribution of jewelry in commerce in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph Hagn Co., in connection with the sale of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use or from supplying others for their use of advertisements or advertising matter of whatever kind or description which features or in any way makes use of the word "Certified" or of any other word or words of similar import or meaning to designate or as descriptive of diamonds except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That there be made available for the benefit of the ultimate purchaser of each diamond such a certificate.

It is further stipulated and agreed by Joseph Hagn Co. that as thus amended all of the terms and provisions of Stipulation No. 2971 shall remain in full force and effect. (1–13314, Apr. 13, 1951.)

3442.[9] **Candies—Certification.**—Stipulation No. 3442 has been amended so that it now reads:

Luden's, Inc., a corporation, engaged in the business of manufacturing candies and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Luden's, Inc., in connection with the offering for sale, sale or distribution, of candy products, agreed to cease and desist from the use of the word "Certified" or any other word or words of like meaning on its product, or label, except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly shown;

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[8] Amended. See 31 F. T. C. 1709.
[9] Amended. See 34 F. T. C. 1665.

(4) That the certificate on the product or label thereof show clearly the qualities to which it appertains.

Luden's, Inc., further stipulated and agreed that, as thus amended, all terms and provisions of Stipulation 3442 shall remain in full force and effect. (1–16914, Mar. 9, 1951.)

3498.[10] **Pharmaceuticals, Biologics and Serums—Certification.**—Stipulation No. 3498 has been amended so that it now reads:

Norden Laboratories, a corporation, engaged in the manufacture of pharmaceuticals, biologics, and serums for animal diseases, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Norden Laboratories, in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(*a*) The use on its label or in its trade publicity of the word "certified" or any other word or words of like meaning except under the following conditions:

(1) That the identity of the certifier be clearly and plainly disclosed;

(2) That the certifier be qualified and competent to know what has been certified is true;

(3) That if the certifier be other than the seller, any connection between the certifier and the seller be clearly disclosed.

(*b*) Asserting or implying, contrary to the facts, that its hog cholera serum is the only certified serum.

(*c*) Representing directly or by implication that said product is the only serum tested under U. S. B. A. I. supervision for purity and potency; or otherwise disparaging competitive products by unwarranted innuendo that they are not in the same manner tested, prior to marketing, under the supervision of the United States Bureau of Animal Industry.

Norden Laboratories further agreed that, as thus amended, all terms and conditions of Stipulation No. 3498 shall remain in full force and effect. (1–16380, Apr. 13, 1951.)

3661.[11] **Tarpaulins—Finished Size.**—Stipulation No. 3661 has been amended so that it now reads:

Fulton Bag & Cotton Mills, a corporation, engaged in the sale and distribution of canvas goods including tarpaulins, or canvas coverings, in interstate commerce, in competition with other corporations and with individuals and concerns likewise engaged, entered into the

[10] Amended. See 34 F. T. C. 1697.
[11] Amended. See 36 F. T. C. 1065.

following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fulton Bag & Cotton Mills, in connection with the sale and distribution of tarpaulins, or canvas coverings, in commerce, as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from the use of any label, brand, tag, advertisement, writing or representation which purports to designate or indicate the size or dimensions of any of such products that does not plainly disclose the actual size or dimensions thereof at the time of completion of manufacture. Such size shall be designated "finished size" and shall be accompanied by a statement clearly indicating that such "finished size" is the size at the time of completion of manufacture and revealing the fact, when such is the case, that the product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture, as for example:

"Finished Size (size at time of completion of manufacture) : 8 ft. by 10 ft."

"(This product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture.)"

Provided, however, that nothing herein shall be construed as prohibiting truthful disclosure of the cut-size of such product when such cut-size is shown in conjunction with, and with no greater conspicuousness than, any marking of the "finished size" and when explanation is made of the meaning of "cut-size." The term "cut-size" as used herein shall mean the size or dimensions of a tarpaulin, or canvas covering, before the making of its seams, hems or reinforcement turn-overs. Any conjunctive statement or markings of finished and cut-size dimensions shall be accompanied by a statement clearly indicating that the product is subject to shrinkage due to climatic conditions and possible retraction from tension applied in the course of manufacture, as for example:

"Finished Size (size at time of completion of manufacture) : 8 ft. by 10 ft. Cut Size (size before making seams, hems, and reinforcement turn-overs) : 8 ft. 6 in. by 10 ft. 6 in."

"(This product is subject to shrinkage due to varying climatic conditions and possible retraction from tension applied in the course of manufacture.)"

Fulton Bag & Cotton Mills further stipulated and agreed that, as thus amended, all terms and conditions of Stipulation No. 3661 shall remain in full force and effect. (1–17901, June 26, 1951.)

7848.[12] **"Sun Lamps"—Therapeutic Properties, Scientific and Relevant Facts, Safety, Endorsements, Etc.**—Substitute Stipulation No. 7848 has been amended so that it now reads:

[12] Amendment. See 45 F. T. C. 902.

Hanovia Chemical & Manufacturing Co., a New Jersey corporation with its principal place of business in Newark, N. J., advertiser-vendors, engaged in the manufacture, sale and distribution in commerce, of therapeutic equipment and quartz ware, in competition with other corporations and with individuals and concerns likewise engaged, entered into an agreement, in connection with the sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That said lamps or others of like construction are "sun lamps"; or otherwise, by statement or inference, that their rays closely resemble or are equal or equivalent to those of the sun in physical or therapeutic properties, either at an altitude high in the mountains or elsewhere;

(*b*) That said lamps bring into your home the sun, the equivalent of pure mountain sunshine, or summer sun all the year around or at all; or otherwise, that by the use thereof one may enjoy all the health giving benefits of sunshine or of a complete sun bath;

(*c*) That the quartz burner is the only type of lamp which can honestly be called a sun lamp, or the only type which produces the healing and tonic qualities of ultraviolet; directly or by implication, that the Hanovia models for home use, because of their quartz burners or otherwise, produce all such healing and purportedly tonic qualities; or that the Hanovia for more than thirty years has furnished the standard or now furnishes the standard by which ultraviolet lamps have been judged;

(*d*) That only the Hanovia Alpine Sun Lamp can effectively actuate vitamin D; or by implication, that lamps equipped with other types of burners cannot do so;

(*e*) That the rays emitted by said lamp have energy, vitality, zest or pep giving properties; tone or rejuvenate muscles, tone up the system generally; restore, renew or increase strength, energy or vigor either physical or mental; instil vigor or buoyancy in the body; stimulate the blood building power of the body, except such slight beneficial effect as the lamps may have in cases of secondary anemia; bring relief from strain and exhaustion; are a tonic for men of all ages, or produce a highly beneficial or any significant tonic effect whatsoever;

(*f*) That the use of said lamp will give the user a clear, radiant or glowing skin, clear the complexion, eliminate practically all blemishes; build resistance against colds, free children from colds, fortify one against winter weather (by implication, the diseases associated with winter); enable one to feel his best throughout the entire year; or, without regard to the user's physical condition, is an indispensable means to enhance beauty or health;

(*g*) That the use of said lamp will assure sound teeth; may be depended upon always to make strong, straight, sturdy bones, fine,

even, strong teeth and robust bodies for children; free children's teeth from a tendency to decay, or prevent tooth decay for expectant and nursing mothers;

(*h*) That irradiation by said lamps builds up resistance against disease except diseases that may be benefited by the development in the body of vitamin D or the lamp's bacteriacidal action or stimulating effect on the outer layers of the skin; is a substantial resistance building factor against colds and associated children's diseases, a very effective means for maintaining the health of children; or will keep the business man fit for his consuming and difficult tasks;

(*i*) That the use of said lamp will stabilize the nerves; induce deeper, sounder or better sleep; successfully treat difficult children of a nervous disposition; relieve physical or mental strain, cause better elimination; provides health the year around for the entire family; is a distinct asset for the well-being of all men; has a general beneficial systemic effect; or that entire well-being is a definite result conferred upon the user;

(*j*) By stating that the ultraviolet rays emitted by said lamp prevent infection, or otherwise, that they kill all germs or bacteria in the air or on the skin; or that without exposure to sunshine one would lose his resistance to disease and would be doomed regardless of his food intake;

(*k*) That the rays of said lamp, or ultraviolet rays generally, will be an absolute safeguard against rickets; or that they have specific action, or any significant effect, in preventing or correcting dropped arches, flabby figure, or loss of hair following childbirth;

(*l*) That the use of said lamp will help convalescents more speedily back to health or otherwise shorten the period of convalescence, except in cases of disturbances of calcium and phosphorus metabolism which result from vitamin D deficiency; or that its rays give "summer holiday benefits" at home all the year around or at all, in the sense that they would provide an adequate and satisfactory substitute for the benefits of a summer vacation;

(*m*) That everyone needs said lamp if he would keep physically fit, that it should be in every home without regard to occupation or environment, that every woman can benefit from the use of its rays as a vitalizing factor; or that said lamp recaptures a form of natural energy with effects, for the user, of better appetite, steady nerves, restful sleep, freedom from fatigue or other tonicity;

(*n*) Without regard to one's physical condition, that said lamp is "safe"; or otherwise, by statement or implication, that it would be harmless for indiscriminate use by the layman; that artificially administered sunbaths by exposure to lamps such as this would be safer than exposure to natural sun, or that such is the claim of medical authority;

(*o*) That the ultraviolet afforded by the use of said lamp is a "sun bath," or by assertion or connotation that it is equal or equivalent to what is generally understood by such term or expression;

(*p*) That said lamp or any lamp of similar construction has the widest endorsement of the medical profession the world over or is endorsed by the medical profession all over the world for the conditions of use—unsupervised home treatment—for which it is advertised and sold;

(*q*) That there is only one short season of the year during which biologically effective amounts of ultraviolet rays are available unless the advertisements in which those representations are made are restricted in circulation to the specific portions of this country where there is only one season during which biologically effective amounts of ultraviolet are available in sunlight.

Hanovia Chemical & Manufacturing Co. also agrees to cease and desist from:

(*r*) The use of illustrations depicting persons exposed to the rays of said lamps without goggles to protect their eyes; or of any representation, pictorial or otherwise, which has or may have the capacity or tendency to cause the belief that such lamps may be safely used without injury to unshielded eyes;

(*s*) Disseminating any advertisement or trade literature pertaining to its ultraviolet lamps for home use which fails clearly to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to the user; that said lamp should not be used in the case of pellagra, lupus erythematosis, or certain types of eczema; and that said lamp should never be used unless goggles are worn to protect the eyes; provided, however, that such advertisement need contain only the statement, "Caution: Use only as directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and labeling, contain a warning to the above effect.

Hanovia Chemical & Manufacturing Co. further agreed that this stipulation is a substitute for, and in lieu of, Stipulation No. 3708, approved and accepted by the Commission on August 19, 1943,[13] which stipulation has been rescinded.

Hanovia Chemical & Manufacturing Co. further agreed that the aforesaid amendment shall be effective as of the date of the approval thereof by the Federal Trade Commission. (1–16192, Oct. 10, 1950.)

8029. **Anti-Freeze—Qualities and Safety.**—Leo A. Sauer, an individual operating under the trade name of V-O Manufacturing Co., with his principal office and place of business located in North Hollywood, Calif., advertiser-vendor, engaged in the business of offering for sale and selling a product for use in automobile cooling systems, desig-

[13] See 37 F. T. C. 703.

nated V-O Anti-Freeze, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That V-O Anti-Freeze prevents rust or protects automobile cooling systems against freezing or clogging from rust formation;

(*b*) That this product is the permanent type or that it will not evaporate or boil away; or

(*c*) That said product will not damage metal or rubber parts of an automobile cooling system. (1–21060, July 12, 1950.)

8030. **Cigars—Source, Manufacture and Producer of Raw Materials.**—West Cigar Manufacturing Corp., a New York corporation with its factory and principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling cigars in commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using the term "Havana," or any other term or terms indicative of tobacco grown on the island of Cuba, to designate or describe cigars not made entirely from tobacco grown on such island; provided, however, that cigars containing a substantial quantity of tobacco grown on the island of Cuba may be designated or described as "blended with Havana" or by some other term of like meaning.

(2) Representing that its cigars are hand made, unless the cigars so designated or described are in fact hand made, as such term is understood in the cigar manufacturing industry.

(3) Representing, directly or by implication, that its cigars are made from tobacco grown on its own plantations, unless it actually owns the plantation on which such tobacco is grown. (1–22576, July 12, 1950.)

8031. **"Lemon Juice Powder"—Nature.**—Specialized Commodities, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Pearce O. Storck, Edward Spector, and Stephen A. O'Sullivan, officers of said corporation, engaged in the business of offering for sale and selling in commerce, artificial lemon juice powder designated as "Lemon Juice Powder" and as "Lemon Viva," entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing said product in any manner as lemon juice powder unless at the same time it is clearly and conspicuously disclosed, in direct connection therewith, that said product or preparation is an artificial or synthetic product. (1–22711, July 31, 1950.)

8032. **Electric Water Heating Device—Qualities and Safety.**—John E. Gauthier, an individual, trading as Midwest Merchandise Mart, with his principal place of business located in Elkhorn, Wis., advertiser-vendor, engaged in the business of offering for sale and selling in

commerce an electric water heating device designated as the "Jiffy Electric Heater," which device consists of an electrical heating element with a nondetachable cord, in use, the heating portion of the device is immersed in a vessel of water and the nondetachable cord, which consists of heavily insulated wires, is connected to a conventional electrical outlet, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Exaggerating the speed with which said device will provide hot water;

(2) Distributing or selling said device unless the word "caution" or "warning" together with adequate directions for safe use of the device is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock. (1–22950, Aug. 8, 1950.)

8033. **Hearing Aid—Qualities and History.**—American Earphone Co., Inc., a New York corporation with its principal place of business located in New York, N. Y., and Louis S. Scher, Sidney M. Scher and Bertha Scher, officers and directors of said corporation, advertiser-vendors, engaged in the business of offering for sale and selling a device designated as the "Audi-Ear" for use as a hearing aid, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that said device:

(1) Magnifies ordinary conversation or musical tones without any distortion;

(2) Embodies a new acoustical principle;

(3) That it is an effective aid for anyone having a loss of hearing sufficient to require the use of a hearing aid. (1–19478, Aug. 17, 1950.)

8034. **Mineral and Vitamin Supplement—Qualities and Composition.**—The LeBlanc Corp., a Louisiana corporation, with its principal office and place of business located in Lafayette, La., and Dudley J. LeBlanc, an individual, engaged in the business of offering for sale and selling a mineral and vitamin supplement designated "Hadacol," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or impliedly:

(*a*) That Hadacol will restore youthful feeling and appearance;

(*b*) That this preparation assures good health;

(*c*) That Hadacol has any therapeutic value other than such as results from the vitamin B–1, vitamin B–2, iron, and niacin it supplies, and then only when clearly limited to cases resulting from a deficiency of one or more of these nutritional elements; or that it has any dietary value except such as may result from providing vitamin B–1, vitamin

B–2, iron, and niacin, and one-third the minimum daily adult requirements of calcium and phosphorous; or

(*d*) That said preparation does not contain drugs or influences health without the use of drugs.

The LeBlanc Corp. and Dudley J. LeBlanc further agreed to cease and desist from exaggerating the frequency with which any disease, symptom or condition is due to a deficiency of vitamin B–1, vitamin B–2, iron, or niacin. (1–20984, Aug. 17, 1950.)

8035. **Vitamin-Mineral Preparations—Unique Nature and Nutritive Qualities.**—Oxford Products, Inc., an Ohio corporation with its principal place of business located in Cleveland, Ohio, and J. Sanford Rose, Robert H. Leler, officers thereof, engaged in the business of offering for sale and selling two vitamin-mineral preparations, one of which is designated "Tremett" and "Slix," the other is designated "Estra-Beta," entered into an agreement, in connection with the dissemination of advertising relating to those preparations, to cease and desist from representing, directly or by implication:

(*a*) That "Estra-Beta" is the highest potency B complex capsule advertised or offered for sale;

(*b*) That the use of "Slix" or "Tremett" in the dosage recommended will adequately compensate for the loss of energy and reduced nourishment occasioned by adherence to a restricted and effective reducing diet. (1–20873, Aug. 23, 1950.)

8036. **Paint Thinner—Manufacture and Composition.**—Elroy Naval Stores Co., a Georgia corporation, with its principal office and place of business located in Vidalia, Ga., engaged in offering for sale and selling, in commerce, a paint thinner designated "Lone Pine Paint Thinner," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(*a*) Representing in any manner that the product is a distilled or redistilled product or that it is other than a blend of the ingredients of which it is composed;

(*b*) Representing through the use of such statements as "Blended Pine Products," through the use of depictions of pine trees and pine cones and through the use of the word "pine" in the brand name, or otherwise, that the product is composed solely or primarily of blended pine products or that it contains such products in a significant amount; provided, however, that this shall not be construed as an agreement not to use the word "pine" as a part of the trade name for the product if, in connection with the trade name "Lone Pine Paint Thinner," or any similar name, the respondent clearly and accurately states the percentage of blended pine products contained in said product;

(*c*) Representing in any manner that the product is based on gum derived from pine. (1–21353, Aug. 30, 1950.)

8037. **Insecticides—Qualities, Safety and Guarantees.**—See-Jay Exterminating Service, Inc., an Oklahoma corporation, with its principal place of business located in Oklahoma City, Okla., and Wilson D. Hand, as an individual and as an officer of said corporation, engaged in offering for sale and selling in commerce, insecticide preparations designated "See-Jay A. P. I." and "See-Jay 52 Roach Powder," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

(1) That See-Jay 52 Roach Powder will eliminate roaches, or that said product will prevent roach reinfestation;

(2) That See-Jay 52 Roach Powder is nonpoisonous;

(3) That See-Jay API is an exterminator, or that said product will exterminate bedbugs, ants, fleas, lice and other insects;

(4) That said products, or either of them, are "guaranteed," unless clear and unequivocal disclosure is made in direct connection therewith of what is offered by way of security for the guarantee as, for example, "refund of the purchase price of the product guaranteed." (1–23213, Aug. 30, 1950.)

8038. **Paint—Relevant Facts.**—American-Marietta Co., an Illinois corporation, with its principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, paints and related products, including a paint designated as "Valdura Asphalt Aluminum Paint," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or inferentially:

That a single application of paint has been applied to advertising "chips" which have received more than one application of paint. (1–22523, Aug. 30, 1950.)

8039. **Office Furniture—Domestic as Foreign.**—Howard S. Cowan, an individual trading as Swedish-Line Chair Manufacturing Co., with his principal office and place of business located in Boston, Mass., engaged in offering for sale and selling in commerce, office furniture designated "Swedish-Line" Office Furniture, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing through the use of the word "Swedish" as a part of his trade name or as a part of the brand name of the furniture, or in any other manner that the said furniture is Swedish furniture or that it is made in Sweden; provided, however, that this shall not be construed as an agreement not to use the word "Swedish" as a part of his trade name if in connection with said trade name it is clearly disclosed that the furniture is made in the United States; and provided further that this shall not be construed as an

agreement not to represent that the furniture is a Swedish style or type of furniture. (1–23152, Aug. 30, 1950.)

8040. **Electronic Organ—Unique Nature.**—C. G. Conn, Ltd., an Indiana corporation, with its principal place of business located in Elkhart, Ind., engaged in offering for sale and selling, in commerce, a musical instrument designated Connsonata Electronic Organ, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and resist from representing directly or by implication:

(1) That the said instrument is the only electronic organ which creates or produces an individual tone by means of a patented use of a vacuum tube;

(2) That the said instrument is the only electronic organ in which each tone is produced by its individual source. (1–21610, Aug. 30, 1950.)

8041.[1] **Drug Preparations—Therapeutic Qualities.**—E. T. Browne Drug Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce drug preparations designated "Palmer's Skin Success Soap" and "Palmer's Skin Success Ointment," entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

That the said preparations, either singly or in combination, cure, heal, promote the healing of, or aid nature in healing externally caused blackheads, pimples, eczema, skin irritations, rash, or "upset skin" or have any beneficial effect thereon in excess of such relief as they may afford from the symptoms of itching.

It is also stipulated and agreed that this stipulation is supplemental to stipulation No. 02411 executed by E. T. Browne Drug Co., Inc., and approved and accepted by the Federal Trade Commission on July 24, 1939,[2] which stipulation remains in full force and effect. (1–13850, Aug. 30, 1950.)

8042. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Previcol, Inc., a New York corporation, with its principal place of business located in Albany, N. Y., engaged in the business of selling in commerce, a certain drug, designating said drug as Previcol, entered into an agreement, in connection with the dissemination of advertising thereof, to cease and desist from representing directly or by implication:

(1) That the use of said preparation will cure, prevent, abort, eliminate, control or stop the common cold;

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[1] Supplemental.

[2] See 29 F. T. C. 1526.

(2) That its use will not result in drowsiness;

(3) That Previcol will cure or prevent hayfever.

The stipulation further provides that nothing therein shall prevent Previcol, Inc., from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops the symptoms or manifestations of the common cold and hayfever such as sneezing, nasal congestion, simple throat coughs, watering eyes or watery or mucous discharge from the nose;

(*b*) Said preparation is safe if taken in accordance with directions on the label. (1–23425, Sept. 5, 1950.)

8043. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Plough, Inc., a Delaware corporation, with its principal place of business located in Memphis, Tenn., engaged in the business of selling in commerce a certain drug, designated as St. Joseph Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertisement relating to that product, to cease and desist from representing directly or by implication:

That the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Plough, Inc., from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23491, Sept. 5, 1950.)

8044. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Julius Blackman Corp., a New York corporation, trading as Supreme Pharmaceutical Co., with its principal place of business located in Jersey City, N. J., engaged in the business of selling in commerce a certain drug, designated as Historal, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Julius Blackman Corp., a corporation trading as Supreme Pharmaceutical Co. from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23518, Sept. 5, 1950.)

8045. **Antihistamine Drug—Therapeutic Qualities and Safety.**—The Pinex Co., Inc., an Indiana corporation, with its principal place of business located in Fort Wayne, Ind., engaged in the business of selling in commerce a certain drug, designated as Pinex Antihistamine Tablets, entered into an agreement, in connection with the dissemination of advertisements relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, control, stop, conquer or abort the common cold.

The stipulation further provides that nothing therein shall prevent The Pinex Co., Inc., from representing in its advertisement that:

(*a*) The use of said preparation relieves and checks, and in many cases stops the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23497, Sept. 5, 1950.)

8046. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Allied Pharmacal Co., an Ohio corporation, trading as Victor Drug Products Co., with its principal place of business located in Cleveland, Ohio, engaged in the business of selling in commerce, a certain drug, designated as Histonex, entered into an agreement, in connection with the dissemination of advertising relating to that product to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Allied Pharmacal Co. trading as Victor Drug Products Co., from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23490, Sept. 5, 1950.)

8047. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Monticello Drug Co., a Florida corporation, with its principal place of business located in Jacksonville, Fla., engaged in the business of selling in commerce, a certain drug designated as A–H Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Monticello Drug Co. from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23424, Sept. 5, 1950.)

8048. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Commerce Drug Co., Inc., a New York corporation, with its principal place of business located in Brooklyn, N. Y., engaged in the business of selling in commerce a certain drug, designated as Orastin, entered into an agreement, in connection with the dissemination of advertising relating to that product to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent the Commerce Drug Co., Inc., from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23483, Sept. 5, 1950.)

8049. **Antihistamine Drug—Therapeutic Qualities and Safety.**—Kirkland S. Lamb and Clyde A. Jones, copartners trading as C–B Drug Co., with their principal place of business located in Charlotte, N. C., engaged in the business of selling in commerce a certain drug, designated as C–B Anti-Histamine Tablets, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the use of said preparation will cure, prevent, abort, eliminate, stop, or lessen the duration or severity of the common cold.

The stipulation further provides that nothing therein shall prevent Kirkland S. Lamb and Clyde A. Jones, copartners trading as C–B Drug Co. from representing in its advertisement that:

(*a*) The use of said preparation relieves or checks, and in many cases stops, the symptoms or manifestations of the common cold, such as sneezing, nasal congestion, simple throat coughs, watering eyes, or watery or mucous discharge from the nose;

(*b*) The preparation is safe if taken in accordance with directions on the label. (1–23524, Sept. 5, 1950.)

8050. **Mason Jars—Unique Nature.**—Kerr Glass Manufacturing Corp., a Nevada corporation, with its principal office and place of business located in Sand Springs, Okla., advertiser-vendor, engaged in the

business of offering for sale and selling, in commerce, Kerr Mason Jars, Caps, and Lids, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

By such expressions as "*The* Self-Sealing Brand" or "*The only* Self-Sealing brand," or otherwise, that Kerr Mason Jars, Caps, and Lids are the only ones which are of the thermo-plastic type. (1–22540, Sept. 12, 1950.)

8051. **Varnish—Durability and Comparative Merits.**—Vita-Var Corp., a New Jersey corporation with its principal place of business located in Newark, N. J., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, paint products including a varnish designated as "Vita-Var Spar Varnish," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That said varnish is weatherproof or alkali-proof;

(2) That it is not adversely affected by exposure to the elements;

(3) That it dries to a hard finish and is ready for use within four hours;

(4) That it lasts twice as long as "ordinary varnishes" or as competitive varnishes generally. (1–22335, Sept. 12, 1950.)

8052. **Paint Sprayers—War Surplus and Fictitious Prices.**—American Salvage Co., a New Jersey corporation, with its principal place of business located in Newark, N. J., and Abraham Seidman and Fannie Seidman, as individuals and officers of said corporation, engaged in the business of offering for sale and selling portable paint sprayers, salvage materials and miscellaneous products in commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That any article or product is "war surplus" unless said article or product was acquired directly or indirectly from an agency of the United States Government and has previously been designated by such agency as "war surplus."

(2) That the usual or customary price or "value" of any article or product is any figure or amount in excess of the actual, customary, or usual retail price thereof. (1–22129, Sept. 13, 1950.)

8053. **Paints—Comparative Merits and History.**—Cello-Nu Products, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Oliver A. Unger, individually and as a corporate officer, engaged in offering for sale and selling in commerce, various types of paints, entered into an agreement, in connection with any future offering for sale, sale, and distribution thereof, to continue to cease and desist from representing in any manner:

(*a*) That said paints differ substantially, in composition or otherwise, from many other good quality paints on the market;

(*b*) That said paints are the result of or constitute new discoveries. (1–19540, Sept. 12, 1950.)

8054. **Communication Device—Nature and Composition.**—Isaac Heller and Saul Robbins, copartners, trading as North East Sales Co. and as Remco Industries, with their principal office and place of business located in Newark, N. J., engaged in the business of offering for sale, and selling, in commerce, a communication device which they have designated a "Walkie-Talkie," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That this is an electronic device or that it operates on a new or electro-sonic principle;

(*b*) By picturization or otherwise, that this device has a tuning dial, control knobs or an extra mouth or ear piece, or that it has any features or equipment not actually a part thereof;

(*c*) By the unqualified use of the term "Walkie-Talkie," or otherwise, that this is a radio receiving and sending set, or that it is anything other than a device which transmits sound over a wire for distances not exceeding 25 feet.

Isaac Heller and Saul Robbins further agreed to cease and desist from designating this device a "Walkie-Talkie" unless it is clearly explained that sound transmission is accomplished only by means of a connecting wire. (1–23186, Sept. 12, 1950.)

8055. **Hair Oil—Therapeutic Qualities.**—L. B. Laboratories, Inc., a California corporation, with its principal place of business located in Glendale, Calif., and John H. Olson, Mary H. Olson, and O. A. Hill, as individuals and as officers of said corporation, engaged in the business of offering for sale and selling a preparation designated "L. B. Hair Oil," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation has any beneficial therapeutic effect in the treatment of the hair or scalp for dandruff, or that said preparation will dissolve, eliminate or remove dandruff from the hair and scalp;

(2) That said preparation will control dandruff;

(3) That said preparation has any beneficial therapeutic effect in the prevention or cure of a dry or itching scalp, or that said preparation penetrates the scalp or has any effect on the functioning of the scalp, the pores of the scalp, or hair follicles;

(4) That said preparation restores natural oils to the hair; or

(5) That said preparation protects the health of the hair or has

a beneficial therapeutic effect in preventing falling hair. (1–2171, Sept. 14, 1950.)

8056. **Water Filters—Nature.**—Puro Filter Corp. of America, a New York corporation, with its principal place of business located in New York, N. Y., engaged in offering for sale and selling in commerce water filters designated "Puro Filter-Purifier," entered into an agreement, in connection with the offering for sale, and distribution in commerce, to cease and desist from representing in any manner that its Puro Filter-Purifier purifies water, in excess of such purification as may be obtained by filtering, but does not agree that it will change the designation of its filter as a "Filter-Purifier." (1–22385, Sept. 12, 1950.)

8057. **Hair and Scalp Preparation—Therapeutic Qualities.**—M. Shemano Hair and Scalp Method, Inc., a California corporation, with its principal office and place of business located at San Francisco, Calif., and Mike Shemano, Rae D. Shemano, and Helen S. Shemano, as individuals and as corporate officers, engaged in the business of offering for sale and selling a product designated "Shemano's Hair and Scalp Method," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(*a*) That the product will prevent baldness, stop falling hair, regrow hair or have a beneficial effect on a dry scalp condition;

(*b*) That the product will beneficially affect a scalp condition manifested by itching or oiliness except to such extent as it may relieve the itching or remove the accumulations of oil from the hair and scalp;

(*c*) That the product will have a beneficial effect on dandruff except to such extent as it may facilitate the removal of loose dandruff scales. (1–21094, Sept. 19, 1950.)

8058. **French Dressing—Foreign Source.**—Louis Milani Foods, Inc., an Illinois corporation, with its principal office and place of business located in Maywood, Calif., advertiser-vendor, engaged in the business of offering for sale and selling food products among which is a product designated "1890 French Dressing," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing in any manner that the formula for the product was originated by a Frenchman or in France or that either the product or its formula has any connection with France. (1–21908, Sept. 25, 1950.)

8059. **Indian Design Jewelry—Misleading Trade Name, Manufacture and Source of Product.**—Jack Michelson, an individual trading as Bell Indian Trading Post, with his place of business located in Albuquerque, N. Mex., engaged in the manufacture of Indian design jewelry and in offering for sale and selling the aforesaid Indian design jewelry in

commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or indirectly by depiction, or implication, or otherwise:

(1) By use of the trade name "Bell Indian Trading Post" that he owns, operates, or absolutely controls an Indian trading post; or that he has been duly licensed as an Indian trader by the Bureau of Indian Affairs, United States Department of the Interior to purchase goods and merchandise from, and sell goods and merchandise to, Indians of any Indian reservation;

(2) That his business is located on, and is conducted from, an Indian reservation;

(3) That the Indian design jewelry he manufactures is handmade by Indian silversmiths and has been produced by traditional Indian production methods;

(4) That the Indian design jewelry he offers for sale and sells has been purchased directly or indirectly from Indian silversmiths. (1–22457, Sept. 29, 1950.)

8060. **Binoculars—Maker.**—Joseph A. Devlin and Stanley C. Koszyk, copartners, trading as Optical Instrument Co., with their principal place of business located in Philadelphia, Pa., advertiser-vendors, engaged in the business of offering for sale and selling in commerce, binoculars, bearing "Bausch & Lomb" name plates, and binocular carrying cases and straps, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using "Bausch & Lomb" name plates or the name plates of any other manufacturer of binoculars on binoculars which are not assembled and produced as complete binoculars by such manufacturer, or representing in any manner that such binoculars are produced by such binocular manufacturer; Provided, however, that this shall not be construed as an agreement not to use a binocular manufacturer's name in sales literature pertaining to assembled binoculars if, whenever used, the manufacturer's name shall be preceded in equal conspicuousness by the name of the assembler as, for example, "Binoculars assembled by (name of assembler) from parts produced by (name of producer of the component parts);"

(2) Advertising, offering for sale or selling Army or Navy surplus binocular carrying cases and straps without adequately disclosing the fact that such products are Army or Navy surplus. (1–22910, Oct. 6, 1950.)

8061. **Binoculars—Maker, Government Source and Guarantee.**—L. J. Thomas, an individual trading as United Products Co. and as Vogue Jewelry Co., with his principal place of business located in Chicago, Ill., advertiser-vendor, engaged in the business of offering for sale

and selling in commerce, jewelry and optical goods, including binoculars, bearing "Bausch & Lomb" name plates, entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using "Bausch & Lomb" name plates or the name plates of any other manufacturer of binoculars on binoculars which are not assembled and produced as complete binoculars by such manufacturer, or representing in advertisements or any other sales material that such binoculars are produced by such binocular manufacturer; Provided, however, that this shall not be construed as an agreement not to use a binocular manufacturer's name in the sales literature pertaining to assembled binoculars if, whenever used, the manufacturer's name shall be preceded in equal conspicuousness by the name of the assembler as, for example, "Binoculars assembled by (name of assembler) from parts produced by (name of producer of the component parts)"; Provided that if the name of the assembler is unknown, that fact shall be stated immediately preceding the name of the producer of the component parts.

(2) Advertising, offering for sale or selling Army or Navy surplus binocular carrying cases and straps without adequately disclosing the fact that such products are Army or Navy surplus;

(3) The use of the initials "U. S. N." in connection with the description of binoculars which were not made for the United States Navy and which do not have incorporated therein such factors or qualities as are required for United States Navy binoculars;

(4) Designating or describing a warranty against defective material or workmanship as a Lifetime Guarantee. (1–22910, Oct. 6, 1950.)

8062. **Insecticide—Unique Nature, Comparative Merits, Safety and Effectiveness.**—Cook Chemical Co., a Missouri corporation, with its principal place of business located in Kansas City, Mo., advertiser-vendor, engaged in the business of offering for sale and selling an insecticide designated "Cook-Kill Bug Killer," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(*a*) That this product contains any ingredient which is not present in any competing preparation; provided, that nothing in this inhibition shall be construed to be in derogation of such rights as Cook Chemical Co. may have under the patent and trade-mark laws of the United States;

(*b*) That this product is the successor to, or more effective than, DDT, unless expressly limited to the specific insects concerning which the product is more effective than DDT;

(*c*) That Cook-Kill Bug Killer is nontoxic to humans or will not harm humans, on external or internal administration;

(*d*) That this product is effective against all bugs and insects;

(*e*) By the publication of any test conducted under rigidly controlled or other special conditions, or otherwise, to the effect that any specified results can be obtained by the use of Cook-Kill Bug Killer, or that this product possesses any given relative effectiveness when compared to competitive preparations, unless such results can be obtained, or such relative effectiveness is true, under actual conditions of use; or

(*f*) That, when poured on ant hills, Cook-Kill Bug Killer will kill all ants in the hill. (1–20579, Oct. 6, 1950.)

8063. **Nursery and High Chair Pads—Waterproof and Healthful Qualities.**—Plymouth Rubber Co., Inc., a Massachusetts corporation, with its principal place of business located in Canton, Mass., engaged in offering for sale and selling in commerce, Vinylite-covered nursery pads and high chair pads, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(1) That said Vinylite-covered nursery pads are waterproof, provided that nothing herein contained shall be construed as prohibiting any claim to the effect that Vinylite is a waterproof material;

(2) That said Vinylite-covered high chair pads will strengthen or support an infant's back. (1–21881, Oct. 10, 1950.)

8064. **Gift Items—Refunds.**—Mayfair Gifts, Inc., a New York corporation, with its principal office and place of business located at Forest Hills, N. Y., and New York Gifts, Inc., a New York corporation, with its principal office and place of business located in Forest Hills, N. Y., both corporations having the same officers dominating and controlling their affairs, engaged in the business of offering for sale and selling in commerce, various types of gift items, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

Engaging in the practice of retaining payments for goods not promptly deliverable and from engaging in the practice of substituting credit memoranda for prompt cash refunds without first securing the consent of those transmitting the payments. (1–22937, Oct. 11, 1950.)

8065. **Drug Preparations—Comparative Merits and Therapeutic Qualities.**—William Held, an individual with his principal place of business located in Chicago, Ill., advertiser-vendor, engaged in selling drug preparations designated as Oral Iodocer and Intravenous Iodocer, also heretofore engaged in selling a drug preparation designated as Endotens, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(1) That Oral Iodocer and Intravenous Iodocer, or either thereof, possess therapeutic properties comparable to those of sulfa drugs, penicillin, or streptomycin;

(2) That Oral Iodocer and Intravenous Iodocer, or either thereof, used as directed, are of therapeutic value in the treatment of inflammatory, toxic, bacterial, parasitical or infectious conditions;

(3) That Oral Iodocer and Intravenous Iodocer, or either thereof, used as directed, act as an antisepticum or internal disinfectant, aid in the formation of healthy granulation, promote the resorption of fibrous growths or exudates, exert any destructive action on malignant tumors, or have any healing effect on inflamed organs;

(4) That Oral Iodocer, used as directed, will relieve nausea, headache, gastro-intestinal disorders or any distress which may be incident to the malfunction of the intestines, biliary tract, kidneys, or other organs of the body;

(5) That Intravenous Iodocer is a competent or effective treatment or cure for epilepsy, gastro-intestinal conditions, respiratory conditions, virus infections, septicemia, salpingo-oophoritis, cysts, poliomyelitis, epididimitis, eczema, infections of any nature, sinusitis, migraine headache, arthritis, fibroid tumor, bed sores, pericarditis, prostate troubles, phlebitis, urethritis, erythema induratum, hypertension, or abscesses;

(6) That Endotens is a competent or effective treatment for hypertension or the complications thereof, such as hemorrhage in the eye, nose bleed, cerebral hemorrhage, arteriosclerosis, cardiac hypertrophy or aneurysm.

William Held further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial or other statement containing any representation contrary to the foregoing agreement. (1–21992, Oct. 11, 1950.)

8066. **Foam Rubber Cushions—Composition.**—Charlton Co., Inc., a Massachusetts corporation, with its principal place of business located in Fitchburg, Mass., engaged in offering for sale and selling in commerce, foam rubber sofa cushions and foam rubber rocking chair seats, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner that its sofa cushions and the cushioned seats of its rocking chairs, exclusive of covering material, are composed entirely of foam rubber when such is not the fact. (1–23338, Oct. 23, 1950.)

8067. **Ball Point Fountain Pens—Prices.**—Abe Marks, an individual trading as Sumlar Co., with his place of business located in Brooklyn, N. Y., engaged in the business of offering for sale and selling ball point fountain pens in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution of ball point fountain pens now sold under the brand name "Winfield," or

any other pen of substantially the same value, to cease and desist from representing that such pen formerly sold for $5.00 or that it is a $5.00 value, and from otherwise representing that such pen has a value far in excess of the customary and usual retail price. (1–22922, Oct. 23, 1950.)

8068. **Bowling Alley Accessories—Manufacturing Status.**—Monumental Bowling & Billiard Corp., a Maryland corporation, with its principal place of business located in Baltimore, Md., engaged in the business of installing bowling alleys and offering for sale and selling bowling alley accessories and "Strikeasy" ten pins and duck pins which are manufactured by said corporation, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the phrase "Manufacturers of Strikeasy Products" and "Manufacturers and Distributors of Strikeasy Products" and from otherwise representing directly or by implication that it manufactures bowling alley equipment and accessories other than "Strikeasy" bowling pins, when such is not a fact. (1–23264, Oct. 25, 1950.)

8069. **Rodenticides—Effectiveness, Safety, etc.**—Jay B. Hazelrig and Thomas T. Hazelrig, copartners trading as American Chemical Co., with their principal place of business located in Birmingham, Ala., engaged in offering for sale and selling in commerce, rodenticide preparations designated "Hot Foot Mouse and Rat Killer," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

(1) That said product kills rodents instantly;

(2) That the bodies of rodents killed by the use of said product will not give off the usual odors or "smells" incident to putrefaction;

(3) That rodents killed by the use of said product will "dry up" or will not putrefy;

(4) That the use of said product will prevent typhus fever, provided that nothing herein contained shall prohibit the representation that the use of an effective rodenticide may help prevent typhus fever;

(5) That said product is non-poisonous;

(6) That facsimile labels used in advertising are true and exact copies of the label affixed to said product when such is not the fact. (1–23379, Oct. 27, 1950.)

8070. **Lumber—Size.**—Robinson Brothers, Inc., a Maryland corporation, with its principal office and place of business located at 1239 Kenilworth Avenue, NE., Washington 19, D. C., engaged in the business of offering for sale and selling lumber, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing, directly or by implication:

That lumber smaller than 1⅝" x 3⅝" is 2" x 4" lumber, or in any other manner from representing that its lumber is cut to accepted standard sizes within allowable tolerances, when such is not the fact. (1–23453, Oct. 31, 1950.)

8071. **Knitting Yarns—Guarantees.**—Tiger Yarn Co., a New York corporation with its principal place of business located in New York, N. Y., and Benjamin Goldman, an officer thereof, engaged in the business of offering for sale and selling knitting and crocheting yarns in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from labeling or otherwise representing such products as being "Fully Guaranteed" when as to color fastness or any other particular they are not guaranteed, and from using the word "guarantee" or any word of similar import as descriptive of a limited guarantee, without specifying in direct connection therewith the terms and limitations of the guarantee. (1–22960, Oct. 31, 1950.)

8072. **Crib Mattresses, etc.—Waterproof and Healthful Qualities.**—Jacob Doppelt, Simon Doppelt and Irving Doppelt, copartners trading as Nurserytyme Products, with their principal office and place of business located in Brooklyn, N. Y., advertiser-vendors, engaged in offering for sale and selling in commerce, various brands of carriage mattresses, crib mattresses, play pen pads and allied products, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That any of the products is waterproof unless and until such time as the complete outer covering thereof shall be impervious to water or moisture for the life of such product.

