

IN THE MATTER OF

CLAY SEWER PIPE ASSOCIATION, INC.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914 AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5484. Complaint, Feb. 14, 1947—Decision, Aug. 20, 1951

Where an association of 12 manufacturers of vitrified clay sewer pipe, provided its members with a freight rate service and other assistance in the furtherance of their common plan to eliminate competition in the sale and distribution of their product between and among themselves; and said members and 5 other manufacturers, together operating about 25 plants in Michigan, Ohio, and Pennsylvania; in competition with one another except as below set forth—

- (a) Unlawfully cooperated among themselves in adopting and continuing a planned common course of action, whereby competition in the sale and distribution of their product was restrained and prevented; and pursuant thereto—
 - (1) By combination fixed and maintained prices for vitrified clay sewer pipe and fittings;
 - (2) In combination composed and announced prices for said products at all destinations at which they sold, through use of their basic "Eastern" or "Standard" Price List, and through a freight rate compilation showing certain rates from Akron to destinations in their trade areas; and the practice of announcing prices at any given destination in terms of percentage discounts from said basic list on the basis of the carload freight rate to the zone in which destination was located;
 - (3) By combination established and maintained uniform terms and conditions of sale to dealers and the allocation of sales between themselves and dealers; and
 - (4) By combination established and maintained a list of jobbers and the terms and conditions of sale thereto, and allocated sales between themselves and jobbers; and

Where the aforesaid members—

- (b) By combination maintained and used said association as a medium for promoting, aiding and rendering more effective such concerted efforts to suppress and eliminate competition; and

Where said various manufacturers—

- (c) By combination contributed to the accomplishment and effectiveness of the aforesaid acts and results in that they—
 - (1) Made simultaneous use, by two or more of them, of a zoning method of computing, formulating, and using delivered price quotations; and
 - (2) Discriminated in price between or among their respective customers by systematically charging and accepting prices which differed by the amounts necessary to produce delivered costs identical with those available from other respondent manufacturers;

Inherent effects of which concerted methods and practices, included—

1. Substantial lessening of competition among respondents; and
2. Unfair and oppressive discrimination in price among respondents' customers:

Held, That said alleged acts, practices, and methods had a dangerous tendency to and did suppress and eliminate competition between and among respondents in the manufacture, and in the sale and distribution in commerce of vitrified clay sewer pipe, and tended to and did unreasonably restrain such commerce; and constituted unfair methods of competition and unfair acts and practices in commerce.

Before *Mr. W. W. Sheppard* and *Mr. Frank Hier*, trial examiners. *Mr. Lynn C. Paulson*, *Mr. Rice E. Schrimsher*, *Mr. Elmer F. Bennett*, and *Mr. J. J. Gercke* for the Commission.

Johnston, Thompson, Raymond & Mayer, of Chicago, Ill., for respondents.

Respondents were also represented as follows:

Thompson, Hine & Flory, of Cleveland, Ohio, for American Vitri-fied Products Co.

Driscoll, Gregory & Coppolo, of St. Mary's, Pa., for The Brockway Clay Co. and St. Mary's Sewer Pipe Co.

Mr. Charles T. Greenlee, of Uhrichsville, Ohio, for The Clay City Pipe Co.

Mr. Paul H. Torbet, of Cleveland, Ohio, for Dennison Sewer Pipe Corp., The Junction City Clay Co., and Stillwater Clay Products Co.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., for The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners).

Mr. R. E. Ashe, of Kittanning, Pa., for Graff-Kittanning Clay Products Co.

Frost & Jacobs, of Cincinnati, Ohio, for The Logan Clay Products Co.

Englehart & Larimer, of Ebensburg, Pa., for Pattan Clay Manu-facturing Co.

Slabaugh, Guinther, Jeter & Pfuenger, of Akron, Ohio, for The Robinson Clay Products Co.

Mr. P. F. Reed and *Mr. J. P. Reed*, of Uhrichsville, Ohio, for The Ross Clay Products Co.

Knepper, White & Dempsey, of Columbus, Ohio, and *Mr. John W. Porter*, of Steubenville, Ohio, for The Stratton Fire Clay Co. and Superior Clay Corp.

McAfee, Grossman, Taplin, Hanning, Newcomer & Hazlett, of Cleveland, Ohio, for Universal Sewer Pipe Corp.

Complaint

48 F. T. C.

COMPLAINT

This complaint is filed to obtain relief from respondents' activities because of their violations, jointly and severally, as hereinafter alleged in Count I herein, of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties; and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U. S. C. A. sec. 41; 52 Stat. 111), and because of their violations, as alleged in Count II herein, of section 2 (a) of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the Clayton Act, as approved October 15, 1914, and amended June 19, 1938 (38 Stat. 730; 15 U. S. C. A. sec. 12, 49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

COUNT I

THE CHARGE UNDER THE FEDERAL TRADE COMMISSION ACT

PARAGRAPH 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 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 in that respect as follows:

DESCRIPTION OF RESPONDENTS

PAR. 2. Respondent Clay Sewer Pipe Association, Inc., is an Ohio corporation with its office and principal place of business located in the AIU Building, Columbus, Ohio.

American Vitrified Products Co. is a New Jersey corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

The Brockway Clay Co. is a Delaware corporation with its office and principal place of business at Brockway, Pa.

The Clay City Pipe Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

Dennison Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Evans Pipe Co. is a copartnership operated by the estate of T. T. Evans and the estate of Eugene Evans, with its office and principal place of business at Uhrichsville, Ohio.

Graff-Kittanning Clay Products Co. is a Pennsylvania corporation with its office and principal place of business at Worthington, Pa.

Grand Ledge Clay Products Co. is a Michigan corporation with its office and principal place of business at Grand Ledge, Mich.

The Junction City Clay Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Kaul Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Toronto, Ohio.

The Logan Clay Products Co. is an Ohio corporation with its office and principal place of business at Logan, Ohio.

Patton Clay Manufacturing Co. is a Pennsylvania corporation with its office and principal place of business at Patton, Pa.

The Peerless Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Port Homer, Ohio (post office address, Toronto, R. D. No. 2, Ohio).

The Robinson Clay Product Co. is a Maine corporation with its office and principal place of business at 1100 Second National Bank Building, Akron 9, Ohio.

The Ross Clay Products Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

St. Mary's Sewer Pipe Co. is a Pennsylvania corporation with its office and principal place of business at St. Mary's Pa.

Stillwater Clay Products Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Stratton Fire Clay Co. is an Ohio corporation with its office and principal place of business at Stratton, Ohio.

Superior Clay Corp. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

The Union Clay Manufacturing Co. is an Ohio corporation with its office and principal place of business at Empire, Ohio.

Universal Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

PAR. 3. Respondent Clay Sewer Pipe Association, Inc., hereinafter sometimes referred to as the association, is incorporated under the laws of the State of Ohio. Respondent, American Vitrified Products Co., Universal Sewer Pipe Corp., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Junction City Clay Co., Stillwater Clay Prod-

Complaint

48 F. T. C.

ucts Co., Graff-Kittanning Clay Products Co., Grand Ledge Clay Products Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., The Robinson Clay Product Co., The Ross Clay Products Co., and Superior Clay Corp. compose its membership. It is an instrumentality for furthering the interests of its members. It has the following standing committees: Traffic, advertising, specifications, simplification, public relations, and OPA. In addition to maintaining a field organization of engineers to study specifications for proposed construction work and promote the use of clay sewer pipe on such projects, the association provides its members with a freight rate service and otherwise assists the members in the furtherance of their common plan to suppress, hinder, lessen and eliminate competition between and among themselves, as hereinafter more fully described.

PAR. 4. Respondents are engaged in the manufacture and sale of vitrified sewer pipe and other clay products. Vitrified clay sewer pipe is a clay product commonly used for all types of sewers. It is an important item in modern building construction and community development. Sewer pipe is a heavy commodity and freight costs are a substantial part of delivered costs. Respondents operate a total of approximately 25 plants in the States of Michigan, Ohio, and Pennsylvania. The vitrified clay sewer pipe industry is composed of manufacturers located in 23 States, operating a total of 75 plants.

PAR. 5. Respondents, with the exception of respondent association and possibly respondent Grand Ledge Clay Product Co. are all doing business in interstate commerce. In the course and conduct of their respective businesses each respondent member sells and distributes vitrified clay sewer pipe manufactured by it to the purchasers thereof located in the various States of the United States, and in connection with and as a part of said sales, transports or causes to be transported said product to said purchasers thereof located in the various States of the United States other than the States of origin. The respondents are therefore engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Each of the respondent members has been and is in competition with one or more of the other respondent members in making or seeking to make sales in commerce between and among the various States of the United States of vitrified sewer pipe, which they manufacture, except insofar as said competition has been hindered, lessened, restricted, or suppressed by the combination and acts and practices engaged in and as hereinafter alleged.

PAR. 7. For more than 5 years last past respondents have done and performed, and are now doing and performing, unfair acts and prac-

tices, have engaged in and are now engaging in unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act in that they have acted and are still acting wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting, and continuing a common course of action and agreement, resulting in substantial hindrance, frustration, restraint, suppression, and prevention of competition in the sale and distribution of vitrified sewer pipe in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid cooperation and common course of action, respondents as a part of their said cooperation, common course of action and agreement, have formulated, adopted, performed and put into effect, among others, the overt acts and used methods, systems, practices, and policies listed, described and set forth in the immediately succeeding subparagraphs numbered 1 to 5, inclusive, of this paragraph 7:

1. Respondents by combination have fixed and maintained prices.
2. Respondents in combination, compose and announce prices for vitrified clay sewer pipe and allied products at each and all destinations at which they sell, by using and maintaining, concertedly and collusively, a basic price list (known in the trade as the Eastern or Standard Price List for vitrified clay sewer pipe and allied products), a freight rate compilation showing certain rates from Akron, Ohio, to destinations in respondents' trade area, and the practice of announcing prices at any given destination in terms of percentage discounts from the basic list on the basis of the carload freight rate to the freight zone in which the destination is located, as shown in the freight rate compilation.
3. Respondents, by combination, concertedly and collusively establish and maintain uniform terms and conditions of sale to dealers, and the allocation of sales between themselves and dealers.
4. Respondents, by combination, concertedly and collusively establish and maintain a list of jobbers, the terms and conditions of sale to jobbers, and allocate sales between themselves and jobbers.
5. Members of respondent association as set forth above, by combination, collectively and concertedly maintain respondent Clay Sewer Pipe Association, Inc., and use said association as a medium for promoting, aiding, and rendering more effective concerted efforts to suppress and eliminate competition as described in the preceding subparagraphs 1, 2, 3, and 4 of this paragraph 7.

PAR. 8. Each of the respondents with the exception of respondent association has contributed to the accomplishment and effectiveness

Complaint

48 F. T. C.

of the acts, things and results alleged in the immediately preceding paragraph 7 hereof through its—

(1) Use of a zoning method of computing, formulating, and using delivered price quotations when other respondent members simultaneously do likewise and by which it is enabled to, and does, match its quotations on a delivered basis with the quotations on a delivered basis of other respondents; and

(2) Discriminating between and among its customers by demanding, charging, accepting, and receiving higher net prices from its customers located near its plant than from its customers more distantly located for goods of like grade and quality, or assisting other respondents to so discriminate, and thereby to match quotations on a delivered basis with the quotations of other respondents.

PAR. 9. The inherent effects of the adoption and maintenance by the respondents of the methods and practices described and alleged in paragraph 6 and paragraph 7 herein include all and singularly the following, to-wit:

1. Substantial lessening of competition among respondents.

2. Unfair and oppressive discrimination against portions of the purchasing public in large areas by depriving such purchasers of the advantage which would otherwise accrue to them as a result of their proximity to the factories of respondents, and by requiring such purchasers to pay increases over what the net prices to such purchasers would have been if such net prices had been fixed by competition among respondents.

PAR. 10. The above alleged acts, practices, and methods of respondents have a dangerous tendency to, and have hindered, suppressed, lessened, and eliminated competition between and among respondents in the manufacture, sale, and distribution of vitrified clay sewer pipe in commerce within the meaning of the Federal Trade Commission Act, have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

COUNT II

THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Pursuant to the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as

the Robinson-Patman Act, the Commission, having reason to believe that the parties hereinafter named and described as respondents in this Count II have violated and are violating the provisions of said act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in such respect as follows:

DESCRIPTION OF RESPONDENTS, DEFINITIONS AND EXPLANATIONS OF TERMS,
DESCRIPTORS AND HISTORY OF INDUSTRY AND THE COMMERCE OF
RESPONDENTS

PARS. 2, 3, 4, 5, AND 6: As and for paragraphs 2, 3, 4, 5, and 6 of this Count II the Commission incorporates (except the first of the unnumbered subparagraphs of paragraph 2, regarding Clay Sewer Pipe Association, Inc., and the definition of "commerce," as contained in paragraph 5) paragraphs 2, 3, 4, 5, and 6 of Count I of this complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this Count II. The description of "commerce" as hereinafter used in this Count II means "commerce" as defined and set forth in the Clayton Act.

OFFENSES CHARGED

PAR. 7. For more than 5 years last past, and while engaged as aforesaid in commerce among the several States of the United States and in the District of Columbia, each of the respondents American Vitriified Products Co., The Brockway Clay Co., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners), Graff-Kittanning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., The Peerless Clay Manufacturing Co., The Robinson Clay Product Co., The Ross Clay Products Co., St. Mary's Sewer Pipe Co., Stillwater Clay Products Co., The Stratton Fire Clay Co., Superior Clay Corp., The Union Clay Manufacturing Co., and Universal Sewer Pipe Corp. has been and is now in the course of such commerce discriminating in price between purchasers of said commodities of like grade and quality sold for use, consumption or resale within the several States of the United States and the District of Columbia in that each of the respondents has been and is now systematically selling such commodities to many purchasers at a price higher than the price at which commodities of like grade and quality are sold by it to other purchasers and users.

Complaint

48 F. T. C.

PAR. 8. Each of the respondents uses a delivered pricing system and practice for such determining, calculating, making up, using, announcing, publishing, and distributing its quotations and offers to its respective customers in selling vitrified clay sewer pipe and other clay products in commerce. Each of the respondents in using its said delivered pricing system for quoting its delivered prices, and in making sales of its products in commerce in accordance and in connection therewith, discriminates as between its customers in net prices realized on its products of like grade and quality. The discriminations by each said respondent thus effected are systematic and result in part because of its failure to "make only due allowance for differing methods or quantities in which such commodities are to such purchasers sold or delivered," and are discriminatory to such an extent that the net prices paid by customers located at or near its factory door in many instances amount to much more than the net prices realized by such respondent on its products of like grade and quantity sold to its customers located hundreds of miles away. The systematic discriminations in net prices thus effected by each of the respondents against nearby customers and in favor of its more distantly located customers are inherent in the use of the aforesaid delivered pricing system of each of the respondents. There are also involved in said system "Matched" delivered price quotations so that such customer in considering or accepting any of such offers is denied the opportunity ordinarily afforded under price competition to bargain with one respondent against another.

PAR. 9. Each of the said respondents practices the aforesaid systematic discriminations in price for the purpose and with the effect of enabling all the respondents to exactly "Match" their delivered price offers to sell its products of like grade and quantity in commerce to any given prospective purchaser at any given destination and to maintain such matched offers.

EFFECTS OF PRICE DISCRIMINATIONS PRACTICED BY RESPONDENTS

PAR. 10. The inherent and necessary effect of the practice by the respondents of the discriminations described and alleged in this Count II includes all and singularly the following, to wit:

- (1) The elimination of price competition between respondents; and
- (2) The maintenance of monopolistic, unfair, and oppressive discrimination against purchasers of vitrified clay sewer pipe and other clay products in large areas of the United States by depriving such purchasers of the advantage in cost which would otherwise accrue to them from their proximity to the factories of respondents.

PAR. 11. Further effects of the said discriminations in price made by said respondents, as alleged and described in this Count II herein, may be substantially to lessen competition between the buyers of respondents' products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices as well as to lessen competition in the lines of commerce in which respondents are engaged.

CONCLUSION

PAR. 12. The aforesaid acts of each of the said respondents constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended.)

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 August 20, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act approved June 19, 1936, the Federal Trade Commission, on February 4, 1947, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of section 5 of the Federal Trade Commission Act, and with having discriminated in price in the sale of vitrified sewer pipes and fittings in violation of the provisions of subsection (a) of section 2 of said Clayton Act as amended.

Findings

48 F. T. C.

After the issuance of the complaint and the filing of respondents' answers thereto, denying in substantial part the allegations of the complaint, a hearing was held before W. W. Sheppard, a trial examiner theretofore duly designated by the Commission, at Columbus, Ohio, on December 9, 1947, at which hearing offers of settlement were made and agreed to by all counsel for submission to the Commission. The Commission, after duly considering the same and after further negotiation between all counsel, rejected the settlement tendered and thereafter directed the hearing to be held for trial of the issues, designating Frank Hier as substitute trial examiner, W. W. Sheppard having been retired from the Government service. On June 12, 1951, a hearing was held at Columbus, Ohio, before Frank Hier as substitute trial examiner, at which hearing testimony was received in support of the allegations of the complaint, pursuant to an arrangement between counsel in support of the complaint and counsel for respondents, looking toward an agreed settlement. At this hearing, respondents by their counsel tendered waivers which were incorporated into the record by which they waived the right to offer any testimony in opposition to the charges in the complaint, the right to submit any findings and conclusions, the right of oral argument and any challenge or contest to the validity of the record herein or to the findings of fact or conclusion of the trial examiner and the Commission if such findings of fact and conclusion shall be the same as those agreed upon by counsel, on the ground that such findings do not have substantial support in the record or that they do not support the order of the trial examiner or the Commission. Thereafter the proceeding regularly came on for final consideration upon the complaint, the answers, evidence, waivers, proposed findings as to the facts and conclusion, and the proposed order agreed to and submitted by all counsel, and the trial examiner, having duly considered the matter, finds that this proceeding is in the interest 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 Clay Sewer Pipe Association, Inc., is an Ohio corporation with its office and principal place of business located at 5 East Long Street, Columbus, Ohio.

American Vitrified Products Co. is a New Jersey corporation with its office and principal place of business at National City Bank Building, Cleveland 14, Ohio.

The Brockway Clay Co. is a Delaware corporation with its office and principal place of business at Brockway, Pa.