(*b*) That the mattresses (1) will keep a baby's spine straight, (2) will materially help a child to develop properly, or (3) will have an appreciable effect on a child's future health. (1–2184, Nov. 8, 1950.)

8073. **Fountain Pens and Mechanical Pencils—Composition.**—Avon Pen Products Co., Inc., a New York corporation with its place of business located in New York, N. Y., and Max M. Neuhoff, an officer thereof, engaged in the business of offering for sale and selling fountain pens and mechanical pencils in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the word "Goldtone" or any other word or term of similar import or meaning to designate or describe any part or parts thereof not composed of gold or an alloy of gold of at least 10 karat fineness. (1–22268, Nov. 2, 1950.)

8074. **Lottery Devices—Interstate Sale.**—Werts Novelty Co., Inc., an Indiana corporation, with its principal place of business located in Muncie, Ind., and Iva G. Werts, individually and as an officer of said corporation, engaged in the sale and distribution of tip cards, tip

books, push cards, jar deals, ticket books, and other devices in interstate commerce, entered into an agreement to cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, tip cards, tip books, push cards, jar deals, ticket books, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. (1–11493, Nov. 14, 1950.)

8075. **Punchboards—Interstate Sale.**—Empire Press, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., and Sylvea Zimmerman and Joseph Zimmerman, individually and as officers of said corporation, engaged in the sale and distribution of punchboards, in commerce, entered into an agreement to cease and desist from:

Selling or distributing in commerce as "commerce" is defined in the Federal Trade Commission Act, punchboards or other lottery devices which are to be used, or may be used, in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme. (1–21326, Nov. 14, 1950.)

8076. **Medicinal Product—Therapeutic Properties.**—Whitehall Pharmacal Co., an Illinois corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling a product designated "TIZ Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication that the product will be of aid in preventing athlete's foot. (1–23142, Nov. 22, 1950.)

8077. **Electric Water Heater—Qualities and Safety.**—The Ambory Corp., a Michigan corporation, with its principal office and place of business located in Hazel Park, Mich., engaged in the business of offering for sale and selling in commerce an electric water heating device designated "Jiffy Electric Water Heater"; the heating portion of the device, while in use, is immersed in a vessel of water and the cord, which consists of insulated wires, is connected to a conventional electric outlet; entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Exaggerating the speed with which the product will provide a sufficient amount of hot water;

(2) Distributing or selling said product unless the word "caution" or "warning," together with adequate directions for safe use of the product, is firmly affixed thereto in a lasting manner plainly informing the user that failure to carefully follow directions may result in dangerous electric shock. (1–23124, Nov. 27, 1950.)

8078. **Mange Treatment—Therapeutic Qualities.**—John Peter Edge, Ltd., a New York corporation, with its principal office and place of business located in New York, N. Y., and John Peter Edge and Lila Edge, individually and as officers of said corporation, engaged in the business of offering for sale and selling a drug preparation for external administration to dogs designated "Tarcosulf," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation has any beneficial therapeutic effect in the treatment of conditions causing summer itch, summer eczema or dandruff;

(2) That said preparation will cure mange without limiting it to sarcoptic mange or without disclosing that it will not cure demodectic mange;

(3) That said preparation will promote and encourage the regrowth of hair or improve the condition of a dog's coat without either limiting such loss of hair or lack of condition to sarcoptic mange or without disclosing that said preparation will not encourage or promote regrowth of hair or improve the condition of a dog's coat where such loss of hair or lack of condition is due to demodectic mange. (1–22582, Nov. 27, 1950.)

8079. **Prints on Cloth—Hand-Made.**—Titus Blatter & Co., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of manufacturing and distributing prints on cloth made by a rolling process and offering for sale and selling such products as "Hantone Print," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

By use of the words "Handtone," "Hantone," or other similar words or phrases that advertiser-vendor's products constitute fabrics printed by other than a roller process or fabrics printed by hand. (1–23233, Nov. 27, 1950.)

8080. **Detergent Preparations—Navy Approval, etc.**—Sumco Products, Inc., a New York corporation, with its principal place of business located in New York, N. Y., advertiser-vendor, engaged in the business of offering for sale and selling in commerce detergent preparations for use in boiler tubes and fuel oil bunkers and for other marine uses, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

That Sumco products have been approved by the United States Navy, have been specified for use on ships operated by the United

States Navy or have been specified for future use on such ships. (1–23466, Nov. 27, 1950.)

8081. **Garlic Medicinal Preparation—Therapeutic and Odorless Qualities.**—Roy H. Cochran, an individual trading as Excelsior Laboratory, with his principal place of business located in Atlantic City, N. J., advertiser-vendor, engaged in the business of offering for sale and selling in commerce, a medicinal preparation designated "D. Gosewich's Garlic Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(*a*) That such preparation when taken as directed has any therapeutic value in the relief or cure of conditions such as stomach gas, belching, heaviness after eating, nervous dull stomach distress, gas pains due to intestinal disorders, flatulence or nervous stomach; or

(*b*) By use of words such as "whiffless," or "odorless" or "Garlic made Sociable" or in any other manner that such preparation is free from the odor of garlic. (1–23243, Dec. 5, 1950.)

8082. **Carbon Tetrachloride Cleaning Preparation—Comparative Merits, Unique Nature, Safety, etc.**—Goulard & Olena, Inc., a New York corporation, with its principal place of business located in Skillman, N. J., advertiser-vendor, engaged in the business of offering for sale and selling a cleaning preparation designated "Rid-O-Spot" in commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That said product is any different from other cleaning preparations or cleaning solutions containing substantial quantities of carbon tetrachloride and petroleum distillates;

(2) That said product is a preparation which cleans and does not leave a ring around the place to which it is applied on "spots" or stains caused by perspiration or insoluble aqueous staining mediums on bleached cotton fabrics, unbleached woolen cloth and dyed silk fabrics;

(3) That said product will clean white buckskin or white buckskin shoes;

(4) That said product will not injure the color of fabrics when such fabrics are colored with dyes which bleed in carbon tetrachloride and petroleum distillates;

(5) That said product is less inflammable, less explosive and safer to use than other cleaning preparations or cleaning solutions containing substantially the same quantities of carbon tetrachloride and petroleum distillates. (1–22253, Dec. 5, 1950.)

8083. **Serums and Bacterins—Preventive and Therapeutic Properties.**—Louis Brunke and F. S. Marstella, copartners, trading as Anchor Serum Co. of Indiana, with their principal place of business located in Indianapolis, Ind., engaged in the business of offering for sale and

selling serums and bacterins designated "Anchor Serum and Bacterins," entered into an agreement, in connection with the dissemination of advertising relating to such products, to cease and desist from representing, directly or by implication:

(1) That Mixed Bacterin Bovine Formula No. 1 is of value in the prevention and treatment of Keratitis (Pink Eye) in cattle;

(2) That their bacterins are effective in the control and treatment of various animal diseases without limiting such effectiveness to the prevention thereof;

(3) That Mixed Bacterin Equine Formula No. 1 is effective in the prevention and treatment of distemper and strangles in horses and mules;

(4) That Mixed Bacterin Equine Formula No. 2 is of value in the prevention and treatment of Navel-Ill and Joint-Ill in foals. (1–19442, Dec. 6, 1950.)

8084. **Preparation for Automotive Machinery—Improving Qualities.**—Isadore W. Goldberg, an individual operating under the trade name of The Gastine Co., with his principal office and place of business located in Bridgeton, N. J., advertiser-vendor, engaged in the business of offering for sale and selling a product for use in automotive machinery, designated "Gastine Tablets," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

That Gastine Tablets have any beneficial effect on the performance of automotive engines. (1–22663, Dec. 15, 1950.)

8085. **Regulator for Automobile Electric System—Improving Qualities.**—Peter Cook, an individual trading as Scientific Electric Co., with his place of business located in Cleveland, Ohio, engaged in the manufacture, offering for sale and selling in commerce a regulator device for the electrical system of an automobile designated "Powermaster Wattage Regulator," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly, indirectly, by implication or otherwise:

(1) That said device will completely, practically or permanently end trouble in the electrical system of an automobile in which said device has been installed;

(2) That the longer the said device is used the better it operates, or that the operation of the said device when installed in an automobile improves in direct proportion to the length of time it is used;

(3) That the said device when installed in an automobile will produce better starting of the motor and will "keep up" the battery at all times;

(4) That automobiles in which said device is installed will never be stranded. (1–23076, Dec. 15, 1950.)

8086. **Hydraulic Brake Fluid Preparation—Durability.**—Quaker Supreme Chemical Corp., an Alabama corporation, with its principal place of business located in Montgomery, Ala., and Herman Aronov, Perry Mendel, Hilliard Aronov, and Aaron Aronov, as officers and as individuals of said corporation engeged in offering for sale and selling in commerce a hydraulic brake fluid preparation designated "Quaker Supreme Grade A Hydraulic Brake Fluid," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertising in regard thereto which represents directly or by implication:

(1) That said product will not evaporate or that said product is nonevaporating;

(2) That said product is a high boiling brake fluid. (1–23437, Dec. 15, 1950.)

8087. **Metal Awnings—Economy and Durability.**—The F. C. Russell Co., an Ohio corporation, with its principal place of business located in Cleveland, Ohio, advertiser-vendor, engaged in offering for sale and selling in commerce, metal awnings designated "Rusco," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(*a*) That such awnings require no maintenance;

(*b*) That the initial cost of such awnings is the only cost;

(*c*) That such awnings are windproof or stormproof. (1–23459, Dec. 18, 1952.)

8088. **Metal Awnings—Economy and Durability.**—John M. Jalanivich, an individual trading as Koolvent Metal Awning Co., of Mississippi, with his principal place of business located in Biloxi, Miss., advertiser-vendor, engaged in offering for sale and selling in commerce, metal awnings designated "Koolvent," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That Koolvent Awnings require no maintenance;

(2) That the initial cost of Koolvent Awnings is the only cost;

(3) That Koolvent Awnings are windproof or stormproof. (1–23458, Dec. 18, 1950.)

8089. **Fabric Plasticizer—Qualities.**—Synco Products Co., Inc., a Tennessee corporation, with its principal place of business located at Chattanooga, Tenn., and George Melvin Cooper, John Logan Cooper, and Leone Park Cooper, individually and as officers thereof, engaged in the business of offering for sale and selling a resin plasticizer designated "Glide," in interstate commerce, entered into an agreement in connection with the offering for sale, sale and distribution thereof,

to cease and desist from disseminating any advertisement in regard thereto which represents, directly or by implication:

That the use of "Glide" prevents the mildewing of fabrics. (1–23181, Dec. 21, 1950.)

8090. **Rubber Flooring—Qualities.**—Henry Westall, an individual, trading as Henry Westall Co., with his general offices and principal place of business located in Asheville, N. C., engaged in the business of offering for sale and selling in commerce, rubber flooring material designated "Spike-Proof Rubber Flooring," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) By the use of the brand name "Spike-Proof," or otherwise, that said rubber flooring material is spike-proof, provided that nothing herein contained shall prohibit the representation that said product has sufficient spike-resistance to give adequate service when walked on in a normal manner by a wearer of golf shoes;

(2) That said rubber flooring material cannot be marred by spiked shoes;

(3) That said rubber flooring material is slip-proof. (1–23507, Dec. 28, 1950.)

8091. **Granulated Soap—Competitive Products.**—Iowa Soap Co., an Iowa corporation with its principal place of business located in Burlington, Iowa, engaged in the business of offering for sale and selling certain soap products, and within approximately the two years last past has engaged in offering for sale and selling a granulated soap designated "Wonder Suds," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication that synthetic detergents are harmful to the skin or to fabrics. (1–23256, Jan. 5, 1951.)

8092. **Ribbons—Manufacturing Status and Composition.**—Superior Ribbon Products Corp., formerly Superior Ribbon Mills, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling, in commerce, ribbons, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist, with respect thereto, directly or impliedly:

(1) from representing in corporate or trade name or names, or otherwise, that it owns or operates a factory or factories, mill or mills, wherein ribbons which it sells are manufactured; or that it is a manufacturer or manufactures such products;

(2) from designating its ribbons containing rayon as "satin" without qualifying such designation with the word "rayon." (1–23394, Jan. 5, 1951.)

8093. **Misses' Coats—Misbranding Wool Products.**—Harrow Classics, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., and Alfred E. Harrow, individually and as an officer of said corporation, engaged in the business of manufacturing, offering for sale and selling in commerce, "wool products" as defined in and subject to the Wool Products Labeling Act of 1939, consisting of misses' coats, entered into an agreement, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution thereof, to cease and desist from failing to affix to such 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 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentum by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents 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.

Harrow Classics, Inc., and Alfred E. Harrow, individually and as an officer of said corporation, further stipulated and agreed they will hereafter fully comply with the Wool Products Labeling Act of 1939 and the rules and regulations promulgated pursuant thereto. (1–23592, Jan. 5, 1951.)

8094. **Medicinal Preparation — Therapeutic Properties.**—Inner - Aid Medicine Co., Inc., a Kentucky corporation, with its principal place of business located in Covington, Ky., and William T. Maynard, Elizabeth N. Maynard and Murray L. Vorhees, as officers of said corporation, engaged in the business of offering for sale and selling a medicinal preparation designated "Inner-Aid," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That said preparation is a cure or remedy for constipation or will restore bowel regularity;

(2) That said preparation has any therapeutic value in excess of that which would be afforded by its laxative action in temporarily relieving constipation, by its action as a bitter appetizer and by its

action as a carminative in temporarily reducing flatulence and in assisting in the expulsion of gas or bloat from the gastrointestinal tract;

(3) That said preparation stimulates the activity of the liver and kidneys, invigorates the system, aids digestion, cleanses the bowels or cleanses the entire system;

(4) That said preparation has any value in the treatment of skin eruptions, rheumatic pains, dizzy spells, sleeplessness, acid indigestion or a weakened or worn-out feeling;

(5) That said preparation cleans acids from the digestive system, or neutralizes acids;

(6) That said preparation is a cure, or remedy, for headaches, coated tongue, bad breath or bad taste in the mouth, or will have any therapeutic value in these conditions in excess of the temporary relief afforded by an evacuation of the bowels in those cases in which such conditions are caused by constipation;

(7) That said preparation is of value in the treatment of stomach disorders or in the treatment of bowel disorders generally; or

(8) That persons who are on a restricted diet because of some stomach disorder will be enabled to "eat anything" after taking said preparation. (1–21767, Jan. 5, 1951.)

8095. **Plastic Starch—Economic Qualities.**—Sunlight Chemical Corp., a Rhode Island corporation, with its principal place of business located in Phillipsdale, R. I., and Leon W. Brower, Albert S. Brower, and Ernest T. Voight, as individuals and as officers of said corporation, engaged in the business of offering for sale and selling a resin plasticizer designated "Sunlight Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(1) That the use of said preparation can be relied upon to double the life of cottons or other fabrics, or to increase the wearing life of fabrics by any definite length of time;

(2) That 1 quart of such preparation makes a quantity of starch equivalent to two gallons without revealing, in direct connection therewith, that in this dilution the product would be suitable only for light starching. (1–23167, Jan. 5, 1951.)

8096. **Beverage—Competitive Products.**—General Foods Corp., a Delaware corporation, with its principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling, among others, a product designated "Postum," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing in any manner that the drinking of coffee has an appreciable or pro-

nounced influence on, or on any rate of increase in, divorces, business failures, factory accidents, juvenile delinquencies, traffic accidents, fires, or home foreclosures or on any decrease in marriages or on any rate of decrease therein.

General Foods Corp. represents that on or about May 1, 1948, the company decided to discontinue the percentage type of advertisements; that said percentage type of advertisements have not been published since August 1948, and that it has no intention of resuming their publication. This action was taken prior to September 7, 1948, which was the date on which the Federal Trade Commission initially contacted General Foods Corp. regarding this matter. (1–22755, Jan. 10, 1951.)

8097. **Plastic Starch—Permanence.**—Taylor Paisley, an individual operating under the trade name of Korex Co., with his principal office and place of business located in Ferndale, Mich., engaged in the business of offering for sale and selling a resin plasticizer designated and advertised as "Korex Synthetic Permanent Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from using the word "permanent" as a part of the brand name of the product or in connection with the advertising and sale of said product. (1–23145, Jan. 15, 1951.)

8098. **Fishing Plug—Government Approval and Success.**—Charles Helin, an individual with his principal place of business located in Detroit, Mich., engaged in selling a fishing plug designated "Flatfish," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

That the Interstate Commerce Commission or any other governmental agency has either tacitly approved or approved advertising claims or representations made by him with respect to his fishing plugs.

Charles Helin, in connection with the offering for sale, sale and distribution in commerce of his product designated "Flatfish," further agreed to cease and desist from:

Using any figure, amount or quantity purporting to represent the number of "Flatfish" plugs sold per day, which is in excess of the average daily sales during a calendar year of 365 days. (1–20570, Jan. 19, 1951.)

8099. **Lumber—"Mahogany."**—Frank Schneider and Julius Schneider, copartners trading as Schneider Brothers Lumber Co., engaged in the business of offering for sale and selling in commerce various species of hardwood lumber identified and designated at Santa Maria (Calophyllum Braziliense) under the designation "Chijole Mahogany," lumber identified and designated as Central American Walnut, Mexico Walnut and Conacaste under the designation "Juana

Costa Mahogany" and lumber identified and designated as Palo Blanco under the designation "Palo Blanco White Mahogany," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from the use of the word "Mahogany," alone or in conjunction with any other word or words, to designate or describe the aforesaid lumber identified as Santa Maria, Central American Walnut, Mexico Walnut, Conacaste, and Palo Blanco, or to use the word "Mahogany," alone or in conjunction with any other word or words, so as to import or imply, or so as to have the capacity and tendency to deceive purchasers into the belief, that lumber so designated or described is Mahogany when such is not the fact. (1–20326, Jan. 10, 1951.)

8100. **Plastic Starch—Preserving Qualities.**—Proxite Products, Inc., a New York corporation, with its principal place of business located at Brooklyn, N. Y., engaged in the business of offering for sale and selling a plastic starch designated and advertised as "Pro Lasting Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(1) That such product retards mildew and mold growth on fabrics;

(2) That its use can be relied upon to double or triple the life of fabrics or to increase the wearing life of fabrics by any definite length of time. (1–23043, Jan. 26, 1951.)

8101. **Plastic Starch—Preserving and Protective Qualities.**—Chemicals, Inc., a California corporation, with its principal place of business located in San Francisco, Calif., engaged in the business of offering for sale and selling a resin plasticizer designated "Dura Plastic Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents directly or by implication:

(1) That said preparation will restore the original color to faded fabrics or will protect colored fabrics from fading in light;

(2) That said preparation will soften fabrics or make them more flexible;

(3) That said preparation can be relied upon to double the life of fabrics or to increase the wearing life of fabrics by any definite length of time. (1–23023, Jan. 26, 1951.)

8102. **Electric Welding Device—Safety.**—Paul Morris, an individual doing business as Morris Welding Service, with his principal place of business located in Schenectady, N. Y., engaged in the business of offering for sale and selling in commerce an electric welding device designated as "110 Volt Arc-Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Advertising or representing that this device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used.

(2) Distributing or selling said device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1–22558, Jan. 10, 1951.)

8103. **Electric Welding Devices—Safety.**—The Larkin Lectro Products Corp., an Arkansas corporation, with its principal place of business located in Pine Bluff, Ark., engaged in the business of offering for sale and selling in commerce, three electric welding devices designated as "Model 75G," "Lectro-Welder" and "Utility Welder," in interstate business, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that these devices are entirely safe or are safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling said devices unless the word "Caution" or "Warning," together with adequate directions for safe use of the devices, is firmly affixed to the devices in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1–22559, Jan. 10, 1951.)

8104. **Electric Welding Devices—Safety.**—The Lincoln Electric Co., an Ohio corporation, with its principal place of business located in Cleveland, Ohio, engaged in the business of offering for sale and selling in commerce, two electric welding devices designated as "Lincwelder 60" and "Powr-Kraft AC Arc Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that these devices are entirely safe or are safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used.

(2) Distributing or selling said devices unless the word "Caution" or "Warning," together with adequate directions for safe use of the devices, is firmly affixed to the devices in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1–22347, Feb. 2, 1951.)

8105. **Mattresses—"Wetproof."**—Isidore Flomenbaum, an individual trading as Colgate Mattress Co., with his principal office and place of business located in Bronx, N. Y., engaged in offering for sale and selling in commerce various brands of mattresses, outer coverings of which are treated by or with the same coating process, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from repre-

senting by use of the word "wetproof" as descriptive thereof or in any other manner that any of such products are waterproof unless and until such time as the complete outer coverings thereof shall be impervious to water or moisture for the life of such products. (1–19140, Feb. 5, 1951.)

8106. **Medicinal Preparation—Therapeutic Properties.**—Marlo Products Co., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, engaged in the business of offering for sale and selling a product designated "Hemocaps," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the product will enable one to stop suffering the pain and discomfort of piles (hemorrhoids) or that it has any therapeutic effect on that condition in excess of such temporary relief from the pain and discomfort theretof as it may afford. (1–22502, Feb. 7, 1951.)

8107. **Cigarettes—Qualities, Properties or Results and Comparative Merits.**—Riggio Tobacco Corp., a New York corporation, with its principal place of business located in Brooklyn, New York, engaged in the business of offering for sale and selling Regent cigarettes, in interstate commerce, entering into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That the oval shape of Regent cigarettes or the smaller cross-section burning area of such cigarettes as compared with conventional round cigarettes, causes Regents to smoke cooler than round cigarettes;

(*b*) That Regent cigarettes will provide any defense against throat irritation due to smoking, or that the extra length of Regent cigarettes will cause the smoke from such cigarettes to be cooler than the smoke from cigarettes of standard length; *provided*, *however*, that nothing herein shall be construed as prohibiting representations that during the time the extra length of such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes. (1–23502, Feb. 12, 1951.)

8108. **Pens and Pencils—Guarantees.**—Eversharp, Inc., a Delaware corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling in commerce, pens and pencils designated "Eversharp" pens and pencils, in interstate commerce, entered into an agreement, in connection with the business, as hereinabove described, to cease and desist from soliciting authorization for additional servicing without calling attention to the nature of the services to which the purchasers are entitled under the applicable guarantee and without disclosing that

those services will be performed if the additional servicing is not desired. (1–22902, Feb. 12, 1951.)

8109. **"Airwick" and "Airkem"—Qualities, Properties or Results and Composition.**—Seeman Brothers, Inc., is a New York corporation, with its principal place of business located in New York, N. Y., and is engaged in offering for sale and selling in commerce a deodorant designated "Air-Wick," in interstate commerce.

Airkem, Inc., is a New York corporation, with its principal place of business located in New York, N. Y., and is engaged in offering for sale and selling in commerce a deodorant designated "Airkem," in interstate commerce.

Seeman Brothers, Inc., entered into an agreement, in connection with the offering for sale, sale and distribution in commerce of said product, "Air-Wick," to cease and desist from representing directly or by implication with respect thereto:

(1) That Air-Wick eliminates "all" unpleasant odors, or otherwise representing by the use of any other word or words that Air-Wick eliminates all unpleasant odors;

(2) That Air-Wick clears or freshens the air otherwise than according to its seeming effect;

(3) That Air-Wick contains pure chlorophyll as distinct from commercial chlorophyll;

(4) That the action of chlorophyll in Air-Wick is similar to the action of chlorophyll in nature;

(5) That the content of commercial chlorophyll as an active ingredient in Air-Wick provides a chief effect in the action of the product.

Airkem, Inc., entered into an agreement, in connection with the offering for sale, sale and distribution of their product, "Airkem," to cease and desist from representing directly or by implication with respect thereto:

(6) That Airkem does not mask odors;

(7) That Airkem "ends" odor problems, or otherwise representing by the use of any other word or words that Airkem ends odor problems;

(8) That Airkem freshens the air otherwise than according to its seeming effect;

(9) That Airkem restores some of the characteristics of outdoor air;

(10) That Airkem contains pure chlorophyll as distinct from commercial chlorophyll;

(11) That the action of chlorophyll in Airkem is similar to the action of chlorophyll in nature;

(12) That the content of commercial chlorophyll as an active ingredient in Airkem provides a chief effect in the action of the product. (1–18994, Feb. 12, 1951.)

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8110. **Leather Goods—Composition and Quality.**—Charles Doppelt & Co., Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling leather goods in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist:

(1) From representing leather goods not composed exclusively of top grain cowhide leather as "Top Grain Cowhide" or "Genuine Top Grain Cowhide"; or

(2) From representing leather goods not composed exclusively of split cowhide as "Split Cowhide" or "Genuine Split Cowhide"; *provided that*, nothing in this agreement shall be construed as preventing the use of any of the aforesaid terms to designate a product which is in fact made of the leather so designated but which leather is backed with material other than leather, and clear disclosure is made of the fact that such leather is backed with certain other designated material. (1–22881, Feb. 14, 1951.)

8111. **"Bust Cream"—Qualities, Properties or Results.**—Henry Decker, an individual doing business under the trade names, Fashion-Glo and Fashion-Glo Cosmetics, with his principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling a preparation designated "Bust Cream," sometimes called by the respondent "Fashion-Glo," entered into an agreement, in connection with the dissemination of advertising of said product, to cease and desist representing, directly or by implication:

(1) That the use of such Bust Cream will beneficially affect the firmness and structure of the breast;

(2) That after years of trying he has perfected a bust cream which will beneficially affect the firmness and structure of the breast. (1–23331, Feb. 21, 1951.)

8112. **Textiles for Embroidering—Prices.**—Harry Abrams, an individual operating under the trade names Embroidery Guild and Benay Manufacturing Co., with his principal office and place of business located in New York, N. Y., engaged in the business of offering for sale and selling textiles for embroidering, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing directly or by implication:

By use of the words "Wholesale Prices" or otherwise, that the prices charged for his products are less than the prices for which such products are ordinarily and customarily offered for sale and sold to producers thereof in the regular course of his business. (1–23324, Mar. 5, 1951.)

8113. **Insecticide—Effectiveness, Safety, Government Approval, etc.**—Rox Ex Co., Inc., a Michigan corporation, with its principal place

of business located in Detroit, Mich., and Edward Van Kinkle, an individual doing business under the name Stay Chemical Co., with his place of business located in Detroit, Mich., engaged in the business of offering for sale and selling a preparation designated as both "Stay Spray" and "Plastic Roxide," in interstate commerce, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing, directly or by implication:

(1) That Stay Spray or Plastic Roxide will kill all insects or all crawling insects that infest the interior of buildings;

(2) That after the use of Stay Spray or Plastic Roxide, insects will not again reinfest the areas treated unless such representations are limited to a period of about six weeks after treatment and to the insects to which the residue of the spray remains lethal for that period of time;

(3) That Stay Spray or Plastic Roxide will kill many insects not killed or exterminated by other methods until and unless such advertisements specify the conditions of use and the type or types of insects which will be killed by Stay Spray or Plastic Roxide, but will not be killed or exterminated by other methods;

(4) That Stay Spray or Plastic Roxide will kill many insects that are not killed or exterminated by DDT;

(5) That one quart of Stay Spray or Plastic Roxide is enough to spray most houses or the average house;

(6) That Stay Spray or Plastic Roxide is safe to use (or safe to use as directed) around food, children and pets, or that the product is not poisonous to warm blooded animals and human beings;

(7) That the Federal Trade Commission or other agencies or authorities of the Federal Government have found the claims made for Stay Spray or Plastic Roxide to be true or that the product is approved by the Federal Trade Commission or other agencies of the Federal Government. (1–23148, Mar. 9, 1951.)

8114. **Book—Old as New.**—Arco Publishing Co., Inc., a New York corporation, with its principal place of business located in New York, N. Y., and Milton Gladstone and David Turner, individually and as officers of said corporation, engaged in the publication, sale, and distribution of books and pamphlets, including, but not limited to, a book titled by them "How to Win Success in the Mail-Order Business," previously published by the United States Department of Commerce under the title "Establishing and Operating a Mail-Order Business," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Representing directly or by implication that any such publication is a new work;

(2) Offering for sale any such publication without clearly disclosing the title under which it was previously sold. (1–23415, Mar. 9, 1951.)

8115. **Gasoline Additive—Improving Qualities.**—Winkenweder & Ladd, Inc., an Illinois corporation, with its principal office and place of business located in Chicago, Ill., engaged in the business of offering for sale and selling, in commerce, a product designated "Start," entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

(*a*) That the product removes water from the fuel system;

(*b*) That the product prevents frozen gas tanks or gas lines except to such extent as it may aid in so doing;

(*c*) That the product leaves no water in the gas tank to freeze or that it ends frozen gas lines;

(*d*) That the product ensures easy starting in cold weather;

(*e*) That the product is effective in forming a homogeneous mass with water and gasoline;

(*f*) That the product absorbs water in the fuel system;

(*g*) That by use of the product there is no risk of frozen gas lines. (1–21283, Mar. 12, 1951.)

8116. **Boys' Ranch Togs—Manufacturing Status and Source.**—De Luxe Ranch Togs, Inc., a New York corporation, with its principal office and place of business located in New York, N. Y., formerly doing business under the name, De Luxe Ranch Togs of California, Inc., which name was changed on or about July 20, 1950, engaged in the business of offering for sale and selling, in commerce, boys' ranch togs and other wearing apparel, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist, with respect thereto, directly or impliedly through the use of the corporate name De Luxe Ranch Togs of California, Inc., and/or the use of such name on labels, advertising, letterheads, and other printed matter or by any other means:

From representing that the boys' ranch togs or other wearing apparel sold by it are made in the State of California until said De Luxe Ranch Togs, Inc., owns, operates, or controls a factory in the State of California in which such ranch togs and other wearing apparel are made. (1–23443, Mar. 14, 1951.)

8117. **Plastic Starch—Manufacturing Status and Preserving Qualities.**—Gordon Chemical Co., Inc., a Pennsylvania corporation, with its principal place of business located at the Otis Building, Sixteenth and Sansom, Philadelphia 3, Pa., engaged in the business of offering for sale and selling a resin plasticizer designated "Plasta Starch," in interstate commerce, entered into an agreement, in connection with offering for sale, sale and distribution thereof, to cease and desist

from disseminating any advertisement in regard thereto which represents directly or by implication:

(*a*) That Gordon Chemical Co., Inc., is a chemical manufacturer or the manufacturer of Plasta Starch;

(*b*) That Plasta Starch resists mildew;

(*c*) That the use of said preparation can be relied upon to double the life of cotton or other fabrics or to increase the wearing life of fabrics by any definite length of time;

(*d*) That said preparation penetrates individual fibers or threads of fabrics. (1–23010, Mar. 16, 1951.)

8118. **Sunglasses—Quality and Manufacture.**—Sun Glass Industries, Inc., a New Jersey corporation, with its principal place of business located in Newark, N. J., engaged in the business of offering for sale and selling sunglasses, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That such sunglasses contain the finest lenses; and

(*b*) That the lenses of such sunglasses are ground and polished. (1–23101, Mar. 16, 1951.)

8119. **Metal Awnings—Economy and Durability.**—Koolvent Metal Awning Co., a Georgia corporation, with its principal place of business located in Atlanta, Ga., engaged in offering for sale and selling, in commerce, metal awnings designated "Koolvent," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing, directly or by implication:

(*a*) That Koolvent Awnings require no maintenance;

(*b*) That the initial cost of Koolvent Awnings is the only cost;

(*c*) That Koolvent Awnings are windproof or stormproof. (1–23460, Mar. 16, 1951.)

8120. **Boiler Repair Product—Nature and Effectiveness.**—Norman A. Sommers, an individual and sole proprietor trading as Silver King Manufacturing Co., with his principal office and place of business located in Philadelphia, Pa., engaged in the business of offering for sale and selling, among other products, "Silver King Boiler Solder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Representing directly or by implication that use of the product will affect a permanent repair of a leaky boiler;

(2) Using the word "Solder" as a part of the brand name or as otherwise descriptive of this product without clearly disclosing that the effectiveness of the product depends principally upon its vegetable fiber content. (1–23469, Mar. 23, 1951.)

8121. **Disinfectant—Effectiveness and Safety.**—Milner Products Co., a Mississippi corporation, with its principal place of business located in Jackson, Miss., and R. E. Dumas Milner, Howard S. Cohoon, and Thurman L. Pitts, as individuals and as officers of said corporation, engaged in offering for sale and selling in commerce, a pine oil disinfectant designated "Pine-Sol," entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or impliedly:

(1) That said product will kill germs or is effective as a germicide unless said representations are limited to the effectiveness of said product in killing fungi and gram-negative bacteria;

(2) That said product is effective in killing spore forming bacteria;

(3) That said product will kill such germs as those causing pneumonia, tetanus and diphtheria;

(4) That said product will meet every standard of the ideal disinfectant and bactericide;

(5) That said product has a high coefficiency of disinfection against many common pathogenic bacteria unless representations concerning its effectiveness as a disinfectant are limited to fungi and gram-negative bacteria;

(6) That said product is nontoxic and nonirritating to the skin. (1–23271, Mar. 27, 1951.)

8122. **Sunglasses—Tests, Certification and Relevant Facts.**—Safety Standards for Sun Glasses Inc., a New York corporation with its place of business located in New York, N. Y., and Daniel De Gorter, individually and as an officer of said corporation, engaged in the promotion of the sale of sun glass lenses made of thermally curved plate glass, and in the interest thereof, engaged in the sale of certain seals or stickers referred to as "20/20 labels" and certain certificates, referred to as "20/20 certificates," used in the sale of such lenses and sun glasses containing such lenses, entered into an agreement, in connection with the promotion of the sale, sale, issuance or authorization thereof, to cease and desist from:

(1) Using, or authorizing others to use any seal, label, or certificate, or any advertising, which represents directly or by implication that such sun glass lenses have been control-checked or tested by an independent testing laboratory and found to meet certain specifications, unless and until the lenses concerning which such representation is made, have, in fact, been adequately sampled, the selections for testing are personally made by the laboratory's representative from an entire stock of lenses and sufficient control is exercised to assure that the stock of lenses does in fact meet the specifications with which the lenses are claimed to comply;

(2) Using or authorizing others to use any seal, label, certificate or advertising containing the words "Twenty-Twenty" or the symbol

"20/20" in connection with or as descriptive of such sun glass lenses, except in compliance with paragraph (1) above, and further, unless a clear disclosure is made that the lenses are protective and not corrective;

(3) Representing directly or by implication that any specifications set or established by Safety Standards for Sun Glasses Inc. regarding the characteristics or quality of sun glass lenses are higher or more exacting than standards established by the National Bureau of Standards, or any other authority, when such is not a fact. (1–22832, Mar. 27, 1951.)

8123. **Crib Mattresses, etc.—Qualities and Approval.**—Bunny Bear, Inc., a Massachusetts corporation, with principal office and place of business located in Everett, Mass., engaged in offering for sale and selling in commerce, crib mattresses, play pen pads, and allied products, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing in any manner:

(*a*) That any of the products is waterproof unless and until such time as the complete outercovering thereof shall be impervious to water or moisture throughout the life of such product.

(*b*) That any of the products is stainproof when it is capable of being stained.

(*c*) That any of the mattresses (1) improve or materially affect posture or (2) develop or insure development of straight or sturdy bodies.

(*d*) That any of the products is recommended or approved by any person or group of persons by whom it is not recommended or approved. (1–21848, Mar. 27, 1951.)

8124. **Fountain Pens—Composition, Value, Special Offers, Guarantee, etc.**—Penman Co., Inc., an Illinois corporation, with its principal place of business located in Chicago, Ill., trading under the assumed name, M. P. K. Co., and Martin P. King, Nelson J. McMahon, and Edward H. Larson, individually and as officers of said corporation, engaged in the offering for sale, sale, and distribution of fountain pens, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication:

(1) That the purchaser's name or initials are engraved or printed in gold letters on such pens and pencils when in fact no gold is used in the lettering;

(2) That any part of the fountain pens is gold plated, unless it is mechanically plated with gold, or gold alloy of not less than 10 karat fineness, and the proportional weight and karat fineness of the plate is clearly shown in immediate conjunction with such representation;

(3) That purchasers save up to $10 per set and from otherwise rep-

resenting that such pens and pencils have a value far in excess of the customary and usual retail price;

(4) That any offer which is regularly made in the usual course of business is a special or an introductory offer or is limited as to time;

(5) That such pens and pencils are guaranteed unless in direct connection with such representation a clear disclosure is made respecting the terms and limitations of the guarantee. (1–17618, Apr. 3, 1951.)

8125. **Starch—Economy, Durability, Competitive Products, etc.**—The Stevens-Wiley Manufacturing Co., Inc., a Pennsylvania corporation, with its principal office and place of business located in Philadelphia, Pa., engaged in the business of offering for sale and selling an aqueous dispersion of polyvinyl acetate, a water-soluble gum, preservative and perfume, designated "Plex," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist with respect thereto, from representing directly or by implication:

(1) That said preparation is a permanent starch;

(2) That said preparation can be relied upon to double the life of fabrics or to increase the wearing life of fabrics by any definite length of time;

(3) That ordinary starch merely coats the surface of fabrics;

(4) That said preparation penetrates individual fibers or threads of fabrics. (1–23052, Apr. 3, 1951.)

8126. **Skip Tracer Post Cards—Nature of Business.**—General Forwarding Co., Inc., a California corporation, with its principal place of business located in San Francisco, Calif., and David Fyne, Ruth Papkin, and Rita Crosier, as individuals and as officers of said corporation, engaged in the business of selling and distributing skip tracer post cards designed and intended to be used by creditors and collection agencies and others, in obtaining information concerning debtors, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Using the name General Forwarding Co., Inc., or any other name of similar import, to designate, describe, or refer to their business; or otherwise representing, directly or by implication, that they are connected in any way with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consigneees thereof;

(2) Representing directly or by implication that persons concerning whom information is sought through their post cards or other material are, or may be, consignees of goods or packages being held by them, or that the information sought through such means is for the purpose of enabling them to make delivery of goods or packages to such persons;

(3) Using, or supplying others for use, post cards or other material which represents directly or by implication that their business is other than that of obtaining information for use in the collection of debts, or that the information sought through such post cards or other material is for any purpose other than for use in the collection of debts. (1–23311, Apr. 3, 1951.)

8127. **Perfumes—Domestic as Foreign.**—Philip S. Willingmyre, an individual doing business under his own name, with places of business in Merchantville, N. J., and Philadelphia, Pa., engaged in the business of offering for sale and selling perfumes, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from:

(1) Referring to such perfumes as "French" perfumes;

(2) Using the brand names "Tete-a-Tete," and "Etonnant" and "Faux-Pas" or any other French or other foreign terms or words to designate, describe or refer to such perfumes, or to any other toilet preparations, compounded in the United States, without clearly disclosing in connection therewith that such products are compounded in the United States. (1–20768, Apr. 10, 1951.)

8128. **Electric Fence Control Units—Operation.**—Norman F. Agnew and W. Porter Place, copartners trading as Farmers Engineering & Mfg. Co., and C. A. McDade, an individual trading as C. A. McDade Co., both with general offices and principal places of business located in Pittsburgh, Pa., engaged in the business of offering for sale and selling electric fence control units designated "Kleen-Line," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

That said electric control units will give trouble-free operation. (1–21473, Apr. 10, 1951.)

8129. **Reducing Devices—Healthful Qualities and Earnings.**—The Aciform Corp., an Illinois corporation, with its principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling devices designated "Gyro-Lator Equipment," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication:

(1) That use of its equipment reduces body measurements, normalizes fat distribution, effects the redistribution of body fat, increases or intensifies the oxidation of adipose tissue or otherwise brings about loss of weight or loss of body fat;

(2) That use of its equipment stimulates circulation or sluggish cells, energizes the body, stimulates, conditions or normalizes body functions, improves muscle tone, produces physical well-being or gives new vitality or life;

(3) That use of its equipment constitutes a health program, provides massage or internal massage or restores or produces figure beauty;

(4) That use of its vibratory equipment or the vibratory part of its equipment provides passive exercise;

(5) That use of its equipment effects complete physical or mental relaxation of nerve or muscle tension or freedom from fatigue, or vitalizes the scalp;

(6) That use of its equipment constitutes an adequate or effective foot or leg massage or relieves the feet or legs of fatigue;

(7) That purchasers of its equipment may reasonably expect earnings of $18,000 and more per year or any other amount in excess of the net average earnings made by a substantial number of users of the equipment in the ordinary and usual course of business and under normal conditions and circumstances. (1–21810, Apr. 13, 1951.)

8130. **Metal Awnings—Economy and Durability.**—Koolvent Metal Awning Corp. of America, a Pennsylvania corporation, with its principal place of business located in Pittsburgh, Pa., engaged in the licensing of manufacturers to produce metal awnings designated "Koolvent," and in connection therewith preparing, offering for sale and selling advertising material purporting to describe such Koolvent Metal Awnings, in interstate commerce, entered into an agreement, to cease and desist from representing directly or by implication:

(1) That Koolvent Awnings require no maintenance;

(2) That the initial cost of Koolvent Awnings is the only cost;

(3) That Koolvent Awnings are windproof or stormproof. (1–22001, Apr. 13, 1951.)

8131. **Insecticide—Effectiveness and History.**—Eagle Products Co., Inc., a Tennessee corporation, with its principal office and place of business located in Chattanooga, Tenn., engaged in offering for sale and selling in commerce, an insecticide designated "Spra-Kill," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

(*a*) That the product is sure or instant in action or that it is safe;

(*b*) That the ingredients composing the product are entirely new. (1–23828, Apr. 13, 1951.)