The Clay City Pipe Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

Dennison Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Evans Pipe Co. at or prior to the date of issuance of the complaint herein was a copartnership operated by the estate of T. T. Evans and the estate of Eugene Evans, with its office and principal place of business at Uhrichsville, Ohio; but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

Graff-Kittanning Clay Products Co. is a Pennsylvania corporation with its office and principal place of business at Worthington, Pa.

Grand Ledge Clay Product Co. is a Michigan corporation with its office and principal place of business at Grand Ledge, Mich.

The Junction City Clay Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Kaul City Manufacturing Co. is an Ohio corporation with its office and principal place of business at Toronto, Ohio.

The Logan Clay Products Co. is an Ohio corporation with its office and principal place of business at Logan, Ohio.

Patton Clay Manufacturing Co. is a Pennsylvania corporation with its office and principal place of business at Patton, Pa.

The Peerless Clay Manufacturing Co. at or prior to the date of issuance of the complaint herein was an Ohio corporation with its office and principal place of business at Port Homer, Ohio (post office address, Toronto, R. D. No. 2, Ohio), but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

The Robinson Clay Product Co. is a Maine corporation with its office and principal place of business at 1100 Second National Bank Building, Akron 9, Ohio.

The Ross Clay Products Co. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

St. Mary's Sewer Pipe Co. is a Pennsylvania corporation with its office and principal place of business at St. Mary's, Pa.

Stillwater Clay Products Co. is an Ohio corporation with its office and principal place of business at 3334 Prospect Avenue, Cleveland 15, Ohio.

The Stratton Fire Clay Co. is an Ohio corporation with its office and principal place of business at Stratton, Ohio.

Superior Clay Corp. is an Ohio corporation with its office and principal place of business at Uhrichsville, Ohio.

Findings

48 F. T. C.

The Union Clay Manufacturing Co. at or prior to the date of issuance of the complaint was an Ohio corporation with its office and principal place of business at Empire, Ohio, but is not now engaged in the manufacture and sale of vitrified clay sewer pipe and fittings.

Universal Sewer Pipe Corp. is an Ohio corporation with its office and principal place of business at 1500 Union Commerce Building, Cleveland 14, Ohio.

PAR. 2. Respondent Clay Sewer Pipe Association, Inc., hereinafter sometimes referred to as the Association, is incorporated under the laws of the State of Ohio. Respondents, American Vitrified Products Co., The Clay City Pipe Co., Dennison Sewer Pipe Corp., The Junction City Clay Co., Stillwater Clay Products Co., Graff-Kittanning Clay Products Co., Grand Ledge Clay Products Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., The Robinson Clay Product Co., The Ross Clay Products Co., and Superior Clay Corp. compose its membership. It is an instrumentality for furthering the interests of its members. It has the following standing committees: Traffic, advertising, specifications, simplification, public relations, and OPA. In addition to maintaining a field organization of engineers to study specifications for proposed construction work and promote the use of clay sewer pipe on such projects, the association provides its members with a freight rate service and otherwise assists the members in the furtherance of their common plan to suppress, hinder, lessen and eliminate competition between and among themselves, as hereinafter more fully described.

PAR. 3. Respondents (with the exception of respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) are engaged in the manufacture and sale of vitrified clay sewer pipe and fittings. Vitrified clay sewer pipe is a clay product commonly used for all types of sewers. It is an important item in modern building construction and community development. Sewer pipe is a heavy commodity and freight costs are a substantial part of delivered costs. Respondents operate a total of approximately 25 plants in the States of Michigan, Ohio, and Pennsylvania. The vitrified clay sewer pipe industry is composed of manufacturers located in 23 States, operating a total of 75 plants.

PAR. 4. Respondents, with the exception of respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co., and possibly respondent Grand Ledge Clay Product Co., are all doing business in interstate commerce. In the course and conduct of their respective

businesses each respondent (other than respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) sells and distributes vitrified clay sewer pipe manufactured by it to the purchasers thereof located in the various States of the United States, and in connection with and as a part of said sales, transports or causes to be transported said product to said purchasers thereof located in the various States of the United States other than the States of origin. The respondents are therefore engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Each of the respondents (except respondent association and respondents The Evans Pipe Co., The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) has been and is in competition with one or more of the other respondents in making or seeking to make sales in commerce between and among various States of the United States of vitrified sewer pipe, which they manufacture, except insofar as said competition has been hindered, lessened, restricted or suppressed by the combination and acts and practices engaged in and as hereinafter set forth.

PAR. 6. For more than 5 years preceding the date of the issuance of the complaint herein respondents have done and performed, and are now doing and performing, unfair acts and practices, have engaged in and are now engaging in unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act in that they have acted and are still acting wrongfully and unlawfully by cooperating between and among themselves in establishing, adopting and continuing a planned common course of action, resulting in substantial hinderance, frustration, restraint, suppression and prevention of competition in the sale and distribution of vitrified sewer pipe in trade and commerce, as "commerce" is defined in the Federal Trade Commission Act.

Pursuant to, in furtherance of, and in order to effectuate the purposes and objectives of the aforesaid planned common course of action, respondents have formulated, adopted, performed and put into effect, among others, the overt acts and used the methods, systems, practices and policies listed, described and set forth in the immediately succeeding subparagraphs numbered 1 to 5, inclusive, of this paragraph 6:

1. Respondents by combination have fixed and maintained prices for vitrified clay sewer pipe or fittings.
2. Respondents in combination have composed and announced prices for vitrified clay sewer pipe or fittings at each and all destina-

Findings

48 F. T. C.

tions at which they sell, by using and maintaining a basic price list (known in the trade as the Eastern or Standard Price List) for vitrified clay sewer pipe or fittings, a freight rate compilation showing certain rates from Akron, Ohio, to destinations in respondents' trade area, and the practice of announcing prices at any given destination in terms of percentage discounts from the basic list on the basis of the carload freight rate to the freight zone in which the destination is located, as shown in the freight rate compilation.

3. Respondents, by combination, have established and maintained uniform terms and conditions of sale to dealers, and the allocation of sales between themselves and dealers.

4. Respondents, by combination, have established and maintained a list of jobbers, the terms and conditions of sale to jobbers, and allocated sales between themselves and jobbers.

5. Members of respondent association, as set forth above, by combination, have maintained respondent Clay Sewer Pipe Association, Inc., and have used said association as a medium for promoting, aiding, and rendering more effective concerted efforts to suppress and eliminate competition as described in the preceding subparagraphs 1, 2, 3, and 4 of this paragraph 6.

PAR. 7. The respondents with the exception of respondent association by combination have contributed to the accomplishment and effectiveness of the acts, things and results alleged in the immediately preceding paragraph 6 hereof through:

(1) Simultaneous use by two or more respondents of a zoning method of computing, formulating and using delivered price quotations; and

(2) Discriminating in price between or among their respective customers by systematically charging and accepting prices which differ by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

PAR. 8. The inherent effects of the adoption and maintenance by the respondents of the concerted methods and practices described in paragraph 5 and paragraph 6 herein include all and singularly the following, to wit:

1. Substantial lessening of competition among respondents.
2. Unfair and oppressive discrimination in price between or among their respective customers by systematically charging and accepting prices which differ by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

202

Order

CONCLUSION

The above alleged acts, practices and methods of respondents have a dangerous tendency to, and have hindered, suppressed, lessened and eliminated competition between and among respondents in the manufacture, sale and distribution of vitrified clay sewer pipe in commerce within the meaning of the Federal Trade Commission Act, have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said product, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, American Vitrified Products Co., The Brockway Clay Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittaning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., Robinson Clay Product Co., The Ross Clay Products Co., St. Mary's Sewer Pipe Co., The Stillwater Clay Products Co., The Stratton Fire Clay Co., Superior Clay Corp., and Universal Sewer Pipe Corp., and their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia of vitrified clay sewer pipe, or fittings, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

1. Fixing or maintaining prices for vitrified clay sewer pipe or fittings.
2. Composing or announcing prices for vitrified clay sewer pipe or fittings, for any destination at which the respondents quote prices or sell their products, through the use of or in accordance with a basic price list, or percentage discounts therefrom.
3. Using in common any freight rate compilation as a factor in fixing or announcing prices of vitrified clay sewer pipe or fittings.
4. Using in common a zoning method of computing or formulating delivered price quotations for any such products.
5. Discriminating in price between or among their respective customers by systematically charging and accepting prices which differ

Order

48 F. T. C.

by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

6. Establishing or maintaining uniform terms or conditions of sales to dealers, or allocating sales between and among the respondents or dealers.

7. Establishing or maintaining a list of jobbers, the terms and conditions of sales to jobbers, or allocating sales between and among the respondents or jobbers.

Provided, however, That wherever and whenever the terms "continuing" and "planned common course of action" are used herein, the Federal Trade Commission interprets the said terms as set forth in the decision of the Supreme Court of the United States in the case entitled *Federal Trade Commission v. Cement Institute*, and reported in 333 United States Reports 683, at pages 727 and 728,¹ and in the decision of the United States Circuit Court of Appeals, Fourth Circuit, in the case entitled *American Chain & Cable Co. v. Federal Trade Commission*, and reported in 139 Federal Reporter, Second Series, 622,² and in including said terms in this order, uses them, and each of them, in the meaning set forth in said decisions.

It is further ordered, That the respondents, American Vitriified Products Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittanning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Robinson Clay Product Co., The Ross Clay Products Co., The Stillwater Clay Products Co., and Superior Clay Corp., and their respective officers, agents, representatives, and employees, do forthwith cease and desist from collectively, concertedly, or by combination of two or more of said respondents, using or maintaining the Clay Sewer Pipe Association, Inc., as a medium for promoting, aiding, or rendering more effective any cooperative or concerted efforts to suppress or eliminate competition in any of the respects set forth in the immediately preceding paragraphs 1 to 7, inclusive, of this order.

It is further ordered, That each of the respondents, Clay Sewer Pipe Association, Inc., American Vitriified Products Co., The Brockway Clay Co., Clay City Pipe Co., Dennison Sewer Pipe Corp., Graff-Kittanning Clay Products Co., Grand Ledge Clay Product Co., The Junction City Clay Co., The Kaul Clay Manufacturing Co., The Logan Clay Products Co., Patton Clay Manufacturing Co., Robinson Clay Product Co., The Ross Clay Products Co., St. Marys Sewer Pipe Co., The Stillwater Clay Products Co., The Stratton Fire Clay Co.,

¹ 44 F. T. C. 1460, at p. 1491.

² 38 F. T. C. 825.

202

Order

Superior Clay Corp., and Universal Sewer Pipe Corp., and their respective officers, agents, representatives, and employees, do forthwith cease and desist from knowingly contributing to the accomplishment of any of the acts, practices, or things prohibited in paragraphs 1 to 7, inclusive, of this order.

It is further ordered, That nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide agreements, discussions, or other action solely between any corporate respondent and its directors, officers and employees, or between any corporate respondent and any of its subsidiaries or affiliates, and relating solely to the carrying on of the business of such corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of restricting competition.

Provided, however, That nothing contained in this order or the understandings in connection herewith shall be construed to affect the duty, authority or power of the Federal Trade Commission to reopen this proceeding and alter, modify or set aside in whole or part any provision of this order whenever in the opinion of the Federal Trade Commission conditions of fact or of law have so changed as to require such action, nor to prevent representatives of either the Federal Trade Commission or of the respondents, or any of them, from moving to so alter, modify, or set aside in whole or in part any provision of this order.

It is further ordered, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the allegations of Count I of the complaint herein be, and they hereby are, dismissed as to The Evans Pipe Co. (the estate of T. T. Evans and the estate of Eugene Evans, copartners), The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co., and that the allegations of Count II of the complaint be, and they hereby are, dismissed as to all of the respondents.

It is further ordered, That the respondents (except The Evans Pipe Co. [the estate of T. T. Evans and the estate of Eugene Evans, copartners], The Peerless Clay Manufacturing Co., and The Union Clay Manufacturing Co.) 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 this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents 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 August 20, 1951].

IN THE MATTER OF

WILLIAM A. REED CO., 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 5539. Complaint, Apr. 27, 1948—Decision, Aug. 22, 1951

Where a corporation, with its president and four other individuals who, formerly partners, had theretofore transferred to it all their property rights and interests in the predecessor business, engaged in the interstate sale and distribution of their "Medrex Soap," "Medrex Ointment," and "Nulfey Tablets," in advertising their said products in newspapers and through radio continuities distributed throughout the United States, and in other ways, directly and by implication—

- (a) Represented falsely that the use of said soap was effective in treating and relieving externally caused pimples, blotches, broken-out skin, rashes, and blackheads, and would relieve itching and burning skin and restore a clear natural complexion in cases of blotchy skin;

When in fact it possessed no medicinal value and acted only as a cleansing agent;

- (b) Represented falsely that the use of said ointment as directed was a cure and effective treatment for all externally caused skin ailments or conditions, including pimples, blackheads, scabies, eczema, skin irritations or blemishes, etc., and would relieve the itching of skin blemishes and eruptions of external nature;

The facts being that although it would temporarily relieve itching of some skin blemishes and eruptions, it would not do so in all such conditions;

- (c) Represented falsely that its "Nulfey Tablets," Formula No. 1, would have a remedial action and would cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains and neuralgia; that waste poisons caused the pains of neuralgia and rheumatism, and that said product would clear the system thereof and thereby relieve such pains;

The facts being that said preparation, by reason of its laxative effect, would cause the evacuation of waste materials from the intestinal tract, but would not accomplish the results claimed above; and

- (d) Represented that its "Nulfey Tablets," Formula No. 2, would relieve aches and pains and particularly muscular aches and pains, rheumatic pains, and headaches, backaches, and pains of simple neuralgia;

The facts being that while said tablets, both Formulas Nos. 1 and 2, because of their analgesic properties, would tend to relieve temporarily or reduce the pain associated with aforesaid ailments, the pain would return as soon as the analgesic effect wore off, and some pains associated with some of said ailments were so severe that the tablets taken as directed would not give complete relief;

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

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.

Mr. Randolph W. Branch for the Commission.

Mr. Matthew S. Biron, of Philadelphia, Pa., 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 William A. Reed Co., a corporation, and Albert J. Sylk, individually and as an officer of said corporation, and Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, copartners, operating as William A. Reed Co., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William A. Reed Co. is a corporation, organized under the laws of the State of Pennsylvania on October 1, 1945, with its principal place of business located at 1928 Spruce Street, Philadelphia, Pa. Albert J. Sylk is president of William A. Reed Co., a corporation, and formulates and directs the policies and practices of said corporation. Prior to about January 2, 1946, Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg operated as copartners under the name and style of William A. Reed Co., at which time the business operated by them under such name was sold to the respondent William A. Reed Co., a corporation.

The addresses of the individual respondents are: Albert J. Sylk, 1928 Spruce Street, Philadelphia, Pa.; William H. Sylk, 6953 Greenhill Road, Philadelphia, Pa.; Harry S. Sylk, 5117 Wynnefield Avenue, Philadelphia, Pa.; Morris Soble, 2277 Georges Lane, Philadelphia, Pa.; and Bernard Weinberg, 2319 North Fifty-first Street, Philadelphia, Pa.

PAR. 2. Respondent William A. Reed Co., a corporation, is now, and the individual respondents, as copartners, from some time prior to January 2, 1946, were engaged in the business of selling and distributing drugs and cosmetic products in commerce as drugs and cosmetics are defined in the Federal Trade Commission Act. The designation used by respondents for said products and the formulae and directions for use thereof are as follows:

Designation: MEDREX SOAP.

Formula: (1) Combination of tallow and cocoanut oil.

(2) 83 to 84% anhydrous soap.

(3) 10 to 12% moisture.

Complaint

48 F. T. C.

- (4) 2% Medrex Ointment.
- (5) $\frac{3}{4}$ of 1% perfume.
- (6) 0.5 of 1% glycerine.
- (7) 0.02 of 1% alkali.
- (8) trace of salt.

Directions for Use: To promote the healing of pimples and blackheads due to external causes, place a cake of Medrex Soap into a bowl of hot water and make a lather. Wash the skin thoroughly and allow the lather to dry on the affected skin. Rinse and dry, by patting with a clean, soft towel. Then apply Medrex Ointment with fingers, gauze or cotton. Do not spread on too thickly, as a thin coating is all that is needed. Use Medrex treatment nightly before bedtime. Every morning cleanse the face with Medrex Soap and hot water, working the lather into the pores; then rinse with cold water.

Designation: MEDREX OINTMENT.

Formula: Acid Salicylic	1# 5 oz. 105 gr.
Benzoic Acid	1# 5 oz. 105 gr.
Zinc Oxide	13#
Amylum (Starch)	13#
Petrolatum	39#
Acetanilid	8 oz.
Phenol (Carbolic Acid)	5 oz.
Methyl Salicylate	4 oz.
Color	q. s.

Directions for Use: Apply gently on the affected parts twice a day. If necessary, it may be used more frequently. Later continue treatment less frequently as may be required.

Designation: NULFEY TABLETS.

Formula No. 1: (Used Prior to October 1947.)

Each tablet contains:

P. E. cascara	$\frac{1}{4}$ gr.
P. E. Buchu	$\frac{1}{4}$ gr.
P. E. Uva Ussi	$\frac{1}{4}$ gr.
Methenamine	$2\frac{1}{2}$ grs.
Acid Sodium Phosphate	$2\frac{1}{2}$ grs.
Sodium Salicylate	5 grs.

Directions for Use: Take 1 or 2 tablets every 3 or 4 hours. If relief is not prompt, see your physician.

Formula No. 2: (Used subsequent to October 1947.)

Acetyl Salicylic Acid	3 grs.
Acetophenetidin	$2\frac{1}{2}$ grs.
Grain Caffeine	$\frac{1}{2}$ gr.

Directions for Use: FOR ADULTS: 1 or 2 tablets. May be repeated in 3 hours if necessary. Do not take more than 5 tablets in any 24 hour period.

For Children over 7 years: 1 tablet only. May be repeated in 3 hours. Do not give more than 3 tablets in any 24 hours.

Do not exceed the above recommended doses in any 24 hours. If pains persist, recur frequently, or are unusually severe, consult a physician.