8132. **Medicinal Preparation—Therapeutic Properties.**—The Occy Crystine Corp., a Connecticut corporation, with its principal office and place of business located in Salisbury, Conn., engaged in the business of offering for sale and selling a drug product designated Occy Crystine, entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing, directly or by implication, that the product has a synergistic action or that it has any beneficial effect on diseases and physical con-

ditions except such benefit as it may afford to such extent as it may act as a laxative, cathartic, cholagogue and as to such mild diuretic effect as may be afforded through its use.

It is understood that if the Occy-Crystine Corp. should at any future date believe that this stipulation should be amended, it may advise the Federal Trade Commission of the reasons for such belief and request that the Federal Trade Commission consider amending this stipulation. (1–21467, Apr. 13, 1951.)

8133. **Dental Reliner—Effectiveness.**—Plasti-Liner Co., Inc., a New York corporation, with its principal place of business located in Buffalo, N. Y., engaged in the business of offering for sale and selling, in commerce, a dental reliner designated "Plasti-Liner" and "Brimm's Plasti-Liner," entered into an agreement in connection with the dissemination of advertising that product, to cease and desist from representing directly or by implication:

That application of this preparation will accomplish permanent results in the re-fitting or tightening of dental plates, or will assure perfect fitting plates. (1–20934, Apr. 18, 1951.)

8134. **Permanent Starch—Durability, Comparative Merits, etc.**—Texize Chemicals, Inc., a South Carolina corporation, with its principal office and place of business located in Greenville, S. C., engaged in the business of offering for sale and selling a resin plasticizer designated "Texize Permanent Resin Starch," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(*a*) By use of the word "Permanent" as a part of the brand name thereof or in any other manner that garments once treated therewith need never be starched again;

(*b*) That the preparation starches fabrics in an entirely new way or in any other manner that there is any substantial difference between the methods of starching fabrics with the aforesaid preparation and with other starches;

(*c*) That the aforesaid preparation penetrates the individual fibers or threads of fabrics;

(*d*) That said preparation doubles the life or increases the wearing life of fabrics to which it is applied by any definite length of time. (1–23177, Apr. 20, 1951.)

8135. **Boiler Repair Compound—Qualities, Nature and Tests.**—Eagle Chemical Products Co., a Pennsylvania corporation with its principal place of business located in Philadelphia, Pa., and Charles Auslander, Alexander Auslander and Eda Auslander, as individuals and as officers of said corporation, engaged in offering for sale and selling in commerce a boiler compound preparation designated "Eagle Boiler Seal," in interstate commerce, entered into an agreement, in con-

nection with the offering for sale, sale, and distribution thereof, to cease and desist from representing directly or by implication that said preparation:

(*a*) Will permanently repair leaks or cracks or cracks in steam or hot water systems or in any of the component parts thereof;

(*b*) Seals leaks or cracks in steam or hot water systems or in any of the component parts thereof except to the extent that it may temporarily seal small or minor leaks appearing therein;

(*c*) Is a metallic solder or effects a metallic seal;

(*d*) Cleans a steam or hot water system or any of the component parts thereof;

(*e*) Was formulated or tested under the auspices of Columbia University. (1–23369, Apr. 23, 1951.)

8136. **Ribbons—Composition.**—Kessler & Gorman, Inc., a New York corporation, with its principal place of business in New York, N. Y., and Ben A. Grossman an individual, trading as Shari Ribbon Co., New York, N. Y., engaged in offering for sale and selling ribbons, in commerce, entered into an agreement in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

Using the words "Satin," "Taffeta" or "Velvet" in advertising, labeling, or branding, or otherwise as descriptive of ribbon material wholly composed of rayon fiber, provided, however, that such descriptive words may be used when, in connection therewith, a clear disclosure is made by use of the word "rayon" that such ribbon material is wholly composed of rayon, as for example, "Rayon Satin," "Rayon Taffeta" or "Rayon Velvet." (1–23361, Apr. 30, 1951.)

8137.[1] **Hair Cosmetics and Correspondence Course—Qualities.**—Alvin Eugene Boler and Amanda L. Boler, copartners doing business under the trade name Amanda-L Co., with their principal place of business located in Chicago, Ill., engaged in the business of offering for sale and selling cosmetics designated "Amanda-L Guaranteed Double Strength Hair Aid" and "Amanda-L Temple Salve" and a correspondence course in beauty culture designated "Amanda-L Correspondence Course," entered into an agreement, in connection with the disseminating of advertising relating to those products to cease and desist from representing directly or by implication:

(1) That Amanda-L Guaranteed Double Strength Hair Aid and Amanda-L Temple Salve have antiseptic, anti-bacterial, or germ-killing properties;

(2) That Amanda-L Guaranteed Double Strength Hair Aid rejuvenates the hair;

(3) That Amanda-L Guaranteed Double Strength Hair Aid relieves itchy scalp;

[1] Supplemental.

Alvin Eugene Boler and Amanda L. Boler also agreed that in connection with the offering for sale, sale, and distribution in commerce of a correspondence course, to cease and desist from representing:

(4) That the Amanda L Correspondence Course includes a course of study in hair growing.

It is also stipulated and agreed that this stipulation is supplemental to Stipulation No. 7537, executed by Alvin Eugene Boler and Amanda L. Boler and approved and accepted by the Federal Trade Commission on November 21, 1946,[2] which stipulation remains in full force and effect. (1–20319, May 4, 1951.)

8138. **Angora Rabbits—Opportunities, Profits, Prices, etc.**—William L. White, an individual trading as White's Rabbitry with his principal place of business located in Newark, Ohio, engaged in offering for sale and selling in commerce, Angora rabbits, in interstate commerce, entered into an agreement, in connection with the offering for sale, and selling Angora rabbits, to cease and desist from representing directly or by implication:

(1) That one grown Angora rabbit will produce one pound of rabbit hair per year;

(2) That the Angora rabbits which he sells are bred and raised by him when a substantial number of those sold are purchased from other breeders;

(3) That the price of rabbit hair per pound is a definite price when the time between quotation and publication is such as not to permit a current price quotation;

(4) That no experience is necessary in order to operate a profitable rabbitry;

(5) That raising Angora rabbits is a business in which success is guaranteed;

(6) That the market for Angora rabbit hair is unlimited, year-round, stable and protected;

(7) That Angora rabbit hair is ideal for surgical bandages;

(8) That a definite net profit per animal can be realized;

(9) That there is a demand for breeding stock and no pressure of competition;

(10) That every Angora rabbit sold is a healthy thoroughbred A–1 rabbit hair producer; and

(11) By giving a definite price per pound for Angora rabbit hair, that there is but one grade of rabbit hair, when as a matter of fact there are several grades, the prices of which fluctuate. (1–23397, May 11, 1951.)

8139. **Anemia Treatment—Therapeutic Properties.**—Boncquet Laboratories, Inc., a California corporation, with its principal place of business located in Glendale, Calif., Samuel J. Ripple, Dorothy M. Faia,

[2] See 43 F. T. C. 763.

and Lawrence A. Williams, individually and as officers thereof, and August Faia, individually, engaged in offering for sale and selling in commerce, a medicinal preparation designated "Boncquet Tablets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from representing directly or by implication:

(*a*) That the product is effective in the treatment of anemia unless clearly limited to iron deficiency anemia caused by a deficiency of iron in the diet;

(*b*) That the product has any therapeutic value in the treatment of borderline anemia, nutritional anemia or secondary anemia;

(*c*) That the product is effective in the treatment of listlessness, a dragged-out feeling, tiredness, weakness, depression, an "all-in" feeling, lack of ambition, lack of energy, lack of vitality, premenstrual distress and pallor, nervousness, lack of appetite or restless sleep, unless clearly limited to cases resulting from iron deficiency anemia caused by a deficiency of iron in the diet;

(*d*) That the product increases the hemoglobin content of the blood, improves the red blood cell count, or otherwise "builds better blood" unless clearly limited to cases resulting from iron deficiency anemia caused by a deficiency of iron in the diet;

(*e*) That the yeast, liver concentrate or red bone marrow in the product have any value in the treatment of anemia;

(*f*) That anemia is more prevalent than is actually the case. (1–23773, May 14, 1951.)

8140. **Metal Awnings—Durability and Economy.**—Orchard Brothers, Inc., a New Jersey corporation, with its principal place of business located in Rutherford, N. J., engaged in offering for sale and selling in commerce, metal awnings designated "Alumaroll," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing directly or by implication:

(*a*) That Alumaroll Awnings require no maintenance;

(*b*) That the initial cost of Alumaroll Awnings is the only cost;

(*c*) That Alumaroll Awnings are stormproof. (1–22428, May 18, 1951.)

8141. **Dog Foods—Therapeutic Properties and Composition.**—A. K. Zinn & Co., a Michigan corporation, trading as Peerless Dog Food Co., with its principal office and place of business located in Battle Creek, Mich., engaged in the business of offering for sale and selling in commerce, dry dog foods, among them being those designated Peerless Ration, Peerless Kibbled Biscuit, Peerless Sportsman Dog Food, and Peerless Charcoal Biscuit, entered into an agreement, in connection with the dissemination of advertising relating to those products, to cease and desist from representing in any manner:

(*a*) That Peerless Charcoal Biscuit acts as a general conditioner, corrects stomach disorders, or tends to correct bad breath or indigestion;

(*b*) That the products contain meat. (1–21719, May 23, 1951.)

8142. **Rat Poison—Effectiveness and Safety.**—John Opitz, Inc., a New York corporation, with its principal office and place of business located in Long Island City, N. Y., engaged in offering for sale and selling in commerce, a product designated "J–O Paste," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from representing in any manner:

(*a*) That the product will rid premises of rats or completely eliminate them therefrom;

(*b*) That the product is safe; provided however that this shall not be construed as an agreement not to represent that it is safe except if taken internally by humans or domestic animals;

(*c*) That the product affords complete control of roach or rat infestations or that it is the most effective poison for rats or roaches, or that it contains the most toxic chemical used in pest extermination;

(*d*) That rats which consume the product will vanish from or leave premises to die. (1–16393, May 23, 1951.)

8143. **Shoes—Private Business as Guild.**—Lincoln Mathews and Paul G. Mathews, copartners trading as The Mathews Guild, with their principal place of business located in Weymouth, Mass., engaged in offering for sale and selling in commerce, shoes, in interstate commerce, entered into an agreement, to cease and desist from:

Using the word "Guild," or any other word or words of similar import, as part of their trade name or from otherwise representing directly or by implication that their business is a guild or association or anything other than a commercial enterprise operated for profit. (1–23345, May 28, 1951.)

8144. **Paint Spray Gun—Comparative Merits.**—The American Brake Shoe Co., a Delaware corporation, with its principal place of business located at 230 Park Avenue, New York 17, N. Y., engaged in the business of offering for sale and selling a product for use in spraying paint designated "Micro-Spray"—a paint spray gun, in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from disseminating any advertisement in regard thereto which represents, directly or by implication:

(1) That Micro-Spray gun produces a smoother paint finish, atomizes paint more finely, distributes paint more evenly or produces a better breakup of paint than competitive paint spray guns;

(2) That Micro-Spray gun uses less paint or requires less air than competitive paint spray guns. (1–23943, June 15, 1951.)

8145. **Knit Garments—Dealer Operating Mill.**—The L. N. Gross Co., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, and Bradley Knitting Mills, Inc., an Ohio corporation, with its principal office and place of business located in Cleveland, Ohio, and Julius S. Gross, Nedward Gross and William V. Gross, individually and as officers of the corporations are engaged in the business of offering for sale and selling wearing apparel in interstate commerce.

Bradley Knitting Mills, Inc., agreed, that in connection with the offering for sale, sale and distribution of wearing apparel, it will forthwith cease and desist from using "knitting" or "mills" in its corporate name or from otherwise representing in any manner that it owns, operates or controls a knitting mill or that it manufactures the wearing apparel.

The L. N. Gross Co., Julius Gross, Nedward Gross and William V. Gross, and each of them agreed, that in connection with the offering for sale, sale and distribution of wearing apparel, they will forthwith cease and desist from representing in any manner that the corporation now known as Bradley Knitting Mills, Inc., owns, operates or controls a knitting mill or that it manufactures the wearing apparel. (1–23814, June 15, 1951.)

8146. **Electric Welding Device—Safety.**—Andre K. Birten, an individual trading as Magic Electro Welder Manufacturing Co., with his place of business located in New York, N. Y., engaged in the offering for sale and selling an electric welding device designated "Magic Welder," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale, and distribution thereof, to cease and desist from:

(1) Advertising or representing that such device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling such device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1–19637, June 13, 1951.)

8147. **Medicinal Preparation—Safety.**—Melvin Co., a California corporation, with its principal place of business located in South Pasadena, Calif., engaged in the business of offering for sale and selling a medicinal preparation designated "Dozets," entered into an agreement, in connection with the dissemination of advertising relating to that product, to cease and desist from failing to reveal that the taker shall "Follow the label—avoid excessive uses." (1–20518, June 26, 1951.)

8148. **Nylon Socks—Tests and Qualities.**—Abraham & Straus, Inc., a New York corporation, with its principal place of business located in New York, N. Y., engaged in the business of offering for sale and selling nylon socks, in commerce, entered into an agreement in connection with the offering for sale, sale, and distribution thereof, to cease and desist from representing, directly or by inference:

(1) That any claim with respect to its socks is predicated upon research by a testing laboratory, unless such claim is based upon reports of actual tests conducted by a competent testing laboratory as represented;

(2) That such socks never lose their color;

(3) That such socks are mildewproof. (1–22670, June 26, 1951.)

8149. **Bed Boards—Therapeutic Properties.**—Sears, Roebuck & Co., a New York corporation, with its principal place of business located in Chicago, Ill., engaged in offering for sale and selling in commerce, bed boards, entered into an agreement, in connection with the disseminating of advertising relating to that product, to cease and desist from representing directly or by implication:

(*a*) That the bed boards are of any benefit for sacroiliac conditions, lumbago, or arthritis except where such conditions are aggravated by overly soft mattresses or sagging springs;

(*b*) That the bed boards are of any benefit in the treatment of heart conditions. (1–23947, June 29, 1951.)

8150. **Electric Welding Device—Safety.**—Ergolyte Manufacturing Co., a Pennsylvania corporation, with its principal place of business located in Philadelphia, Pa., engaged in the offering for sale, sale and distribution of an electric welding device designated "Ergolyte Junior Welding Kit," in interstate commerce, entered into an agreement, in connection with the offering for sale, sale and distribution thereof, to cease and desist from:

(1) Advertising or representing that such device is entirely safe or is safe for home use unless affirmative disclosure is made as to the proper wiring and fusing of the circuit on which the device is used;

(2) Distributing or selling such device unless the word "Caution" or "Warning," together with adequate directions for safe use of the device, is firmly affixed to the device in a lasting manner plainly informing the user that failure to follow directions may create a dangerous fire hazard. (1–22555, Mar. 23, 1951.)

DECISIONS OF THE COURTS [1]

GOLD TONE STUDIOS, INC., ET AL. v. FEDERAL TRADE COMMISSION [2]

No. 178, Docket 21, 163—F. T. C. Docket 4779

(Court of Appeals, Second Circuit. July 5, 1950)

WORDS AND PHRASES—"TINTED" AND "COLORED" PHOTOGRAPHS—WHETHER SYNONYMOUS IN MINDS OF PUBLIC ARTISTS, OR PHOTOGRAPHERS

In proceeding to review and set aside order of Federal Trade Commission to cease and desist, in connection with offering for sale and sale and distribution in commerce of photographs, from using words "oil painted" or the like to refer to tinted or colored photographs, evidence sustained finding of Commission that "tinted" and "colored" are not, in the minds of the public, artists, or photographers, synonymous, in that "tinted" refers to a photograph which has been only partly touched with the pigment, while "colored" refers to a photograph fully covered with color.

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF SUPPORTED BY EVIDENCE

The findings of the Federal Trade Commission cannot be disturbed by the Court of Appeals when supported by substantial evidence.

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE OR CORPORATE NAMES—"GOLD TONE" FOR PHOTOGRAPHIC BUSINESS—IF NOT SUBSTANTIALLY ENGAGED IN FINISHING PRODUCT BY SUCH PROCESS

In proceeding to review and set aside order of Federal Trade Commission to cease and desist in connection with the offering for sale and sale and distribution in commerce of photographs, from using words "gold tone" or words of similar meaning in corporate name, evidence sustained Commission's finding that use of the term "gold tone" in petitioner's corporate

[1] During the period covered by this volume, namely, July 1, 1950 to June 30, 1951, the Supreme Court in *Federal Trade Commission* v. *Alberty et al.*, on Oct. 9, 1950, 340 U. S. 818, denied petition for writ of certiorari to review the decision of CA–DC of Mar. 20, 1950, 182 F. (2d) 36, 46 F. T. C. 1453, which modified and affirmed as modified, the Commission's desist order in *Alberty, et al.*, D. 5101, Feb. 4, 1948, 44 F. T. C. 475.

The court below had granted the relief requested by respondents in the Commission proceeding, by striking from the order the requirement that their advertisement of therapeutic effectiveness of "Oxorin Tablets" also state "that the condition of lassitude is caused less frequently by simple iron deficiency anemia than by other causes and that in such cases this preparation will not be effective in relieving or correcting it", and in connection with advertisements of "Phoso-B", striking the phrase "Under the principles of the Homeopathic School of Medicine."

[2] Reported in 183 F. (2d) 257. For case before the Commission, see 45 F. T. C. 206.

name to refer to a photographic business not substantially engaged in finishing photographs by the gold tone process had a probable tendency to deceive the purchasing public.

CEASE AND DESIST ORDERS—MISREPRESENTATION—TRADE OR CORPORATE NAMES—"GOLD TONE" FOR PHOTOGRAPHIC BUSINESS—WHERE NOT SUBSTANTIALLY ENGAGED IN FINISHING PRODUCT BY SUCH PROCESS—IF PROBABLE TENDENCY TO DECEIVE

The fact that use of term "gold tone" in name of corporation not engaged in finishing photographs by gold tone process had a probable tendency to deceive purchasing public was sufficient to sustain Federal Trade Commission's cease and desist order forbidding use of such term in corporate name.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—SELECTION OF APPROPRIATE AS PRIMARILY IN COMMISSION DISCRETION

The selection of the appropriate remedy to prevent probable deception of purchasing public is a matter within the discretion of the Federal Trade Commission and will be reviewed only where abused.

CEASE AND DESIST ORDERS—SCOPE—TRADE OR CORPORATE NAMES—WHERE FURTHER USE PROHIBITED—IF IDENTIFYING AND EXPLANATORY REFERENCE, IN CONTINUING BUSINESS UNDER PERMITTED NEW NAME, ALSO PROHIBITED

Provision in cease and desist order of Federal Trade Commission forbidding corporation, in doing business under a permitted new name, to make it plain that it was the same corporation which formerly did business under the prohibited name, was an abuse of discretion and order would be modified so as to allow corporation to identify itself as one formerly doing business under prohibited name.

(The syllabus, with substituted captions, is taken from 183F. (2d) 257)

On petition to review and set aside order to cease and desist of Commission, order affirmed as modified.

MacFarlane, Harris and Goldman (*Mr. Harry D. Goldman*, of counsel) of Rochester, N. Y., for petitioners.

Mr. W. T. Kelley, General Counsel, *Mr. James W. Cassedy*, Associate General Counsel, and *Mr. Alan B. Hobbes*, Attorney, all of Washington, D. C., for the Commission.

Before SWAN, AUGUSTUS N. HAND and CHASE, *Circuit Judges.*

[258] CHASE, *Circuit Judge:*

This is a petition to review and set aside an order of the Federal Trade Commission requiring petitioners, among other things, to cease and desist, in connection with the offering for sale, sale, and distribution in commerce of photographs, from (1) using the words "oil painted portraits," "oil painted" or the like to refer to a tinted or colored photograph; (2) using the words "oil colored portrait" "colored in oils" or the like to refer to a tinted photograph; and (3) using the words "Gold-Tone," or words of similar import or meaning, as

a corporate or trade name or otherwise, to refer to a photographic reproduction which is not a product of a finishing process involving the use of a toning or developing bath using salts or chloride of gold, or to a photographic business "not substantially engaged" in finishing photographs by such a process. The Commission found such use of these words to be a deceptive act or practice in commerce and that a proceeding by it in respect thereof would be in the public interest. 15 U. S. C. § 45.

Petitioners argue, first, that the terms "oil colored" and "colored in oils" do not deceptively describe their photographic reproduction. These were, in major part, sepia photographs tinted or colored in varying degrees. There was, however, evidence to support the Commission's finding that "tinted" and "colored" are not, in the minds of the public, artists or photographers, synonymous, in that the former refers to a photograph which has been only partly touched with the pigment, while the latter refers to one fully covered with color. While there was evidence to the contrary, the Commission's findings cannot be disturbed by us when they are supported, as here, by substantial evidence. *Excelsior Laboratory, Inc.* v. *Federal Trade Commission*, 2 Cir., 171 F. (2d) 484. [45 F. T. C. 1087; 4 S. & D. 792.]

"Gold toning" or the "gold tone process" is a recognized method of finishing photographs by the use of a finishing bath containing gold chloride or some other gold salt. Petitioners do not object to so much of the Commission's order as forbids them from using the term "Gold-Tone" to refer to photographs not finished by that process. But they do claim that the use of the term in their corporate name does not, and is not likely to, deceive the general public and that, while in extraordinary circumstances an expert photographer might be deceived by the use of those words in the corporate name, in such cases the public interest is not [259] substantial. While there was no evidence that any member of the general public was even actually deceived, there was evidence that persons do specify "gold tone" when they place orders for additional copies of photographs they know have been finished with the "gold-tone" process; that some customers so specify on originally placing orders for photographs; and that amateur photographers who read photography publications are familiar with the technical meaning of that term. We think this evidence sufficient to support the Commission's finding that the use of the term "Gold-Tone," in petitioners' corporate name to refer to a photographic business not substantially engaged in finishing photographs by the "Gold-Tone" process, has a probable tendency to deceive the purchasing public. This is enough. *Fioret Sales Co., Inc.* v. *Federal Trade Commission*, 2 Cir., 100 F. (2d) 359. [27 F. T. C. 1702; 2 S. & D. 481.]

While the Commission's order seems drastic at first glance, it does give petitioners a choice. If they can, and will, substantially use the gold tone process they may keep their present corporate name. Yet, however that may be, the selection of the appropriate remedy is a matter within the discretion of the Commission, which will be reviewed only where abused, *Herzfeld* v. *Federal Trade Commission*, 2 Cir., 140 F. (2d) 207 [38 F. T. C. 833; 4 S. & D. 109]. Petitioners do not object to so much of the order as prohibits the use of the terms "oil painted portrait," "oil painted," or the like to refer to their photographs. And the Commission concedes that its order does not prohibit the use of the term "portrait" alone or in conjunction with terms other than "oil painted," "oil colored" or words of similar import or meaning.

Perhaps, however, paragraph 4 of the order might be construed to mean that the corporation may not, in doing business under a permitted new name, make it plain that it is the same corporation which formerly did business under the name "Gold Tone Studios, Inc." To forbid that would, we think, be an abuse of discretion. Consequently paragraph 4 is modified by adding at the end thereof the following sentence: "Provided that the corporation may, in conducting its business under any permitted changed name, state that it is the same corporation which formerly did business under the name 'Gold Tone Studios, Inc.'"

As so modified the order is affirmed and an order of enforcement will be issued.

BENJAMIN D. RITHOLZ ET AL. TRADING AS NATIONAL OPTICAL STORES CO., ETC. v. FEDERAL TRADE COMMISSION[1]

No. 10173—F. T. C. Docket 5176

(Court of Appeals, Second Circuit. August 15, 1950)

Order granting leave to petitioners to withdraw petition filed May 15, 1950, to review desist order of March 22, 1950, 46 F. T. C. 694 at 704, requiring respondents, individually and as copartners trading under the names National Optical Stores Co. and Dr. Ritholz Optical Co., their agents, etc., in connection with the offer, etc., of eyeglasses or other optical supplies, to cease and desist from:

(1) Disseminating, etc., any advertisements which represent, directly or by implication—

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

(*b*) That any of the respondents' glasses are offered for sale at prices substantially lower than the prices actually charged for said glasses; or

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[1] Not reported in Federal Reporter. For case before Commission, see 46 F. T. C. 694.

that any offer of glasses at the respondents' usual or customary prices which is not limited in point of time is a special offer for a limited time only;

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

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

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

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

Mr. James W. Cassedy, Assistant Chief Counsel, of Washington, D. C., for the Commission.

ORDER GRANTING LEAVE TO WITHDRAW PETITION FOR REVIEW

Before J. EARL MAJOR, *Chief Judge.*

On petition of Benjamin D. Ritholz, attorney pro se and on behalf of all petitioners in the above-entitled cause, it is ordered that leave be, and the same is hereby granted to the petitioners to withdraw instanter the petition for review herein which was filed in this Court on May 15, 1950.

BRISTOL-MYERS CO. v. FEDERAL TRADE COMMISSION[1]

No. 6049—F. T. C. Docket 4861

(Court of Appeals, Fourth Circuit. Nov. 9, 1950)

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE USE AND INDORSEMENT OF PRODUCT

Evidence sustained order of Federal Trade Commission forbidding advertisements by toothpaste manufacturer that claimed twice as many dentists in the United States used manufacturer's toothpaste than any other dentifrice and that more dentists recommend manufacturer's toothpaste for their patients than any other two dentifrices combined as misleading and likely to deceive general public in that such sweeping statements were not justified by answers to questionnaires sent by manufacturer to list of dentists picked at random from subscribers to two dental magazines.

[1] Reported in 185 F. (2d) 58. For case before Commission see 46 F. T. C. 162.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—SCIENTIFIC OR RELEVANT FACTS

Evidence sustained order of Federal Trade Commission forbidding advertisements which represented to public that modern American diet consists of such soft well-cooked foods that gums do not get exercise and stimulation which they need, and that massage with manufacturer's toothpaste would provide such exercise and stimulation and would prevent gum trouble generally as misleading and likely to deceive general public.

EVIDENCE—OPINION—IF BASED ON KNOWLEDGE OF EXPERTS, WITHOUT PERSONAL EXPERIENCE WITH PRODUCT CONCERNED

Opinion evidence based on general medical and pharmacological knowledge of qualified experts, may constitute "substantial evidence" for cease and desist order by Federal Trade Commission, even if experts have had no personal experience with product to which cease and desist was directed.

EVIDENCE—TESTIMONY—IF CONFLICTING

Conflicts in testimony in proceedings before Federal Trade Commission are to be resolved by the Commission and not by courts whose function is limited to determining whether upon a review of the whole record it appears that Commission's findings are supported by substantial evidence.

EVIDENCE—WEIGHT AND INFERENCES

In proceedings before Federal Trade Commission, weight to be given to facts proved and inferences to be drawn from them are for the Commission to determine, not the court.

(The syllabus with substituted captions, is taken from 185 F. (2d) 58)

On petition to review and set aside order to cease and desist of Commission, order affirmed.

Mr. Gilbert H. Weil, of New York City, and *Mr. T. Justin Moore*, of Richmond, Va. (*Mr. Isaac W. Digges*, of New York City, *Mr. John W. Riely*, of Richmond, Va., and *Hunton, Williams, Anderson, Gay & Moore*, of Richmond, Va., on brief) for petitioners.

Mr. Donovan Divet, special attorney, of Washington, D. C. (*Mr. W. T. Kelley*, general counsel, *Mr. James W. Cassedy*, associate general counsel, and *Mr. A. B. Hobbes*, attorney, all of Washington, D. C., on the brief), for the Commission.

Before PARKER, SOPER AND DOBIE, *Circuit Judges*.

[59] SOPER, *Circuit Judge:*

This case arises upon the petition of Bristol-Myers Company, a Delaware corporation, engaged in the manufacture and sale of Ipana tooth paste, to review and set aside a cease and desist order entered against it by the Federal Trade Commission pursuant to findings that in advertising the product it had engaged in unfair and deceptive acts or practices in violation of Sections 5 and 12 of the Federal Trade

Commission Act, 15 U. S. C. A. §§ 45 and 52. The prohibitive provisions of the order, which are set out in full in the margin,[1] forbid advertisements which fall into two main categories: (1) advertisements that claim that twice as many dentists in the United States personally use Ipana as any other dentifrice; and that more dentists recommend Ipana for their patients than any other two dentifrices combined; (Sections 1 (a) and 1 (b) of the order); and (2) advertisements which claim that Ipana possesses therapeutic and prophylactic qualities in that when used with massage it stimulates circulation and imparts health to the gums and prevents "Pink Tooth Brush" and aids in the treatment of its causes. (Sections 1 (c), 1 (d), 1 (e) and 1 (f) of the order.)

[60] The Commission issued a complaint against the corporation and found upon substantial evidence that the corporation had represented in advertisements in the first category (1) that according to a national survey conducted in 1940 among thousands of dentists twice as many dentists personally use Ipana toothpaste as any other dentifrice; and (2) that more dentists recommend Ipana for their patients' daily use than the next two dentifrices combined. These advertisements were based upon the answers to a questionnaire sent by the corporation in 1940 to each of 10,000 dentists out of 66,000 in the United States picked at random from the subscribers to two dental magazines. The questionnaires asked the following questions: (1) What dentifrice do you personally use most often?, and (2) What dentifrice do you most often recommend to your patients? In reply 1,983 questionnaires were received which contained 2,467 replies to the first and 2,364 replies to the second question. The replies exceeded the questionnaires in number because some dentists named more than one product in their an-

[1] The order under review requires the petitioner to cease and desist from:

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

"(a) That twice as many dentists in the United States personally use Ipana tooth paste as any other dentifrice, or that any greater proportion or number of dentists use said product than is the fact;

"(b) That more dentists in the United States recommend Ipana tooth paste for use by their patients than any other two dentifrices combined, or that more dentists recommend said product than is the fact;

"(c) That use of Ipana tooth paste with massage will prevent 'Pink Tooth Brush' or aid in the treatment of its causes;

"(d) That Ipana tooth paste has any significant therapeutic value in the treatment of mouth, tooth, or gum diseases;

"(e) That modern or current diets, or soft well-cooked foods, do not give the gums the exercise and stimulation they need, or that such diets or foods make the gums susceptible to trouble;

"(f) That massage with Ipana tooth paste stimulates circulation in the gums, imparts firmness or health to the gums, or prevents gum trouble.

"2. 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 in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of said product, which advertisement contains any of the representations prohibited in paragraph 1 hereof."

swers. Of the 2,467 replies to the first questions 621 dentists replied that they used Ipana most often, whereas the four nearest competing products were preferred by 258, 189, 144, and 128 dentists, respectively. In answer to the second question 461 dentists indicated that they most often recommended Ipana to their patients while the four nearest competing products were preferred by 195, 125, 106, and 94 dentists, respectively. Of the 461 dentists who recommended Ipana to their patients, 413 used it themselves and 48 did not use it. Other surveys conducted in 1941 and 1944 revealed substantially similar siuations.

Based upon the results of the survey, the corporation published advertisements from which the casual reader would reasonably infer that careful inquiry amongst the members of the dentist profession had disclosed that a large majority of the dentists in this country not only used Ipana themselves but recommended it to their patients. Typical of these advertisements were the following:

"Do you know that the 1940 National survey recently conducted among thousands of dentists revealed the following remarkable fact—Twice as many dentists personally use Ipana Tooth Paste as any other dentifrice preparation.

"Dentists choose Ipana for Personal use 2 to 1 over any other dentifrice.

"* * * In a recent nationwide survey, more dentists said they recommended Ipana for their patients' daily use than the next two dentifrices combined. Which should help convince you * * * that for healthier gums, brighter teeth and a more attractive smile, you should begin now to massage with Ipana Tooth Paste.

"That is why so many dentists recommend massage with Ipana.

"So many dentists suggest the helpful stimulation of Ipana and massage."

We are of the opinion that these sweeping statements were not justified by the answers to the questionnaire and that in consequence, as the Board found, the advertisements were misleading and likely to deceive the general public. Certainly the average reader would not infer that the positive proof in the hands of the advertiser disclosed the personal preference of only 621 dentists and the customary recommendation of tooth paste to patients by only 461 dentists out of the 66,000 dentists in the United States, or that less than 20 percent of those who had been questioned had taken the trouble to reply, so that the use and practice of the remaining 80 percent were unknown. It may well be that an accurate estimate of public opinion or practice can be obtained by a sampling process or survey, but the record is devoid of information on this subject and in the absence of the proof of the scientific principles, if any, which underlie the practice, we must rely upon the impression which the advertisements would be likely to make upon the mind of a man of ordinary intelligence. This

is not to express the opinion that all advertisements based upon surveys must be barred, but merely that the information in the possession of the manufacturer in this case was insufficient to **[61]** support its advertisements, and hence that the action taken by the Commission in this respect was within its authority.

The remaining parts of the order were passed in respect to advertisements which represented to the public that the modern American diet consists of such soft well-cooked foods that the gums do not get the exercise and stimulation which they need, and that massage with Ipana will provide such exercise and stimulation, and will make the gums firm and healthy, guard against Pink Tooth Brush, a bleeding of the gums sometimes due to disease, and prevent gum trouble generally.[2] Sections 1 (c) to 1 (f) of the order were designed to prevent the dissemination of these statements. The order was based upon findings of the Commission that the preponderant weight of qualified dental opinion establishes the following facts: It is immaterial to the health of the gums whether the diet of a person is soft or coarse, and the modern American diet provides sufficient gum stimulation. The term "massage," as used by dentists, means a careful downward stroking or squeezing pressure applied to a quarter inch of the gum margin and teeth. The term "massage," as used in the manufacturer's advertisements, means to the general public a horizontal, vertical, or rotary scrubbing of the teeth and the gums with the brush, or a similar rubbing with the finger. Such uninstructed massage either with or without Ipana or any other tooth paste does not stimulate circulation in the gums, impart firmness thereto, or prevent gum trouble in general or pink tooth brush in particular. Even carefully instructed and properly performed massage is not needed in a mouth free from disease, and a layman is unable to ascertain whether or not he is in need of massage. Ipana tooth paste is a cleansing agent only,

[2] Typical of these advertisements were the following:

"Guard against 'Pink Tooth Brush' with the help of Ipana and Massage—It may not mean serious trouble, but find out. More than likely it is a warning of neglected gums, soft, flabby, underworked. And like thousands of dentists your dentist may suggest 'the healthful stimulation of Ipana massage.'

"That is why the daily use of Ipana and Massage—to help guard against 'Pink Tooth Brush.'

" * * * foods we eat nowadays do not give our gums the work they need to keep them firm and healthy—so they often become soft and susceptible to trouble. That's why so many dentists suggest massage with Ipana Toothpaste.

"That's why so many dentists say—Give your gums the healthful stimulation of Ipana Toothpaste—and massage * * * it gives your gums the kind of stimulation they need to help guard against gum trouble.

" * * * but when used with massage Ipana helps to give our gums the exercise and stimulation they fail to get from the soft, creamy foods we eat—a stimulation they need to help guard against gum trouble.

"For when you massage with Ipana you can actually feel its stimulating effect upon your gum tissues as lazy gums start to waken and circulation speeds up. And that helps bring greater health to your gums and consequently more radiance to your smile.

"You'll notice an invigorating 'tang'—exclusive with Ipana and massage. That tells you circulation is speeding up within the gums—helping gums to gain new firmness and new strength."

without therapeutic value, and possesses prophylactic value only insofar as it cleanses.

The manufacturer contends that these findings are not supported by substantial evidence insofar as they state that the use of Ipana in connection with massage has no beneficial effect. The testimony in support of the findings was given by four expert dentists who were distinguished in their profession and had published numerous articles in leading dental and medical journals. Two of them had published textbooks on dentistry. In opposition the petitioner produced one witness who had been educated in medicine, had been a medical director in industry and in the army, and was employed by the petitioner at the time of the trial. His testimony differed in material points from that of the Commission's expert.

It is not denied that the testimony of the Commission's experts supported its findings, but it is contended that it did **[62]** not constitute substantial evidence within the meaning of Section 5 (c) of the Federal Trade Commission Act, 15 U. S. C. A. § 45 (c), and Section 10 (e) of the Administrative Procedure Act, 5 U. S. C. A. § 1009 (e), because each of the witnesses based his opinion upon his clinical experience without experimenting with Ipana, and without making scientifically controlled experiments which the witness admitted were necessary for the acquisition of positive knowledge as distinguished from opinion. The witnesses, however, were in possession of the formula of Ipana which contained familiar ingredients concerning which they were competent to testify; and, in saying that their opinions were not based on scientifically controlled experiments, they did not take the position that their opinions, based upon general clinical experience, were valueless. It does not appear in this case that either the producer of the goods or anyone else has made a technically precise or exhaustive scientific investigation. The Commission based its findings upon the opinions of persons qualified in the field in much the same manner as the manufacturer purports to have acted in describing the beneficial qualities of his product to the public. In our opinion the Commission was justified in giving preference to the testimony of the experts who supported the allegations of the complaint and who, so far as the evidence shows, were the persons best qualified in the field to form a trustworthy judgment upon the matters under investigation. Opinion evidence based on the general medical and pharmacological knowledge of qualified experts has often been held to constitute substantial evidence, even if the experts have had no personal experience with the product. *Goodwin* v. *U. S.*, 6 Cir., 2 F. (2d) 200, 201; *Dr. W. B. Caldwell, Inc.* v. *F. T. C.*, 7 Cir., 111 F. (2d) 889, 891 [30 F. T. C. 1670, 3 S. & D. 218]; and this has been done even where witnesses who had personally observed the effects of the product testified to the contrary.

Justin Haynes & Co. v. *F. T. C.*, 2 Cir., 105 F. (2d) 988, 989 [29 F. T. C. 1578, 3 S. & D. 134]; *Neff* v. *F. T. C.*, 4 Cir., 117 F. (2d) 495, 497 [32 F. T. C. 1842, 3 S. & D. 332]; *J. E. Todd, Inc.* v. *F. T. C.*, C. A. D. C., 145 F. (2d) 858 [39 F T. C. 711, 4 S. & D. 291]; *John J. Fulton Co.* v. *F. T. C.*, 9 Cir., 130 F. (2d) 85, 86 [35 F. T. C. 946, 3 S. & D. 499]; cf. *Kidder Oil Co.* v. *F. T. C.*, 7 Cir., 117 F. (2d) 892, 899 [32 F. T. C. 1823, 3 S. & D. 317], where the evidence was found to be so speculative and uncertain that findings of the Commission were set aside. Conflicts in testmiony are to be resolved by the Commission and not by us whose function is limited to determining whether upon a review of the whole record it appears that the Commission's findings are supported by substantial evidence. The weight to be given to the facts proved and the inferences to be drawn from them are for the Commission to determine, not the courts. *Corn Products Refining Co.* v. *F. T. C.*, 324 U. S. 726, 739 [40 F. T. C. 892, 4 S. & D. 331].

A judgment affirming the Commission's order will be issued.

Affirmed.

P. LORILLARD CO. *v.* FEDERAL TRADE COMMISSION [1]

No. 6140—F. T. C. Docket 4922

(Court of Appeals, Fourth Circuit. Dec. 29, 1950)

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—EFFECT

Fact stipulations approved by Federal Trade Commission have no greater sanctity than pretrial stipulations approved by judge.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF INADVERTENCE OR MISTAKE ON PART OF COMMISSION OR ITS COUNSEL

The Federal Trade Commission is not a private party but a body charged with the public interest, and the public interest should not be allowed to suffer as a result of inadvertence or mistake on the part of commission or its counsel where this can be avoided.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF APPROVED UNDER ERRONEOUS IMPRESSION MATERIAL ISSUES COVERED

Federal Trade Commission could rescind order approving a fact stipulation and could direct taking of testimony in case where Commission approved stipulation under erroneous impression that stipulation covered the material issues and Commission later discovered that highly important facts had not been stipulated.

PROCEEDINGS BEFORE COMMISSION—FACT STIPULATIONS—IF PRIOR APPROVAL RESCINDED—WHETHER HEARING OF EVIDENCE THEREAFTER BEFORE DIFFERENT TRIAL EXAMINER, PROPER

Where Federal Trade Commission rescinded order approving fact stipulation and directed taking of testimony, the hearing of evidence could be had

[1] Reported in 186 F. (2d) 52. For case before Commission see 46 F. T. C. 752 as modified in 47 F. T. C. 853.

before a different trial examiner than the one before whom the fact stipulation had been filed, in view of exclusion of fact stipulation from further consideration and making of report by examiner presiding at hearing at which evidence was taken.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE MERITS OF PRODUCT

Evidence warranted Federal Trade Commission's finding that tobacco company's advertising that cigarettes and smoke therefrom contained less nicotine and that smoke contained less tars and resins and was less irritating to throat than six other leading brands of cigarettes was false, misleading, and deceptive, so as to warrant cease and desist order.

EVIDENCE—EXPERT TESTIMONY—WEIGHT

The weight to be accorded to testimony of expert witness testifying in proceeding before Federal Trade Commission to prevent false advertising was for Commission.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—NON-DISCLOSURE—DECEPTIVE QUOTATION

Printing a small part of magazine article in such a way as to create an entirely false and misleading impression of advertiser's product constitutes false advertising which can be prevented by the Federal Trade Commission.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—NON-DISCLOSURE—DISCLOSURE OF PARTIAL TRUTH ONLY

To tell less than the whole truth in an advertisement is a well-known method of deception, and he who deceives by resorting to such methods cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which the deception has been accomplished.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—APPRAISAL—EFFECT ON GENERAL PUBLIC AS PROPER CRITERION

In determining whether advertising is false or misleading, regard must be had, not to fine-spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public.

CEASE AND DESIST ORDERS—OPERATION—AS PROSPECTIVE

Orders of the Federal Trade Commission have relation to the future and not to the past.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—AS PROPERLY INCLUDING ADVERTISING OF WHICH RESPONDENT GUILTY IRRESPECTIVE OF PARTICULAR NAME EMPLOYED

The Federal Trade Commission, forbidding false advertising in the future by tobacco company, could make the order broad enough to forbid false advertising of which the company had been guilty even though such advertising might be made with respect to cigarettes and tobacco sold under a different name.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—PREVENTION OF EVASION AS MEASURE OF POWER

The Federal Trade Commission can make its order forbidding false and misleading advertising broad enough to prevent evasion by merely changing the name of the product advertised.

CEASE AND DESIST ORDERS—SCOPE—ADVERTISING FALSELY OR MISLEADINGLY—PREVENTION OF EVASION AS MEASURE OF POWER—THAT PROHIBITED ADVERTISING MIGHT BECOME TRUTHFUL IN FUTURE

The possibility that false and misleading advertising prohibited by Federal Trade Commission might become truthful in future would not prevent Federal Trade Commission from prohibiting such advertising, since application could be made to Commission for revision of order in event of change.

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—COMPARATIVE DATA OR CLAIMS

Federal Trade Commission's order prohibiting tobacco company whose cigarette advertising was false and misleading from thereafter making comparisons with six other leading brands was proper, where the false and misleading advertisements contained comparisons with six other leading brands.

(The syllabus, with substituted captions, is taken from 186 F. (2d) 52)

On petition to review order of the Commission, petition denied and order enforced.

Mr. L. P. McLendon, of Greensboro, N. C. (*Mr. G. Neil Daniels*, of Greensboro, N. C., *Mr. F. J. Daniels* and *Mr. T. L. Perkins*, both of New York City, on brief) for petitioner.

Mr. Joseph S. Wright, assistant general counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, general counsel; *Mr. James W. Cassedy*, assistant general counsel; *Mr. John W. Carter, Jr.*, *Mr. John R. Phillips, Jr.*, and *Mr. A. B. Hobbes*, attorneys, Federal Trade Commission, all of Washington, D. C., on brief) for respondent.

Before PARKER, SOPER and DOBIE, *Circuit Judges.*

[53] PARKER, *Chief Judge:*

This is a petition to set aside an order of the Federal Trade Commission which directed that the P. Lorillard Co. cease and desist from making certain representations found to be false in the advertising of its tobacco products. The Commission has filed answer asking that its order be enforced. The company was ordered to cease and desist "from representing by any means directly or indirectly:

[54] That Beech-Nut cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, or the smoke therefrom, will not harm or irritate the throat, or will provide any defense against throat irritation; or that the extra length of Beech-Nut cigarettes, or of any cigarette of substantially the same length, will filter out or eliminate the harmful properties in

the smoke from such cigarettes or will cause the smoke from such cigarettes to be cooler than the smoke from cigarettes of standard length; provided, however, that nothing herein shall be construed to prohibit the respondent from representing that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes;

(2) That Sensation cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, are made of extra-choice imported and domestic tobaccos, or are top quality cigarettes, or are made from the finest tobacco that can be bought;

(3) That Old Gold cigarettes or the smoke therefrom contains less nicotine, or less tars and resins, or is less irritating to the throat than the cigarettes or the smoke therefrom of any of the six other leading brands of cigarettes; or

(4) That Friends smoking tobacco, or any other smoking tobacco manufactured in substantially the same manner, is rum-cured, or that the process by which a rum flavoring is added to such tobacco enriches the tobacco or causes the smoke therefrom to be any less irritating to the throat or any cooler than if such rum flavoring were not added; or that the smoke from Friends smoking tobacco, or from any other smoking tobacco composed of substantially the same blend of tobaccos, will not irritate the mouth or throat of a smoker, or is cool, or is free from bite, burn or harshness.

The company does not contend that the falsity of the representations referred to in paragraphs (1), (2) and (4) of the above order was not established by substantial evidence but does make that contention with respect to its advertising of Old Gold cigarettes referred to in paragraph (3). It contends, also, that the Commission was without power to make the order because of alleged procedural irregularities and that the order exceeds the authority and jurisdiction of the Commission and is fatally vague and ambiguous in its terms. Three questions are presented for our consideration: (1) whether the Commission was without power to enter the order complained of because of the alleged procedural irregularities; (2) whether paragraph three of the order relating to Old Gold cigarettes is supported by substantial evidence; and (3) whether the order exceeds the power of the Commission or is otherwise invalid.

1. THE PROCEDURAL QUESTIONS

The principal procedural question raised by the company is whether the Commission, after approving a fact stipulation, could rescind its order to that effect and direct the taking of testimony in the case. The facts are that after the proceeding was instituted, counsel for the company and the Commission agreed upon a stipulation as to the facts with respect to most of the questions presented but provided for the taking of testimony as to two of them. The Commission approved the stipulation and set the case down for hearing. It later discovered that facts in the case which it regarded as highly important had not been stipulated, viz., facts relating to the nicotine,

tar and resin content of Old Gold cigarettes as compared with other leading brands of cigarettes. Upon the refusal of the company to agree to an amendment of the stipulation so as to cover this matter, counsel for the Commission moved that it withdraw its approval of the stipulation. This motion was allowed and the order of approval was rescinded and the case was reopened for the taking of additional testimony. The company made a motion to strike this order from the record which the Commission denied, setting forth at length its reasons for the action taken as follows:

In approving these stipulations, the Commission acted under the erroneous impression, not in any way due to respondent, that with the exception of the two charges mentioned the stipulation covered all other [55] material issues raised by the complaint. When, however, the matter came on for final consideration and the preparation by the Commission of its findings as to the facts and order to cease and desist, it was found that the facts stipulated afforded no basis for findings as to the facts and order to cease and desist with respect to charges in the complaint that Old Gold cigarettes contain tobaccos other than "prize crop" tobaccos, that the tobaccos in Old Golds are not the finest money can buy, and that of the so-called seven leading brands of cigarettes Old Golds are not lowest in nicotine content or in throat-irritating tars and resins.

At the time of the issuance of the complaint the Commission had reason to believe that these charges were well founded, and there had been no intervening cause for any change in this belief. The Commission was further of the opinion that the charge concerning nicotine, tar, and resin content as set out in subparagraph (f) of paragraph four and controverted in subparagraph (8) of paragraph nine of the complaint, from the standpoint of the public interest, was perhaps the most important charge in the complaint.

In these circumstances, at the direction of the Commission that appropriate action be taken to provide for determination of these issues upon their merits, the chief counsel on March 17, 1945, filed a motion to withdraw approval of the stipulations and reopen the case. Thereafter, pursuant to a rule to show cause, hearing was had upon this motion, and on June 2, 1945, the Commission entered an order rescinding approval of the stipulations and reopening the case for the taking of testimony in support of and in opposition of the allegations of the complaint.

From time to time in proceedings before the Commission, after entering into stipulations as to the facts with the Commission or filing admission answers to complaints, respondents have requested that the stipulations be set aside or asked leave to withdraw the admission answers. The grounds for such requests have been various and have included matters such as mistake, failure to appreciate the significance of the act, misunderstanding, and others. It has been, and is, the policy of the Commission to grant such requests and thereafter proceed to a determination of the issues upon such facts as may be established in the course of the trial of the case.

The Commission having fully considered the present matter, including the mistake of fact which resulted in approval of the stipulations, and being of the opinion that there is no warrant for an abandonment of the aforesaid charges, which would result from granting respondent's motion, that the public interest will be best served, and that the rights of respondent will be protected by an adjudication based upon a record established in the trial of the issues; * * *.

Little need be added to what the Commission itself has said with respect to the reopening of the case. Fact stipulations approved by the Commission certainly have no greater sanctity than pretrial stipulations approved by a judge; and no one would contend that a judge could not relieve against fact stipulations upon such a finding as was made by the Commission here. R. C. P. 16. It must not be forgotten that the Commission is not a private party, but a body charged with the protection of the public interest; and it is unthinkable that the public interest should be allowed to suffer as a result of inadvertence or mistake on the part of the Commission or its counsel where this can be avoided. As said by this court in *N. L. R. B.* v. *Baltimore Transit Co.*, 4 Cir. 140 F. (2d) 51, 55:

> An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past. Cf. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 145, 60 S. Ct. 437, 84 L. Ed. 656; *Houghton* v. *Payne*, 194 U. S. 88, 100, 24 S. Ct. 590, 48 L. Ed. 888. Nor can the principles of equitable estoppel be applied to deprive the public of the protection of a statute because of mistaken action or lack of action on the part of public officials. *United States* v. [56] *San Francisco*, 310 U. S. 16, 32, 60 S. Ct. 749, 84 L. Ed. 1050; *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409, 37 S. Ct. 387, 61 L. Ed. 791; *United States* v. *City of Greenville*, 4 Cir. 118 F. (2d) 963, 966.

See also *McComb* v. *Homeworkers' Handicraft Corp.*, 4 Cir. 176 F. (2d) 633, 640, 641, and *Wallace Corporation* v. *N. L. R. B.*, 4 Cir. 141 F. (2d) 87, 91. The case last cited is very much in point. In that case we said with regard to action by the National Labor Relations Board:

> Settlements approved by the Board should ordinarily be observed and administrative orders should not be lightly disregarded (Cf. Matter of Simplicity Pattern Co., 16 N. L. R. B. 291); but these are guides for the exercise of discretion by the Board, not limitations upon its power. It is the duty of the Board to prevent unfair labor practices; and the fact that it may have certified a union as a bargaining representative does not limit its power later to declare such union to be company dominated and order its disestablishment, if such course is seen to be proper in the light of subsequent developments.

If the Commission had sustained the objection to the reopening of the case, there was nothing in law or in reason to prevent its directing that another case be instituted to deal with the advertising of Old Gold cigarettes; and it certainly could furnish no ground of complaint that the matter was dealt with in a pending case rather than in a separate one, which would properly have been consolidated with the pending case had it been instituted.

The company complains, also, because the hearing of evidence was had before a different trial examiner from the one before whom the fact stipulations had been filed. There is nothing in this. The fact

stipulations were excluded from further consideration when the case was reopened and the report was made by the examiner who presided at the hearings at which the evidence was taken and who saw and heard the witnesses. See *N. L. R. B.* v. *Dixie Shirt Co.*, 4 Cir. 178 F. (2d) 969, 971, and cases there cited.

2. THE QUESTION OF SUBSTANTIAL EVIDENCE

While the company questions the scope of the order as embodied in paragraphs (1), (2), and (4), a matter which we shall discuss later, no question is raised as to the sufficiency of the evidence to support the findings upon which those paragraphs are based to the effect that the company had engaged in advertising as therein indicated which was false and misleading. Its argument as to the sufficiency of the evidence relates to the advertising of its Old Gold cigarettes. With respect to this, the Commission found that the company had advertised that these cigarettes and the smoke therefrom contain less nicotine than any of the six other leading brands of cigarettes and that the smoke contains less tars and resins and is less irritating to the throat than cigarettes of the other leading brands, and that the advertising was false, misleading, and deceptive. The evidence amply supports this finding.

Laboratory tests introduced in evidence show that the difference in content of nicotine, tars, and resins of the different leading brands of cigarettes is insignificant in amount; and there is abundant testimony of medical experts that such difference as there is could result in no difference in the physiological effect upon the smoker. There is expert evidence, also, that the slight difference in the nicotine, tar, and resin content of cigarettes is not constant between different brands, but varies from place to place and from time to time, and that it is a practical impossibility for the manufacturer of cigarettes to determine or to remove or substantially reduce such content or to maintain constancy of such content in the finished cigarette. This testimony gives ample support to the Commission's findings.

The company introduced no evidence in the case but asks that we disregard the testimony of the expert witness who testified to the impossibility of determining, removing or substantially reducing the nicotine, tar or resin content of cigarettes, on the ground that he had had no experience in the manufacturing or blending of tobacco. The record shows, however, that this witness, Dr. McMurtry, is a plant [57] physiologist with the U. S. Department of Agriculture in the Division of Tobacco Investigation and that he has been so employed since 1917. It would seem that his testimony with respect to a matter of this sort should have great weight; but, of course, the weight to be accorded it is a matter for the Commission, not for us, and the

Commission believed it. Even if his testimony be disregarded, there remains the testimony of the experts to the effect that the difference in the nicotine, tar and resin content of cigarettes of the leading brands is insignificant and not sufficient to make any difference in the physiological effect upon the smoker. This of itself is sufficient to condemn the advertising as false and misleading, since it is intended to appeal to those who are interested in the physiological effect of the smoke of the cigarettes and who would be led by the advertising to believe that the smoke of the Old Gold cigarettes is less harmful to the smoker because containing appreciably less nicotine, tars and resins.

The company relies upon the truth of the advertisements complained of, saying that they merely state what had been truthfully stated in an article in the Reader's Digest. An examination of the advertisements, however, shows a perversion of the meaning of the Reader's Digest article which does little credit to the company's advertising department—a perversion which results in the use of the truth in such a way as to cause the reader to believe the exact opposite of what was intended by the writer of the article. A comparison of the advertisements with the article makes this very plain. The article, after referring to laboratory tests that had been made on cigarettes of the leading brands, says:

> The laboratory's general conclusion will be sad news for the advertising copy writers, but good news for the smoker, who need no longer worry as to which cigarette can most effectively nail down his coffin. For one nail is just about as good as another. Says the laboratory report: "The differences between brands are, practically speaking, small, and no single brand is so superior to its competitors as to justify its selection on the ground that it is less harmful." How small the variations are may be seen from the data tabulated on page 7.

The table referred to in the article was inserted for the express purpose of showing the insignificance of the difference in the nicotine and tar content of the smoke from the various brands of cigarettes. It appears therefrom that the Old Gold cigarettes examined in the test [1] contained less nicotine, tars and resins than the others examined, although the difference, according to the uncontradicted expert evidence, was so small as to be entirely insignificant and utterly without meaning so far as effect upon the smoker is concerned. The company proceeded to advertise this difference as though it had received a citation for public service instead of a castigation from the Reader's Digest. In the leading newspapers of the country and over the radio it advertised that the Reader's Digest had had experiments conducted

[1] In some other tests of the same leading brands of cigarettes, evidence of which was produced before the Commission, Old Gold Cigarettes were not the lowest in nicotine, tar or resin content.

and had found that Old Gold Cigarettes were lowest in nicotine and lowest in irritating tars and resins, just as though a substantial difference in such content had been found. The following advertisement may be taken as typical:

"OLD GOLDS FOUND
LOWEST IN NICOTINE

OLD GOLDS FOUND
LOWEST IN THROAT-IRRITATING
TARS AND RESINS

See Impartial Test by Reader's Digest July Issue.

See How Your Brand Compares with Old Gold.

Reader's Digest assigned a scientific testing laboratory to find out about cigarettes. They tested seven leading cigarettes and Reader's Digest published the results.

The cigarette whose smoke was lowest in nicotine was Old Gold. The cigarette with the least throat-irritating tars and resins was Old Gold.

[58] On both these major counts Old Gold was best among all seven cigarettes tested.

Get July Reader's Digest. Turn to page 5. See what this highly respected magazine reports.

You'll say, 'From now on, my cigarette is Old Gold.' Light one? Note the mild, *interesting* flavor. Easier on the throat? Sure: And *more* smoking pleasure: Yes, its the *new* Old Gold—finer yet, since 'something new has been added'."

The fault with this advertising was, not that it did not print all that the Reader's Digest article said, but that it printed a small part thereof in such a way as to create an entirely false and misleading impression. Not only as to what was said in the article, but also as to the quality of the company's cigarettes. Almost anyone reading the advertisements or listening to the radio broadcasts would have gained the very definite impression that Old Gold cigarettes were less irritating to the throat and less harmful than other leading brands of cigarettes because they contained substantially less nicotine, tars, and resins, and that the Reader's Digest had established this fact in impartial laboratory tests; and few would have troubled to look up the Reader's Digest to see what it really had said. The truth was exactly the opposite. There was no substantial difference in Old Gold cigarettes and the other leading brands with respect to their content of nicotine, tars, and resins and this was what the Reader's Digest article plainly said. The table whose meaning the advertisements distorted for the purpose of misleading and deceiving the public was intended to prove that there was no practical difference and did

prove it when properly understood. To tell less than the whole is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.

In determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which it might reasonably be expected to have upon the general public. "The important criterion is the net impression which the advertisement is likely to make upon the general populace." *Charles of the Ritz Dist. Corp.* v. *F. T. C.*, 2 Cir. 143 F. (2d) 676, 679–680 [39 F. T. C. 657; 4 S. & D. 226]. As was well said by Judge Coxe in *Florence Manufacturing Co.* v. *J. C. Dowd & Co.*, 2 Cir. 178 F. 73, 75, with reference to the law relating to trade-marks: "The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions." See also *F. T. C.* v. *Standard Education Soc.*, 302 U. S. 112 [25 F. T. C. 1715, 2 S. & D. 429]; *Standley Laboratories* v. *F. T. C.*, 9 Cir., 138 F. (2d) 388 [37 F. T. C. 801, 3 S. & D. 596]; *Aronberg* v. *F. T. C.*, 7 Cir. 132 F. (2d) 165 [35 F. T. C. 979, 3 S. & D. 647]; *Ford Motor Co.* v. *F. T. C.*, 6 Cir. 120 F. (2d) 175 [33 F. T. C. 1781, 3 S. & D. 378]. We think that the Commission's determination here was reasonable and amply supported by the evidence before it, and that its order forbidding the advertising as false and misleading was well within the limits of its discretion. *Bristol-Myers Co.* v. *F. T. C.*, 4 Cir. 185 F. (2d) 58 [47 F. T. C. 1749]; *General Motors Corp.* v. *F. T. C.*, 2 Cir. 114 F. (2d) 33, 36 [31 F. T. C. 1852, 3 S. & D. 282].

3. The Validity of the Order.

Little need be said as to the validity of the order. The company contends that paragraphs (1), (2) and (4) exceed the powers of the Commission because they apply, not merely to the advertising of the tobacco products named therein, but also to any other cigarettes composed of substantially the same blend of tobaccos as Beech Nut or Sensation cigarettes or to any other smoking tobacco manufactured in substantially the same manner as Friends smoking tobacco. We think that this contention is entirely without merit. Orders of the Commission have relation to the future, not to the past. *American Chain & Cable Co.* v. *F. T. C.*, 4 Cir. 142 F. (2d) 909, 911 [38 F. T. C. 896, 4 S. & D. 186]; *United Corp.* v. *F. T. C.*, 4 Cir. 110 F. (2d) 473,

475 [30 F. T. C. 1659, 3 S. & D. 209]. And certainly it was proper in forbidding false advertising in the future, to make the order broad enough **[59]** to forbid false and misleading advertising of which the company had been guilty even though it might be made with respect to cigarettes and tobacco sold under a different name. The order ought not be so limited in scope that the company could evade it by merely changing the name of its products. The Commission is entitled to make its order broad enough to prevent evasion. *Hershey Chocolate Corp.* v. *F. T. C.*, 3 Cir. 121 F. (2d) 968, 971–972 [33 F. T. C. 1798, 3 S. & D. 392]; *Hill* v. *F. T. C.*, 5 Cir. 124 F. (2d) 104, 106 [34 F. T. C. 1800, 3 S. & D. 436]; *N. L. R. B.* v. *Express Publishing Co.*, 312 U. S. 426, 436–437. As said in the case last cited, which dealt with a cease and desist order of the Labor Board:

> Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts. * * * The breadth of the order, like the injunction of a court, must depend upon the circumstances of each case, the purpose being to prevent violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which the Board has found to have been committed by the employer in the past.

It is argued that paragraph (3) of the order is void (1) because the advertising as to Old Gold cigarettes is not false, (2) because the comparison with the six other leading brands may be true sometime in the future, and (3) because the comparison in the advertising is restricted to the six other leading brands. The falsity of the advertising and its relation to the Reader's Digest article we have already sufficiently dealt with. As to the other objections, it is a sufficient answer to say that the order deals with the false advertising that was before the Commission; and the Commission properly framed its order to deal with the matter before it. If, in the future, advertising of the sort prohibited should become truthful because of a change in the character of the cigarettes to which it has reference, a very remote contingency, application can be made to the Commission for a revision of the order. It will be time enough to give consideration to that matter when the occasion for it arises. As to the prohibited comparison being limited to the six leading brands, there is nothing in this of which the company can complain. It was with these six leading brands that the comparison was made in the false and misleading advertisements, and the Commission properly observed the limits which they set in itself defining the advertising which was prohibited.

For the reasons stated, the petition to set aside the order will be denied and the order will be enforced.

Petition denied and order enforced.

STANDARD OIL CO. v. FEDERAL TRADE COMMISSION[1]

No. 1—F. T. C. Docket 4389

(United States Supreme Court. Jan. 8, 1951)

INTERSTATE COMMERCE—WHAT DOES AND DOES NOT CONSTITUTE—STREAM OF COMMERCE—WHERE EXTRASTATE FLOW THROUGH MARINE TERMINAL TO LOCAL CUSTOMERS FAIRLY CONSTANT

Where stream of commerce flowed continuously from oil company's refinery in Indiana to marine terminal in Michigan and from there to Michigan customers, pursuant to a fairly constant demand, sales to Michigan customers were still in "interstate commerce" for purposes of Robinson-Patman Act, though gasoline was not brought to marine terminal pursuant to orders already taken and was temporarily stored before delivery on individual orders.

INTERSTATE COMMERCE—WHAT DOES AND DOES NOT CONSTITUTE—STREAM OF COMMERCE—IF TEMPORARILY INTERRUPTED

Temporary storage at Michigan marine terminal of gasoline brought in interstate commerce from Indiana refinery and accumulated at terminal during navigation season did not deprive the gasoline of its interstate character for purposes of Robinson-Patman Act.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—IF MADE IN GOOD FAITH TO MEET LOWER PRICE OF COMPETITOR

It is a complete defense to charge of price discrimination under Robinson-Patman Act for seller to show that its price differential had been made in good faith to meet a lawful and equally low price of a competitior.

CLAYTON ACT, AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DISCRIMINATION—JUSTIFICATION—IF MADE IN GOOD FAITH TO MEET LAWFUL AND EQUALLY LOW PRICE OF COMPETITOR

The legislative history of priviso in Robinson-Patman Act permitting seller to rebut prima facie case by showing that price discrimination was made in good faith to meet equally low price of competitors manifests intent to limit, but not to abolish, essence of the defense recognized as absolute in original Clayton Act.

COMPETITION—AS HEART OF NATIONAL ECONOMIC POLICY

The heart of our national economic policy long has been faith in the value of competition.

COMPETITION—AS INVOLVED IN SHERMAN, CLAYTON, AND ROBINSON-PATMAN ACTS

In Sherman and Clayton Acts as well as in Robinson-Patman Act, Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent.

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[1] Reported in 340 U. S. 231, and 71 S. Ct. 240. For case before Commission, see 41 F. T. C. 263, and, as modified, 43 F. T. C. 56.

ROBINSON-PATMAN ACT—OBJECTIVES—COMPETITIVE PRICES AND SELLERS

[241] The Robinson-Patman Act did not seek to abolish competition or so radically to curtail it that seller would have no substantial right of self-defense against a price paid by a competitor.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACT AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—IF REDUCTION TO MEET LOWER PRICE OF COMPETITOR ALTERNATIVE TO LOSS OF CUSTOMER, AND HIGHER UNIT COST AND SALES PRICE—WHETHER EXTENSION OF REDUCED PRICE TO OTHER CUSTOMERS THEREBY REQUIRED

If a large customer requests seller to meet a temptingly lower price offered by seller's competitor, under such circumstances that loss of such customer would result in forcing a much higher unit cost and higher sales price upon seller's other customers, seller is not compelled by Robinson-Patman Act to choose only between ruinously cutting prices to all customers to match the price offered to one, or refusing to meet competition and then ruinously raising prices to remaining customers to cover increased unit costs, but seller may meet in good faith the price offered to such customer without necessarily changing price to other customers.

METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—CLAYTON ACTS AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DIFFERENTIALS—THAT BENEFICIARIES OF REDUCTION MAY DERIVE COMPETITIVE ADVANTAGE OR REDUCE THEIR OWN RESALE PRICES TO CUSTOMERS—WHETHER GOOD FAITH THEREBY DESTROYED

The good faith purpose of meeting a lawful equally low price of competitor, as defense to charge of price discrimination under Robinson-Patman Act, is not destroyed merely because beneficiaries of price reductions may derive a competitive advantage from them or may, in natural course of events, reduce their own resale prices to their customers.

CLAYTON ACT, AS AMENDED BY ROBINSON-PATMAN ACT—SECS. 2 (a) AND 2 (b)—PRICE DISCRIMINATION—JUSTIFICATION—IF MADE IN GOOD FAITH TO MEET LAWFUL AND EQUALLY LOW PRICE OF COMPETITOR—WHETHER NEW DEFENSE AND FURTHER COMPETITIVE APPRAISALS THEREBY ESTABLISHED AND REQUIRED

The proviso in Robinson-Patman Act, authorizing seller to meet prima facie case of price discrimination by showing that lower price was made in good faith to meet equally low price of competitor, merely continues in effect a defense which is equally absolute, but more limited in scope, than that which existed under original Clayton Act, and does not establish a new defense requiring potentially injurious effect of price reduction upon competition of all lower levels to be weighed against beneficial effect thereof in permitting seller to meet competition at its own level.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE, ETC.—WHERE "LARGE" JOBBER CUSTOMERS FAVORED OVER RETAIL STATION, TO THEIR COMPETITIVE INJURY—PROHIBITION OF DIFFERENTIAL AS ERRONEOUS, IF FINDINGS SILENT AS TO WHETHER MADE TO MEET EQUALLY LOW PRICE OFFERED TO JOBBERS BY COMPETITORS

The Federal Trade Commission erred in ordering oil company to cease and desist from making price differential in favor of large "jobber" customers

as compared with service station customers, without making findings on whether such differentials were made to meet equally low prices offered to jobbers by competitiors, and such findings should be made notwithstanding proof that effect of discrimination was to injure, destroy and prevent competition with retail stations.

(The syllabus, with substituted captions, is taken from 71 S. Ct. 240)

Mr. Howard Ellis of Chicago, Ill., (*Mr. Weymouth Kirkland*, *Mr. Hammond E. Chaffetz*, *Mr. W. H. Van Ooserhout*, *Mr. Thomas E. Sunderland*, and *Mr. Gordon E. Tappan*, all of Chicago, Ill., and *Mr. Arthur J. Abbot* of Detroit, Mich., on the brief) for petitioner.

Mr. William Simon, of Chicago, Ill., *Mr. Cyrus Austin*, of New York City, and *Mr. Raoul Berger*, of Washington, D. C. for *amici curiae*.

Mr. James W. Cassedy, associate general counsel (*Mr. W. T. Kelley*, general counsel, on the brief) both of Washington, D. C., for Federal Trade Commission.

[242] MR. JUSTICE BURTON delivered the opinion of the Court.

In this case the Federal Trade Commission challenged the right of the Standard Oil Co., under the Rob[234]inson-Patman Act,[1] to sell gasoline to four comparatively large "jobber" customers in Detroit at a less price per gallon than it sold like gasoline to many comparatively small service-station customers in the same area. The company's defenses were that (1) the sales involved were not in interstate commerce and (2) its lower price to the jobbers was justified because made to retain them as customers and in good faith to meet an equally low price of a competitor.[2] The Commission, with one member dissenting, ordered the company to cease and desist from making such a price differential (43 F. T. C. 56). The Court of Appeals slightly modified the order and required its enforcement as modified (173 F. (2d) 210). We granted certiorari on petition of the company because the case presents an important issue under the Robinson-Patman Act which has not been settled by this Court (338 U. S. 865). The case was argued at our October Term, 1949, and reargued at this term (339 U. S. 975).

For the reasons hereinafter stated, we agree with the court below that the sales were made in interstate commerce but we agree with petitioner that, under the Act, the lower price to the jobbers was justified if it was made to retain each of them as a customer and in good faith to meet an equally low price of a competitor.

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[1] Specifically under § 2 of the Clayton Act, as amended by the Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C., § 13. For the material text of § 2 (a) and (b) see pp. 9–10 [1773], *infra*.

[2] The company contended before the Commission that the price differential allowed by it to the jobbers made only due allowance for differences in the cost of sale and delivery of gasoline to them. It did not, however, pursue this defense in the court below and does not do so here.

I. Facts

Reserving for separate consideration the facts determining the issue of interstate commerce, the other material [235] facts are summarized here on the basis of the Commission's findings. The sales described are those of Red Crown gasoline because those sales raise all of the material issues and constitute about 90 percent of petitioner's sales in the Detroit area.

Since the effective date of the Robinson-Patman Act, June 19, 1936, petitioner has sold its Red Crown gasoline to its "jobber" customers at its tank-car prices. Those prices have been 1½ cents per gallon less than its tank-wagon prices to service station customers for identical gasoline in the same area. In practice, the service stations have resold the gasoline at the prevailing retail service station prices.[3] Each of petitioner's so-called jobber customers has been free to resell its gasoline at retail or wholesale. Each, at some time, has resold some of it at retail. One now resells it only at retail. The others now resell it largely at wholesale. As to resale prices, two of the jobbers have resold their gasoline only at the prevailing wholesale or retail rates. The other two, however, have reflected, in varying degrees, petitioner's reductions in the cost of the gasoline to them by reducing their resale prices of that gasoline below the prevailing rates. The effect of these reductions has thus reached competing retail service stations in part through retail stations operated by the jobbers and in part through retail stations which purchased gasoline from the jobbers at less than the prevailing tank-wagon prices. The Commission found that such reduced resale prices "have resulted in injuring, destroying, and preventing competition between said favored dealers and retail dealers in respondent's [petitioner's] gasoline and other major brands of gasoline * * *" [243] (41 F. T. C. 263, 283). The distinctive [236] characteristics of these jobbers are that each (1) maintains sufficient bulk storage to take delivery of gasoline in tank-car quantities (of 8,000 to 12,000 gallons) rather than in tank-wagon quantities (of 700 to 800 gallons) as is customary for service stations; (2) owns and operates tank wagons and other facilities for delivery of gasoline to service stations; (3) has an established business sufficient to insure purchases of from 1 to 2 million gallons a year; and (4) has adequate credit responsibility.[4] While the cost of petitioner's sales

[3] About 150 of these stations are owned or leased by the customer independently of petitioner. Their operators buy all of their gasoline from petitioner under short-term agreements. Its other 208 stations are leased or subleased from petitioner for short terms.

[4] Not denying the established industry practice of recognizing such dealers as a distinctive group for operational convenience, the Commission held that petitioner's classification of these four dealers as jobbers was arbitrary because it made "no requirement that said jobbers should sell only at wholesale" (41 F. T. C. at 273). We use the term "jobber" in this opinion merely as one of convenience and identification, because the result here is the same whether these four dealers are wholesalers or retailers.

and deliveries of gasoline to each of these four jobbers is no doubt less, per gallon, than the cost of its sales and deliveries of like gasoline to its service-station customers in the same area, there is no finding that such difference accounts for the entire reduction in price made by petitioner to these jobbers, and we proceed on the assumption that it does not entirely account for that difference.

Petitioner placed its reliance upon evidence offered to show that its lower price to each jobber was made in order to retain that jobber as a customer and in good faith to meet an equally low price offered by one or more competitors. The Commission, however, treated such evidence as not relevant.

II. The Sales Were Made in Interstate Commerce

In order for the sales here involved to come under the Clayton Act, as amended by the Robinson-Patman Act, [237] they must have been made in interstate commerce.[5] The Commission and the court below agree that the sales were so made (41 F. T. C. 263, 271, 173 F. (2d) 210, 213–214).

Facts determining this were found by the Commission as follows: Petitioner is an Indiana corporation, whose principal office is in Chicago. Its gasoline is obtained from fields in Kansas, Oklahoma, Texas, and Wyoming. Its refining plant is at Whiting, Ind. It distributes its products in 14 Middle Western States, including Michigan. The gasoline sold by it in the Detroit, Mich., area, and involved in this case, is carried for petitioner by tankers on the Great Lakes from Indiana to petitioner's marine terminal at River Rouge, Mich. Enough gasoline is accumulated there during each navigation season so that a winter's supply is available from the terminal. The gasoline remains for varying periods at the terminal or in nearby bulk storage stations, and while there it is under the ownership of petitioner and en route from petitioner's refinery in Indiana to its market in Michigan. "Although the gasoline was not brought to River Rouge pursuant to orders already taken, the demands of the Michigan territory are fairly constant, and petitioner's customers' demands could be accurately estimated, so the flow of the stream of commerce kept surging from Whiting to Detroit" (173 F. (2d) at 213–214). Gasoline delivered to customers in Detroit, upon individual orders for it, is taken from the gasoline at the terminal in interstate commerce en route for delivery in that area. Such sales are well within the jurisdictional requirements of the act. Any other conclusion [244] would fall short

[5] Section 2 (a) of the Clayton Act, as amended, relates only to persons "engaged in commerce, in the course of such commerce * * * where either or any of the purchases involved * * * are in commerce * * *" (49 Stat. 1526, 15 U. S. C. § 13 (a)). Commerce is defined in § 1 of the Clayton Act as including "trade or commerce among the several states * * *" (38 Stat. 730, 15 U. S. C. § 12).

of the recognized [238] purpose of the Robinson-Patman Act to reach the operations of large interstate businesses in competition with small local concerns. Such temporary storage of the gasoline as occurs within the Detroit area does not deprive the gasoline of its interstate character. *Stafford* v. *Wallace*, 258 U. S. 495. Compare *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 570, with *Atlantic Coast Line R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, 268.[6]

III. There Should Be a Finding as to Whether or Not Petitioner's Price Reduction Was Made in Good Faith to Meet a Lawful Equally Low Price of a Competitor

Petitioner presented evidence tending to prove that its tank-car price was made to each jobber in order to retain that jobber as a customer and in good faith to meet a lawful and equally low price of a competitor. Petitioner sought to show that it succeeded in retaining these customers, although the tank-car price which it offered them merely approached or matched, and did not undercut, the lower prices offered them by several competitors of petitioner. The trial examiner made findings on the point[7] but the Commission declined to do so, saying:

> Based on the record in this case the Commission concludes as a matter of law that it is not material [239] whether the discriminations in price granted by the respondent to the said four dealers were made to meet equally low prices of competitors. The Commission further concludes as a matter of law that it is unnecessary for the Commission to determine whether the alleged competitive prices were in fact available or involved gasoline of like grade or quality or of equal public acceptance. Accordingly the Commission does not attempt to find the facts regarding those matters because, even though the lower prices in question may have been made by respondent in good faith to meet the lower prices of competitors, this does not constitute a defense in the face of affirmative proof that the effect of the discrimination was to injure, destroy and prevent competition with the retail stations operated by the said named dealers and with stations operated by their retailer-customers (41 F. T. C. 263, 281–282).

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[6] The Fair Labor Standards Act cases relied on by petitioner are not inconsistent with this result. They hold that, for the purposes of that statute, interstate commerce ceased on delivery to a local distributor. *Higgins* v. *Carr Bros. Co.*, 317 U. S. 572; *Walling* v. *Jacksonville Paper Co., supra.* The sales involved here, on the other hand, are those of an interstate producer and refiner to a local distributor.

[7] The trial examiner concluded:

"The recognition by respondent [petitioner] of Ned's Auto Supply Co. as a jobber or wholesaler [which carried with it the tank-car price for gasoline], was a forced recognition given to retain that company's business. Ned's Company at the time of recognition, and ever since, has possessed all qualifications required by respondent [petitioner] for recognition as a jobber and the recognition was given and has ever since been continued in transactions between the parties, believed by them to be bona fide in all respects * * *" (Conclusion of Fact 2, under § IX, R. 5098–5099).

"The differentials on its branded gasolines respondent [petitioner] granted Ned's Auto Supply Co., at all times subsequent to March 7, 1938, and Stikeman Oil Co., Citrin-Kolb Oil Co., and the Wayne Co. [the four jobbers], at all times subsequent to June 19, 1936, were granted to meet equally low prices offered by competitors on branded gasolines of comparable grade and quality" (Conclusion of Fact, under § X, R. 5104).

The court below affirmed the Commission's position.[8]

[245] There is no doubt that under the Clayton Act, before its amendment by the Robinson-Patman Act, this evidence would have been material and, if accepted, would have [240] established a complete defense to the charge of unlawful discrimination. At that time the material provisions of § 2 were as follows:

> SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided, That nothing herein contained shall prevent* discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or *discrimination in price in the same or different communities made in good faith to meet competition: And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade. [Emphasis added within the first proviso.] (38 Stat. 730–731, 15 U. S. C. (1934 ed.) § 13.)

The question before us, therefore, is whether the amendments made by the Robinson-Patman Act deprived those facts of their previously recognized effectiveness as a defense. The material provisions of § 2, as amended, are [241] quoted below, showing in italics those clauses which bear upon the proviso before us. The modified provisions are distributed between the newly created subsections (a) and (b). These must be read together and in relation to the provisions they supersede. The original phrase "that nothing herein contained shall prevent" is still used to introduce each of the defenses. The defense relating to the meeting of the price of a competitor appears only in subsection (b). There it is applied to discriminations in services or facilities as well as to discriminations in price, which alone are expressly condemned in subsection (a). In its opinion in the instant case, the Commission recognizes that it is an absolute defense to a charge of price discrimination for a seller to prove, under § 2 (a), that its price differential makes only due allowances for differences in cost or for price changes made in response to changing market conditions (41 F. T. C. at 283). Each of these three defenses is introduced by the same phrase "nothing * * * shall prevent," and all are embraced in the same word "justification" in the first sentence

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[8] "Now as to the contention that the discriminatory prices here complained of were made in good faith to meet a lower price of a competitor. While the Commission made no finding on this point, it assumed its existence but held, contrary to the petitioner's contention, that this was not a defense.

"We agree with the Commission that the showing of the petitioner that it made the discriminatory price in good faith to meet competition is not controlling in view of the very substantial evidence that its discrimination was used to affect and lessen competition at the retail level" (173 F. (2d) at 214, 217).

of § 2 (b). It is natural, therefore, to conclude that each of these defenses is entitled to the same effect, without regard to whether there also appears an affirmative showing of actual or potential injury to competition at the same or a lower level traceable to the price differential made by the seller. The Commission says, however, that the proviso in § 2 (b) as to a seller meeting in good faith a lower competitive price is not an absolute defense if an injury to competition may result from such price reduction. We find no basis for such a distinction between the defenses in § 2 (a) and (b).

The defense in subsection (b), now before us, is limited to a price reduction made to meet in good faith an equally low price of a competitor. It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discriminations in price "in **[242]** the same or different communities * * *" and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the "lower price" of a competitor. None of these changes, however, cut into the actual core of the defense. That still **[246]** consists of the provision that wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price. Actual competition, at least in this elemental form, is thus preserved.

Subsections 2 (a) and (b), as amended, are as follows:

SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, That nothing herein contained shall prevent* differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: * * * *And provided further, That nothing herein contained shall prevent* price changes from time to time * * * in response to changing conditions affecting the market for or the marketability of the goods concerned * * *.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, *the burden of rebutting the prima-facie case thus* **[243]** *made by showing justification* shall be upon the person charged with a violation of this section, and *unless justification shall be affirmatively shown,* the Commission is authorized to issue an order terminating the discrimination: *Provided, however, That nothing herein contained shall prevent* a seller rebutting the prima-facie case thus made by *showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.*" [Emphasis added in part.] (49 Stat. 1526, 15 U. S. C. § 13 (a) and (b)).

This right of a seller, under § 2 (b), to meet in good faith an equally low price of a competitor has been considered here before. Both in *Corn Products Refining Co.* v. *Federal Trade Comm'n*, 324 U. S. 726 [40 F. T. C. 892; 4 S. & D. 331] and in *Federal Trade Comm'n* v. *Staley Mfg. Co.*, 324 U. S. 746 [40 F. T. C. 906; 4 S. & D. 346] evidence in support of this defense was reviewed at length. There would have been no occasion thus to review it under the theory now contended for by the Commission. While this Court did not sustain the seller's defense in either case, it did unquestionably recognize the relevance of the evidence in support of that defense. The decision in each case was based upon the insufficiency of the seller's evidence to establish its defense, not upon the inadequacy of its defense as a matter of law.[9]

In the *Corn Products* case, *supra*, after recognizing that the seller had allowed differentials in price in favor of certain customers, this Court examined the evidence presented by the seller to show that such differentials were [244] justified because made in good faith to meet equally low prices of a competitor. It then said:

> Examination of the *testimony* satisfies us, as it did the court below, that it *was insufficient* to sustain a finding that the lower prices allowed to favored customers were in fact made to meet competition. Hence petitioners *failed to sustain the burden* of showing that the price discriminations were granted for the purpose of meeting competition." [Em[247]phasis added.] (324 U. S. at 741).[10]

In the *Staley* case, *supra*, most of the Court's opinion is devoted to the consideration of the evidence introduced in support of the seller's defense under § 2 (b). The discussion proceeds upon the assumption, applicable here, that if a competitor's "lower price" is a lawful individual price offered to any of the seller's customers, then the seller is protected, under § 2 (b), in making a counteroffer provided the seller proves that its counteroffer is made to meet in good faith its competitor's equally low price. On the record in the *Staley* case, a majority of the Court of Appeals, in fact, declined to accept the findings of the Commission and decided in favor of the accused seller.[11]

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[9] In contrast to that factual situation, the trial examiner for the Commission in the instant case has found the necessary facts to sustain the seller's defense (see note 7, *supra*), and yet the Commission refuses, as a matter of law, to give them consideration.