PAR. 3. Respondents cause and have caused said products when sold, to be transported from their place of business in the State of Pennsylvania to purchasers, thereof located in various other States of the United States and in the District of Columbia and at all times mentioned herein, maintain and 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 business, respondent William A. Reed Co., a corporation, subsequent to about January 2, 1946, and the individual respondents as copartners prior to such time, but subsequent to March 31, 1938, disseminated and caused the dissemination of certain 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, including but not limited to advertisements in the Cincinnati "Star-Times," June 1944; in the Detroit "News" on or about February 16, 1944; in the Chicago "Herald-Examiner" from June 1946 to January 1947; Newark "Evening News" November 1947, and other nationally distributed newspapers in several States of the United States over the period of time covered in this complaint, and by means of radio continuities broadcast from Station WOL, Washington, D. C., on or about June 30, 1943; Station WPEN, Philadelphia, Pa., in June 1943, and in December 1944; and from other radio stations during the period of time covered in this complaint, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and caused the dissemination of advertisements concerning their said products by various means, including but not limited to the advertisements and radio continuities referred to above, 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.

PAR. 5. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

Relating to Medrex Soap, disseminated by means of radio continuities by the individual respondents as copartners in the year 1944:

MEDREX SOAP * * * helps to bring genuine relief from burning, itching and embarrassment of blotchy skin. Mild, medicated MEDREX SOAP is delightful to use—and a big help in bringing back a clear, natural complexion * * * Friends if you're troubled with blotchy, broken-out skin, get a cake of MEDREX SOAP tonight. Use it regularly. See how it may help relieve that externally-caused skin condition.

And how should MEDREX SOAP be used to help relieve externally-caused pimples, blackheads and rashes? It is very simple. You just make a thick

Complaint

48 F. T. C.

rich MEDREX SOAP lather. Wash your face thoroughly—allow some of the lather to dry on the face—then rinse with warm water and pat dry with a soft towel. Do it regularly. MEDREX SOAP is a pure, perfectly balanced, soothing soap that helps nature bring back a clear, lovely complexion.

Relating to Medrex Ointment, disseminated by the individual respondents as copartners by means of newspapers prior to January 2, 1946:

WHY LOOK DISPLEASED? Get rid of pimples. Do ugly, red, disfiguring pimples, bothersome blackheads, burning eczema, itching skin and other non-systemic externally-caused skin ailments make you look as if you suffered from a really serious complaint? Then, for Heaven's Sake go to your druggist right away and get a jar of MEDREX OINTMENT. * * * MEDREX offers quick relief and promotes beneficial effect by helping nature to clear away these externally-caused blemishes.

BLACKHEADS, PIMPLES, QUICKLY GO, OR MONEY BACK!

MEDREX has proved completely effective in clearing up PIMPLES, BLACKHEADS, and all other kinds of externally-caused skin irritations.

Disseminated by the corporate respondent by means of newspapers subsequent to January 2, 1946:

AWAY GO PIMPLES.

The instant you put soothing MEDREX OINTMENT on the itching pimples you get action. Relieve the troublesome symptoms of externally-caused pimples with MEDREX OINTMENT. Millions of satisfied users find this famous doctor's prescription eases the itching of pimples—helps nature in healing. The eight tested ingredients of MEDREX OINTMENT guarantee quick relief or your money back. Why suffer? medicate with MEDREX OINTMENT.

Here is a free way to rid yourself of torturous itching pimples, eczema, blotches and blemishes of an external nature. Money refunded if pure MEDREX OINTMENT fails to give you quick relief from symptoms. MEDREX OINTMENT is guaranteed. Skin eruptions must go or money back.

ONE! TWO! PIMPLES THROUGH.

A new double action way to find relief from itching pimples, eczema and other skin eruptions of external nature. MEDREX OINTMENT relieves instantly or your money back. Millions find MEDREX OINTMENT the ideal answer to their skin problems.

BAD SKIN, PIMPLES.

Here is a new way to help rid yourself of torturous itching pimples, scales, scabies and blemishes of external nature.

Relating to Nulfey Tablets, under Formula No. 1 above, disseminated by newspapers and radio prior to January 2, 1946:

NULFEY HELPS clear up the system by acting as a laxative, too. It helps clear away those waste poisons that might be the cause of unbearable neuralgia and muscular pains.

BACK-BREAKING PAINS.

If you suffer from the agonizing torture of nagging backaches, rheumatism, arthritis, sciatica, gout, lumbago, or simple neuralgia . . . if you feel so stiff and achy that you can hardly walk, sit or sleep in comfort, don't despair.

Go to your druggist this very minute and buy a box of NULFEY TABLETS. Take 1 or 2 every 3 or 4 hours and the chances are better than good that you will find quick relief. Sold with the ironclad guarantee that they must act beneficially on the particular condition for which they are intended or your money cheerfully refunded. Get NULFEY TABLETS today and get rid of those torturing pains.

RHEUMATISM—ARTHRITIS—NEURALGIA—MUSCULAR PAINS.

You are only as old as you feel! So why not do something that will help you regain your youthful vim, pep and vigor. Go to your druggist now and buy a bottle of NULFEY TABLETS that often bring relief in a jiffy to sufferers from rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains and simple neuralgia. NULFEY TABLETS are sold with an ironclad guarantee that they must act beneficially on the particular conditions for which they are intended or your money promptly refunded. Get NULFEY TABLETS at your druggist and get relief from agonizing pain.

Disseminated by respondent corporation by means of newspapers subsequent to January 2, 1946, under Formula No. 2 above:

ACHES—PAINS

Help rid yourself of torturing pains. Use time-tested NULFEY TABLETS for the relief of muscular aches and pains commonly referred to as rheumatic pains, also headaches, backache and simple neuralgia. Guaranteed quick acting NULFEY TABLETS must relieve promptly or your money back. The new improved NULFEY TABLETS are on sale today.

HEADACHE

Are you suffering from the misery of a nervous headache? Why let pain make work all agony and nights a torture? NULFEY TABLETS will often bring you relief in a jiffy. Don't delay—when that warning pain strikes. Get genuine, dependable NULFEY TABLETS today, NULFEY TABLETS, a time-tested, formula, is scientifically prepared and used by thousands of satisfied customers for over 50 years with amazing results. Complete satisfaction or your money back. Use only as directed.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication:

That the use of Medrex Soap, is effective in treating and relieving externally caused pimples, blotches, broken out skin, rashes, and blackheads; that it will relieve itching and burning skin and will restore a clear, natural complexion, in cases of blotchy skin.

That the use of Medrex Ointment, as directed, is a cure or remedy and constitutes a competent and effective treatment for, all externally caused skin ailments or conditions including pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes or similar skin ailments, or conditions and will relieve the itching of skin blemishes and eruptions of external nature.

Complaint

48 F. T. C.

That Nulfey Tablets Formula No. 1 above, will have a remedial action and will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, and neuralgia; that waste poisons cause the pains of neuralgia and rheumatism and that this product will clear the system of these poisons and thereby relieve such pains.

That Nulfey Tablets Formula No. 2 above, will relieve aches and pains, particularly muscular aches and pains, rheumatic pains, headaches, backaches and pains of simple neuralgia.

PAR. 7. That 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:

The use of Medrex Soap is not an effective treatment for and will not relieve externally or otherwise caused pimples, blotched or broken out skin, rashes, or blackheads. Its use will not relieve itching or burning skin. It will not restore a clear, natural complexion in cases of blotchy skin. This product possesses no medicinal value and acts only as a cleansing agent.

The use of Medrex Ointment as directed, is not a cure or remedy nor does it constitute a competent or effective treatment for externally or otherwise caused pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes, or similar skin ailments or conditions. While this product will temporarily relieve the itching of some skin blemishes and eruptions it will not do so in all such conditions.

Waste poisons do not cause the pains of neuralgia or rheumatism and while Nulfey Tablets Formula No. 1 above, will by reason of its laxative effect cause the evacuation of waste materials from the intestinal tract, such action will not clear the system of poisons or relieve the pains of neuralgia or rheumatism.

This product will not cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, or neuralgia or have any remedial or beneficial effect upon such ailments or conditions.

Both Nulfey Tablets, Formulas No. 1 and No. 2, because of their analgesic properties will tend to temporarily relieve or reduce the pain associated with the aforesaid ailments or conditions but the pain will return as soon as the analgesic effect wears off. There are pains associated with some of said ailments or conditions in which the pain is so severe that Nulfey Tablets, taken as directed, will not give complete relief.

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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 27, 1948, 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. An answer to said complaint was filed by respondents William A. Reed Co. and Albert J. Sylk. No answer was filed by the other respondents. Thereafter, respondents submitted an offer of settlement conditioned upon the issuance by the Commission of a specified order to cease and desist. The Commission declined to issue its order to cease and desist in the form specified in the offer of settlement, but issued and served upon respondents a tentative order to cease and desist. Objection having been made by respondents to the issuance by the Commission of its order to cease and desist in the form contained in the said tentative order, the Commission remanded the matter to a trial examiner of the Commission, theretofore duly designated by it, for further proceedings. Thereupon, respondents agreed to the issuance of an order to cease and desist in the form contained in the tentative order issued by the Commission. The trial examiner, stating that no further proceedings by him were necessary, certified the matter to the Commission for its final consideration. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the answer thereto of respondents William A. Reed Co. and Albert J. Sylk, respondents' offer of settlement, the Commission's tentative order to cease and desist and respondents' consent thereto (no briefs having been filed or oral argument requested), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent William A. Reed Co. is a corporation, organized under the laws of the State of Pennsylvania on October 1, 1945, with its principal place of business located at 1928 Spruce Street, Philadelphia, Pa. Respondent Albert J. Sylk is president of the respondent corporation, William A. Reed Co., and formulates and directs the policies and practices of said corporation. Respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg are individuals who prior to January 2, 1946 op-

Findings

48 F. T. C.

erated as copartners under the name and style of William A. Reed Co. On or about January 2, 1946, the said respondent copartners transferred all of their property, rights and interest in the said partnership to the respondent corporation, William A. Reed Co.