[10] In the *Corn Products* case, the same point of view was expressed by the Court of Appeals below: "We think the evidence is insufficient to sustain this affirmative defense" (144 F. (2d) 211, 217 (C. A. 7th Cir.)). The Court of Appeals also indicated that, to sustain this defense, it must appear not only that the competitor's lower price was met in good faith but that such price was lawful.

[11] The *Staley* case was twice before the Court of Appeals for the Seventh Circuit. In 1943 the case was remanded by that court to the Commission for findings as to wherein the discriminations occurred and how they substantially lessened competition and promoted monopoly and also "for consideration of the defense [under § 2 (b)] urged by the petitioners, and for findings in relation thereto." 135 F. (2d) 453, 456. In 1944, a majority of the court decided in favor of the seller. 144 F. (2d) 221. One judge held that the complaint was insufficient under § 2 (a) and that, therefore, he need not reach the seller's defense under § 2 (b). He expressly stated, however, that he did not take issue with the

This Court, on review, reversed that judgment [245] but emphatically recognized the availability of the seller's defense under § 2 (b) and the obligation of the Commission to make findings upon issues material to that defense. It said:

> Congress has left to the Commission the determination of fact in each case whether the person, charged with making discriminatory prices, acted in good faith to meet a competitor's equally low prices. The determination of this fact from the evidence is for the Commission. See *Federal Trade Commission* v. *Pacific States Paper Trade Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636; 1 S. & D. 583] *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73 [18 F. T. C. 669; 2 S. & D. 247]. In the present case, the Commission's finding that respondents' price discriminations were not made to meet a "lower" price and consequently were not in good faith, is amply supported by the record, and we think the Court of Appeals erred in setting aside this portion of the Commission's order to cease and desist.
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> In appraising the evidence, the Commission recognized that the statute does not place an impossible burden upon sellers, but it emphasized the good faith requirement of the statute, which places the burden [246] of proving good faith on the seller, who has made the discriminatory prices. * * *
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> * * * We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of [248] a competitor. Nor was the Commission wrong in holding that respondents failed to meet this burden (324 U. S. at 758, 759–760).

See also, *Federal Trade Comm'n* v. *Cement Institute*, 333 U. S. 683, 721–726 [44 F. T. C. 1460; 4 S. & D. 676] *Federal Trade Comm'n* v. *Morton Salt Co.*, 334 U. S. 37, 43 [44 F. T. C. 1499; 4 S. & D. 716], and *United States* v. *United States Gypsum Co.*, 340 U. S. 76, 92. All that petitioner asks in the instant case is that its evidence be considered and that findings be made by the Commission as to the sufficiency of that evidence to support petitioner's defense under section 2 (b).

In addition, there has been widespread understanding that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet a lawful and equally low price of a competitor. This understanding is reflected in actions and state-

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basis for the conclusion that the seller's price was made in good faith to meet an equally low price of a competitor. *Id.*, at 227–231. His colleague held squarely that the seller's defense of meeting competition in good faith under § 2 (b) had been established. *Id.*, at 221–225. The third judge found against the seller both under § 2 (a) and (b). *Id.*, at 225–227. The important point for us is that the Court of Appeals, as well as this Court, unanimously recognized in that case the materiality of the seller's evidence in support of its defense under § 2 (b), even though the "discriminations 'have resulted, and do result, in substantial injury to competition among purchasers * * *.'" *Id.*, at 222.

ments of members and counsel of the Federal Trade Commission.[12] Representatives of the Department of [247] Justice have testified to the effectiveness and value of the defense under the Robinson-Patman Act.[13] We see no reason to depart now from that interpretation.[14] [248] [249]

[12] In cease and desist orders, issued both before and after the order in the instant case, the Commission has inserted saving clauses which recognize the propriety of a seller making a price reduction in good faith to meet an equally low price of a competitor, even though the seller's discrimination may have the effect of injuring competition at a lower level. (See *In re Ferro-Enamel Corp.*, 42 F. T. C. 36; *In re Anheuser-Busch, Inc.*, 31 F. T. C. 986; *In re Bausch & Lomb Optical Co.*, 28 F. T. C. 186.)

See also, the statement filed by Walter B. Wooden, Assistant Chief Counsel, and by Hugh E. White, Examiner for the Commission, with the Temporary National Economic Committee in 1941:

"The amended Act now safeguards the right of a seller to discriminate in price in good faith to meet an equally low price of a competitor, but he has the burden of proof on that question. This right is guaranteed by statute and could not be curtailed by any mandate or order of the Commission * * *. The right of self-defense against competitive price attacks is as vital in a competitive economy as the right of self-defense against personal attack." The Basing Point Problem 139 (TNEC Monograph 42, 1941).

In regard to the Commission's position on § 2 (b), urged in the instant case, Allen C. Phelps, Assistant Chief Trial Counsel and Chief of the Export Trade Division of the Commission, testified before the Subcommittee on Trade Policies of the Senate Committee on Interstate and Foreign Commerce in June, 1949, that "This position, if upheld in the courts, in my judgment will effectively and completely erase section 2 (b) from the Robinson-Patman Act." Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st Sess. 66. (See also, pp. 274–275.)

[13] Herbert A. Bergson, then Assistant Attorney General, testifying for the Department, January 25, 1949, said: "The section [2 (b)] presently permits sellers to justify otherwise forbidden price discriminations on the ground that the lower prices to one set of buyers were made in good faith to meet the equally low prices of a competitor." Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st Sess. 77. See also, report on S. 236 by Peyton Ford, Assistant to the Attorney General, to the Senate Committee on Interstate and Foreign Commerce. *Id.*, at 320. Mr. Bergson added the following in June 1949: "While we recognize the competitive problem which arises when one purchaser obtains advantages denied to other purchasers, we do not believe the solution to this problem lies in denying to sellers the opportunity to make sales in good faith competition with other sellers." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess. 12.

[14] Attention has been directed again to the legislative history of the proviso. This was considered in the *Corn Products* and *Staley* cases. See especially, 324 U. S. at 752–753. We find that the legislative history, at best, is inconclusive. It indicates that it was the purpose of Congress to limit, but not to abolish, the essence of the defense recognized as absolute in § 2 of the original Clayton Act, 38 Stat. 730, where a seller's reduction in price had been made "in good faith to meet competition * * *." For example, the legislative history recognizes that the Robinson-Patman Act limits that defense to price differentials that do not undercut the competitor's price, and the amendments fail to protect differentials between prices in different communities where those prices are not actually competitive. There is also a suggestion in the debates, as well as in the remarks of this Court in the *Staley* case, *supra*, that a competitor's lower price, which may be met by a seller under the protection of § 2 (b), must be a lawful price. And see, S. Res. 224, 70th Cong., 1st Sess., directing the Federal Trade Commission to investigate and report to it on chain-store operators and F. T. C. Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess.

In the report of the Judiciary Committee of the House of Representatives, which drafted the clause which became § 2 (b), there appears the following explanation of it:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further,

The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, [249] "Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent." *Staley Mfg. Co.* v. *Federal Trade Comm'n*, 135 F. 2d 453, 455 [36 F. T. C. 1126, 3 S. & D. 556.] We need not now reconcile, in its entirety, the economic theory which underlies the Robinson-Patman Act with that of the Sherman and Clayton Acts.[15] It is enough to say that Congress did not seek by the Robinson-Patman Act either to abolish competition or so radically to curtail it that a seller would have no substantial right of self-defense against a price raid by a competitor. For example, if a large customer requests his seller to meet a temptingly lower price offered to him by one of his seller's competitors, the seller may well find it essential, as a matter of business survival, to meet that price rather than to lose the customer. It might be that this customer is the seller's only [250] available market for the major portion of the seller's product, and that the loss of this customer would result in forcing a much higher unit cost and higher sales price upon the seller's other custom[250]ers. There is nothing to show a congressional purpose, in such a situation, to compel the seller to choose only between ruinously cutting its prices to all its customers to match the price offered to one, or refusing to meet the competition and then ruinously raising its prices to its remaining customers to cover increased unit costs. There is, on the other hand, plain language and established practice which permits a seller, through § 2 (b), to retain a customer by realistically meeting in good faith the price offered to that customer, without necessarily changing the seller's price to its other customers.

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he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further." H. R. Rep. No. 2287, 74th Cong., 2d Sess. 16.

See also, 80 Cong. Rec. 6426, 6431–6436, 8229, 8235.

Somewhat changing this emphasis, there was a statement made by the managers on the part of the House of Representatives, accompanying the conference report, which said that the new clause was a "provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission * * *." H. R. Rep. No. 2951, 74th Cong., 2d Sess. 7. The Chairman of the House Conferees also received permission to print in the Record an explanation of the proviso. 80 Cong. Rec. 9418. This explanation emphasizes the same interpretation as that put on the proviso in the *Staley* case to the effect that the lower price which lawfully may be met by a seller must be a lawful price. That statement, however, neither justifies disregarding the proviso nor failing to make findings of fact where evidence is offered that the prices met by the seller are lawful prices and that the meeting of them is in good faith.

[15] It has been suggested that, in theory, the Robinson-Patman Act as a whole is inconsistent with the Sherman and Clayton Acts. See Adelman, Effective Competition and the Antitrust Laws, 61 Harv. L. Rev. 1289, 1327–1350; Burns, The Anti-Trust Laws and the Regulation of Price Competition, 4 Law & Contemp. Prob. 301; Learned & Isaacs, The Robinson-Patman Law: Some Assumptions and Expectations, 15 Harv. Bus. Rev. 137; McAllister, Price Control by Law in the United States: A Survey, 4 Law & Contemp. Prob. 273.

In a case where a seller sustains the burden of proof placed upon it to establish its defense under § 2 (b), we find no reason to destroy that defense indirectly, merely because it also appears that the beneficiaries of the seller's price reductions may derive a competitive advantage from them or may, in a natural course of events, reduce their own resale prices to their customers. It must have been obvious to Congress that any price reduction to any dealer may always affect competition at that dealer's level as well as at the dealer's resale level, whether or not the reduction to the dealer is discriminatory. Likewise, it must have been obvious to Congress that any price reductions initiated by a seller's competitor would, if not met by the seller, affect competition at the beneficiary's level or among the beneficiary's customers just as much as if those reductions had been met by the seller. The proviso in § 2 (b), as interpreted by the Commission, would not be available when there was or might be an injury to competition at a resale level. So interpreted, the proviso would have such little, if any, applicability as to be practically meaningless. We may, therefore, conclude that Congress meant to permit the natural consequences to follow the seller's action in meeting in good faith a lawful and equally low price of its competitor. [251]

In its argument here, the Commission suggests that there may be some situations in which it might recognize the proviso in § 2 (b) as a complete defense, even though the seller's differential in price did injure competition. In support of this, the Commission indicates that in each case it must weigh the potentially injurious effect of a seller's price reduction upon competition at all lower levels against its beneficial effect in permitting the seller to meet competition at its own level. In the absence of more explicit requirements and more specific standards of comparison than we have here, it is difficult to see how an injury to competition at a level below that of the seller can thus be balanced fairly against a justification for meeting the competition at the seller's level. We hesitate to accept § 2 (b) as establishing such a dubious defense. On the other hand, the proviso is readily understandable as simply continuing in effect a defense which is equally absolute, but more limited in scope than that which existed under § 2 of the original Clayton Act.

The judgment of the Court of Appeals, accordingly, is reversed and the case is remanded to that court with instructions to remand it to the Federal Trade Commission to make findings in conformity with this opinion.

It is so ordered.

MR. JUSTICE MINTON took no part in the consideration or decision of this case.

MR. JUSTICE REED, dissenting.

The Federal Trade Commission investigated practices of the Standard Oil Co. of Indiana in selling its gasoline in the Detroit area at different prices to competing local distributors, in alleged violation of the Robinson-Patman (antiprice discrimination) Act. Standard's defense is not a denial of that discriminatory practice [251] but a complete justification, said to be allowed by the [252] Robinson-Patman Act, on the ground of trade necessity in order to meet an equally low price in Detroit of other gasoline refiners. On concluding the practice violated federal prohibitions against discriminatory sale prices, the Commission entered a cease and desist order against Standard's sale system. The order was enforced by the Court of Appeals after a minor modification (43 F. T. C. 56; 173 F. (2d) 210).

The need to allow sellers to meet competition in price from other sellers while protecting the competitors of the buyers against the buyers' advantages gained from the price discrimination was a major cause of the enactment of the 1936 Robinson-Patman Act. The Clayton Act of 1914 had failed to solve the problem. The impossibility of drafting fixed words of a statute so as to allow sufficient flexibility to meet the myriad situations of national commerce, we think, led Congress in the Robinson-Patman Act to put authority in the Federal Trade Commission to determine when a seller's discriminatory sales price violated the prohibitions of the antimonopoly statute, § 2 (a), 49 Stat. 1526, and when it was justified by a competitor's legal price.[1] The disadvantage to business of this choice was that the seller could not be positive before the Commission acted as to precisely how far he might go in price discrimination to meet and beat his competition. The Commission acted on its interpretation of the act.[2] Believing it important to support the purpose of Congress and the Commission's interpretation of the act, with which we agree, we state our reasons. [253]

The court first condemns the Commission's position that meeting in good faith a competitor's price merely rebuts the prima facie establishment of discrimination based on forbidden differences in sales price, so as to require an affirmative finding by the Commission that nevertheless there may be enjoinable injury under the Robinson-Patman Act to the favored buyer's competitors. The court then de-

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[1] The difficulties of any other approach are illustrated by the attempt of Congress to clarify the Robinson-Patman Act. See President's veto message on S. 1008, Cong. Rec. June 16, 1950, p. 8844, and conference reports, House of Reps., 81st Cong., 1st Sess., No. 1422, October 13, 1949, and 2d Sess., No. 1730, March 3, 1950.

[2] Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess., June 8 and 14, 1949, p. 61.

cides that good faith in meeting competition was an absolute defense for price discrimination, saying:

> On the other hand, the proviso is readily understandable as simply continuing in effect an equally absolute, but more limited, defense than that which existed under § 2 of the original Clayton Act.

Such a conclusion seems erroneous. What follows in this dissent demonstrates, we think, that Congress intended so to amend the Clayton Act that the avenue of escape given price discriminators by its meeting competition clause should be narrowed. The court's interpretation leaves what the seller can do almost as wide open as before. (See p. 12 *et seq.*, *infra.*) It seems clear to us that the interpretation put upon the clause of the Robinson-Patman Act by the Court means that no real change has been brought about by the amendment.

The public policy of the United States fosters the free-enterprise system of unfettered competition among producers and distributors of goods as the accepted method to put those goods into the hands of all consumers at the least expense.[3] There are, however, statutory exceptions to such unlimited competition.[4] Nondiscriminatory [254] pricing tends to weaken competition in that a seller, while otherwise maintaining his prices, cannot meet his antagonist's price to get a single order or customer. But Congress obviously concluded that the greater advantage would accrue by fostering equal access to supplies by competing merchants or other purchasers in the course of business.[5]

The first enactment to put limits on discriminatory selling prices was the Clayton Act in 1914, 38 Stat. 730, § 2. Section 11 enabled the Commission to use its investigatory and regulatory authority to handle price discrimination. Section 2 provided for the maintenance of competition by protecting the ability of business rivals to obtain commodities on equal terms. The Robinson-Patman Act moved further toward this objective. In the margin appears the applicable words of the Clayton Act followed by those of the Robinson-Patman Act. Phrased summarily for this case, it may be said that the italicized words in the Clayton Act were the source of the difficulties in enforcement that Congress undertook to avoid by the italicized words of the Robinson-Patman Act.[6] [255]

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[3] *Associated Press* v. *United States,* 326 U. S. 1, 13; *United States* v. *Line Material Co.,* 333 U. S. 287, 309.

[4] *E. g.,* Interstate Commerce Act, § 5, 49 U. S. C. § 5; Communications Act of 1934, § 221, Miller-Tydings Act. 15 U. S. C. § 1. And see Mason, The Current Status of the Monopoly Problem in the United States, 62 Harv. L. Rev. 1265.

[5] For a discussion of the merits of the legislation, see Adelman, Effective Competition and the Antitrust Laws, 61 Harv. L. Rev. 1289.

[6] Clayton Act:

"SEC. 2. That it shall be unlawful for any person engaged in commerce * * * to discriminate in price between different purchasers of commodities, * * * where the effect of such discrimination may be to substantially lessen competition, or tend to create a monopoly in any line of commerce: Provided, That nothing herein contained shall

It will be noted that unless the effect is given the Robinson-Patman amendment contended for by the Federal Trade Commission, there is little done to overcome the difficulties arising from the meeting competition clause of the Clayton Act. Formerly "discrimination in price in the same or different communities made in good faith to meet competition" was allowed as a complete defense. Now it is "made in good faith to meet an equally low price of a competitor." The Court says:

> It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discriminations in price "in the same or different communities * * *" and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the "lower price" of a competitor. None of these changes, however, cut into the actual core of the defense. That still consists of the provision that wherever a [253] lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price.

We see little difference. The seller may still, under the Court's interpretation, discriminate in sales of goods of [256] like quantity and quality between buyers on opposite corners, so long as one gets a lower delivered price offer from another seller, no matter where located. The "actual core of the defense" remains intact.

I

Legislative History.—Upon the interpretation of the words and purpose of this last addition by the Robinson-Patman Act to curbs on discrimination in trade, the narrow statutory issues in this case turn. Though narrow, they are important if trade is to have the benefit of careful investigation before regulation, attainable under the Federal Trade Commission Act but so difficult when attempted by prosecutions in courts with the limitations of judicial procedure. As an aid to the interpretation of § 2 (b), we set out applicable parts of its legislative history.

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prevent * * * *discrimination in price in the same or different communities made in good faith to meet competition:* * * *"*

Robinson-Patman Act:

"SEC. 2. (a) That is shall be unlawful for any person engaged in commerce, * * * to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, *or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them;* * * *

"SEC. 2. (b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, *the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown,* the Commission is authorized to issue an order terminating the discrimination: Provided, however, *That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."*

The Clayton Act created a broad exception from control for prices made in good faith to meet competition. This raised problems of which Congress was aware. In reporting on a redrafted version of S. 3154, the Senate's companion bill to the House bill that became the Robinson-Patman Act, the Senate Committee on the Judiciary, February 3, 1936, pointed out the weakness of § 2 of the Clayton Act in permitting discrimination to meet competition, and suggested a harsh remedy, the elimination of its italicized proviso in note 6 *supra*, without the mollifying words of § 2 (b) of the Robinson-Patman Act.[7] In [257] March, the House Committee on the Judiciary made its report on the bill that became the act. Section 2 (b) was then in substantially its present form. The report pointed out the draftsmen's purpose to strengthen the laws against price discrimination, directly or indirectly through brokerage or other allowances, services or absorptions of costs.[8] It commented that the subsection that became [254]

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[7] S. Rep. No. 1502, 74th Cong., 2d Sess., p. 4:

"The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition, and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill. Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere, is in its unmasked effect the liberty to destroy competition by selling locally below cost, a weapon progressively the more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size.

"Specific phrases of section 2 (a), as now reported, may be noted as follows:

"One: '* * * where either or any of the purchases involved in such discrimination are in commerce * * *.'

"Section 2 (a) attaches to competitive relations between a given seller and his several customers, and this clause is designed to extend its scope to discriminations between interstate and intrastate customers, as well as between those purely interstate. Discriminations in excess of sound economic differences involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them. When granted by a given seller to his customers in other States, and denied to those within the State, they involve the use of that interstate commerce to the burden and injury of the latter. When granted to those within the State and denied to those beyond, they involve conversely a directly resulting burden upon interstate commerce with the latter. Both are within the proper and well-recognized power of Congress to suppress."

[8] H. R. Rep. 2287, 74th Cong., 2d Sess., p. 3:

"The purpose of this proposed legislation is to restore, so far as possible, equality of opportunity in business by strengthening antitrust laws and by protecting trade and commerce against unfair trade practices and unlawful price discrimination, and also against restraint, and monopoly for the better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

"To accomplish its purpose, the bill amends and strengthens the Clayton Act by prohibiting discriminations in price between purchasers where such discriminations cannot be shown to be justified by differences in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which such commodities are to such purchasers sold and delivered. It also prohibits brokerage allowances except for services actually rendered, and advertising and other service allowances unless such allowances or services are made available to all purchasers on proportionally equal terms. It strikes at the basing-point method of sale, which lessens competition and tends to create a monopoly."

§ 2 (b) let a seller "meet the price actually pre-[258]viously offered by a local competitor." [9] The language used in regard to competition in the bills and in the Act seems to have been based on a recommendation of the Federal Trade Commission.[10] The Commission had been [259] unable to restore the desired competition under the Clayton Act, and Congress evidently sought to open the way for effective action.[11]

Events in the course of the proposed legislation in the Senate and House have pertinence. The Senate inserted the original ineffective language of the Clayton Act in its exact form in the Senate bill. In the same draft it adopted an amendment sim-[255]ilar to the proviso ultimately enacted. 80 Cong. Rec. 6426, 6435. In the House, Representative Patman explained his view of the dangers in the original pro-

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[9] *Id.*, p. 16:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further, he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further."

[10] Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st Sess., p. 96: "A simple solution for the uncertainties and difficulties of enforcement would be to prohibit unfair and unjust discrimination in price and leave it to the enforcement agency, subject to review by the courts, to apply that principle to particular cases and situations. The soundness of and extent to which the present provisos would constitute valid defenses would thus become a judicial and not a legislative matter.

"The Commission therefore recommends that section 2 of the Clayton Act be amended to read as follows:

" 'It shall be unlawful for any person engaged in commerce, in any transaction in or affecting such commerce, either directly of indirectly to discriminate unfairly or unjustly in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States.' "

This report was utilized by the House Committee dealing with the proposed Robinson-Patman legislation. H. R. Dep. No. 2287, 74th Cong., 2d Sess., pp. 3, 7.

[11] *Id.*, p. 64: "If the discrimination is 'on account of differences in the grade, quality, or quantity of the commodity sold,' or makes 'only due allowance for difference in the cost of selling or transportation,' or is 'made in good faith to meet competition,' it is not unlawful even though the effect 'may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' Discriminatory price concessions given to prevent the loss of a chain-store's business to a competing manufacturer, to prevent it manufacturing its own goods, or to prevent it from discouraging in its stores the sale of a given manufacturer's goods, may be strongly urged by the manufacturer as 'made in good faith to meet competition.' " See p. 90, *id.*

Attention was called to this need. H. R. Rep. No. 2287, 74th Cong., 2d Sess., p. 7: "Some of the difficulties of enforcement of this section as it stands are pointed out in the [Final Report] of the Federal Trade Commission above referred to, at pp. 63 and following."

viso.[12] It was taken out in Confer-[260]ence.[13] The Chairman of the House managers, Mr. Utterback, before the Conference Report was agreed to by the House, received permission to print an explanation [261] of his understanding of the proviso. He explained that the proviso "does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. * * * It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, * * *." The pertinent parts of the statement appear in the margin.[14] [256]

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[12] 80 Cong. Rec. 8235:

"Mr. Chairman, I would like to ask a question of the gentleman from Texas [Mr. Patman]. A great many of the industries in Ohio were very much in favor of the proviso in the Senate bill, appearing on page 4, and reading as follows:

" '*And provided further,* That nothing herein contained shall prevent discrimination in price in the same or different commodities made in good faith to meet competition.'

"I find that on page 9 of the Patman bill, beginning in line 14, there appear these words:

" '*Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.'

"Will the gentleman explain the difference between these two proposals?

"Mr. PATMAN. If the Senate amendment should be adopted it would really destroy the bill. It would permit the corporate chains to go into a local market, cut the price down so low that it would destroy local competitors and make up for their losses in other places where they had already destroyed their competitors. One of the objects of the bill is to get around that phrase and prevent the large corporate chains from selling below cost in certain localities, thus destroying the independent merchants, and making it up at other places where their competitors have already been destroyed. I hope the gentleman will not insist on the Senate amendment, because it would be very destructive of the bill. The phrase 'equally low price' means the corporate chain will have the right to compete with the local merchants. They may meet competition, which is all right, but they cannot cut down the price below cost for the purpose of destroying the local man.

"Mr. COOPER of Ohio. What does the gentleman's proviso mean?

"Mr. PATMAN. It means they may meet competition, but not cut down the price below cost. It means an equally low price but not below that. It permits competition, but it does not permit them to cut the price below cost in order to destroy their competitors. I hope the gentleman will not insist on the Senate amendment."

But see pp. 15 and 16, *infra.*

[13] H. R. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6–7:

"The Senate bill contained a further proviso—

" 'That nothing herein contained shall prevent discrimination in price in the same or different communities made in good faith to meet competition.'

"This language is found in existing law, and in the opinion of the conferees is one of the obstacles to enforcement of the present Clayton Act. The Senate receded, and the language is stricken. A provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission, is included in subsection (b) in the conference text as follows:

" '*Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of service or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.' "

[14] 80 Cong. Rec. 9418:

"In connection with the above rule as to burden of proof, it is also provided that a seller may show that his lower price was made in good faith to meet an equally low price of a competitor, or that his furnishing of services or facilities was made in good faith to meet those furnished by a competitor. It is to be noted, however, that this does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. This provision is entirely procedural. It does not determine substantive rights, liabilities, and duties. They are fixed in the other provisions of the bill. It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, as one lying

II

Statutory Interpretation.—This résumé of the origin and purpose of the original § 2 of the Clayton Act and **[262]** the amendments of the Robinson-Patman Act gives a basis for determining the effect of this section in a hearing before the Commission where the charge, as here, that a seller during the same period of time has sold the same commodities to various purchasers at different prices, is admitted and the defense, the elements of which are likewise admitted, is that the discrimination was made in good faith to meet an equally low price of a competitor. Does meeting in good faith a competitor's price constitute a complete defense under the proviso to § 2 (b)? Or does the fact of good faith reduction in price to a purchaser to meet a competitor's price merely rebut the prima facie establishment of discrimination, arising under the statute from proof of forbidden differences in price,[15] so as to require under § 2 (a) affirmative finding by the Commis-**[263]** sion that there may be injury to competition? Petitioner asserts that good faith meeting of a competitor's price is a complete defense. The Commission and the Court of Appeals take the opposite position, with which we concur.

This is our reason. The statutory development and the information before Congress concerning the need for strengthening the competitive price provision of the Clayton Act, make clear that the evil dealt with by the proviso of § 2 (b) was the easy avoidance of the prohibition against price discrimination. The control of that evil was an important objective of the Robinson-Patman Act. The debates, the Commission's report and recommendation and statutory changes show this. The Conference Report and the explanation by one of the managers, Mr. Utterback, are quite definitive upon the point. Because of experience under the Clayton Act, Congress refused to continue its competitive price proviso. Yet adoption of petitioner's position would permit a seller of nationally distributed

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within the limitations laid down by the bill, and whether the way in which the competition was met lies within the latitude allowed by those limitations.

"This procedural provision cannot be construed as a carte blanche exemption to violate the bill so long as a competitor can be shown to have violated it first, nor so long as that competition cannot be met without the use of oppressive discriminations in violation of the obvious intent of the bill.

* * * * * * *

"If this proviso were construed to permit the showing of a competing offer as an absolute bar to liability for discrimination, then it would nullify the act entirely at the very inception of its enforcement, for in nearly every case mass buyers receive similar discriminations from competing sellers of the same product. One violation of law cannot be permitted to justify another. As in any case of self-defense, while the attack against which the defense is claimed may be shown in evidence, its competency as a bar depends also upon whether it was a legal or illegal attack. A discrimination in violation of this bill is in practical effect a commercial bribe to lure the business of the favored customer away from the competitor, and if one bribe were permitted to justify another the bill would be futile to achieve its plainly intended purposes."

[15] See note 6, *supra*.

goods to discriminate in favor of large chain retailers, for the seller could give to the large retailer a price lower than that charged to small retailers, and could then completely justify its discrimination by showing that the large retailer had first obtained the same low price from a local low-cost producer of competitive goods. This is the very type of competition that Congress sought to remedy. To permit this would not seem consonant with the other provisions of the Robinson-Patman Act, strengthening regulatory powers of the Commission in "quantity" sales, special allowances and changing economic conditions.

[257] The structure and wording of the Robinson-Patman Amendment to the Clayton Act also conduce to our conclusion. In the original Clayton Act, § 2 was not divided into subsections. In that statute § 2 stated the body of the substantive offense, and then listed, in a series of provisos, various circumstances under which discrimi-**[264]** nations in price were permissible. Thus the statute provided that discriminations were not illegal if made on account of differences in the grade of the commodity sold, or differences in selling or transportation costs. Listed among these absolute justifications of the Clayton Act appeared the provision that "nothing herein contained shall prevent discrimination in price * * * made in good faith to meet competition." The Robinson-Patman Act, however, made two changes in respect of the "meeting competition" provision, one as to its location, the other in the phrasing. Unlike the original statute, § 2 of the Robinson-Patman Act is divided into two subsections. The first, § 2 (a), retained the statement of substantive offense and the series of provisos treated by the Commission as affording full justifications for price discrimination; § 2 (b) was created to deal with procedural problems in Federal Trade Commission proceedings, specifically to treat the question of burden of proof. In the process of this division, the "meeting competition" provision was separated from the other provisos, set off from the substantive provisions of § 2 (a), and relegated to the position of a proviso to the procedural subsection, § 2 (b). Unless it is believed that this change of position was fortuitous, it can be inferred that Congress meant to curtail the defense of meeting competition when it banished this proviso from the substantive division to the procedural. In the same way, the language changes made by § 2 (b) of the Robinson-Patman Act reflect an intent to diminish the effectiveness of the sweeping defense offered by the Clayton Act's "meeting of competition" proviso. The original provisos in the Clayton Act, and the provisos now appearing in § 2 (a), are worded to make it clear that nothing shall prevent certain price practices, such as "price differentials * * * [making] * * * due allowance for differences in the cost of manufacture * * *," or "price changes * * * in response to chang-**[265]**ing conditions affecting the market for * * * the goods concerned * * *."

But in contrast to these provisions, the proviso to § 2 (b) does not provide that nothing "shall prevent" a certain price practice; it provides only that "nothing shall prevent a seller rebutting * * * [a] * * * prima facie case by showing" a certain price practice—meeting a competitive price. The language thus shifts the focus of the proviso from a matter of substantive defense to a matter of proof. Consistent with each other, these modifications made by the Robinson-Patman Act are also consistent with the intent of Congress expressed in the legislative history.

The court suggests that former Federal Trade Commission cases decided here have treated the meeting-competition clause of the Robinson-Patman Act as being an absolute defense, not merely a rebuttal of the discrimination charge requiring further finding by the Commission. Reference is made to *Corn Products Refining Co.* v. *Federal Trade Comm'n*, 324 U. S. 726 [40 F. T. C. 892; 4 S. & D. 331] and *Federal Trade Comm'n* v. *Staley Mfg. Co.*, 324 U. S. 746. [40 F. T. C. 906; 4 S. & D. 346] In the *Corn Products* case, dealing with a basing point scheme for delivered prices, this Court merely said at p. 741:

> The only evidence said to rebut the prima facie case made by proof of the price discriminations was given by witnesses who had no personal knowledge of the transactions, and was limited to statements of each witness's assumption or conclusion that the price discriminations were justified by competition.

And then went on to use the language quoted at p. 12 of the court's opinion. There was no occasion to consider the effect of a successful rebuttal. [254] As authority for its statement, we there cited the *Staley* case at 324 U. S. 746.

That citation included these words at pp. 752–753:

> Prior to the Robinson-Patman amendments, § 2 of the Clayton Act provided that nothing contained in [266] it "shall prevent" discriminations in price "made in good faith to meet competition." The change in language of this exception was for the purpose of making the defense a matter of evidence in each case, raising a question of fact as to whether the competition justified the discrimination. See the Conference Report, H. Rep. No. 2951, 74th Cong., 2d Sess., pp. 6–7; see also the statement of Representative Utterback, the Chairman of the House Conference Committee, 80 Cong. Rec. 9418.

After that statement, which it should be noted relies upon Mr. Utterback's interpretation quoted at note 14 of this opinion, the court in the *Staley* case goes on to say that there was no evidence to show that Staley adopted a lower price to meet an equally low price of a competitor. Again there was no occasion for this Court to meet the present issue. We think our citation in *Staley*, quoted above, shows the then position of this Court.[16]

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[16] The court's opinion in this case refers, p. 12, notes 12 and 13 [p. 1776]; notes 10 and 11, to the opinions of the Court of Appeals for the Seventh Circuit in *Staley* and *Corn Products*, 144 F. (2d) 211 and 221. But that court reversed its position in the opinion below, 173 F. (2d) 210, 216. It is fair to assume that reversal was because of our opinions in *Corn Products* and *Staley*.

There are arguments available to support the contrary position. No definite statement appears in the committee reports that "meeting competition" is henceforth to be only a rebuttal of a prima facie case and not a full justification for discrimination in price. The proviso of § 2 (b) can be read as having the same substantive effect as the provisos of § 2 (a). The earlier provisos are treated by the Commission as complete defenses. Perhaps there is an implication favorable to the petitioner's position in Representative Patman's omission to state the Federal Trade Commission interpretation of the floor. (See note 12, *supra.*)

[267] The underlying congressional purpose to curtail methods of avoiding limitations on price discriminations, however, considered with the more specific matters discussed herein, satisfies us that we should adopt the conclusion of the Commission and the Court of Appeals.[17] We believe that good faith meeting of a competitor's price only rebuts the prima facie case of violation established by showing the price discrimination. Whether the proven price discrimination is of a character that violates § 2 (a) then becomes a matter for the determination of the Commission on a showing that there may be injury to competition.

III

Conclusion.—In view of the court's ruling, we will not enlarge this dissent by discussing other problems raised by the case. We have said enough to show that we would affirm the decree below in principle, even though we should conclude some amendment might be required in the wording of the order.

THE CHIEF JUSTICE and MR. JUSTICE BLACK join in this dissent.

CARTER PRODUCTS, INC., ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 10008—F. T. C. Docket 4960

(Court of Appeals, Seventh Circuit. Feb. 2, 1951)

METHODS, ACTS, AND PRACTICES—MISREPRESENTATION—INITIAL CONTACTS—IF MISREPRESENTATION THEREAFTER CORRECTED

The Federal Trade Commission Act is violated if first contact or interview

[17] It is hardly necessary to note that the wisdom of the enactment is not for the Commission nor the courts in enforcing the act. The Commission recently has advised Congress that while "on balance it would be preferable to make the good faith meeting of competition a complete defense," it "does not strongly urge either view upon the Congress." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st Sess., June 8 and 14, 1949, p. 61. Compare *Standard Oil Co.* v. *United States*, 337 U. S. 293, 311. This statement confirmed the Commission's position taken in this case. There were other officials of the Commission who have taken the view adopted by the court.

[1] Reported in 186 F. (2d) 821. For case before Commission see 46 F. T. C. 64.

is secured by deception, even though true facts are made known to buyer before he enters into contract of purchase.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DEODORANT

Evidence required that cease and desist order of Federal Trade Commission requiring manufacturer of deodorant cosmetic preparation cease and desist from disseminating in commerce any advertisement representing that application of the preparation stops under-arm perspiration, or that it will be more than temporarily effective in reducing flow of perspiration, by eliminating phrase that preparation will [822] be more than temporarily effective in reducing flow of perspiration, and by adding provision that nothing shall prevent manufacturer from representing that preparation will prevent appearance of perspiration when used daily or as frequently as necessary.

PROCEEDINGS BEFORE COMMISSION—COMPLAINTS—LATITUDE UNDER—TERMINOLOGY—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—"DEODORANT COSMETIC" CLAIMS AS DISTINGUISHED FROM PERSPIRATION STOPPER

Fact that complaint of Federal Trade Commission in proceeding under Federal Trade Commission Act alleged that preparation was a "deodorant cosmetic preparation," did not prevent Commission from considering and passing on question whether advertising claims of manufacturer as a deodorant, as distinguished from stopper of perspiration, were deceptive, false, or misleading.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—APPELLATE POWER—MODIFICATION

Power of Court of Appeals under Federal Trade Commission Act to modify orders of the Federal Trade Commission extends to the remedy.

APPELLATE PROCEDURE AND PROCEEDINGS—CEASE AND DESIST ORDERS—APPELLATE POWER—LIMITATION ON REVIEW

Judicial review by a Court of Appeals of an order of the Federal Trade Commission under the Federal Trade Commission Act is limited and extends no further than to ascertain whether the Commission has made an allowable judgment in its choice of remedy.

CEASE AND DESIST ORDERS—SCOPE AND PROPRIETY—ADVERTISING—FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—DEODORANT

Where medical experts experienced in dermatology, testified that cosmetic deodorant would remain effective as a deodorant from 3 to 6 hours, 10 to 12 and maybe 14 hours, 4 to 10 hours, 4 to 24 hours, and 15 to 20 hours, cease and desist order of Federal Trade Commission requiring manufacturer to use the word "temporary" in referring to length of time that deodorant was effective as a deodorant, would be modified to permit omission of the word "temporary" and order would be modified to permit manufacturer to advertise that deodorant was effective where used daily or as frequently as found necessary.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADING—QUALITIES OR PROPERTIES OF PRODUCT—SAFETY

Evidence justified portion of cease and desist order of Federal Trade Commission under the Federal Trade Commission Act requiring manufacturer of deodorant cosmetic preparation to cease and desist from advertising that the preparation would not harm the skin.

(The syllabus with substituted captions, is taken from 186 F. (2d) 821)

On petition to review order of Commission, order modified and, as modified, affirmed and enforced.

Breed, Abbott & Morgan, Mr. Wm. L. Hanaway of counsel, of New York City, for petitioners.

Mr. W. T. Kelley, General Counsel, *Mr. James W. Cassedy*, Assistant General Counsel, *Mr. Donovan Divet*, Special Attorney, and *Mr. A. B. Hobbes*, Attorney, all of Washington, D. C., for the Commission.

Before MAJOR, *Chief Judge;* DUFFY and LINDLEY, *Circuit Judges.*

DUFFY, *Circuit Judge:*

Petitioners ask us to review and set aside a cease and desist order entered by the Federal Trade Commission against petitioners, charging them with engaging in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act, 15 U. S. C. 45.

Petitioner Carter Products, Inc., sells and distributes in interstate commerce a deodorant, cosmetic preparation called Arrid. The other petitioner is Carter's advertising agency. By means of various types of advertising, petitioners have represented that Arrid "safely stops under-arm perspiration * * * instantly stops perspiration one to three days * * * remember, it stops perspiration and keeps it stopped * * * for one to three days," [823] and also, "If you want complete under-arm protection, you must keep the armpits dry as well as odorless. Arrid cream will do both for you, and do it safely." Petitioners also advertised that Arrid is harmless and will not irritate the skin even if used after shaving, and that by stopping the flow of under-arm perspiration altogether, the collection of odor-creating body secretions in the armpits is prevented. The Commission found that the foregoing statements and representations are grossly exaggerated, false, deceptive, and misleading. The Commission also found that certain of said advertisements meant that the application of Arrid to the area of skin under the arms will terminate and bring to an end the flow of perspiration in that area for 1 to 3 days.

Although often used interchangeably, the terms "sweat" and "perspiration" are not identical, and do not define or describe the same thing. Located beneath the surface of the skin are glands known as sweat glands, each having an opening or duct at the surface of the

skin, referred to as the mouth of the sweat gland. "Sweat" is the substance which is formed in the sweat glands before it appears on the surface of the skin. In a general sense, "perspiration" means any secretion which passes through the skin, which would include a secretion which passed through at a place where no sweat glands were located. In a more restricted sense, and as the term generally is used, "perspiration" refers to the secretion of the sweat glands after it passes through the skin and appears on the surface thereof, plus accumulated dirt or debris which has collected on the skin from various sources, and when both are left on the surface of the skin, the combination generates an odor characterized as the odor of sweat. Perspiration is either sensible (which can be seen or felt) or insensible (which can neither be seen nor felt).

The principal active ingredient of Arrid is aluminum sulphate, an astringent. When applied to the skin it tends to cause a swelling which contracts or closes the mouths of the sweat glands, and thus reduces the flow of such glands. Later the swelling gradually decreases, permitting sweat to flow again from the glands.

The Commission found that the extent of the reduction of the flow of sweat depends upon the temperature, the humidity, the physical activity of the individual, and the degree of tendency to perspire peculiar to the particular individual. The Commission further specifically found, "The use of 'Arrid' will not terminate or bring to an end the flow of underarm perspiration. Its use will not absorb perspiration to the extent of keeping the armpits dry. It will not keep the armpits dry or free from the odor of perspiration for one to three days. This preparation is not harmless, and its use will cause skin irritations, and dermatitis in some people. If used after shaving 'Arrid' is not safe and harmless, but is capable of irritating the skin, and of aggravating irritation."

Petitioners were ordered to cease and desist from disseminating in commerce any advertisement which represented "(*a*) that the application of said preparation stops underarm perspiration, or that it will be more than temporarily effective in reducing the flow of perspiration; (*b*) that said preparation will be more than temporarily effective in keeping the armpits dry or odorless; (*c*) that the use of said preparation immediately after shaving will not irritate the skin;[1] (*d*) that the said preparation will be more than temporarily effective in preventing the accumulation of odor-creating body secretions or excretions in the armpits; (*e*) that said preparation is safe or harmless to use, without disclosing it may cause irritation of sensitive skin."

As a product having antiperspirant properties, Arrid does have some merit. All witnesses who testified on the subject agreed that

[1] No question is raised on this appeal as to the propriety of clause (c).

Arrid did stop the appearance of perspiration on the surface of the skin of most people for certain periods. Two doctors testified the use of Arrid would have this effect for 3 to 6 hours; another stated it had such effect for a minimum of 3 to 4 hours; one [824] doctor testified that such effect would continue 6 to 14 hours, and another doctor from 4 to 24 hours.