The addresses of the individual respondents are: Albert J. Sylk, 1928 Spruce Street, Philadelphia, Pa.; William H. Sylk, 6953 Greenhill Road, Philadelphia, Pa.; Harry S. Sylk, 5117 Wynnefield Avenue, Philadelphia, Pa.; Morris Soble, 2277 Georges Lane, Philadelphia, Pa.; and Bernard Weinburg, 2319 North Fifty-first Street, Philadelphia, Pa.

PAR. 2. Respondent corporation, William A. Reed Co., is now, and since January 2, 1946, it has been, engaged in the sale and distribution of certain drug and cosmetic products. Respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, as copartners operating as William A. Reed Co., were engaged in the sale and distribution of the said drug and cosmetic products for several years immediately prior to January 2, 1946. The designation used by respondents for said drug and cosmetic products and the formulae and direction for use thereof are as follows:

Designation: MEDREX SOAP.

Formula: (1) Combination of tallow and coconut oil.

- (2) 83 to 84% anhydrous soap.
- (3) 10 to 12% moisture.
- (4) 2% Medrex Ointment.
- (5) $\frac{3}{4}$ of 1% perfume.
- (6) 0.05 of 1% glycerine.
- (7) 0.02 of 1% alkali.
- (8) trace of salt.

Directions for Use: To promote the healing of pimples and blackheads due to external causes, place a cake of Medrex Soap into a bowl of hot water and make a lather. Wash the skin thoroughly and allow the lather to dry on the affected skin. Rinse and dry, by patting with a clean, soft towel. Then apply Medrex Ointment with fingers, gauze or cotton. Do not spread on too thickly, as a thin coating is all that is needed. Use Medrex treatment nightly before bedtime. Every morning cleanse the face with Medrex Soap and hot water, working the lather into the pores; then rinse with cold water.

Designation: MEDREX OINTMENT.

Formula: Acid Salicylic.....	1# 5 oz. 105 gr.
Benzoic Acid.....	1# 5 oz. 105 gr.
Zinc Oxide.....	13#
Amylum (Starch).....	13#
Petrolatum	39#
Acetanilid	8 oz.
Phenol (Carbolic Acid).....	5 oz.
Methyl Salicylate.....	4 oz.
Color	q.s.

Directions for Use: Apply gently on the affected parts twice a day. If necessary, it may be used more frequently. Later continue treatment less frequently as may be required.

Designation: NULFEY TABLETS.

Formula No. 1: (Used prior to October 1947.)

Each tablet contains:

P. E. Cascara.....	1/4 gr.
P. E. Buchu.....	1/4 gr.
P. E. Uva Ussi.....	1/4 gr.
Methenamine.....	2 1/2 grs.
Acid Sodium Phosphate.....	2 1/2 grs.
Sodium Salicylate.....	5 grs.

Directions for Use: Take 1 or 2 tablets every 3 or 4 hours. If relief is not prompt, see your physician.

Formula No. 2: (Used subsequent to October 1947.)

Acetyl Salicylic Acid.....	3 grs.
Acetophenetidin.....	2 1/2 grs.
Grain Caffein.....	1/2 gr.

Direction for Use: FOR ADULTS: 1 or two tablets. May be repeated in 3 hours if necessary. Do not take more than 5 tablets in any 24-hour period.

For Children over 7 years: 1 tablet only. May be repeated in 3 hours. Do not give more than 3 tablets in any 24 hours.

Do not exceed the above recommended doses in any 24 hours. If pains persist, recur frequently, or are unusually severe, consult a physician.

PAR. 3. Respondents cause and have caused said products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, respondent William A. Reed Co., a corporation, subsequent to about January 2, 1946, and the individual respondents as copartners prior to such time, but subsequent to March 31, 1938, disseminated and caused the dissemination of a number of advertisements concerning said products, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of a number of advertisements concerning their said products, by various means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in the advertisements disseminated and caused to be dis-

Findings

48 F. T. C.

seminated by the respondents as hereinabove set forth, in newspapers and radio continuities distributed throughout the United States, by the United States mails, and by other means in commerce, were the following:

1. *Medrex Soap:*

MEDREX SOAP * * * helps to bring genuine relief from burning, itching and embarrassment of blotchy skin. Mild, medicated MEDREX SOAP is delightful to use—and a big help in bringing back a clear, natural complexion * * * Friends if you're troubled with blotchy, broken-out skin, get a cake of MEDREX SOAP tonight. Use it regularly. See how it may help relieve that externally-caused skin condition.

And how should MEDREX SOAP be used to help relieve externally-caused pimples, blackheads and rashes? It is very simple. You just make a thick rich MEDREX SOAP lather. Wash your face thoroughly—allow some of the lather to dry on the face—then rinse with warm water and pat dry with a soft towel. Do it regularly. MEDREX SOAP is a pure, perfectly balanced, soothing soap that helps nature bring back a clear, lovely complexion.

2. *Medrex Ointment:*

WHY LOOK DISPLEASED? Get rid of pimples. Do ugly red, disfiguring pimples, bothersome blackheads, burning eczema, itching skin and other non-systemic externally-caused skin ailments make you look as if you suffered from a really serious complaint? Then, for Heaven's Sake go to your druggist right away and get a jar of MEDREX OINTMENT. * * * MEDREX offers quick relief and promotes beneficial effect by helping nature to clear away these externally-caused blemishes.

BAD SKIN, PIMPLES.

Here is a new way to help rid yourself of torturous itching pimples, scales, scabies and blemishes of external nature.

3. *Nulfev Tablets, Formula No. 1:*

NULFEY HELPS clear up the system by acting as a laxative, too. It helps clear away those waste poisons that might be the cause of unbearable neuralgia and muscular pains.

BACK-BREAKING PAINS.

If you suffer from the agonizing torture of nagging backaches, rheumatism, arthritis, sciatica, gout, lumbago, or simple neuralgia . . . if you feel so stiff and achy that you can hardly walk, sit or sleep in comfort, don't despair. Go to your druggist this very minute and buy a box of NULFEY TABLETS. Take 1 or 2 every 3 or 4 hours and the chances are better than good that you will find quick relief. Sold with the ironclad guarantee that they must act beneficially on the particular condition for which they are intended or your money cheerfully refunded. Get NULFEY TABLETS today and get rid of those torturing pains.

4. *Nulfev Tablets, Formula No. 2:*

ACHES—PAINS

Help rid yourself of torturing pains. Use time-tested NULFEY TABLETS for the relief of muscular aches and pains commonly referred to as rheumatic pains, also headaches, backache and simple neuralgia. Guaranteed quick acting NULFEY TABLETS must relieve promptly or your money back. The new improved NULFEY TABLETS are on sale today.

PAR. 6. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication:

(a) That the use of Medrex Soap is effective in treating and relieving externally caused pimples, blotches, broken out skin, rashes, and blackheads; and its use will relieve itching and burning skin and restore a clear, natural complexion, in cases of blotchy skin;

(b) That the use of Medrex Ointment as directed as a cure or remedy and constitutes a competent and effective treatment for all externally caused skin ailments or conditions, including pimples, blackheads, scabies, scales, skin blotches, eczema, skin irritations and eruptions, skin blemishes or similar skin ailments or conditions, and will relieve the itching of skin blemishes and eruptions of external nature;

(c) That Nulfey Tablets, Formula No. 1, will have a remedial action and will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, and neuralgia; that waste poisons cause the pains of neuralgia and rheumatism and that this product will clear the system of these poisons and thereby relieve such pains; and

(d) That Nulfey Tablets, Formula No. 2, will relieve aches and pains, particularly muscular aches and pains, rheumatic pains, headaches, backaches, and pains of simple neuralgia.