Sweat glands function most of the time in at least some small degree in all human beings, but much of the time the secretion produced is so small in amount that it dries off too quickly for a person to see or feel any of the secretion. However, we are not here concerned with whether it is possible to stop entirely the functioning of the underarm sweat glands, which would seem theoretically impossible. Petitioners did not use the word "sweat" in their advertising. The reasonable interpretation of the average person reading their advertisement that Arrid would stop perspiration was that they were representing that Arrid would stop the appearance and odor of "moisture" on the underarm skin. Their use of the word "stop" was ambiguous, however. If we say a person is dead because he has "stopped breathing," there is a connotation of performance about the word "stopped"; but if when driving an automobile a person "stopped for a traffic light," the connotation of "stopped" would be of a temporary nature. Dictionary definitions of "stop" include "to cause to cease; to suppress; check; hold back; to arrest the progress or action of."

As stated heretofore, the evidence discloses that the use of Arrid will reduce the appearance of perspiration on the skin for a number of hours, to a point where it cannot be seen or felt. Of course the length of time that this situation prevails differs with each person and the existing circumstances. But the statement in the advertisements that Arrid will stop perspiration from 1 to 3 days was unjustified, as well as that its use would stop the flow of underarm perspiration "altogether."

Petitioners insist that they have never claimed that Arrid produced a permanent antiperspirant effect. Arrid is marketed in jars containing slightly more than 1 ounce of the product. Directions for use have appeared on packages and labels of Arrid, as follows (since 1939):

"Cover arm pit. Rub gently until cream vanishes. Wipe off excess. Use daily if necessary." Also, "Use frequently as you find necessary." And (since 1946), "Use daily for constant protection."

Petitioners argue that they made no greater claim than that the product, when used as directed, would stop the appearance of perspiration on the surface of the skin for a reasonable length of time. However, this contention of petitioners cannot be sustained. Petitioners did a considerable amount of advertising over the radio. At the first contact between buyer and seller, the buyer had no means of

knowing that the directions printed on cartons and jars containing Arrid called for "daily" use or "as frequently as * * * necessary." The same would hold true as to newspaper or magazine advertising. The law is violated if the first contact or interview is secured by deception (*Federal Trade Comm.* v. *Standard Education Society, et al.*, 302 U. S. 112, 115 [25 F. T. C. 1715, 2 S. & D. 429]), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co., et al.* v. *Federal Trade Comm.*, 7 Cir. 153 F. (2d) 103, 104, 105 [42 F. T. C. 882, 4 S. & D. 455]). See also *Aronberg, et al.* v. *Federal Trade Comm.*, 7 Cir., 132 F. (2d) 165, 169 [29 F. T. C. 1634, 3 S. & D. 528].

Thus we are here confronted with a situation where the distributers of Arrid, a product of some merit, made claims in their advertising which were too sweeping and too broad in their scope. Further, petitioners' use of the word "stop" was ambiguous. The approach of the Commission is to interpret "stop" as connoting permanency. The Commission has previously held that certain words connote permanency. In *International Parts Corp.* v. *Federal Trade Comm.*, 7 Cir., 133 F. (2d) 883 [36 F. T. C. 1102, 3 S. & D. 535], the advertisement for an automobile muffler stated, "Finest Quality Metallic Finish Prevents Rust and Corrosion." The Commission made a finding that the word "prevents" implies permanency, and therefore its use in that advertisement was misleading to the public. This court vacated the Commission's cease and desist order, and held that the idea of permanency was improperly interpolated by the Commission, and that without such interpolation there was no misrepresentation. Also in *D. D. D. Corp.* v. *Federal Trade Comm.*, 7 Cir. [825], 125 F. (2d) 679 [34 F. T. C. 1821, 3 S. & D. 455], the Commission construed the claim of relief from itching as promising a permanent effect, for it ordered the manufacturers of D. D. D. to discontinue representing that the product would have more than a temporary effect in relieving itching. But this court, on appeal, ruled (p. 682):

> We are also of the view that the word "temporary" as used in paragraphs 1 (*a*), (*b*), (*c*), (*e*), and (*g*) of the Commission's order should be eliminated. We see no reason why petitioner should not be permitted to represent its product as a relief for itching. It does not cure the itch or its cause, but it does afford relief. One of the definitions given by Webster for the word "relief" is "lessens evil, pain, etc." The words "relief from itching" could, in our minds, carry no implication to the public that the product was a permanent cure either for the symptom or the disease. The word "temporary" carries an uncertain meaning. As the Commission's doctor stated: "It might mean a few minutes, or an hour or so." To require its use would serve no purpose in the protection of the public, but might limit the petitioner in truthfully representing its product.

There is some indication that the attitude of the Commission as to the connotation to be given to the word "stop" in advertising may

have changed since the date of the decision in the case at bar. In the five antihistamine cases,[2] the Commission on July 5, 1950, approved stipulations prohibiting each manufacturer from representing that its product would cure, prevent, stop, or shorten the duration of the common cold, which stipulations included the following permission: "*Provided, however*, That nothing therein shall prevent the respondent from representing (*a*) that the use of the product relieves or checks and, in many cases, *stops* the symptoms or manifestations of the common cold, such as sneezing, or nasal congestion, simple throat coughs, watering eyes, or watery or mucuous discharge from the nose. * * *." [Emphasis added.] Petitioners herein claim that all they want to do is claim that Arrid stops the appearance of perspiration, which is the manifestation of the operation of the sweat glands.

Paragraph 1. (*a*) of the cease and desist order will be modified by the elimination of the clause, "or that it will be more than temporarily effective in reducing the flow of perspiration," and by adding at the end of the undeleted portion of such subsection the following underscored words, so that the subsection will read: "(*a*) That the application of said preparation stops underarm perspiration: *Provided, however, That nothing herein shall prevent the respondent from representing that the use of Arrid will prevent the appearance of perspiration when used as directed, namely, 'daily' or 'as frequently as you find necessary.'*"

Paragraph 1. (*b*) of the Commission's order requires petitioners to refrain from representing that Arrid will be more than temporarily effective in keeping the armpits dry or odorless, and paragraph 1 (*d*) from representing that Arrid will be more than temporarily effective in preventing the accumulation of odor-creating body secretions or excretions in the armpits. Petitioners strongly urge that there was no justification for the Commission to pass upon the deodorant qualities of Arrid, because such deodorant qualities were not in issue. Petitioners point out that in the Commission's complaint Arrid was referred to as "a deodorant cosmetic preparation," and that respondents admitted this allegation of the complaint in their answer. Petitioners quote dictionary definitions defining "deodorant" as a substance which destroys offensive odors. Petitioners argue that the Commission cannot controvert issues of its complaint which are admitted by the answer, citing *Hill, et al.* v. *Federal Trade Comm.*, 124 F. (2d) 104, 106 [34 F. T. C. 1800, 3 S. & D. 436], and *National Candy Co.* v. *Federal Trade Comm.*, 7 Cir., 104 F. (2d) 999, 1003 [29 F. T. C. 1557, 3 S. & D. 116]. They point out that the deodorant properties of Arrid are entirely different from its antiperspirant

[2] 47 F. T. C. 1441, et seq.

properties, that many deodorant substances do not have any anti-perspirant properties at all, and that no deodorant has a permanent effect and that petitioners made no such claim as to Arrid. In sum, petitioners assert that as the Commission alleged and thus admitted Arrid was a deodorant and that everyone knows that a temporary ef-[826]fect is characteristic of a deodorant, the public could not possibly he defrauded or deceived, and that the Commission has gone out of its way to destroy a legitimate advertising claim.

We think it was permissible for the Commission to consider and pass upon whether the advertising claims of Arrid as a deodorant were deceptive, false or misleading. It is the perspiration remaining on the skin of a human being which causes an unpleasant odor, and since stopping the odor of perspiration is so dependent on reducing the perspiration itself, that is, when the deodorant is of the type of Arrid, the Commission could not very well have treated each as distinct and unrelated matters, and investigated one and passed over the other. The testimony of the medical experts who were experienced in dermatology, as to the length of time that Arrid would remain effective as a deodorant, varied, to wit, "3 to 6 hours," "10 to 12, and maybe 14 hours," "4 to 10 hours," "4 to 24 hours," and "15 to 20 hours."

The statute gives this court power not only to affirm or to reverse, but also to modify the orders of the Commission. *15 U. S. C. 45 (c) and (d)*. This power to modify extends to the remedy. *Federal Trade Comm.* v. *Royal Milling Co., et al.*, 288 U. S. 212 [17 F. T. C. 664, 2 S. & D. 217]. However, the Supreme Court has pointed out that judicial review by a Court of Appeals is limited, and extends no further than to ascertain whether the Commission has made "an allowable judgment in its choice of the remedy." *Jacob Siegel Co.* v. *Federal Trade Comm.*, 327 U. S. 608, 612 [42 F. T. C. 902, 4 S. & D. 476].

As stated heretofore, this court in *D. D. D. Corp.* v. *Federal Trade Comm., supra*, disapproved of the use of word "temporary" because of its very uncertain meaning. We pointed out that it might mean only a few minutes, yet experts testifying before the Commission in this case admitted that Arrid's deodorant properties are effective at least 3 to 6 hours. We think in the case at bar, as we did in the *D. D. D.* case, that protection of the public does not require petitioners to use the word "temporary" or "temporarily," and that to require its use would be unfair to the petitioners in representing the truth as to Arrid.

Paragraph 1 (*b*) of the Commission's cease and desist order will

be deleted, and in lieu thereof the following shall be inserted: "(*b*) That said preparation will keep the armpits dry or odorless, provided that nothing herein shall prevent respondents from representing that the use of Arrid will keep the armpits dry or odorless when used as directed, namely, 'daily' or 'as frequently as you find necessary.' "

And paragraph 1 (*d*) will be deleted also, and in lieu thereof the following shall be inserted in the Commission's order: "(*d*) That said preparation will prevent the accumulation of odor-creating body secretions or excretions in the armpits, provided that nothing herein shall prevent respondents from representing that the use of Arrid will prevent the accumulation of odor-creating body secretions or excretions in the armpits when used as directed, namely, 'daily' or 'as frequently as you find necessary.' "

Paragraph 1 (*e*) of the Commission's order requires that petitioners cease and desist from representing that "said preparation is safe or harmless to use, without disclosing that it may cause irritation of sensitive skin." Petitioners presented evidence showing that the experiment of 1 doctor, involving a daily application of Arrid on 27 women for a 2-week period, revealed none had any sign of skin irritation; and that another doctor experimented with such applications on 186 women, and that again the skin of none of them showed any sign of irritation. Petitioners contend that the evidence clearly shows that the use of Arrid will not produce harmful effects upon normal skin, and that they should have the right to say so in their advertisements; [827] and they requested the Commission to permit them to so advertise. In our opinion the Commission might well have granted petitioners' request; but since it did not, we feel that we cannot overrule the Commission's order in this respect, because we are convinced that the Commission made "an allowable judgment in its choice of the remedy." *Jacob Siegel Co.* v. *Federal Trade Comm.*, *supra.* The evidence proved that Arrid had caused and may cause injury to a number of people, and that such injury is not confined to persons having allergies or idiosyncracies. One medical expert testified that during the course of 10 years he had treated 50 cases of dermatitis proved to have been caused by Arrid. There was, therefore, substantial evidence sustaining the finding, "This preparation is not harmless, and its use will cause skin irritations, and dermatitis in some people." It follows that paragraph 1 (*e*) of the Commission's cease and desist order should stand, and be enforced.

The cease and desist order is affirmed, as modified herein, and the enforcement of the order as modified is ordered.

GALTER v. FEDERAL TRADE COMMISSION[1]

No. 9489—F. T. C. Docket 4458

(Court of Appeals, Seventh Circuit. Feb. 5, 1951)

CEASE AND DESIST ORDERS—IF PRACTICE ABANDONED—WHETHER ABUSE OF DISCRETION—PERIOD OF ABANDONMENT—PROPER MEASURE OF

In determining whether the Federal Trade Commission has abused its discretion in ordering a petitioner to desist from an unfair practice which it has already halted, court is concerned largely not with period of time which has elapsed between cessation and entry of order, but with time from date of cessation to date of issuance of complaint.

CEASE AND DESIST ORDERS—IF PRACTICE ABANDONED—WHETHER ABUSE OF DISCRETION—PERIOD OF ABANDONMENT—IF PRACTICE DISCONTINUED MORE THAN YEAR AFTER COMPLAINT

In action by petitioner to set aside cease and desist order issued by the Federal Trade Commission to prevent petitioner from using three proper names, on ground that petitioner had long since discontinued use of names, stipulation which showed that use of two names was discontinued more than a year after issuance of complaint, did not, in absence of other evidence, prove that discontinuance was voluntary, and discontinuance of unfair practice was of itself no bar to issuance of cease and desist order.

CEASE AND DESIST ORDERS—IF PRACTICE ABANDONED—WHETHER BAR TO ISSUANCE, *per se*

The mere discontinuance of an unfair practice is of itself no bar to issuance of a cease and desist order based thereon by the Federal Trade Commission.

CEASE AND DESIST ORDERS—IF PRACTICE ABANDONED—WHERE RIGHT TO CONTINUE, NEVERTHELESS, STILL CONTENDED FOR, AND INTENTION AND PROMISE TO REFRAIN, LACKING

In action by petitioners to set aside Federal Trade Commission order which prevented petitioners from using three proper names, on ground that petitioners had long since discontinued use of names, where petitioners still contended that they could use names and expressed no intention to refrain from that use, and made no promise to do so, Commission was fully justified in believing that claimed cessation of lawful action was not voluntary, but was brought about by Commission's proceedings, and District Court [sic] would not interfere with Commission's exercise of discretion but would uphold the entry of order.

STIPULATIONS—WHERE DECISION UPON FACTS STATED AND TESTIMONY AND EVIDENCE TAKEN, AGREED TO—WHETHER FURTHER HEARINGS THEREBY PRECLUDED

Stipulation between parties before Federal Trade Commission that Commission might render its decision upon facts stated therein, and upon testimony and evidence already taken in proceedings, did not constitute an agreement that no more hearings were to be held, but indicated that there

[1] Reported in 186 F. (2d) 810. For case before Commission, see 44 F. T. C. 80.

would be more hearings, and that if Commission approved stipulation, evidence taken at those hearings would not be considered in disposing of the proceedings.

STIPULATIONS—WHERE DECISION UPON FACTS STATED, AND TESTIMONY AND EVIDENCE TAKEN, AGREED TO—IF EVIDENCE AT ADDITIONAL HEARINGS NOT TO BE CONSIDERED—WHETHER PETITIONER DENIED DUE PROCESS, WHERE SUCH HEARINGS NECESSARILY HELD, ABSENT EVIDENCE OF VIOLATION OF AGREEMENT BY COMMISSION

Where parties before Federal Trade Commission stipulated that Commission might render its decision upon facts stated in stipulation and upon testimony and evidence taken in proceedings, and that if Commission approved stipulation, evidence taken at additional hearings would not be considered in disposing of proceedings, and additional hearings were necessarily held by Commission and there was nothing in record to indicate that Commission violated provisions of stipulation, even if petitioners had no notice of additional hearing, petitioners were not denied due process of law.

STIPULATIONS—CEASE AND DESIST ORDERS—WHETHER DISCREPANCIES—IF ERROR HARMLESS

[811] In action by petitioners to set aside cease and desist order issued by Federal Trade Commission to prevent petitioners from using three proper names, where evidence did not disclose any right in petitioners to use the names in such a manner as to mislead public into believing that petitioner's products were products of companies which had exclusive right to use names even if stipulation that names were exclusive property of those companies was erroneous, error was harmless.

STIPULATIONS—CEASE AND DESIST ORDERS—WHETHER DISCREPANCIES—TRADE NAME USE—IF MISLEADING—THAT OTHERS THAN RESPONDENT, AND ALLEGED OWNERS OF EXCLUSIVE RIGHT TO, MAY HAVE ALSO USED SAME

In action by petitioners to set aside cease and desist order issued by Federal Trade Commission in proceeding to protect public against fraud and deception, and to prevent petitioners from using three proper names, evidence that other corporations than those allegedly entitled to exclusive use of the names used the names, did not indicate that stipulation entered into between parties was erroneous in stating that Commission had available witnesses who would testify that they had been or would be misled, induced, as a consequence of use of names to buy petitioner's products.

STIPULATIONS—CEASE AND DESIST ORDERS—WHETHER DISCREPANCIES—TRADE NAME USE—IF MISLEADING

Evidence supported order of Federal Trade Commission directing petitioners to cease and desist from using three proper names, to protect public against fraud and deception, even though statement in stipulation that names in question belonged exclusively to three corporations were wholly disregarded.

CORPORATE DISSOLUTION—WHETHER LIMITED CORPORATE EXISTENCE THEREAFTER—IN GENERAL

Under Illinois law, upon dissolution of a domestic corporation, however it may be effected, corporation will nevertheless be regarded as still existing for purpose of settling up its affairs and having its property applied for payment of its just debts.

CORPORATE DISSOLUTION—WHETHER LIMITED CORPORATE EXISTENCE THEREAFTER—AMENABILITY TO SUIT—INJUNCTIVE PROCEEDINGS AGAINST PROSPECTIVE ACTS

Under Illinois law, liability of a corporation for act performed by it prior to its dissolution is preserved for 2 years, but corporation is not subject to an injunction against act to be performed in the future, especially where act sought to be enjoined is in no way related to winding up of affairs of the corporation.

CEASE AND DESIST ORDERS—PARTIES—IF CORPORATIONS, SINCE DISSOLVED, INCLUDED

In action by petitioners to set aside cease and desist order issued by Federal Trade Commission in proceeding to prevent petitioners from using three proper names, where several of corporations which petitioners represented, had been dissolved under Illinois law, names of those corporations would be stricken from the Commission's order.

(The syllabus with substituted captions, is taken from 186 F. (2d) 810)

On petition to review and set aside order of Commission, order modified, and as so modified, approved, confirmed and ordered enforced.

Mr. Henry H. Koven, and *Mr. Howard R. Koven*, Chicago, Ill., for petitioners.

Mr. W. T. Kelley, General Counsel, *Mr. Donovan Divet*, Special Attorney, Federal Trade Commission, *Mr. James W. Cassedy*, Associate General Counsel, Washington, D. C., for respondent.

Before KERNER, DUFFY and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge:*

Petitioners seek to review and set aside a cease and desist order entered against them pursuant to a complaint charging them with unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, 15 U. S. C. A. 45. The Commission issued the complaint on February 4, 1941, after which this proceeding was consolidated for trial with another in which the respondents were jobbers who purchased for resale certain electric razors and cameras manufactured by [812] petitioners. Joint hearings were held from time to time until February 27, 1942, when petitioners and the attorneys for the Commission entered into a stipulation, whereby it was agreed that, subject to the approval of the Commission, the facts stated therein might be made a part of the record and "that upon such facts and upon the testimony and evidence already taken, the Commission might dispose of the proceeding. Between the date of signing the stipulation and its approval by the Commission, further hearings were held in the consolidated proceeding, at none of which petitioners were represented. The Commission, however, in making its findings, says that it did not rely upon the evidence adduced at these further hearings but considered only the stipulated facts, and such evidence as had been received prior to

the date of the stipulation. The Commission, on August 14, 1947, entered its cease and desist order, whereupon petitioners filed their petitions to set aside the order or, in the alternative, to reopen the proceeding for the taking of further testimony, both of which were denied.

Although petitioners broadly assert "that the order to cease and desist should be set aside in whole or in part," they have not attacked those paragraphs directing them to cease and desist from (1) falsely representing as the customary prices of their products prices in excess of those at which the products are ordinarily sold, (2) falsely representing that the prices at which their products are offered are special or reduced prices or are applicable for a limited time only, or (3) falsely representing that their products are guaranteed against defective workmanship and materials, but have confined their attack to those portions ordering them to cease and desist from (1) using the names "Elgin," "Remington," and "Underwood" on their products, and (2) representing as "candid-type" any cameras not equipped with special lenses and shutters or incapable of taking action pictures under unfavorable light conditions. Since the Commission has joined in the request that the court modify the order by striking those paragraphs relating to the representation of petitioners' cameras as "candid-type" cameras, the issue before this court is as to the validity of that portion of the order which directs that petitioners cease and desist from using the names "Elgin," "Remington," and "Underwood."

In support of their contention that the prohibition against their use of the three names should be set aside, petitioners, asserting that their use of the names has been long since discontinued, cite *Federal Trade Commission* v. *Civil Service Training Bureau*, 79 F. (2d) 113, 116 (CA–6) [21 F. T. C. 1197; 2 S. & D. 306, 309] in which the court held that "The commission is not authorized to issue a cease and desist order as to practices long discontinued, and as to which there is no reason to apprehend renewal. *L. B. Silver Co.* v. *Federal Trade Commission* (CCA) 292 Fed. 752 [6 F. T. C. 608; 1 S. & D. 327] cf. *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 445, 40 S. Ct. 293, 64 L. Ed. 343, 8 A. L. R. 1121." This court, in *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. (2d) 321 [38 F. T. C. 840; 4 S. & D. 117], in considering the effect of the cessation of an unfair practice, indicated that it also was of the opinion that the Commission should not ordinarily enter an order in cases where the unfair practice condemned in the order had been discontinued, but went on to say, at page 330: "On the other hand, *parties who refused to discontinue until proceedings are begun against them* and proof of their wrongdoing obtained, *occupy no position where they can demand a dismissal.* The *order to desist* deals with the future, and we think it is somewhat *a matter of sound discretion to be exercised wisely by the Commission* * * *. We are not

satisfied that the Commission abused that discretion in the instant case." [Emphasis supplied.] This language, when considered in conjunction with the decisions of this court which have flatly held that discontinuance of an unfair practice will not of itself necessarily bar issuance of a cease and desist order based thereon, *Fairyfoot Products* v. *Federal Trade Commission*, 80 F. (2d) 684, 686 [21 F. T. C. 1224; 2 S. & D. 330], or justify a court in refusing to enforce such order, *Corn Products Refining Co.* v. *Federal Trade Commission*, 144 F. (2d) 211, 220 [39 F. T. C. 664; 4 S. & D. 234], means, we think, that, in determining whether the Commission has abused its discretion in ordering a petitioner to **[813]** desist from an unfair practice which he has already halted, the court is concerned largely not with the period of time which has elapsed between the cessation and the entry of the order but with the time from the date of cessation to the date of issuance of the complaint.

It was stipulated, in the instant proceeding, that petitioners had used the name "Elgin" on their products for three months during the fall of 1939 and that they had manufactured electric razors marked "Underwood" and cameras marked "Remington," the latter having been made for the DeLuxe Products Co. and the word "Remington" placed thereon at that company's request.[1] The stipulation is silent as to the exact dates of use of the marks "Underwood" and "Remington," but petitioners, in their petition to set aside the Commission's order, averred that they had not been used "since entering into the stipulation as to the facts in February 1942 * * *." If these allegations are accepted as true, the result is that the use of two of the three names is not shown to have been discontinued until more than a year after issuance of the complaint, which does not, in the absence of other evidence, even tend to prove that the discontinuance was voluntary and most certainly does not, in view of the well-settled rule that the mere discontinuance of an unfair practice is of itself no bar to issuance of a cease and desist order based thereon, *Fairyfoot Products Co.* v. *Federal Trade Commission*, 80 F. (2d) 684, 686, (CA–7) [21 F. T. C. 1224; 2 S. & D. 330]; *Corn Products Refining Co.* v. *Federal Trade Commission*, 144 F. (2d) 211, 220 (CA–7) [39 F. T. C. 664; 4 S. & D. 234], warrant a holding that the Commission abused its discretion in entering the order or in declining to set it aside. *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. (2d) 321, 330 (CA–7) [38 F. T. C. 840; 4 S. & D. 117]. The improper use of the

[1] Petitioners' argument that this fact somehow absolves them of any responsibility for the use of the name "Remington" is patently without merit, for it is clearly established that one who places in the hands of another a means of consummating a fraud or competing unfairly in violation of the Federal Trade Commission Act is himself guilty of a violation of the Act. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483 [4 F. T. C. 610; 1 S. & D. 198]; *Marietta Mfg. Co.* v. *Federal Trade Commission*, 50 F. (2d) 641, 642 (CA–7) [15 F. T. C. 613; 2 S. & D. 129]; *Perloff* v. *Federal Trade Commission*, 150 F. (2d) 757, 759–760 (CA–3) [40 F. T. C. 878; 4 S. & D. 316].

names in the past was a stipulated fact. And though petitioners have asserted abandonment of the practice, they still contend in this court that they have a right to continue it. They express no intention to refrain from it; they make no promise to do so. Under these circumstances, the Commission was fully justified in believing that the claimed cessation of wrongful action was not voluntary but brought about by the Commission's proceeding and that, in view of petitioners' continued insistence that they might use each of the three names and the absence of any assertion or proof of intent not to renew their use and of any promise so to do, it was in the public interest to enjoin such use. With such exercise of discretion we may not interfere.

In petitioning the Commission to set aside its order or reopen the proceeding, petitioners urged that they should be released from the stipulation on which the order was based for the reason that "in violation of the terms of the stipulation * * * hearings were held in this cause subsequent to the date of the filing of said stipulation * * * at which hearings evidence adverse to the interests of these respondents was introduced * * *." Before this court, however, petitioners have taken a somewhat different position. Although they contend that holding hearings in the consolidated cause subsequent to the signing of the stipulation without notice to them constituted a denial of due process, they inconsistently complain that the Commission did not consider the evidence adduced at those hearings which, they say, indicated that a substantial number of the facts stipulated were not true, and urge that, for this reason, the stipulation and, of course, the cease and desist order based thereon, should be set aside by this court. The Commission, although denying that hearings were held in violation of the stipulation or without notice to petitioners, contends that, in any event, petitioners were not prejudiced thereby since none of the [814] evidence received at those hearings was considered in disposing of the proceeding against petitioners; it contends further that the evidence received at those hearings does not show that the facts stipulated are not true.

The express statement in the stipulation that the Commission might render its decision upon the facts stated therein "and upon the *testimony and evidence already taken* in this proceeding" [Emphasis supplied] would hardly seem to constitute an agreement that no more hearings were to be held but would rather indicate that it was contemplated that there would be more hearings but that, if the Commission approved the stipulation, the evidence taken at those hearings would not be considered in disposing of the instant proceeding. Certainly, it is obvious that additional hearings were necessarily held in the proceeding with which the instant proceeding had been consolidated, for the respondents in that proceeding were not parties to the stipulation. Such hearings had, in fact, been scheduled and peti-

tioners notified thereof prior to signing the stipulation. But, even assuming that petitioners had no notice of the hearings and that evidence adverse to their interests was received at those hearings, still there is no denial of due process shown, for there is, in the record, nothing to indicate that the Commission violated that provision of the stipulation by which it agreed that it would consider only the facts stipulated and the evidence already taken, in disposing of the case, and to argue that the Commission's adherence to its agreement with petitioners constituted a denial of due process to them is to take an obviously untenable position.[2]

There remains petitioners' contention that the evidence received in the companion proceeding subsequent to the signing of the stipulation indicated that a substantial number of the facts stipulated were untrue and required that the stipulation be set aside. The evidence on which they rely revealed that the names "Elgin," "Remington," and "Underwood" were used by companies other than the Elgin Watch Co. and the Remington and Underwood Typewriter Cos. This evidence, they say, indicates that the stipulation is incorrect in stating that the names in question are the exclusive property of the aforementioned companies.[3] Assuming arguendo that the evidence did show that the stipulation was erroneous in this respect, we cannot see that petitioners can be benefited thereby, for this is not an action for trade-mark violation but a proceeding to protect the public against fraud and deception, and the evidence taken in the companion proceeding did not disclose any right in petitioners to use the names "Elgin," "Remington," and "Underwood" in such a manner as to mislead the public into believing that petitioners' products were the products of the Elgin, Remington, or Underwood corporations. Nor does it indicate that the stipulation was erroneous in stating that the Commission had witnesses available who would testify that they had been or would be so misled, and induced, as a consequence thereof, to buy petitioners' products.[4] Thus, the Commission's order would have substantial support in the evidence even though the statements that the names in question belonged exclusively to Elgin, Remington, and Underwood were wholly disregarded.

[815] Petitioners, in their alternative petition to set aside the order or reopen the proceeding, for the first time directed the Commission's

[2] That the Commission did not consider any evidence taken at the subsequently held hearings in the consolidated cause is admitted by petitioners themselves and is, in fact, the premise upon which they base their contention that the Commission erred in failing to set aside the stipulation as patently untrue.

[3] Petitioners also state that this evidence accounts for the dismissal of the complaint against the respondents in the companion proceeding, but the dismissal order entered by the Commission in that proceeding clearly indicates that dismissal was predicated on the fact that the respondents had not manufactured or selected the trade names for the products referred to in the complaint or done any of the advertising referred to therein, but were merely jobbers who had purchased the products from the petitioners herein.

[4] The stipulation provided that the Commission might consider these statements and give to them the same credence as if the witnesses were called.

attention to the dissolution, late in 1943, of the corporate petitioners American Supercraft Corp. and Match King, Inc., also sometimes known by its trade name, Monrach Manufacturing Co., their dissolution having been accomplished through voluntary proceedings brought by the stockholders, officers and directors of the respective corporations. This disclosure was made in connection with petitioners' argument that their abandonment of the unfair practices against which the order had been issued made that order unnecessary and improper. Although we have rejected the contention that the order should have been set aside because of such abandonment, the fact that the corporations have been dissolved raises a question as to the propriety of the entry of the order against them.

The Commission argues that section 157.94, chapter 32, Illinois Revised Statutes, providing that "The dissolution of a corporation * * * shall not take away or impair any remedy available * * * against such corporation * * * for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within 2 years after the date of such dissolution," authorizes issuance of a cease and desist order against the dissolved corporations, but the cases interpreting that section and its predecessors are strikingly devoid of even the slightest suggestion that the provision that a dissolved corporation shall, for a limited time after dissolution, be held legally responsible for any *liability incurred prior to dissolution* can be extended so far.

In *Life Association of America* v. *Fassett*, 102 Ill. 315, the Illinois court considered at length the purpose and effect of a statutory provision extending the existence of a dissolved corporation for 2 years from the date of its dissolution. The court there observed, at page 323: "Upon the dissolution or civil death of a corporation, all its real estate, by the strict rule of the common law, reverts to the original owners or their heirs, and all its personal estate vests in the Crown, in England, and the State here, and all debts due to or from it are by operation of law extinguished. * * * With a view of mitigating the rigor of the common law with respect to the effects of a defunct corporation, the legislature of this and most, if not all, of the other States of the Union have, by appropriate legislative enactments, provided for a just and equitable distribution of their assets in cases of insolvency, or sudden dissolution from any cause, and our own act on the subject contains a provision which in express terms extends their corporate existence 2 years from the date of their dissolution, for such purpose." The court concluded, at page 324: "From these and other provisions of the statute it clearly appears that it is a part of the settled policy of the State, at least so far as domestic corporations are concerned, that upon their dissolution, however that may be effected, they shall nevertheless be regarded as still existing for the purpose of

settling up their affairs and having their property applied for the payment of their just debts * * *." The influence of this decision on subsequent Illinois cases is noted in the court's opinion in *Evans* v. *Illinois Surety Co.*, 298 Ill. 101, in which, after quoting at length from the *Fassett* case, the court stated, at page 108: "The doctrine of this opinion has never been modified or changed, and in some respects it has been specifically approved in several decisions. *St. Louis and Sandoval Coal Co.* v. *Sandoval Coal Co.*, 111 Ill. 32; *Singer* v. *Hutchinson*, 183 id. 606; *Eau Claire Canning Co.* v. *Western Brokerage Co.*, 213 id. 561; *Commercial Trust Co.* v. *Mallers*, *supra*; *Edwards* v. *Shillinger*, 245 Ill. 231."

Although the earlier Illinois statutes were perhaps more explicit in providing for the continued existence of a dissolved corporation for the purpose only of [816] winding up its affairs, it would seem quite evident, in the light of the Illinois cases construing such statutes and the public policy expressed therein, that the current provision does no more than preserve for a 2-year period, the corporation's liability for acts performed by it prior to its dissolution but does not make it subject to an injunction against acts to be performed in the future, especially where, as here, the acts sought to be enjoined are in no way related to the winding up of the corporate affairs and are, therefore (in view of the Supreme Court's statement, in *Chicago Title and Trust Co.* v. *Wilcox Bldg. Corp.*, 302 U. S. 120, 129, that "The only power left to the corporation * * * (after dissolution) * * * was to finish pending cases begun within 2 years after its dissolution. With that exception, its corporate powers were ended for all time and for all purposes"), beyond the dissolved corporation's power to perform. Such was the construction accorded the statute by the District Court in *Laning* v. *National Ribbon & Carbon Paper Mfg. Co.*, 40 F. Supp. 1005, the court stating, at page 1006, "It seems to me quite evident that the legislature intended that the decree dissolving the corporation should terminate its existence absolutely except for the purpose of enabling a creditor to maintain an action against it," and such has been the construction generally accorded statutes extending the existence of a corporation after dissolution, Fletcher Cyc. Corp., Perm. Ed. (1942 revised volume), section 8170. Thus it seems clear that the Commission, when the dissolution of the corporate petitioners was brought to its attention, should have amended its order by striking therefrom the names of the aforementioned corporate petitioners.

The order of the Commission is modified by striking therefrom paragraphs 1 (g) and 5 (f), as requested by the Commission, and by striking therefrom also the names of American Supercraft Corp. and Match King, Inc. In all other respects, and as so modified, the order is approved, confirmed, and order enforced.

FEDERAL TRADE COMMISSION v. RHODES PHARMACAL CO., INC., ET AL.[1]

No. 51 C 176—F. T. C. Docket 5691

(District Court for the Northern District of Illinois, Eastern Division. February 21, 1951)

Memorandum opinion and decision by Judge La Buy denying Commission's motion for preliminary injunction, made under section 13 of the Federal Trade Commission Act, restraining defendants from alleged false advertising of a medicinal product called Imdrin, on the ground that the court should not determine the questions of fact involved upon the verified pleadings and ex parte affidavits, and upon the additional consideration that an early determination of the case on the merits by the Commission may be anticipated.

On motion for preliminary injunction, injunction denied and suit dismissed.

Mr. Frank E. Gettleman and *Mr. Arthur Gettleman* of Chicago, Ill., and *Mr. James B. Goding* of Washington, D. C., for respondents.

Mr. James W. Cassedy, Assistant General Counsel, and *Mr. Joseph Callaway*, both of Washington, D. C., for Federal Trade Commission.

MEMORANDUM

Plaintiff, Federal Trade Commission, has filed its complaint herein and prays for the issuance of a preliminary injunction restraining defendants from alleged false advertising of a product called Imdrin. Said complaint for injunction is made pursuant to section 53 (15 U. S. C. A.) reading as follows:

(a) Whenever the Commission has reason to believe—

(1) That any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) That the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission may by any of its attorneys designated by it for such purpose bring suit in a district court of the United States * * * to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. * * *

The allegations of the complaint, supported by affidavits, if undenied would justify the issuance of the injunction prayed for, but the de-

[1] Not reported in Federal Reporter. Decision reversed by the Court of Apeals, July 5, 1951, 191 F. (2d) 744.

fendants have filed their verified answer denying all the material allegations of the complaint and submitted counter-affidavits in support of their answer. In *Woodside* v. *Tonopah & G. R. Co.* (C. C. Nev., 1911), 184 Fed. 359, 360, the court was confronted with the same condition of the pleadings and in resolving the problem said as follows:

> The defendants have answered as they are required to do under the statute, and have fully met and denied all of the equities of the complaints. The answers are specific and under oath. In equity practice this is usually deemed sufficient to dissolve a restraining order and prevent the issuance of an injunction pendente lite; that is to say, where the equities of the bill are denied fully and explicitly by a sufficient answer under oath, the court usually denies an injunction pendente lite, for the reason that such an answer is deemed to overcome the equities of the bill.

It appears, therefore, where the equities of the complaint are fully and explicitly met by denial under oath, a preliminary injunction will not be granted. See also *Behre* v. *Anchor Insurance Co. of N. Y.* (C. C. A. 2, 1924), 297 Fed. 986; *Decorative Stone Co.* v. *Building Trade Council* (C. A. 2, 1926), 13 F. (2d) 123; *Horsman* v. *Kaufman* (C. C. A. 2, 1922), 286 Fed. 372.

In the present case both the plaintiffs and defendants have submitted affidavits in support of their verified pleadings. Such a procedure is permissible and there being no opportunity to see the witnesses, the contents of all affidavits are entitled to equal weight. This principle was adhered to by the Court of Appeals in the Third Circuit in *Warner Bros. Pictures* v. *Gittone* (C. C. A. 3, 1940), 110 F. (2d) 292, wherein it said:

> Furthermore we think that a preliminary injunction should not have been granted upon evidence largely in the form of affidavits as was done in the case before us. The evidence was conflicting and the trial judge, in order to enable him to resolve these conflicts, should have been afforded the opportunity of testing the credibility of the witnesses by having the benefit of their cross-examination and, if possible, their presence in court. In the absence of such opportunity the affidavits of each side were entitled to equal weight. * * *

See also *General Talking Pictures Corp.* v. *Stanley Co.* (D. C. Del., 1930), 42 F. (2d) 904; *United States* v. *Zukauckas* (D. C. Pa., 1923), 293 Fed. 756; *United States* v. *Wierton Steel Co.* (D. C. Del., 1934), 7 F. Supp. 255; Cyc. Fed. Pro., Vol. 13, page 176; 43 C. J. S. page 907.

The court has read the verified pleadings and the affidavits and is of the opinion that the verified complaint and answer present debatable questions which are not resolved by the supporting affidavits. In such a situation, where the pleadings present controverted questions, and where the affidavits are in conflict and equally balanced as to proofs,

a court should not issue a preliminary injunction, unless special circumstances warrant issuance to preclude irreparable injury to the plaintiff and without substantial damage to the defendant pending a final hearing on the merits. *Lare* v. *Harper & Bros.* (C. C. A. 3, 1898), 86 Fed. 481, 483; *United States* v. *Zukauckas*, supra.

The instant case is controlled by the above announced rule, that is, that a preliminary injunction should never be granted unless it appears clearly that petitioner has sustained its burden. To resolve technical controversial facts solely on pleadings and conflicting affidavits does not satisfy the ends of justice, and where the plaintiffs contentions in fact and in law are seriously disputed, an injunction will not issue. *Lare* v. *Harper & Bros.*, supra; *United States* v. *Zukauckas*, supra; *General Talking Pictures Corp. v. Stanley*, supra; *Popular Mechanics* v. *Fawcett Publications* (D. C. Del., 1923), 1 F. Supp. 292; *Decorative Stone* v. *Building Trade Council*, supra.

The court arrives as the question of whether there exist special circumstances in the instant case to warrant issuance of the injunction in order to prevent irreparable injury. The Commission filed its complaint in this court on January 30, 1951, in connection with Commission proceedings which had commenced on August 17, 1949. Attorney for the defendants has filed an affidavit alleging that following the filing of defendant's answer on September 8, 1949, numerous conversations were had with the attorney for the Commission wherein defendant requested an early trial, but that despite these requests there was no hearing until September 27, 1950. The affiant further avers that defendants were ready to proceed to trial at all times and so notified the Commission and the delay was due solely to the Commission. In support of these allegations are attached copies of correspondence had with the Commission. Hearings were finally commenced on September 27, 1950. The Commission has concluded its case and the court is advised that in a matter of 6 weeks, the case will be concluded. It appears, therefore, that if diligently prosecuted, there will be an early determination of the merits.

The court is of the opinion that there are serious debatable questions presented and the court should not determine these questions of fact upon the verified pleadings and ex parte affidavits. Since the plaintiff has failed to maintain its burden, the court will decline to issue an injunction. Therefore, the motion for preliminary injunction is denied and the suit is dismissed. This memorandum shall constitute the findings of fact and conclusions of law of the court.

An order in accord with the above has this day been entered.

STEELCO STAINLESS STEEL, INC. ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 10178—F. T. C. Docket 5530

(Court of Appeals, Seventh Circuit, Mar. 6, 1951)

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—PRESUMPTION

The findings by the Federal Trade Commission are presumed to be supported by substantial evidence, and a court is not required to search the record for undesig-[694]nated errors claimed in an omnibus attack upon the findings.

METHODS, ACTS AND PRACTICES—DISPARAGEMENT OF COMPETITORS AND THEIR PRODUCTS—PRODUCTS—WHETHER TRADE UNDULY DIVERTED FROM COMPETITORS TO DISPARAGER

In action to review and set aside a cease and desist order issued by the Federal Trade Commission, evidence sustained finding of Commission that as a result of manufacturer's disparagement of competitors' products, trade had been unduly diverted to manufacturer from competitors.

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—TESTIMONY—CREDIBILITY AND WEIGHT

The credibility and weight to be attached to witnesses' testimony before the Federal Trade Commission has been lodged with the Commission as the trier of the facts.

METHODS, ACTS, AND PRACTICES—DISPARAGEMENT OF COMPETITORS AND THEIR PRODUCTS—PRODUCTS—SALESMEN OF DISPARAGER—STATUS

In action to review and set aside a cease and desist order issued by the Federal Trade Commission, evidence sustained finding of Commission that salesmen in making disparaging remarks about competitors' products were acting in the capacity of employees and agents of manufacturer and manufacturer was bound by and responsible for their activities.

CORPORATIONS—ACTS OF—IN GENERAL

A corporation can act and speak only through its authorized officers and agents.

CEASE AND DESIST ORDERS—PARTIES—CORPORATE ACTS—IF INDIVIDUAL JOINED, MAIN STOCKHOLDER IN FAMILY CORPORATION

Where individual petitioner had management, direction and complete control over activities of corporation and was the main stockholder with only his son-in-law and daughter as other stockholders, Federal Trade Commission was justified in issuing cease and desist order against individual petitioner as well as against corporation.