PAR. 7. The said advertisements contained statements and representations which were misleading and are "false advertisements" as that term is defined in the Federal Trade Commission Act in that:

(a) The use of Medrex Soap is not an effective treatment for and will not relieve externally or otherwise caused pimples, blotched or broken out skin, rashes or blackheads, will not relieve itching or burning skin, will not restore a clear, natural complexion in cases of blotchy skin, and the said soap does not possess medicinal value but acts only as a cleansing agent;

(b) The use of Medrex Ointment as directed is not a cure or remedy nor does it constitute a competent or effective treatment for externally or otherwise caused pimples, blackheads, scabies, skin blotches, eczema, skin irritations and eruptions, skin blemishes, or similar skin ailments, and although this product will temporarily relieve itching of some skin blemishes and eruptions, it does not do so in all such conditions;

(c) Nulfey Tablets, Formula No. 1, by reason of its laxative effect, will cause the evacuation of waste materials from the intestinal tract, but such action will not clear the system of poisons nor cure or relieve the pains of neuralgia, rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, nor does the use of these

Order

48 F. T. C.

tablets have any remedial or beneficial effect upon such ailments or conditions; and

(d) Nulfey Tablets, Formula No. 1, and Nulfey Tablets, Formula No. 2, because of their analgesic properties will tend to relieve temporarily or reduce the pain associated with the aforesaid ailments set out in subsection (c) above, but the pain will return as soon as the analgesic effect wears off; and there are pains associated with some of the said ailments or conditions in which the pain is so severe that Nulfey Tablets taken as directed will not give complete relief.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto of respondents William A. Reed Co. and Albert J. Sylk, respondents' offer of settlement and respondents' consent to the issuance by the Commission of an order to cease and desist in the form set forth in a tentative order to cease and desist issued by the Commission on January 22, 1951 (no briefs having been filed and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent William A. Reed Co., a corporation, and its officers, and the respondent Albert J. Sylk, individually and as president of William A. Reed Co., and the respondents Albert J. Sylk, William H. Sylk, Harry S. Sylk, Morris Soble, and Bernard Weinberg, individually and as copartners trading under the name of William A. Reed Co., or trading under any other name or trade designation, and said respective respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their

220

Order

drug and cosmetic products presently designated as "Medrex Soap," "Medrex Ointment," "Nulfey Tablets," or any other products of substantially similar composition or composing or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

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

(a) That the use of Medrex Soap is effective in treating or relieving externally or otherwise caused pimples, blotched or broken out skin, rashes or blackheads; that said product will relieve itching or burning skin or restore a clear, natural complexion in cases of blotchy skin; or that said product possesses any medicinal value;

(b) That the use of Medrex Ointment, as directed, is a cure or remedy or constitutes a competent or effective treatment for externally caused skin ailments or conditions, or that said product has any value in the treatment of such ailments or conditions in excess of such temporary relief from itching as may be afforded;

(c) That Nulfey Tablets Formula No. 1 will have a remedial action or will cure rheumatism, arthritis, sciatica, gout, lumbago, muscular aches and pains, or neuralgia, or that said product will have any beneficial effect upon such ailments or conditions in excess of tending to temporarily relieve or reduce minor aches or pains associated with such ailments or conditions; or that said product, by the evacuation of waste materials from the intestinal tract afforded by the laxative effect of this product, will clear the system of poisons, or that the presence of waste poisons in the system causes the pains of neuralgia or rheumatism;

(d) That Nulfey Tablets Formula No. 2 will relieve aches or pains, particularly muscular aches or pains, rheumatic pains, headaches, backaches, and pain of simple neuralgia, except to the extent that said tablets will tend to temporarily relieve or reduce minor aches and pains associated with the aforesaid ailments or conditions.

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 products, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

KOCH LABORATORIES, INC., ET AL.

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

Docket 4772. Complaint, June 13, 1942—Decision, Aug. 24, 1951

The premise or theoretical basis for a certain method of treatment which involved administration by intramuscular or intravenous injection of the products concerned—namely, that natural immunity or resistance to disease is brought about by a vigorous oxidation mechanism which destroys and renders harmless germ structures and cancer-producing mechanisms—is not supported by the predominant weight of qualified scientific opinion, which is to the effect that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and the allergies are not caused by a defect of the oxidation mechanism, and that the products concerned in the instant proceeding have no beneficial role whatsoever in carbohydrate or glucose oxidation.

As respects the question of public interest and the false and misleading advertising of preparations offered and sold as treatments for various diseases and conditions of human beings and animals: the provisions of the Federal Trade Commission Act and the public policy expressed therein require corrective action to eliminate false representations, irrespective of whether or not the dissemination of the advertising was limited to those who had the requisite training to appraise accurately the false representations of material facts which appeared in the advertising in question.

Evaluation of therapeutic preparations requires study of a substantial number of cases correctly diagnosed, and usually also contemplates some knowledge of the ratio of cures to trials.

Where a corporation and two officers thereof, engaged in the manufacture and interstate sale and distribution of their "Glyoxylide," "B-Q," and "Malonide Ketene Solution" preparations for administration by intramuscular or intravenous injection;

In advertising in periodicals, pamphlets, circulars, and other promotional matter which they disseminated to doctors of medicine (including homeopathic physicians) and to naturopaths and other practitioners of the healing arts, and in which were included statements purportedly dealing with conditions encountered and results accomplished in clinical use, directly and by implication—

(a) Falsely represented that their preparation "Glyoxylide" was an adequate treatment for and possessed substantial therapeutic value in the presence of any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicæmia, and insanity;

- (b) Falsely represented that the product "B-Q" constituted an adequate treatment for and possessed substantial therapeutic value in the presence of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases;
- (c) Falsely represented that the preparation "Malonide Ketene Solution" constituted an adequate treatment for and possessed substantial therapeutic value in the presence of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and post operative meningitis; and
- (d) Falsely represented through the use of the expressions "for the infections," "for the allergies," and "for cancer, and the degenerative diseases," that their products were of therapeutic value in the treatment of all infections, allergies, cancer, and degenerative diseases;

With capacity and tendency to deceive and mislead prospective purchasers into the belief that such representations were true and thereby induce purchase of said products:

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

While the witnesses who testified in support of the complaint had not prescribed respondents' products or observed their effects in concrete cases, they had had wide experience in various fields of medical science, and their broad knowledge individually and in the aggregate respecting the fields under inquiry, was such that their testimony—which affirmed in substance that respondents' highly diluted products, irrespective of the dilution in which they might be used, were of no value in the treatment of any disease or disorder whatsoever—was entitled to very great weight.

In the foregoing connection it also appeared that there had been a series of scientific experiments which entailed administration of various dilutions of a substance allied to the product "Glyoxylide" (which had apparently been used earlier by one of said individual respondents in the treatment of cancer), and that it was the conclusion of the scientific witnesses who conducted said experiments at an eastern university that the product had no effect, inhibitory or stimulatory, on tumors in mice, either spontaneous or induced.

As respects the preparation "Glyoxylide" and the effects thereof, the record also revealed that a legislative commission of the Province of Ontario, Canada, appointed to inquire into treatments offered for cancer, reported to the Minister of Health in 1942 that in nine cancer cases treated by "Glyoxylide" and observed until final termination, no curative or remedial effects were observed from the standpoint of the prolongation of life, regression of tumor, or suppression of symptoms.

As regards testimony and other evidence relating to specific instances in which respondents' products had been administered and other testimony respecting the opinions which certain of the witnesses, who were doctors of medicine or practitioners of other healing arts, had formed as to respondents' products,

Syllabus

48 F. T. C.

primarily on the basis of the witnesses' use of such preparations and which were to the general effect that the products in question had significant therapeutic value: it was the view of the Commission that the evidence relating to the case histories concerned was unconvincing and constituted a wholly inadequate basis for a conclusion that such products possessed therapeutic value.

As respects said case histories it appeared, among other things, that in some instances improvement which apparently followed administration of one of respondents' products undoubtedly was attributable to such conventional therapeutic treatment as was rendered to the patient previously, simultaneously or subsequently, rather than to the effects of the products concerned; that in other instances the particular disease belonged in that category in which the symptoms might be subject to complete or substantial remission, subject, possibly, to reappearance months or years later; that in others the diseases were self-limiting or their symptoms were of definite duration or both; that in no single category did the testimony relating to clinical use embrace a substantial number of specific cases; and that in more than 20 or such categories the testimony in each instance related to the use of respondents' treatment of one patient.

As regards further testimony and evidence offered in respondents' behalf, it appeared that, in view of the existence of respondents' products for more than 20 years, there was a singular lack of test data or information obtained from controlled clinical work to corroborate the representations for therapeutic value used by respondents in promoting the sale of the product involved; and it was the conclusion of the Commission, on the basis of the greater weight of the evidence, that respondents' preparations possessed no therapeutic value; that their use in any dilution would not benefit any disease or condition of humans or animals; and that the statements in respondents' advertising and promotional matter—including those which represented that the efficacy of said products and their method of treatment was attested, demonstrated, or proved by the results afforded in their clinical use—constituted false representations of material facts, and that respondents' advertisements were false and misleading, and constituted false advertisements.

As respects respondents' contention that no public interest existed in the proceeding for the reason that dissemination of the advertising concerned had been restricted to members of the medical profession with the requisite training to understand and evaluate therapeutic claims made for medicinal products, it appeared that it was disseminated to doctors of medicine, including homeopathic physicians, and to practitioners of other healing arts, including naturopaths; and also that similar representations phrased in different language, particularly as they related to the treatment of cancer, had appeared in media coming to the attention of the lay public; and that, accordingly, respondents' advertising had not been thus limited as claimed, laying to one side the fact that, even if the contention were true, corrective action would nevertheless have been required under the statute and the public policy expressed therein.