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[1] Reported in 187 F. (2d) 693. For case before Commission, see 46 F. T. C. 643.

APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—OPINION—IF IN CONFLICT WITH OTHER TESTIMONY

Opinion evidence need not be rejected merely because it is in conflict with other testimony of the same character, since the weight to be attached to such testimony is for the trier of fact.

(The syllabus, with substituted captions, is taken from 187 F. (2d) 693)

On petition to review order of Commission, petition dismissed.

Mr. John A. Nash, *Mr. Arthur H. Schwab* and *Mr. Earl M. Friesenecker*, all of Chicago, Ill., for petitioners.

Mr. W. T. Kelley, General Counsel, *Mr. James W. Cassedy*, Associate General Counsel, and *Mr. John W. Carter, Jr.*, Special Counsel, Federal Trade Commission, all of Washington, D. C., for respondent.

Before MAJOR, *Chief Judge*, and DUFFY and FINNEGAN, *Circuit Judges*.

MAJOR, *Chief Judge*.

This is a petition by Steelco Stainless Steel, Inc., and Clyde C. Carr, individually and as an officer of the corporation, to review and set aside a cease and desist order issued by the Federal Trade Commission (respondent) on March 15, 1950. The complaint issued March 9, 1948, charging petitioners with unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act, 15 U. S. C. A. Sec. 45. Petitioners were engaged in the sale and distribution of stainless steel cooking utensils in interstate commerce in competition with others selling various types of cooking utensils. The complaint as well as the findings are voluminous and supply material for an opinion almost without end, if we were looking for an excuse to indulge in such time-consuming activity, but in the view which we take, no useful purpose could be served in so doing. And particularly is this so in light of the disclosure that petitioners by their answer to the complaint and by stipulation entered into at the trial have conceded a major portion of the allegations of the complaint. It follows that findings made in accordance therewith and those portions of the order predicated upon such findings are not open to attack.

More than that, while petitioners in their brief and argument in this court make the general charge that the findings are not supported by substantial evidence, they fail to point out the particular findings under attack, many of which, as already noted, [695] rest upon conceded facts. It has been held that findings are presumed to be supported by substantial evidence, *Federal Trade Commission* v. *A. McLean & Son*, 84 F. (2d) 910, 911 [22 F. T. C. 1149, 2 S. & D. 347],

certiorari denied 299 U. S. 590, and that a court is not required to search the record for undesignated errors claimed in an omnibus attack upon the findings, *North Whittier Heights Citrus Assn.* v. *National Labor Relations Board*, 109 F. (2d) 76, 83, certiorari denied 310 U. S. 632.

Notwithstanding what we have said, it is discernible from petitioners' brief that their attack upon the substantiality of the findings may be categorized as follows: (1) that petitioners' salesmen made disparaging statements relative to competitive products, which petitioners in their brief state is the most important and material issue; (2) that petitioner Clyde C. Carr was improperly included in the order in his individual capacity; (3) that the order is based upon conflicting opinion testimony, and (4) that the findings and order are based upon unjustified inferences and unwarranted interpretation of the meaning of representations made and immaterial representations which it is asserted were no more than so-called "puffing" statements.

With the issues thus narrowed, we return to a brief statement of the factual situation pertinent thereto. The complaint alleged that petitioners caused their products, stainless steel cooking utensils, to be sold and offered for sale through sales agents who conducted, under petitioners' direction, demonstrations in the use of the products, exhibiting charts and distributing pamphlets and various other printed matter accompanied by sales talks taken from sales manuals supplied by petitioners, and that by this method, manner and means petitioners disseminated false, misleading and deceptive statements and representations as to the characteristics and nature of the products and the effectiveness and result upon health to be obtained from the use thereof in the cooking and preparation of food; and, as to the vital need of various named organs and tissues of the human body for certain designated materials and vitamins, and the effect thereof on the structure and function of such organs and tissues. The complaint goes into much detail describing the false and misleading representations thus made and sets forth various pamphlets and circulars issued by the petitioners. Because of their length we shall not attempt to set forth these exhibits in detail. It is sufficient to note that they list many and perhaps all of the minerals essential to the functions and structure of the various organs and tissues of the human body, together with the effect which they are designed to have thereon. Typical of the representations thus made is that sulphur purifies and tones the human system and intensifies feeling and emotions; that phosphorus nourishes the brain cells, builds power of thought and stimulates the growth of the hair; that calcium gives vitality, endurance, heals wounds, and counteracts acid; that magnesium relaxes the nerves, refreshes the human system, prevents and relieves constipation; that potassium is a liver activator, makes tissues elastic, muscles supple,

creates grace, beauty, and a good disposition. Contained in one of said exhibits is a representation that vitamin A affords resistance to disease and is effective in preventing and relieving anemia, pellagra and gallstones; that vitamin B prevents and relieves nervous disease and paralysis; that vitamin C imparts strength and endurance and prevents and relieves muscular disease and loss of weight, and so on. In another exhibit is a picturization of the human body in connection with which there appear statements associating various tissues and organs with certain specified minerals and vitamins. That such representations were false is not disputed, but it is claimed they were not deceptive.

The complaint alleged that for the purpose of inducing the purchase of their products petitioners made false and disparaging statements and representations of cooking utensils sold by their competitors, such representations and statements being to the effect that consumption of food prepared or kept in aluminum utensils, if eaten, would cause cancer, stomach trouble, anemia, blood poisoning, and various other ailments, afflictions, and diseases detrimental to the [696] health of the user, that the preparation of food in such utensils would cause formation of poisons, and that by reason of such false and disparaging statements the public was induced to purchase large quantities of petitioners' products and, as a result, trade had been unlawfully diverted to petitioners from their competitors.

On the issue of the disparagement of competitive products, the Commission found, "* * * over a substantial number of years, over a representative area, and in a substantial number of instances a number of respondents' salesmen, in the course of their demonstration and selling talks, represented to prospective purchasers that cooking food in aluminum ware would cause, in the consumer of the food, cancer, ulcers, bad health, decayed teeth, indigestion, and poisoning, bacterial and metallic; that minerals and vitamins essential to health were lost by cooking therein; that their use was bad for children and pregnant women; that aluminum ware retained an odor and destroyed the color of food," and that "The effect of these representations was to frighten some of those to whom they were made into discarding their currently used cooking utensils and buying respondents' products and persuading others to do likewise." It was found that these representations were false and deceptive in that cooking in aluminum utensils did not have the effect, produce the results, or cause the diseases ascribed to them. And the Commission found, "As a result of the disparagement of competitors' products, trade has been unfairly diverted to the respondents from their competitors, whereby substantial injury has been, and is being, done by respondents to their competitors in commerce among the States of the United States and the District of Columbia."

Petitioners attack this finding relative to disparagement mainly upon two grounds: (1) that the testimony is so lacking in probative value as not to constitute substantial evidence, and (2) in any event, petitioners' salesmen were acting in the capacity of independent contractors rather than agents and that petitioners are not responsible for their statements. The Commission offered some 24 housewives as witnesses on this disparagement issue, and in varying degree their testimony amply supports the finding. It is true, as argued by petitioners and as pointed out by the Trial Examiner, that little, if any, weight should be attached to the testimony of some of such witnesses for various reasons. However, determination of the credibility and weight to be attached to their testimony has been lodged with the Commission as the trier of the facts. More than that, their testimony is quite convincing that petitioners' salesmen made the representations found by the Commission. We are not impressed with the contention that the testimony of such witnesses is not substantial merely because it relates to a comparatively few of petitioners' salesmen. Especially is this so when such testimony is evaluated in connection with the false, misleading, and deceptive pamphlets and literature which admittedly were prepared and placed in the hands of the salesmen by petitioners. It may be true that there is nothing in such pamphlets or literature directly suggestive of disparagement of competitive products, but it certainly was suggestive in that petitioners' salesmen were authorized to sell petitioners' products on other than a truthful and honest basis. It is hardly conceivable that such pamphlets and literature could have been supplied for any other purpose, and it is a weak argument on the part of petitioners that its salesmen went further in their unfair and deceptive tactics than was suggested by petitioners themselves. And it is of little benefit to petitioners that they instructed their salesmen to sell their products on the merits without disparagement of competitive products.

The Commission found, "In the sale of their products, respondents enter into contracts, called franchises, with salesmen, designated as dealers, and furnish the latter with sales manuals, instruction books, advertising matter, pamphlets, leaflets, charts, circulars, order books, chattel mortgages for deferred-payment sales, and sample outfits of respondents' products. Such agents have authority to receive the sales price of respondents' products, to receive deposits on deferred payment sales, to evaluate and allow trade-in allowances on used [697] cooking utensils and to conduct demonstrations of cooking with respondents' utensils in the homes of prospects, giving lectures and sales talks in the course thereof. Such salesmen, in most instances, devote their full time to respondents and do not sell other merchandise. These salesmen do not purchase respondents' products for resale to the consumer but sell them on behalf of respondents. Such salesmen

are agents or employees of respondents and are not independent contractors or independent dealers. Respondents are fully responsible for such salesmen's acts and statements made in connection with the sale or offering for sale of their products and germane thereto."

No direct attack is made upon this finding, but nonetheless cases are cited in support of the theory that the salesmen were independent contractors or, at any rate, sustain a relationship with petitioners by which the latter are not responsible for their activities. The authorities cited are of no aid to petitioners' contention. We think it is hardly open to question but that the salesmen were acting in the capacity of employees and agents of petitioners and that petitioners are bound by and responsible for their activities.

The Commission found, "Respondent Clyde C. Carr is president of, and the majority stockholder in, the corporate respondent, and has been such since he organized the corporation. The only other officers and stockholders are his son-in-law and daughter, who, together with him constitute the board of directors. By virtue of stock ownership, officership, and active direction, the policies, activities, and practices of the corporate respondent are his."

Notwithstanding this undisputed finding, it is argued that petitioner Carr in his individual capacity should not be included in the order under attack. The record unmistakably discloses that the management, direction, and activities of the corporation were those of Carr. A corporation can act or speak only through its authorized officers and agents. In the instant case it was Carr alone, and it is not discernible either how or why his activities as a person should be separated or distinguished from those of the corporation. In our view, he as an individual occupies precisely the same position as does the corporation. To think contrary means that an individual as the sole manager of and responsible for the activities of a corporation can escape liability on the flimsy pretext that he was merely acting on behalf of the corporation and not as an individual. We think he is a proper party to the cease and desist order and approve the Commission's action in this respect. Cf. *Federal Trade Commission* v. *Standard Education Society et al.*, 302 U. S. 112, 120 [25 F. T. C. 1715; 2 S. & D. 429]; *Sebrone Co. et al.* v. *Federal Trade Commission*, 135 F. (2d) 676, 678 [36 F. T. C. 1142; 3 S. & D. 570].

Petitioners contend that conflicting opinion testimony is insufficient to support adverse findings against them. We know of no rule which requires the rejection of proper opinion testimony merely because it is in conflict with other testimony of the same character. The weight to be attached to such testimony, the same as any other kind of testimony, is for the trier of the facts and we know of no reason against its utilization as the basis for a finding. More than that, petitioners fail to specify which of the findings they would have us reject because

based upon such testimony. Likewise without merit is the argument that the Commission indulged in unjustified inferences and unwarranted interpretations which it has ascribed to petitioners' activities, particularly the statements contained in the pamphlets and literature which were applied to their salesmen. In fact, we think that the inferences thus drawn were not only reasonable but inescapable. Neither are we impressed with the suggestion that representations relied upon can be excused on the basis that they are only "puffing," as that expression is sometimes used. It seems plain that the representations were made in order to induce the purchase of petitioners' products, and those contained in printed matter as well as the false statements by the salesmen were made with that end in view. Statements made for the purpose of deceiving prospective purchasers and particularly those designed to consummate the sale of products by [698] fright cannot properly be characterized as mere "puffing."

An examination of the record is convincing that other questions raised by petitioners are without merit and need not be discussed. No reason is discernible why the order complained of should not be enforced.

The petition to review is dismissed, and a decree will be entered affirming the Commission's order to cease and desist and commanding obeyance and compliance by petitioners.

FOLDS ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 10233—F. T. C. Docket 5332

(Court of Appeals, Seventh Circuit. Mar. 23, 1951)

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—REVIEW—APPELLATE DUTY—AS LIMITED TO RECORD AS A WHOLE, INCLUDING EXAMINER'S REPORT

It is the Federal Trade Commission which has ultimate responsibility of finding facts and it is findings of Commission that Court of Appeals is authorized to review, but its duty is to ascertain whether on record as a whole there is substantial evidence to support findings of Commission and record includes examiner's report.

METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT

On petition for review of an order to cease and desist entered by Federal Trade Commission, evidence did not sustain Commission's finding that petitioners made representations that liquid sold by them was an effective treatment for pimples.

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[1] Reported in 187 F. (2d) 658. For case before Commission, see 47 F. T. C. 898.

APPELLATE PROCEDURE AND PROCEEDINGS—ORDERS OF COMMISSION—APPELLATE POWER—MODIFICATION

Under statute giving Court of Appeals power not only to affirm or reverse but also to modify orders of Federal Trade Commission, court has power to modify the remedy.

APPELLATE PROCEDURE AND PROCEEDINGS—ORDERS OF COMMISSION—EVIDENCE—MODIFICATION TO CONFORM TO

Where petitioners did not represent that their product was an effective treatment for pimples but did improperly advertise that product would cause pimples to disappear overnight, cease and desist order of Federal Trade Commission would be modified so as to prohibit such representation.

(The syllabus with substituted captions, is taken from 187 F. (2d) 658)

On petition to review order of Commission, order modified and affirmed and enforcement, as modified, ordered.

Mr. Frank E. Gettleman and *Mr. Edward Brodkey*, of Chicago, Ill., for petitioners.

Mr. W. T. Kelley, General Counsel, *Mr. James W. Cassedy*, Assistant General Counsel, *Mr. Donovan Divet*, Special Attorney, Federal Trade Commission, all of Washington, D. C., for respondent.

Before MAJOR, *Chief Judge*, and KERNER and DUFFY, *Circuit Judges*.

[659] DUFFY, *Circuit Judge*.

Petitioners ask us to review an order of the Federal Trade Commission dated June 6, 1950, requiring petitioners to cease and desist from disseminating any advertisement which represents directly or by implication that a medicinal product called Kleerex will cause pimples to disappear or constitutes an effective treatment for pimples.

A typical advertisement of petitioners' product follows:

"Yes, it's true, there is a safe harmless medicated liquid called Kleerex that dries up pimples overnight. Those who followed simple directions and applied Kleerex upon retiring were amazingly surprised when they found their pimples had disappeared. These users enthusiastically praise Kleerex and claim they are no longer embarrassed and are now happy with their clear complexions.

"Many (users) report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion."

In the complaint the Commission charged that by the use of said statements and others of like import, petitioners have described the therapeutic properties of Kleerex and represented that it was an *effective treatment* for pimples and that these statements were grossly exaggerated, false, and misleading. The gravamen of the complaint was that petitioners represent that Kleerex is an effective treatment for pimples.

The evidence disclosed that pimples are a low inflammatory lesion of the skin, caused by a specific germ, and that they range in size from scarcely visible bumps to the proportion of boils, and usually are surrounded by an area of redness. There also was testimony that the primary treatment of pimples is a thorough washing of the face or affected parts with soap and water, although ultraviolet rays and vaccines are occasionally used.

Dr. Scott was the only witness who testified upon behalf of the Commission. He received his medical degree in 1940, served a year's interneship, then 10 months as an assistant in a Marine Hospital in Baltimore, and 9 months as medical officer on a Coast Guard cutter. From February 1943 to October 1944 he was assistant on the medical service at the Marine Hospital in Chicago. For a period of about 2 years before he testified herein he held the position of clinical director and chief of the medical service at that hospital. Dr. Scott had not seen the bottle of Kleerex used as an exhibit until about 15 minutes before the hearing commenced. He had never used Kleerex or conducted any tests or experiments with it. He did testify, however, that for some time prior to the hearing he knew the formula of Kleerex.

The active ingredients of Kleerex are prepared calamine, spirits of camphor, resorcin, and distilled extract of witch hazel. Milton Folds, a registered pharmacist and one of the copartners of the Kleerex Co., and Professor Ocen, who teaches pharmacy at the University of Illinois, and Dr. Scott all testified as to the properties of the ingredients of Kleerex. It is without dispute that calamine is composed largely of zinc oxide, which when placed on the skin has a drying action, combined with an antiseptic and antipruritic (relief from itching) action, and is pink in color; that spirits of camphor has an astringent action on the skin and is also antipruritic; that resorcin, in the concentration of 1 to 2 percent used in the Kleerex formula, is antiseptic, antipruritic, and analgesic (pain relieving); and that witch hazel is mildly antiseptic.

It was stipulated that if five named persons of varying ages and representing both sexes were called as witnesses, each would testify that he or she had been afflicted with pimples, and had used Kleerex in accordance with the printed directions accompanying it, that after using Kleerex he or she received relief from itching and accompanying pain, that the colored covering of Kleerex concealed their blemishes, and that their pimples disappeared, but not overnight.

The directions for the use of Kleerex were: "Just before retiring, wash your face with a good soap and warm water [660] * * * Dip the brush in the Kleerex and apply to the affected parts. After the first coat is thoroughly dry, apply the second coat. Do this just before retiring. Leave Kleerex on overnight. It is greaseless and stainless. * * * Follow this procedure every night, and we know

that you are going to be pleasantly surprised with the results you will obtain. * * *"

Dr. Scott's testimony was given in Chicago on September 25, 1946. The trial examiner closed the record on November 4, 1946, and filed his recommended decision and basis therefor on April 4, 1947. He found that Kleerex will, if used as directed over a period of time, dry up and remove pimples, but would not do so overnight, that the Commission's charge that petitioners' implied representation that Kleerex is an effective treatment for pimples is misleading, deceptive, and false, was not sustained by the record. He recommended that a cease and desist order be entered against the advertising that Kleerex would remove pimples overnight, but otherwise recommended that the complaint be dismissed.

On May 8, 1947, counsel for the Commission moved to set aside the recommended decision of the trial examiner and to take additional evidence. On October 30, 1947, the Commission ordered the proceedings opened and a hearing was held at Fredericksburg, Va., on May 25, 1948. The only witness at this hearing was Dr. Scott, and he expressed his opinion that Kleerex is not an effective treatment for pimples. The trial examiner sustained an objection to his answer as being the expression of an opinion going to the ultimate issue of the case. On March 28, 1949, the Commission reversed this ruling of the trial examiner. Nevertheless, on May 23, 1949, the trial examiner, after reviewing the evidence adduced on both hearings, reaffirmed his previous findings and recommended decision. He emphasized that the additional evidence had not changed the factual situation which demonstrated that Kleerex would, if used as directed, and for a sufficient length of time, cause pimples to dry up, the blemishes being temporarily concealed by the pink residue of the solution. On June 6, 1950, the Commission, refusing to follow the recommended decision, entered the cease and desist order hereinbefore described.

The Commission found that the ingredients of Kleerex were mildly astringent, antiseptic, antipruritic, and analgesic in nature; that in the proportions present in Kleerex they have a tendency to dry up surface lesions, to decrease the number of organisms on the surface of the skin, and to relieve pain and itching; that Kleerex may be applied in such manner as to leave a pink-colored residue sufficient to mask small pimples from view, but that it is not effective in concealing severe inflammation. Based upon Dr. Scott's testimony, the Commission concluded that Kleerex was not an effective treatment for pimples. The Commission did not charge, nor make a finding, that the use of Kleerex was injurious to the skin or to the person using it.

In their brief counsel for the Commission state the findings of the trial examiner are of no interest to this court, implying, we assume,

that we are not to give them any consideration. We do not agree with that statement, although we recognize that it is the Commission which has the ultimate responsibility of finding the facts and that it is the findings of the Commission that we are authorized to review.

Our duty is to ascertain whether on the record as a whole there is substantial evidence to support the findings of the Commission.[1] In a very recent case involving the findings of the Labor Board (*Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, decided Feb. 26, 1951), the Supreme Court said: "* * * Surely an examiner's report is as much a part of the record as the complaint or the testimony. * * *"

Also:

"It is therefore difficult to escape the conclusion that the plain language of the statutes directs a reviewing court to determine the substantiality of evidence on the record including the examiner's report. The conclusion is confirmed by the indications in the legislative history that en[661]hancement of the status and function of the trial examiner was one of the important purposes of the movement for administrative reform."

And further: "* * * Nothing suggests that reviewing courts should not give to the examiner's report such probative force as it intrinsically commands. * * *"

The court also said:

"We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. * * *"[2]

The real basis for the Commission's complaint was that petitioners represented that Kleerex was an effective treatment for pimples. No such representation was ever made, but the Commission purported to find in the advertisements an implied representation to that effect, and 2 years after Dr. Scott had first testified, and a year and a half

[1] Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. 1001, et seq.

[2] Although in the *Universal Camera* case, *supra*, the court was considering Labor Board findings and order, the same rule is applicable to findings of the Federal Trade Commission. The court there said: "It would be mischievous word-playing to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. * * * And so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act."

after the record had been closed, the Commission brought Dr. Scott from Chicago to Fredericksburg, Va., to give opinion evidence that Kleerex was not an effective treatment for pimples. We do not think that the Commission's finding that petitioners made such a representation is supported by substantial evidence. The action of the Commission is subject to the same criticism which this court heretofore made in *International Parts Corp.* v. *F. T. C.*, 133 F. (2d) 883 [36 F. T. C. 1102; 3 S. & D. 535], where the manufacturer of an automobile muffler advertised that the metallic finish prevented rust and corrosion. The Commission there made a finding that the use of the word "prevent" implied "permanency." This court there vacated the Commission's cease-and-desist order.

It should be kept in mind that the conclusion of the Commission was reached in spite of its express findings that the ingredients of Kleerex in the proportions present in that product have a tendency to dry up surface lesions, to decrease the number of organisms on the surface of the skin and to relieve pain and itching. There was no claim whatsoever in this case that Kleerex would injure the skin of any person using it. The only legitimate criticism of petitioners' advertisements is that they were too broad in scope. They should not have advertised that Kleerex would cause pimples to disappear overnight, or to imply that users would have a clear complexion the next day after using same. The trial examiner made a very sensible and sound recommendation based upon the entire record. It is difficult to understand why the Commission did not follow his recommendation, instead of making a mountain out of a pimple as they have attempted to do in this case.

The statute gives this court power not only to affirm or reverse but also to modify the orders of the Commission. 15 U. S. C. A. 45 (c) and (d). This power to modify extends to the remedy. *F. T. C.* v. *Royal Milling Co. et al.*, 288 U. S. 212 [17 F. T. C. 664; 2 S. & D. 217]; *Carter Products, Inc., et al.* v. *F. T. C.*, 186 F. (2d) 821, [47 F. T. C. 1788] (Decided Feb. 2, 1951.)

The cease and desist order will be modified by the elimination of the last clause in Order (1) thereof, to wit, "That said products will cause pimples to disappear or constitutes an effective treatment for [662] pimples," and by the insertion in lieu thereof of the following clause, "That application of Kleerex will cause pimples to disappear overnight or that the user thereof will have a clear complexion the day following its use at night."

As modified herein, the cease and desist order is affirmed, and the enforcement thereof, as modified, is ordered.

INDEPENDENT DIRECTORY CORP. ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 158, Docket 21769—F. T. C. Docket 5486.

(Court of Appeals, Second Circuit. Apr. 16, 1951)

APPELLATE PROCEDURE AND PROCEEDINGS—FINDINGS OF COMMISSION—IF SUBSTANTIAL SUPPORTING EVIDENCE—APPELLATE LIMITATION

Where findings of the Federal Trade Commission that publishers were guilty of deceptive commercial practice had the support of substantial evidence, the findings were binding on appeal to the Court of Appeals.

COMMISSION—POWER OF—ILLEGAL TRADE PRACTICES—REMEDY—DETERMINATION OF

Where an illegal trade practice has been proved and found, the Federal Trade Commission is empowered to determine the appropriate remedy.

APPELLATE PROCEDURE AND PROCEEDINGS—ILLEGAL TRADE PRACTICES—REMEDY—COMMISSION DETERMINATION—APPELLATE LIMITATION

The means chosen by the Federal Trade Commission for abatement of an illegal trade practice will not be disturbed unless the discretion of the Commission has been clearly abused.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—SECURING ORDERS FALSELY OR MISLEADINGLY—DECEPTIVE ASSOCIATION WITH, OF CUSTOMER'S PRIOR RELATED TRANSACTIONS WITH OTHERS

Where publishers' practice of soliciting advertising by mail by sending to a prospective customer one of publishers' order blanks to which was pasted one of the prospective customers' advertisements, clipped from some directory or other publication with which publishers had no connection, was shown to have conveyed to some prospective customers the idea that it was merely submission of proof of advertisement already ordered or to be renewed, so that they signed order without knowing that it was an order, Federal Trade Commission properly entered a cease and desist order.

PROCEEDINGS BEFORE COMMISSION—SUBPOENAS—REQUESTS FOR—DENIAL OF—WHETHER ABUSE OF DISCRETION

In hearing before Federal Trade Commission against publishers charged with an illegal trade practice in connection with its solicitation of advertising by mail, court did not abuse its discretion in denying subpoenas duces tecum to require third parties to produce all contracts for listings and advertisements in their telephone directories and all records of dealings with 17 witnesses, who had testified that they were misled by publishers' solicitation of advertising, and subpoenas ad testificandum requiring the attendance of the 17 witnesses to establish the unreliability of their testimony previously given.

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[1] Reported in 188 F. (2d) 468. For case before the Commission, see 47 F. T. C. 13.

PROCEEDINGS BEFORE COMMISSION—SUBPOENAS—REQUESTS FOR—DENIAL OF—NATURE OF COMMISSION'S POWER

The Federal Trade Commission is not bound to issue subpoenas duces tecum on request as a ministerial act and then to entertain a motion to quash or modify, and it has a quasi judicial discretion to deny the application.

PROCEEDINGS BEFORE COMMISSION—EVIDENCE—EXCLUSION OF—SECURING ORDERS FALSELY OR MISLEADINGLY—DECEPTIVE ASSOCIATION WITH, OF CUSTOMER'S PRIOR RELATED TRANSACTIONS WITH OTHERS—THAT PUBLISHER-RESPONDENT HAD SATISFIED CUSTOMERS

In proceeding before the Federal Trade Commission against publishers [469] charged with illegal trade practice in their solicitation of advertising by mail, commission properly excluded evidence that publishers had many satisfied customers, who renewed their advertisements, since fact that publishers had satisfied customers was entirely irrelevant.

PROCEEDINGS BEFORE COMMISSION—EVIDENCE—EXCLUSION OF—SECURING ORDERS FALSELY OR MISLEADINGLY—DECEPTIVE ASSOCIATION WITH, OF CUSTOMER'S PRIOR RELATED TRANSACTIONS WITH OTHERS—USE OF SAME METHOD BY OTHERS

In proceeding before the Federal Trade Commission against publishers charged with illegal trade practice in their solicitation of advertising by mail, evidence that other publishers used same method of solicitation was properly excluded, since evidence as to what others did was irrelevant.

(The syllabus with substituted captions, is taken from 188 F. (2d) 468)

On petition to review an order of the Commission, order affirmed and enforced.

Hays, St. John, Abramson & Schulman, of New York City; *Mr. John Schulman, Mr. Osmond K. Fraenkel, Mr. Jacob Steinfeld*, and *Mr. Irwin Karp*, all of New York City, of counsel.

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for American Tel. & Tel. Co., New York Tel. Co., New England Tel. & Tel. Co. and Southern Bell Tel. & Tel Co.

Hughes, Hubbard & Ewing, of New York City, for Reuben H. Donnelley Corp.

Mr. W. T. Kelley, general counsel, *Mr. James W. Cassedy*, assistant general counsel, *Mr. Alan B. Hobbes*, attorney, all of Washington, D. C., for Federal Trade Commission.

Before AUGUSTUS N. HAND, CHASE, and CLARK, *Circuit Judges*.

CHASE, *Circuit Judge:*

The petitioners, who are two corporations which publish directories and two individuals who are officers in such corporations, are seeking to have set aside a cease and desist order of the Federal Trade Commission.

The order required the petitioners to stop a practice they had been using in soliciting advertising by mail. This practice was to send to a prospective customer one of the petitioners' order blanks to which

was pasted one of the prospect's advertisements clipped from some directory or other publication with which the petitioners had no connection. The printed matter on the order blank included statements that the submitted advertisement was from another publication, that the solicitor was an independent directory publication, and that it had nothing to do with any telephone company. The Commission found, following the recommendation of its trial examiner, that these written statements did not prevent the recipients of such solicitations from being deceived into thinking that they were merely approving the proof of, or renewing, an advertisement they had ordered in another publication and consequently signing the petitioners' order blank without being aware that they were signing an order for any additional advertising.

The petitioners attack the order for the following reasons: They say that the evidence did not support the findings that the method of solicitation by mail used by the petitioners was deceptive, since no one who read their order blank would be misled; that even if anyone was deceived the order eliminating the method entirely was too drastic in that some other sufficient means of warning careless signers could have been devised; that they were erroneously denied subpoenas for certain evidence; and that certain offered evidence was erroneously excluded.

The Commission found on adequately supporting evidence the following pertinent facts. The corporate petitioners publish directories which list the names, addresses, and telephone numbers of business concerns. Such concerns are classified in respect to the products manufactured or sold or the services performed, and their advertisements are published with their listing. The directory of the Independent Directory Corp. of Illinois is circulated throughout the Midwest and that of the Independent Directory Corp. of New York throughout the Middle Atlantic and Southeastern States. Each edition of a directory is guaranteed to have a minimum distribution of 50,000 copies, most of which are placed free of charge although a few are sold. The individual petitioners control both corporations and the principal income of the corporations comes [470] from the sale of listings and advertising. These sales are solicited both by salesmen and by mail, the latter accounting for perhaps thirty percent of the total receipts. The petitioners do a substantial business with their old customers but continually solicit new ones by the so-called "clip and paste" method outlined above. Often they use clippings of advertisements from the familiar "Red Books" published by The Reuben H. Donnelley Corp. in the New York and Chicago areas, and from the also familiar "yellow pages" in local telephone directories of other communities. They attach such a clipping to an order blank of their own which has a blank space provided for that purpose and

send it to the advertiser. The latter is apt to jump to the conclusion from the appearance of the order blank so made up that it is the submission of a proof of an advertisement already ordered, or to be renewed, and to sign the blank in the belief that such proof is being approved. A fair number of such signers so testified as to the actual deceptive effect of the practice upon them. It was also the custom of the petitioners not to send bills for the advertisements for some weeks after the blanks were signed and usually not until the directory had gone to press. When signers who were billed protested that they had not signed an order or had not knowingly signed one, sometimes the orders were cancelled but the more common practice was to send each protestant a photostatic copy of the order and to insist upon payment. Then sometimes compromises were made with those who still refused to pay and sometimes collection suits were brought.

The Commission's findings of the deceptive commercial practice, having the support of substantial evidence, are binding here. *Excelsior Laboratory, Inc.* v. *Federal Trade Commission*, 2 Cir., 171 F. (2d) 484 [45 F. T. C. 1087, 4 S. & D. 792]. It was reasonably to be expected that a busy business man might glance at any previously published advertisement of his business and take it for granted that the publisher of it had submitted a proof for a renewal, or that he might believe it was a previously ordered advertisement whether he specifically remembered it as such. Such a misconception is more probable in the case of the careless business man who is also entitled to protection from deception. *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112 [25 F. T. C. 1715, 2 S. & D. 429]. *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 2 Cir., 143 F. (2d) 676, 679–80 [39 F. T. C. 657, 4 S. & D. 226].

It may be that some more eye-arresting manner might be devised to make sure that the information now actually on the order blank showing its true nature would be brought home to the solicited person. We may assume that there is, and still be bound to give effect to the order made. It is well established that where an illegal trade practice has been proved and found the Commission is empowered to determine the appropriate remedy. *Hillman Periodicals, Inc.*, v. *Federal Trade Commission*, 2 Cir. 174 F. (2d) 122 [45 F. T. C. 1103]. The means chosen for its abatement will not be disturbed unless the Commission's discretion has been clearly abused, and such an abuse has not been made to appear.

It follows, therefore, that the order should be enforced, provided there was no reversible error by denial of the right of the petitioners to be heard, *i. e.*, if the order was made after hearing them as due process of law requires.

The subpoenas *duces tecum* which were requested and denied required the New York Telephone Co. and the Reuben H. Donnelley

Corp. to produce all contracts for listings and advertisements in any of their telephone directories for the years 1940–48, inclusive, and all copy, proof, correspondence, and records of telephone conversations with regard to 17 of the witnesses who testified and their business concerns. The subpoenas *ad testificandum* would have required the attendance of these 17 witnesses to testify for the petitioners "to establish the unreliability of their testimony" previously given. What this boiled down to was an attempt to show that the general make-up and appearance of the order blanks sent to these witnesses by the petitioners was so different from that of forms used by the two [471] companies above named that the testimony of such witnesses that they thought they signed something one of those companies had sent could not be believed.

The lack of error in the denial of a request for such subpoenas needs little demonstration. In the first place it was but an amplification of the fact that an attentive, careful person could have found enough on the order blank as presented to show just what it was. But, even so, the test as to the likelihood of deception in these cases is not what would be apparent from comparison. *Pillsbury* v. *Pillsbury-Washburn Flour Mills Co.*, 7 Cir., 64 Fed. 841; *A. Y. McDonald & Morrison Mfg. Co.* v. *H. Meuller Mfg. Co.*, 8 Cir., 183 Fed. 972. This is a situation, as the evidence demonstrates, where the order blanks are often given only a casual glance, and what was said in another, but kindred, situation in *Coca-Cola Co.* v. *Chero-Cola Co.*, App. D. C., 273 Fed. 755, applies: "He acts quickly. He is governed by a general glance. The law does not require more of him." However, regardless of any doubtful relevancy, the subpoenas were properly denied. They were so sweeping as to be well considered unreasonable. And the Federal Trade Commission is not bound to issue subpoenas *duces tecum* upon request as a ministerial act and then to entertain a motion to quash or to modify. It has a quasi-judicial discretion to deny the application. *Hale* v. *Henkel*, 201 U. S. 43, 76–77; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 306 [7 F. T. C. 599; 1 S. & D. 341]; *E. B. Muller & Co.* v. *Federal Trade Commission*, 6 Cir., 142 F. (2d) 511 [38 F. T. C. 868; 4 S. & D. 151]. Without the papers subpoenaed there was no reason, so far as we can ascertain, for the reappearance of the 17 witnesses who had previously testified.

The evidence excluded was proof that the petitioners had many satisfied customers who renewed their listings and advertisements and that other publishers solicited advertisements by sending to prospective advertisers clippings of advertisements such persons had in other publications. The fact that petitioners had satisfied customers was entirely irrelevant. They cannot be excused for the deceptive practices here shown and found, and be insulated from action by the Com-

mission in respect to them, by showing that others, even in large numbers, were satisfied with the treatment petitioners accorded them. And the evidence as to what others did was equally irrelevant. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483 [4 F. T. C. 610; 1 S. & D. 198]; *Federal Trade Commission* v. *Standard Education Society*, 2 Cir., 86 F. (2d) 692, rev. on other grounds, 302 U. S. 112 [25 F. T. C. 1715; 2 S. & D. 429].

Petition for review dismissed; order affirmed and enforced.

CONCRETE MATERIALS CORP. v. FEDERAL TRADE COMMISSION [1]

No. 10090—F. T. C. Docket 5474

(Court of Appeals, Seventh Circuit. May 25, 1951)

PROCEEDINGS BEFORE COMMISSION—DUE PROCESS—EVIDENCE—MISREPRESENTATION—QUALITIES OR PROPERTIES OF PRODUCT—WHETHER TESTIMONY OF GOVERNMENT TECHNICIANS PROPERLY CONSIDERED, IF RESPONDENT NOT REPRESENTED BY COUNSEL

In hearing to determine whether company should cease and desist making certain representations as to effectiveness of its products as waterproofing agents, Federal Trade Commission properly considered [360] testimony of technicians of Bureau of Standards, though company was not represented by an attorney to cross-examine the technicians.

PROCEEDINGS BEFORE COMMISSION—METHODS, ACTS, AND PRACTICES—QUALITIES OR PROPERTIES OF PRODUCT—COMMISSION'S BURDEN

In hearing to determine whether company should cease and desist making certain representations as to effectiveness of its products as waterproofing agents, it was incumbent on Federal Trade Commission to prove its charges by competent, relevant, and substantial evidence.

ADMINISTRATIVE AGENCIES—EVIDENCE—RULES OF—APPLICABILITY

Administrative agencies, such as the Federal Trade Commission, are not restricted by rigid rules of evidence.

PROCEEDINGS BEFORE COMMISSION—EVIDENCE—WEIGHT

The weight to be given evidence introduced before the Federal Trade Commission is for the determination of the commission.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—ADVERTISING FALSELY OR MISLEADINGLY—QUALITIES OR PROPERTIES OF PRODUCT—WATERPROOFING

Evidence authorized order of Federal Trade Commission requiring company to cease and desist making certain representations as to the effectiveness of its products as waterproofing agents.

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[1] Reported in 189 F. (2d) 359. For case before Commission, see 46 F. T. C. 152.

(The syllabus with substituted captions is taken from 189 F. (2d) 359)

On petition to review order of the Commission, enforcement ordered.

Mr. George F. Callaghan, *Mr. John J. Toohey*, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, General Counsel, *Mr. James W. Cassedy*, Assoc. Gen. Counsel, and *Mr. Donovan Divet*, Sp. Atty., Federal Trade Commission, all of Washington, D. C., for respondent.

BEFORE DUFFY, FINNEGAN and LINDLEY, *Circuit Judges.*

DUFFY, *Circuit Judge.*

Petitioner asks us to review and set aside an order of the Federal Trade Commission issued November 9, 1949, requiring that petitioner cease and desist making certain representations as to the effectiveness of its products as waterproofing agents. Petitioner manufactured and distributed in interstate commerce products known as Comco 2, Iron Waterproofing; Comco 4, Waterproofing Paste; and Comco 6, Transparent Waterproofing. For the purpose of inducing the purchase of its products petitioner circulated advertising folders, pamphlets and circular letters through the mail. Typical of the statements contained therein are the following:

> You can now permanently stop all leaks and seepage in concrete, brick, stone and tile; also waterproof below water-level basements and pits under pressure. Comco No. 2, our own waterproofing will do the job. This is a special chemical mixture of iron and other chemicals that, when mixed with water only, and brushed into the cracks of walls and floors needing repair will permanently waterproof and stop leaks under all conditions no matter how severe.
>
> For after-construction waterproofing problems in foundations. Permanently waterproofs concrete, brick, stone and tile walls and floors from either inside or outside. For all classes of construction where a positive waterproof condition is necessary. Successful under all conditions no matter how severe.

And:

> Comco 6, Comco Transparent Waterproofing. A transparent water repellant liquid that effectively seals and waterproofs concrete, brick, stone, stucco, plaster or masonry surfaces. Makes surface permanently nonabsorbent.

And:

> Comco 4, Comco waterproofing paste for new construction work. Produces a close-meshed concrete that increases strength and permanently waterproofs. Makes concrete flow easily around reinforcing.

After due notice the first hearing was had in Chicago, Ill. The two principal officers of petitioner appeared without counsel, and one of them testified. The Commission's attorney there notified petitioner's officers that a subsequent hearing would be held in Washington, D. C., for [361] the purpose of receiving the testimony of three technicians of the National Bureau of Standards as to certain tests which had been made on samples of petitioner's products. Prior

to the hearing in Washington the Commission's trial attorney on two occasions suggested to petitioner's officers that an attorney be engaged to represent petitioner. Although timely notified of the time and place, no one appeared for petitioner at the Washington hearing. During the course of that hearing a letter was received from petitioner requesting a postponement, but the hearing proceeded. However, a subsequent hearing was scheduled for Chicago. Petitioner appeared at the second Chicago hearing with counsel, who moved to strike certain testimony received at the Washington hearing, but did not request an opportunity to cross-examine the witnesses who testified at the Washington hearing. Petitioner then submitted the testimony of its secretary-treasurer, and also that of a chemist of a testing laboratory. The latter testified as to the qualitative and quantitative analyses of petitioner's products, but did not testify as to the lasting qualities of the products when applied as directed.

The trial examiner submitted a Recommended Decision. Thereafter the Commission filed findings of fact and conclusions of law, which were in accord with the recommendations of the trial examiner, and entered the cease and desist order.

Petitioner claims that the Commission's order is not supported by substantial evidence. Its principal contention here is that the tests conducted by the Bureau of Standards were made out of the presence of and without notice to the petitioner, and that the testimony of the Bureau of Standards technicians was largely hearsay testimony. Petitioner argues that such testimony should not have been received by the trial examiner or considered by the Commission. Petitioner also contends that because the order as entered is broad in its sweep, it offers no guide for compliance.

The finding as to Comco 2, Iron Waterproofing is supported by substantial evidence. Cyrus Fishburn, a well qualified expert who has been with the Bureau of Standards since 1928, testified as to the results of experiments he conducted with Comco 2. Although he applied three applications to a specimen brick wall, each in accordance with directions, nevertheless water seeped through at several points. The permeability tests given by him simulated an exposure of the wall to wind-driven rain. Fishburn testified, "The Comco 2 cannot be considered to be a satisfactory waterproofing for permeable brick masonry walls when applied as directed to the inside, unexposed face."

The finding as to Comco 6, Transparent Waterproofing is not supported by evidence quite so unequivocal, as Comco 6 was not tested. But, relying upon a previous report prepared by him, based upon tests in 1943 of another product "containing essentially the same ingredients as Comco 6," Fishburn testified, "The material will not waterproof highly permeable masonry surfaces," but admitted that it would tend to seal the pores in those surfaces. He questioned the permanency of

the effectiveness of the pore-sealing, stating, "It may last 5 or 6 years and be effective for that time as a pore sealer." He laid considerable emphasis on the fact that it would not seal openings larger than the pore space.

The Commission found that through the advertising statements heretofore stated as to Comco 6, petitioner represented that its product "effectively seals and waterproofs concrete, brick, stone, stucco, plaster and masonry surfaces, and makes said surfaces upon which it is applied permanently nonabsorbent to water," and that such representations were false.

Although Fishburn did not test Comco 6, he possessed the education and practical experience which qualified him to judge the waterproofing qualities of Comco 6 by tests which he had previously made of products of essentially the same ingredients compounded in the same proportion. Furthermore, the Commission itself has had wide experience in the masonry waterproofing [362] industry.[1] We conclude that substantial evidence supports the Commission's findings as to Comco 6.

The testimony as to Comco 4, Waterproofing Paste was given by Leonard Bean and Thomas Kelly, employees of the Bureau of Standards. Bean, a chemist, personally had not made a test of Comco 4 but testified from the notes of a subordinate who was no longer with the Bureau and who made such a test under his direction. He limited his testimony to the chemical analysis of the product, stating that it was a fatty acid type water repellent agent. He disclaimed qualifications to testify as to its waterproofing qualities. Kelly, a well qualified materials engineer, testified that he was familiar with the report of the Bureau of Standards prepared by his predecessor, Hornibrook, who was no longer with the Bureau. Kelly referred to Comco 4 as a "type of waterproofing which we have tested at the Bureau of Standards." He testified further that from his general scientific knowledge, Comco 4 does not make concrete waterproof in the sense of a permanent condition, and that under pressure it does not have any appreciable waterproofing effect. The Hornibrook report (exhibit 16) contained several comments which were favorable to petitioner, as follows:

> These materials are generally capable of effecting small reductions in absorption by capillarity, and because of the increased workability imparted to the concrete, may indirectly contribute to the uniformity of the concrete in place (that is, result in a greater freedom from honeycomb and similar defects), and accordingly improve the impermeability. Such improvements in impermeability and absorption as effected by the use of this material may be expected to be of reasonable permanence.

[1] After many conferences and months of investigation, the Commission promulgated on August 31, 1946, trade practice rules for the masonry waterproofing industry. Fed. Reg., 16 Code of Federal Regulations (1949 Ed.), p. 481. Rule 2 covers "Deceptive Use of Representations 'Waterproof,' 'Waterproofing,' Etc."

Petitioner advertised Comco 4 for new construction work and claimed it "produces a close-meshed concrete that increases strength and permanently waterproofs. Makes concrete flow easily around reinforcing." It is apparent that the only words subject to criticism are, "permanently waterproofs." Petitioner objects because the Commission's order prohibits it from advertising Comco 4 as suitable for waterproofing without disclosing that its use will not render surfaces below grade impermeable to water under pressure. Petitioner states that it never advertised Comco 4 would render surfaces below grade impermeable to water under pressure. However, it did represent for new construction that Comco 4 would permanently waterproof, and we think the Commission was justified in insisting petitioner make clear that it would not be satisfactory for that purpose for surfaces below grade subject to water under pressure.

Petitioner's contention that the Commission should not have considered any of the testimony of the technicians of the Bureau of Standards cannot be sustained. True, it is incumbent on the Commission to prove its charges by competent, relevant and substantial evidence. *Carlay Co et al.* v. *Federal Trade Comm.*, 7 Cir., 153 F. (2d) 493 [42 F. T. C. 897; 4 S. & D. 470]. But administrative agencies, such as the Federal Trade Commission, have never been restricted by the rigid rules of evidence. *Federal Trade Comm.* v. *Cement Institute et al.*, 333 U. S. 683, 705 [44 F. T. C. 1460; 4 S. & D. 676.]. Moreover, the petitioner's objections go largely to the weight of the evidence, and it is well established that the weight to be given is a matter for the determination of the Commission. *Corn Products Refining Co. et al.* v. *Federal Trade Comm.*, 324 U. S. 726 [40 F. T. C. 892; 4 S. & D. 331]. Perhaps it would have been better for petitioner to have been represented by an attorney at the Washington hearing so that the witnesses from the Bureau of Standards might have been cross-examined, but it was no fault of the Commission that this was not the case.

As to the scope of the cease and desist order, our consideration must be whether the Commission has made "an **[363]** allowable judgment in its choice of the remedy." *Jacob Siegel Co.* v. *Federal Trade Comm.*, 327 U. S. 608, 612 [42 F. T. C. 902; 4 S. & D. 476]. We think the Commission was clearly supported by substantial and adequate findings to conclude that the practices of petitioner were to the prejudice of the public and constituted unfair and deceptive acts in commerce, and that the form of the Commission's order meets the test of an allowable judgment in the choice of the remedy.

Enforcement of the cease and desist order of the Commission is ordered.

FEDERAL TRADE COMMISSION v. STANDARD BRANDS, INC.[1]

No. 73, Docket 21742—F. T. C. Docket 2986

(Court of Appeals, Second Circuit. Mar. 30, 1951. On Rehearing June 4, 1951)

APPELLATE PROCEDURE AND PROCEEDINGS—ENFORCEMENT OF ORDERS—CLAYTON ACT—VIOLATIONS—COMMISSION HEARINGS ON—FINDINGS—STATUS BEFORE COURT, IF AFFIRMANCE ORDER NOT FIRST OBTAINED

Where Federal Trade Commission, without first obtaining a court affirmance of order directing seller to cease and desist from discriminating in price between different buyers of bakers' yeast, held a hearing to determine whether seller had violated order, and at such hearing seller had full opportunity to offer evidence and in all respects to be fully heard, Court of Appeals on affirming the order, could, in exercise of its discretion, treat the Commission's findings as if it were the master of the Court of Appeals, and could pass on question whether seller had violated the order.

APPELLATE PROCEDURE AND PROCEEDINGS—ENFORCEMENT OF ORDERS—CLAYTON ACT—VIOLATIONS—COMPLIANCE REPORT—DISCRIMINATION IN PRICE—WHERE DIFFERENT SCALE ADOPTED BY SELLER-RESPONDENT, SUBSEQUENT TO COMMISSION ACCEPTANCE OF SUCH REPORT—BURDEN OF JUSTIFICATION IN PROCEEDING FOR DECREE

Where seller in compliance with order of Federal Trade Commission filed report of scale of prices with stated prices of stated quantities, and Commission accepted report as compliance, but thereafter seller adopted a new scale which included new brackets of quantities and prices involving new relations between customers, seller had burden in proceeding by commission for decree affirming and enforcing order, of proving that new differentials were based on due allowances for differences in cost of manufacture, sale or delivery resulting from different methods or quantities in which product was sold to buyers.

APPELLATE PROCEDURE AND PROCEEDINGS—ENFORCEMENT OF ORDERS—CLAYTON ACT—VIOLATION—COMPLIANCE REPORT—DISCRIMINATING IN PRICE—WHERE DIFFERENT SCALE ADOPTED BY SELLER-RESPONDENT SUBSEQUENT TO COMMISSION ACCEPTANCE OF REPORT—IF DIFFERENT COMPETITION FROM THAT THERETOFORE INVOLVED, AFFECTED

Where seller in compliance with order of Federal Trade Commission filed report of scale of prices with stated prices of stated quantities and Commission accepted report as compliance, but thereafter seller adopted a new scale which included new brackets of quantities and prices involving new relations between customers, fact that new scale substantially lessened competition between seller and some of its competitors, did not prove a violation of Commission's order, which was based on complaint charging that sales unlawfully affected competition among seller's customers.

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[1] Reported in 189 F. (2d) 510. For case before Commission, see 29 F. T. C. 121, 30 F. T. C. 1117, and 46 F. T. C. 1485.

APPELLATE PROCEDURE AND PROCEEDINGS—ENFORCEMENT OF ORDERS—CLAYTON ACT—VIOLATION—DISCRIMINATING IN PRICE—IF PROHIBITED DISCRIMINATION BETWEEN BUYERS, DISCONTINUED, AFTER 7 MONTHS' VIOLATION

Finding of Federal Trade Commission, on basis of ample evidence, that for 7 months seller violated clause of order directing seller to cease and desist from discriminating in price between different buyers, justified enforcement of that clause by Court of Appeals, though violation had ceased and thereafter no violation occurred.

METHODS, ACTS, AND PRACTICES—DISCRIMINATING IN PRICE—JUSTIFICATIONS—COMPETITIVE PRICES—IF COMPETITOR'S PRICE UNDERCUT BY OTHERWISE DISCRIMINATORY PRICE OF SELLER-RESPONDENT

Fact that competitor of seller was selling bakers' yeast to a customer at a given quantity at a stated price, which was less than seller's price for same quantity, did not authorize seller under the Clayton Act to sell that customer a smaller quantity at a price below its competitor's price for that smaller quantity and also below its own scale price for that smaller quantity, though the price was not below its competitor's or its own scale price for the large quantity sold to that customer by the competitor.

METHODS, ACTS, AND PRACTICES—DISCRIMINATING IN PRICE—JUSTIFICATIONS—BURDEN OF ESTABLISHING

Where Federal Trade Commission proves discrimination by seller without more, Commission makes out a prima facie case, and seller then has burden of rebut[511]ting the prima facie case by showing justification.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—DISCRIMINATING IN PRICE—SALE AT "OFF-SCALE" PRICES

Clause of order of Federal Trade Commission that seller cease and desist from discriminating in price between different buyers of bakers' yeast by selling yeast to certain buyers at "off-scale" prices, was sufficient and was not required to be modified to include additional language.

(The syllabus with substituted captions, is taken from 189 F. (2d) 510.)

On application by Commission for decree affirming and enforcing desist order against respondents: Order modified and, as modified, affirmed, and in part enforced.

Mr. W. Crosby Roper, Jr., *Mr. Charles F. Barber*, Washington, D. C., (*Mr. Newell W. Ellison*, of counsel), *Mr. Henry Weigl* of New York, *Covington, Burling, O'Brian & Shorb*, of counsel, for respondents.

Mr. W. T. Kelley, General Counsel, *Mr. John W. Carter, Jr.*, (*Mr. James W. Cassedy*, of counsel) all of Washington, D. C., for Federal Trade Commission.

Before L. HAND, SWAN, and FRANK, *Circuit Judges*.

The facts are stated in the reports and orders of the Federal Trade Commission, reported in 29 F. T. C. Decisions 121, 30 F. T. C. Decisions 117, and 46 F. T. C. Decisions 1485.

The Commission's order of June 15, 1939, as amended by the order of May 1, 1940, ordered Standard Brands to "cease and desist from discriminating in price between different purchasers of bakers' yeast of like grade and quality, either directly or indirectly:

"(1) By selling said bakers' yeast at different prices based upon the total quantity or volume purchased or required monthly by the respective purchasers, as set forth in schedule A of paragraph 10 of said findings of fact;

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

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

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

FRANK, *Circuit Judge:*

1. *Affirmance of the order.*—Respondent makes no substantial argument against affirmance except as to clause [512] (4). That clause does not contain the minimum qualifying language required by the statute; i. e., "where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which any of [respondent's] customers are engaged, or to injure, destroy, or prevent competition with any of its customers." The omission seems to have been inadvertent. The Commission's findings, sufficiently supported by the evidence, sustain that clause of the order if read to include that qualification. The Commission's complaint is broad enough to cover that clause so qualified. Standard Brands, in the long interval between the entry of the order and the present proceedings in this court, did not seek to have the order judicially reviewed. In the circumstances, we direct that clause 4 be modified to include the omitted language; and, in that revised form, we affirm that clause, and accordingly, the entire order.

2. *Enforcement of the order.*—The Commission, without first obtaining a court affirmance of the order, held a hearing to determine whether respondent had violated the order. At this hearing, respondent had full opportunity, of which it availed itself, to offer evidence and in all respects to be fully heard. On the basis of this hearing, the Commission made findings to the effect that respondent had violated clauses 2, 3, and 4 of the order; and the Commission, on the basis of the hearing record and its findings, asks this court, if it affirms the order, to enforce those clauses.

Standard Brands argues that this procedure for enforcement is fatally defective because an affirmance of the Commission's order must precede any effort to determine whether it has been violated. We think the cases cited by respondent [1] do not so hold. True, it has been customary for a court, upon affirming such an order, to appoint a master to make an inquiry as to violation, and, usually, to name the Commission as master. But there is no reason why, now that we have affirmed the order, we may not, in the exercise of our discretion, treat the Commission's findings as if the Commission had been appointed our master, since in the Commission hearings, respondent was accorded all its procedural privileges. (If, in future cases, a respondent, believing the Commission's order invalid, wishes to avoid what it may consider the needless expense of such a hearing if the order is invalid,

[1] *F. T. C.* v. *Herzog*, 150 F. (2d) 450 (C. A. 2); [41 F. T. C. 426, 43 F. T. C. 1175; 4 S. & D. 399, 582]. *F. T. C.* v. *Balme*, 23 F. (2d) 615 (C. A. 2; [11 F. T. C. 717; 1 S. & D. 666]. *F. T. C.* v. *Paramount, Famous Laskey Corp.*, 57 F. (2d) 152 (C. A. 2); [16 F. T. C. 660; 2 S. & D. 161]. *F. T. C.* v. *Baltimore Paint & Color Works*, 41 F. (2d) 474 (C. A. 4); [14 F. T. C. 475; 2 S. & D. 75]. *F. T. C.* v. *Standard Education Society*, 14 F. (2d) 947 (C. A. 7); [10 F. T. C. 751; 1 S. & D. 567]. *F. T. C.* v. *Morrissey*, 47 F. (2d) 101 (C. A. 7); [14 F. T. C. 710; 2 S. & D. 113].

such a respondent can promptly test the order's validity by a petition to review the order.) We turn, then, to the question whether Standard Brands has violated the order.

(a) Violation of the second clause of the order.—Standard Brands on May 1, 1940, in compliance with the order, filed report showing a scale of prices with stated prices of stated quantities. The Commission promptly accepted this report as compliance. Subsequently, in 1945, Standard Brands adopted a new scale.

We think that the new scale included new brackets of quantities and prices which involved new relations between customers; that Standard Brands therefore had the burden of proving that the new differentials were (responsive to changed conditions or otherwise) based on "due allowances for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities" in which Standard Brands bakers' yeast was sold to purchasers; that no such proof was made; and that the evidence sustains the Commission's findings of substantial lessening of competition between Standard Brands and some of its competitors.

However, we think that all this did not prove a violation of the Commission's order. That order was issued after a proceeding in which the Commission's complaint charged that Standard Brands' sales unlawfully affected competition among Standard Brands' customers. The com[513]plaint did not charge, nor did the Commission (in connection with its order) find, that Standard Brands' activities had had any unlawful effects upon its own competitors.

Had the evidence in the initial proceedings shown injury to such competitors, perhaps—in line with current doctrines concerning variance in civil and criminal cases—the Commission might properly have amended its complaint to conform to the proof, giving respondent an adjournment (if one was requested and there was surprise) to offer further evidence. This liberal doctrine has of recent years been applied to proceedings of several administrative agencies;[2] but the older cases seem not to have applied it to proceedings of the Federal Trade Commission.[3] Whether it should be applied to this Commission's proceedings, we need not here consider, although in another context, we have recently held that doctrines applicable to other agencies should apply to this Commission.[4] For the Commission did not amend the complaint, nor, in the initial proceedings, did it make any findings concerning injury to Standard Brands' competitors. The

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[2] See, *e. g., Kuhn* v. *CAB,* 183 F. (2d) 839 (App. D. C.); *N. L. R. B.* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333, 349; *N. L. R. B.* v. *Greater New York Br. Corp.,* 147 F. (2d) 337; *N. L. R. B.* v. *Grieder Mach. T. D. Co.,* 142 F. (2d) 163, 166 (C. A. 6).

[3] *Federal Trade Commission* v. *Gratz,* 253 U. S. 421, 427 [2 F. T. C. 564; 1 S. & D. 69]; *Gimbel Bros.* v. *Federal Trade Commission,* 116 F. (2d) 578, 579 (C. A. 2). [32 F. T. C. 1820; 3 S. & D. 314.]

[4] *Herzfeld* v. *Federal Trade Commission,* 140 F. (2d) 207, 209 (C. A. 2); [38 F. T. C. 833; 4 S. & D. 109].

order, therefore, must be read in the light of the complaint and the findings accompanying the order. Consequently, the findings made, in connection with the violation hearings, of reduction of competition with Standard Brands' competitors do not show a violation of clause (2) of the order.

Perhaps this conclusion may seem somewhat formalistic. For the Commission may at once begin a new proceeding pursuant to a complaint charging violations of the Act as to Standard Brands' competitors and, in such a proceeding, the Commission may properly consider the evidence heretofore taken in the violation hearing. Nevertheless, this seeming formalism is desirable in fairness to respondent since, in such a new proceeding, it may be able to offer evidence proving that its actions were not unlawful vis-à-vis its own competitors.

(b) Violation of the third clause of the order.—The Commission found, on the basis of ample evidence, that for some seven months in 1945 Standard Brands violated this clause. This violation ceased, and thereafter no such violation occurred. Nevertheless, the finding justifies enforcement.[5]

(c) Violation of the fourth clause of the order as modified.—Standard Brands argues that section 2 of the Clayton Act [6] permits sales at prices below its scale where those sales were made "in good faith to meet an equally low price of a competitor." What Standard Brands did may be described in general terms as follows: A competitor of Standard Brands was selling to a customer a given quantity at a stated price which was less than Standard Brands' price for that same quantity. In order to obtain some of this customer's business, Standard Brands would sell that customer a smaller quantity at a price below its competitor's price for that smaller quantity and also below its own scale price for that smaller quantity (but not below its competitor's or its own scale price for the larger quantity sold to that customer by the competitor).[7] [515] We think that the argument ad-

[5] *F. T. C.* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260; *Edison Co.* v. *Labor Board*, 305 U. S. 197, 230; *Gelb* v. *F. T. C.*, 144 F. (2d) 580, 581 (C. A. 2) [39 F. T. C. 694; 4 S. & D. 271]; *N. L. R. B.* v. *Sewell Mfg. Co.*, 172 F. (2d) 459, 461 (C. A. 5); *Pueblo Gas & Fuel Co.* v. *N. L. R. B.*, 118 F. (2d) 304, 307 (C. A. 10).

[6] 15 U. S. C. § 13.

[7] The Commission's findings in this respect read as follows:

"Paragraph Seven: (a) The record contains details of the accounts of 242 [514] customers of respondent which were introduced as evidence tending to show violations of paragraph 4 of the order to cease and desist. It appears that in 15 of these sales were made in accordance with the scale prices, while in 226 sales were made at prices which were below those established by respondent's scale of prices in existence between January 2, 1945, and March 1946 for the volume of monthly purchases by respective customers involved. Sales made below scale prices fall in two categories: (1) those where the customer purchased a portion of his monthly requirements from respondent and a portion from competitors and the prices granted him by respondent was based upon the customer's total purchases in accordance with the respondent's established scale of prices just as though the customer's entire monthly purchases had been made from respondent, and (2) those in which the customer purchased his total monthly requirements from respondent but was granted a price below that required by respondent's established price for his particular monthly volume

vanced to justify this practice answers itself. An "equally low price of a competitor" means an equally low price for a given quantity.[8]

Clause 4 is modified. We affirm the order as thus modified. Enforcement of clause 2 is denied. We grant enforcement of clause 3 and of clause 4 as modified. [On rehearing]

Respondent's petition is denied. The Commission's petition is partly granted for the following reason: In *Moss, Inc.* v. *Federal Trade Commission*, 148 F. (2d) 378, 379 (C. A. 2) [40 F. T. C. 885, 42 F. T. C. 921; 4 S. & D. 324, 495], we held that, under 15 U. S. C. § 13 (b), when the Commission proves discrimination without more, it makes out a

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of purchases. The majority of sales made by respondent at prices below its established scale of prices falls in the first category.

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

"However, said instructions were initially deficient in two respects and therefore ineffective in preventing sales at prices which deviated from respondent's scale prices only to the extent of meeting equally low prices of competitors. Respondent failed to advise said representatives as to what low price of a competitor was to be met or to define said low price and permitted them to consider the entire monthly requirements of a customer to be used as a basis for determining the price to be quoted and used in meeting the undefined low price of a competitor regardless of the monthly quantity actually purchased from respondent. The record discloses numerous instances in which respondent quoted and sold bakers' yeast not only at prices below its established scale prices but below the prices of competitors, particularly when the monthly volume purchased by the customer is taken into consideration and used as a basis for determining price. In such instances the low price of a competitor was for a monthly quantity of yeast far in excess of that sold said customer by the respondent. In other instances, where respondent was already supplying the total monthly requirements of a customer it reduced prices below its scale for such requirements. In these instances its representatives were advised by the buyer of unconfirmed price quotations of competitors, and in others neither respondent nor its representatives had any knowledge of the competitive price quotations or even the name of the alleged potential competitor.

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

[8] We see nothing contrary to this conclusion in *Standard Oil Co.* v. *F. T. C.*, 340 U. S. 231.

prima facie case, and that the respondent then has the burden of rebutting this *prima facie* case by showing justification. This ruling, together with its approval in *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 45 [44 F. T. C. 1499, 4 S. & D. 627], leads us to believe that we erred in our original opinion in the instant case in requiring clause (4) of the order to be modified. Accordingly, we affirm the order without such modification, and grant enforcement thereof except Clause 2.

RUBEROID CO. v. FEDERAL TRADE COMMISSION [1]

No. 149, Docket 21667—F. T. C. Docket 5017
(Court of Appeals, Second Circuit. June 4, 1951)

CLAYTON ACT AS AMENDED BY ROBINSON-PATMAN ACT—PRICE DISCRIMINATION—JUSTIFICATIONS—BURDEN OF PROOF

Under Robinson-Patman Price Discrimination Act, burden is on seller seeking benefits of one of exceptions of act to prove, that seller comes within exception.

APPELLATE PROCEDURE AND PROCEEDINGS—ENFORCEMENT OF ORDERS—CLAYTON ACT—VIOLATIONS—CONTEMPT PROCEEDINGS—PRICE DISCRIMINATION—JUSTIFICATIONS—IF NOT AVAILED OF BEFORE COMMISSION

Where seller who was charged with price discrimination in violation of statute had not introduced any evidence at hearing before Federal Trade Commission which might show that discount allowed was within statutory exceptions and order directing seller to cease and desist from such practices was entered, seller would not thereafter be entitled to litigate issue as to exception in contempt proceedings for violation of order but new hearing on order would be justified only in event of definite change of circumstances.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—DISCRIMINATING IN PRICE—BUYER DIFFERENTIATION—IF NO RIGID FUNCTIONAL—WHOLESALERS, RETAILERS, AND APPLICATORS

Where there was no rigid differentiation between functions of various buyers of asphalt roofing from seller who was charged with price discrimination but some buyers were in fact both wholesalers and applicators, even though there was no finding that there was price discrimination by seller as to wholesalers, order of Federal Trade Commission which was general and embraced not only applicators and retailers but wholesalers as well in directing seller to desist from price discrimination was proper.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—DISCRIMINATING IN PRICE—IF PRICE DISCRIMINATION BETWEEN COMPETING PURCHASERS, ETC., PROHIBITED—WHETHER MODIFICATION TO PROVIDE SLIGHT DIFFERENTIAL, AS TO RETAILERS, INDICATED

[894] Order of Federal Trade Commission pursuant to Robinson-Patman Price Discrimination Act which prohibited any price discrimination between

[1] Reported in 189 F. (2d) 893. For cases before Commission, see 46 F. T. C. 379.

competing purchasers in products of like grade and quality, was proper and would not, on revew, be modified as to retailers in such manner as to provide slight price differential even assuming that such differential would have been found by Commission to be immaterial.

(The syllabus with substituted captions, is taken from 189 F. (2d) 893)

On petition to review order of the Commission, order affirmed and enforcement granted.[2]

Mr. Cyrus Austin, of New York City (*Austin & Malkan*, of New York City, on the brief), for the petitioner.

Mr. John W. Carter, Jr. Atty., Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, Gen. Counsel, Federal Trade Commission, of Washington, D. C., on the brief), for respondent.

Before L. HAND, AUGUSTUS N. HAND, and CLARK, *Circuit Judges*.

CLARK, *Circuit Judge:*

On a proceeding to review an order of the Federal Trade Commission, petitioner Ruberoid Co. prays that the order be set aside, or in the alternative modified in some four respects. The order was issued upon a complaint charging petitioner with violation of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, 15 U. S. C. A., section 13 (a). It directed petitioner to cease and desist from price discrimination in the sale of asbestos or asphalt roofing materials "by selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products."

The order was issued after hearings, wherein counsel for the Commission produced evidence showing that petitioner had granted discounts or price differentials of from 5 to 7½ percent of list price to certain of its customers. Petitioner classified its customers into three groups: wholesalers, retailers, and applicators, the last being roofing contractors who applied petitioner's products on their contract jobs for which they were paid as a whole. The Commission found active competition for the resale of petitioner's products, as well as the price discrimination noted, among the roofing contractors or applicators and the retailers. As to wholesalers, there was sharp disagreement among counsel as to whether the record established any discrimination there. The Commission noted this, and went on to hold the evidence insufficient to establish such discrimination, but pointed out "that the particular designations given purchasers are not always controlling

[2] On rehearing, the court, in its decision of August 14, 1951, held that so much of its mandate as directed the enforcement of the order was premature and should be stricken.

as indicating the functions actually performed by such purchasers. For example, one purchaser, although engaged primarily as a roofing contractor or applicator, sold quantities of the products to other applicators. And another purchaser, although classified by respondent as a wholesaler, also functioned as an applicator." In a conclusion challenged here, it then said that the particular designations applied to the various purchasers were unimportant, the controlling factor being the establishing of price discriminations among purchasers who were in fact competing with one another in the resale of petitioner's products. So, it continued: The corrective action "should be sufficiently comprehensive to stop the discriminations, irrespective of the designations applied to the purchasers."

At the hearings petitioner presented no evidence contesting the price discrimination found by the Commission and does not seriously contest the issuance of some form of order against it. It does, however, vigorously attack the order for its generality and for the particular prohibitions discussed below. We sympathize with the petitioner's position and can realize the difficulties of conducting business under such general prohibitions. Nevertheless we are convinced that the cause of the trouble is the act itself, which is vague and [895] general in its wording and which cannot be translated with assurance into any detailed set of guiding yardsticks. Compare *Standard Oil Co.* v. *F. T. C.*, 340 U. S. 231, 249, 253 [47 F. T. C. 1766]. In formulating its orders, the Commission has tried from time to time to develop a plan; but one of its latest attempts, that in *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37 [44 F. T. C. 1499; 4 S. & D. 716], resulted in such failure that it is now attempting a new course, which "merely represents another milestone" in its efforts to establish a fair and just interpretation of this difficult act. We are not justified in ordering the Commission to undertake an illusory certainty which will not stand up in the process of review.

Petitioner's requested modifications are that the order be reframed to prohibit only differentials between purchasers of roofing materials competing in the resale thereof as applicators or retailers; to exempt differentials of less than 2½ percent between retailers; to contain a proviso excepting a discount for differences in petitioner's costs of manufacture, sale, or delivery, i. e., a quantity or other discount permitted under the act itself; and to contain a proviso excluding from its prohibition differentials made in good faith to meet competition, again as permitted in the act itself. The first two provisions, petitioner claims, are required by the evidence. The last two, involving exceptions in the act itself, it claims to be necessary lest it either be held in contempt for lawful acts or bear the burden of showing legality.

Parenthetically, we should point out that under the *Morton Salt* case, explicitly following our own decision in *Samuel H. Moss, Inc.*,

v. *F. T. C.*, 2 Cir., 148 F. (2d) 378 [40 F. T. C. 885; 4 S. & D. 324], certiorari denied 326 U. S. 734, the burden of proving that a seller comes within one of the Act's exceptions is placed upon the one who claims it. Furthermore, under both the wording of the particular order and the law itself, no contempt can be found for legally permissible acts. If there were any doubt about this, both the Commission's brief and our opinion herein point out as much. Further, it is surely not necessary to repeat the wording of the statute in the order itself. The Commission does point out, however, with some force that petitioner has been found guilty of definite price discriminations and has not seen fit to introduce evidence which might show these discounts within the statutory exceptions. Petitioner should not have the opportunity of making that contest hereafter on a proceeding in contempt. Only in the event of a definite change of circumstances will a new hearing on the facts be justified. The insertion of the provisos is therefore not only unnecessary to the extent that they are legally applicable, but potentially misleading as suggesting the possible retrial in contempt proceedings of issues already settled.

The other two requested modifications are apparently the main reasons for plaintiff's appeal to us. Since discrimination among wholesalers was not found, the argument is that the prohibition should run against only differentials among applicators or retailers. Since no differentials under 5 percent were found, the argument is that there is no evidence to support a finding of material discrimination in lesser differentials—specifically, those up to 2½ percent among retailers. The first point rests upon the provision of the act which prohibits discrimination "in price between different purchasers of commodities of like grade and quality" and previous decisions of the Commission drawing distinctions in price discrimination based upon functional differences among classes of competing purchasers. Thus the order in the *Morton Salt* case, which appears at page 51 of 334 U. S., separately prohibits price discrimination among wholesalers and price discrimination among retailers. That fact, however, was not of importance in the decision and nothing therein states any arbitrary requirement to that effect. Here, too, the Commission's answer appears adequate, as is demonstrated by its findings and conclusions with respect to the applicators. Indeed to many of us an "applicator" who purchases petitioner's products to use them in a contracting job for some building owner would seem pretty much like a [896] wholesaler; moreover, as the Commission pointed out, there was no rigid differentiation of function: one applicator, for instance, sold quantities of the products to other applicators, while one wholesaler acted as an applicator. The Commission appears quite justified, therefore, in concluding that there was no real functional difference

necessarily disclosed by petitioner's classification of its customers and that the order should hit the evil directly, rather than invite evasion by incorporating an ambiguous label. Austin, Price Discrimination and Related Problems under the Robinson-Patman Act 51, 52 (1950).

As to the request for the modification permitting a 2½-percent differential, there seem two definite answers: First, there is nothing in the law suggesting such a limited differential; even assuming *arguendo* that the Commission perhaps might permit it on a finding of immateriality under all the circumstances, we cannot force such a finding upon it. Second, there was evidence tending to show that differentials of small amounts were important in the trade. As to the first, petitioner's argument seems to run along the line that one who is found guilty of exceeding a 30-mile-per-hour automobile speed limit for traveling 50 miles per hour should then receive permission to travel at 40 miles per hour—or at least 35. Proof of the violation here made should lose nothing, it would seem, because it is thorough proof of a thorough violation. Prohibition should cover in any event the violation in full.

Petitioner claims some support from the *Morton Salt* case, but we think that decision is quite definitely against the contention made. In that case the Commission expressly prohibited selling "to some wholesalers [or retailers as covered by a separate paragraph] thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products; provided, however, that this shall not prevent price differences of less than 5 cents per case which do not tend to lessen, injure, or destroy competition among such wholesalers [retailers]." The court specifically says, 334 U. S. at page 53: "Paragraphs (a) and (b) up to the language of the provisos are approved," a statement it repeats later, 334 U. S. at page 55. It goes on to point out that the clause permitting differentials of less than 5 cents "would appear to benefit respondent, and no challenge to it, standing alone, is here raised." Then it considers the respondent's objection to the final clause and holds that clause invalid for a vagueness which throws the whole question into the courts. It strikes this latter part out, but, while saying that it would sustain the order with the exception of the proviso, nevertheless concludes that the deleted part is so important that the Commission "should have an opportunity to reconsider the entire provisos in light of our rejection of the qualifying clauses, and to refashion these provisos as may be deemed necessary."

Thus it is quite clear that an order may legally prohibit all differentials, and hence the form of prohibition before us is justified by the *Morton Salt* case. It is to be noted that the court does not in that case expressly approve of the small differential of 5 cents per case there suggested by the Commission, although it is a possible inference, in

view of the purpose for which the matter was returned to the Commission, that a finding in favor of such a differential would not be illegal if based on appropriate evidence. It is clear, however, that the case does not force the Commission always to indicate some modest maximum in stating its prohibition.

Moreover, here the evidence produced by the Commission through the testimony of a sales manager for the petitioner showed that differentials of small amount and specifically of 2½ percent were quite important in the realm of competition among petitioner's customer. The manager testified that in certain instances the 5-percent discount allowed was insufficient for the customers' uses and petitioner found it therefore necessary or desirable to add an additional 2½ percent. *Cf.* Austin, *op. cit. supra* at 48, 49. In the light of this evidence and in view of the very wide discretion given the Commission in fitting the [897] remedy to the evil before it, *Jacob Siegel Co.* v. *F. T. C.*, 327 U. S. 608, 611, 612 [42 F. T. C. 902; 4 S. & D. 476]; *Charles of the Ritz Distributors Corp.* v. *F. T. C.*, 2 Cir., 143 F. (2d) 676, 680 [39 F. T. C. 657; 4 S. & D. 226], we are not justified in ordering the insertion of a maximum permissible discrimination, even a moderate one, in this order. It must, therefore, stand for appropriate enforcement.

Order affirmed; enforcement granted.

REID H. RAY FILM INDUSTRIES, INC. v. FEDERAL TRADE COMMISSION [1]

No. 14281—F. T. C. Docket 5495

(Court of Appeals, Eighth Circuit. June 26, 1951)

Order dismissing, upon stipulation of parties, appeal of petitioner in above entitled case to review order of Commission of October 17, 1950, 47 F. T. C. 326 at 338, requiring respondent corporation, its officers, etc., in connection with the sale, leasing, and distribution of commercial or advertising films in commerce to cease and desist from—

Entering into contracts with motion picture exhibitors for the exclusive privilege of exhibiting commercial or advertising films in theaters owned, controlled or operated by such exhibitors when the term of such contracts extends for a period in excess of 1 year, or continuing in operation or effect any exclusive screening provision in existing contracts when the unexpired term of such provision extends for a period of more than a year from the date of the service of the order.

On petition to review Commission's order to cease and desist, appeal dismissed.

Oppenheimer, Hodgson, Brown, Baer & Wolf, St. Paul, Minn., for petitioner.

[1] Reported in 190 F. (2d) 207. For case before Commission, see 47 F. T. C. 326.

Mr. W. T. Kelley, Gen. Counsel, *Mr. James W. Cassedy*, Asst. Gen. Counsel, and *Mr. John W. Carter*, Acting Asst. Gen. Counsel in charge of appeals, Federal Trade Commission, all of Washington, D. C., for respondent.

PER CURIAM:

Petition for review of order of Federal Trade Commission dismissed with prejudice, but without costs to either party in this court, on stipulation of parties.

PENALTY PROCEEDINGS

United States v. *International Salt Co.*, United States District Court, N. D., Illinois. Judgment of $40,000 was entered on June 13, 1951, against International because of its failure to file a special supplemental report concerning its compliance with a Commission order (34 F. T. C. 38 at 56, and, as modified, 37 F. T. C. 339, at 340), which prohibited a price-fixing conspiracy among certain salt producers. The court also directed International to file the special report.

The Commission's modified order required respondent corporations, etc., to cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, and from doing any of the following acts or things pursuant to any such planned or agreed common course of action:

1. Establishing or maintaining uniform prices for salt, or uniform terms and conditions in the sale thereof, or in any manner agreeing upon, fixing, or maintaining any prices, including terms and conditions of sale, at which salt is to be sold.

2. Adhering, or promising to adhere, to filed or published prices or terms and conditions of sale for salt pending the filing of changes therein with the Salt Producers' Association, or with any other agency, or with each other.

3. Continuing the delivered price zones heretofore used for making quotations and sales of salt, or establishing or maintaining any delivered price zones which are similar to those heretofore used in that their use would result as heretofore in making the delivered prices of the respective corporations identical despite their different costs of delivery.

4. Exchanging, directly or through the Salt Producers' Association, or any other agency or clearing house, price lists, invoices, and other records of sale showing the quantity, current prices, and terms and conditions of sale allowed by said corporations to dealers and distributors: *Provided, however*, That nothing herein shall prevent said association from collecting and disseminating to the respective manufacturers figures showing the total volume of sales of salt without disclosing the sales volume of individual producers, for the purpose,

or with the effect, of restraining competition in the offering for sale, or sale, of salt.

5. Exchanging, directly or through the medium of the Salt Producers' Association, or any other agency, the names of distributors or dealers who receive special discounts, for the purpose, or with the effect, of restraining competition in the offering for sale, or sale, of salt.

6. Curtailing, restricting, or regulating the quantity of salt to be produced and sold by said corporations by any method or means during any given period of time, for the purpose, or with the effect, of restraining competition in the offering for sale, or sale, of salt (Docket 4320, 37 F. T. C. 339 at 340).

NOTE.—The entry of the foregoing judgment, preceded by the entry of a similar judgment by the same court at Chicago on January 25, 1951, in *U. S.* v. *Morton Salt Co.*, completed the litigation through which the two companies sought unsuccessfully to challenge the validity of the Commission's supplemental order *re* compliance, and is reported in 80 F. Supp. 419, 45 F. T. C. 1075, 174 F. (2d) 703, 45 F. T. C. 1125, and 338 U. S. 632, 46 F. T. C. 1436.

TRADE PRACTICE CONFERENCE SUMMARY

During the period of this volume, July 1, 1950, to June 30, 1951, trade practice rules were promulgated for seven industries, and revised for two, under the Commission's trade practice conference procedure, which provides members of an industry with the opportunity to cooperate in establishing rules for the prevention of unfair practices on an industry-wide basis and represents a practical application of the principle of self-regulation. Said procedure, to the extent that it brings about widespread voluntary observance of the law, avoids the necessity for formal litigation, and thereby saves industry and the Government time and money, and benefits average citizens as taxpayers, businessmen, and consumers.

Such industries, and rules applicable thereto, as thus promulgated, include:[1]

Retail installment sale and financing of motor vehicles, in which the rules adopted, among other things, prohibit the practice of concealed "packing" by requiring that the purchaser be furnished with an itemization of the finance charge, insurance costs, and other charges before consummation of the sale; and prohibit use of deceptive rate charts; execution of contracts containing blank spaces; misrepresentation of insurance coverage or rates, or finance charges; and the forcing of purchasers to obtain insurance from a particular company.

Canvas cover industry, involving the manufacture, finishing, etc., or marketing of canvas products such as tarpaulins, truck covers, tents, awnings, etc., in which the rules deal with misrepresentation of the resistance of canvas covers to fire, water passage, weather, or mildew; inadequate disclosure as to size and fabric; harmful and excessive stretching; misuse of such terms as "custom-made" and "shrunk"; the loading or adulterating of products; and the failure to disclose presence of used material.

Bedding manufacturing and wholesale distributing industry, involving sleeping equipment such as mattresses, bedsprings, etc., in which the rules deal with deceptive concealment or nondisclosure of the nature of mattress filler material; and deceptive use of such terms as "Rx," "posturize," "waterproof," "orthopedic," "latex," and "foam rubber."

Cocoa and chocolate industry, in which the rules deal with deceptive use of the word "free"; coercing the purchase of one product as prerequisite to the purchase of others; the marketing of products through

[1] Copies of the full trade practice conference rules, as promulgated for the different industries, and other information with respect to the Commision's trade practice conference work, which is described in the Commission's annual report for the year ended June 30, 1951, may be had on application to the Commission.

lottery methods, and unlawful discrimination in price or promotional services or facilities.

Slide fastener industry, involving the manufacture, assembling, and distribution of zippers, in which the rules deal with unfair nondisclosure of the foreign origin of slide fasteners or other component parts; misrepresentation of the length of zippers; and competition-stifling exclusive-dealing arrangements with dealers; and, in the group II category—which embraces permissive practices and voluntary restrictions considered conducive to the maintenance of free and fair competition—such matters as arbitration of disputes, dissemination of credit information, filing of trade-marks, and the furnishing of excessive free sample to prospective customers.

Seam binding industry, involving the manufacture, distribution, and marketing of the narrow fabric used to prevent raveling or fraying of seams and hems of wearing apparel, in which the rules deal with misrepresentation of fiber or material content, yardage, and types of edges of seam binding; false invoicing; and unlawful discrimination in price or promotional services or facilities.

Parking meter industry, involving such meters and related parts and accessories, in which the rules deal with various forms of misrepresentation and deception in the advertising or sale of industry products; commercial bribery; inducing breach of contract; deceptive guarantees; fictitious price quotations; and false invoicing.

Milk bottle cap and closure industry, in which rules promulgated for the paper bottle cap industry in November 1931, were revised and extended to cover all milk bottle caps and closure regardless of composition, and in which the rules deal with misrepresentation of industry products and character of business of members; deceptive use of trade-marks; unlawful coercion or combination in restraint of trade; commercial bribery; unlawful selling below cost; and unlawful discrimination in price or promotional services or facilities; and, in the group II category, with arbitration of disputes, repudiation of contracts, and accurate records.

Feather and down products industry, in which rules promulgated in July 1932, for said industry, concerned with the manufacture, etc., of pillows, comforters, sleeping bags, and similar products wholly or partially filled with feathers or down, were revised and extended; contain a new definition of the industry covered; define significant trade terms such as "down," "down fiber," "water fowl feathers," and "natural feathers"; establish trade tolerances as to content and size; describe acceptable labeling practices; and deal with use of second-hand materials, and cleanliness of feather and down stocks; fictitious price lists; false invoicing; commercial bribery; defamation of competitors; and unlawful discrimination in price or promotional services or facilities.