While it appeared from certain documents filed on behalf of respondents that subsequent to the institution of the proceeding, respondent corporation was

Complaint

dissolved and no longer existed, and there were also indications that the sale and distribution of the preparations concerned had been discontinued by respondent individuals, it was the opinion of the Commission that, while the corporate respondent under the circumstances was not included in the cease and desist order, the public interest required issuance of such an order prohibiting respondent individuals from resuming or continuing use of the unfair and deceptive acts and practices employed at the time when the complaint was issued and subsequent thereto.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Dykema, Jones & Wheat, of Detroit, Mich., 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 Koch Laboratories, Inc., a corporation, William F. Koch, individually and as an officer of Koch Laboratories, Inc., and Louis G. Koch, individually and as an officer of Koch Laboratories, Inc., 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. The respondent Koch Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan and maintains its principal office and place of business at 8181 East Jefferson Avenue, Detroit, Mich.

PAR. 2. Respondent William F. Koch is president and Louis G. Koch is secretary-treasurer of Koch Laboratories, Inc., and they both are actively engaged in the conduct of the business of respondent Koch Laboratories, Inc. The aforesaid individual respondents direct and control the sales and advertising policy of the corporate respondent.

PAR. 3. The respondents are now and for several years last past have been engaged in the business of selling and distributing preparations designated as "Glyoxylide," "B-Q," and "Malonide Ketene Solution," which preparations have been offered for sale and sold by respondents as treatments for various diseases and conditions of the human body. The respondents manufacture the said preparations and cause them to be transported from Detroit, Mich., to purchasers thereof located in various States of the United States other than the State of Michigan. The respondents maintain and at all times mentioned herein have maintained a course of trade in said preparations in commerce among and between the various States of the United States.

Complaint

48 F. T. C.

PAR. 4. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning the said preparations by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of their said preparations 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 hereinbefore set forth by the United States mails, by advertisements in periodicals, by pamphlets, circulars, and other advertising literature, are the following:

The BASIS OF IMMUNITY is, after all, the vital principle, the OXIDATION MECHANISM. When its catalysis ceases, death is the result. When its activity wanes, the toxins that support pathogenic germ activity, that produce allergy, or that cause cancer, are not destroyed in the body, and can execute their effects. All of these toxins depend upon their free valencies between carbon atoms, between carbon and oxygen, and between carbon and nitrogen for their pathogenic photochemic action.

Our SYNTHETIC ANTITOXINS not only activate oxygen, but they activate the toxic free valencies of germ and allergy poisons to accept the activated oxygen and thus become burned to harmless structures. Our active principles are fundamentally and universally useful, therefor.

Certain polymerization phases have specific pathogenic action, while others have no action at all. The rapidity of the recovery from virus caused disease after one dose of our Benzoquinone solution or one of the transition forms, Glyoxylide or Malonide, can only be accounted for by this assumption, for recovery from early acute infantile paralysis has taken place in twenty-four hours and measles recover regularly in twelve hours.

SYNTHETIC ANTITOXINS

For the INFECTIONS—

* * *

1:4 Benzoquinone.

* * *

For the ALLERGIES—

Malonide.

Ketene.

For CANCER and the REGENERATIVE diseases—

Glyoxylide OCCO.

Glyoxlide * * * for allergy, cancer, infection.

B-Q * * * for the infections and their sequelae.

In both coronary occlusion and obliterative endarteritis besides the allergy to such toxins as that in tobacco which excite the angiospasm and the hypertrophic response in the cells of the intima, the pain of the vascular spasms and muscle spasms occurring with occlusion and circulatory failure are due to the presence of incompletely burned materials produced by muscle contraction in the absence of a supply of oxygen and glucose. In such areas the oxidation catalyst must also be exhausted, and a fresh supply behaves specifically in reducing the pain and correcting the pathology. The spasms and hyperplasia of the original allergic response are quickly corrected and sufficient circulation is soon restored to the part to burn up the pain producing products of muscle spasm through the catalysis of the glyoxylide. The toxic substances and their effects are thus removed and with reasonable time the whole pathology is corrected.

ANGIONEUROTIC OEDEMA * * * Condition seemed almost fatal for a half-hour before glyoxylide was given intra-muscularly. In less than two minutes relief was perhaps 80 per cent. Recovery complete within one hour.

OBLITERATIVE ENDARTERITIS * * * Obliterative Endarteritis, both legs and feet to the knees. Much pain, bedfast. Amputation at knees requested by surgeon. Blood sugar 380. One dose glyoxylide followed in three months by much improvement and in six months by complete recovery. Blood sugar 80. No return of trouble.

Hay fever, asthma, severe sinusitis, generalized, pigmented, itching hives constantly. * * * One dose of glyoxylide was given in May, 1934. Recovery complete in all respects within six months.

Dementia Praecox * * * recovery was complete in two years after two doses of Glyoxylide solution.

Epilepsy * * * one dose of glyoxylide solution given August 12, 1929, was followed by a gradual recession of the disease, so that by the twelfth week only a few petit mal were observed and thereafter recovery became complete, with no more fits.

PSORIASIS * * * At the time of glyoxylide injection body was generally covered, hair and nails affected. Ears almost separated from scalp. Recovery completed and heart action returned to normal fourteen weeks after one injection of glyoxylide * * *.

POLIOMYELITIS * * *. Recovery started to show within ten minutes after the first injection (Glyoxylide).

According to reports by expert clinicians more is accomplished in tuberculosis in three months by one dose of Glyoxylide than by five years of sanitarium care. Many of the most advanced cases of tuberculosis of the lungs and bones recover on one dose. The results in leprosy, malaria, syphilis, multiple sclerosis and infantile paralysis are good but no statistical estimates have been made as yet. Cases of insanity and epilepsy have responded well also. Thus the field of action is general and the efficiency is extraordinary.

ARTHRITIS * * *. One dose of Glyoxylide was given in December, 1927. Pain was soon better and in three months she was able to walk a few steps. In one year recovery had become about 90% of normal and has so remained.

TUBERCULAR ARTHRITIS AND OSTEOMYELITIS * * *. One dose of Glyoxylide given July 23, 1934, was followed by a rapid decrease in the pain and a steady restoration of joint and bone to normal functionally and structurally, with perfect use of leg and full motion within nine months.

A case of abscess of the prostate with septicaemia becoming worse after Sulfathiazole recovered splendidly following a dose of Glyoxylide.

Complaint

48 F. T. C.

In a series of some three hundred cases of asthma, eczema and hay fever eighty-five percent made full recovery on one or two doses of Glyoxylide.

We recommend BQ * * * 1:4 Benzoquinone in the treatment of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicæmia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, degenerative diseases.

Malonide Ketene Solution has served well in the allergies, infections and cancer. A boy of two with double pneumonia and osteomyelitis of the left tibia, which had to be opened the full length; the prognosis given by all attendants was early death. Two doses of Malonide Ketene Solution brought full recovery with rapid recuperation. A case of postoperative meningitis caused by the staphylococcus pyogenes aureus that had passed beyond the convulsive stage into coma and was expected to pass on any minute made a rapid recovery (ten days) on one dose of Malonide Ketene Solution.

An efficient single dose treatment for diabetes on a full carbohydrate diet without insulin. * * * The period of observation includes scattered cases treated since 1929 and recent systematic studies. The cases studied cover about every type known including a few of diabetes insipidus.

The treatment material consists of cataleptic delusions of the carriers of aerobic oxidation which we have described elsewhere. (1) the substances are 1:4 Benzoquinone and its transition products Glyoxylide (OCCO) and Malonide (OCCCO) and also Ketene. * * *. After the remedy is injected one should watch for periodic reactions which play their part in the recovery process. These have already been described. They generally come at three and a half day or three week intervals until recovery is complete. If an intervening factor prevents recovery it should be identified and removed and the dose repeated.

Acute Appendicitis * * * Twenty-four hours after treatment of one dose of Benzoquinone white count was 3,500, pain nearly gone, no vomiting or nausea. Desiring food. Pulse 92, temperature 99°. Forty-eight hours after treatment white count 10,350, temperature normal, pulse 80, feeling good. Slight sore spot still remaining in appendicitis region. Recovery rapid thereafter.

PAR. 5. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein which purport to be descriptive of the therapeutic value of respondents' preparations and of the benefits to be derived from their use, the respondents represent directly and by implication that the preparation "Glyoxylide" is an adequate treatment for any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia præcox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicæmia, and insanity; that the product "B-Q" constitutes an adequate treatment for all infections and their sequelae, including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicæmia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases; and

that the preparation "Malonide Ketene Solution" constitutes an adequate treatment for the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and post-operative meningitis. Through the use of the term "for allergy, cancer, infection" to describe and refer to properties of the aforementioned products, they have represented such products to be of therapeutic value in the treatment of all infections, cancer and allergies.

PAR. 6. The foregoing advertisements and representations and others similar thereto not specifically set out herein, used and disseminated by the respondents as hereinabove described, are false and misleading. In truth and in fact, respondents' products "Glyoxylide," "B-Q," and "Malonide Ketone Solution" do not possess any therapeutic value and their use will not benefit any disease.

PAR. 7. The use by respondents of their advertising matter heretofore described has had and now has the capacity and tendency to and did and does deceive and mislead prospective purchasers and purchasers of their products into the belief that such representations are true and that such products possess the therapeutic properties represented. On account of such mistaken and erroneous belief a substantial portion of the purchasing public has been and is induced to purchase said products from the respondents.

PAR. 8. The aforesaid acts and practices of respondents as herein 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 June 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and

Findings

48 F. T. C.

oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. At the time this proceeding was instituted, the respondent Koch Laboratories, Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and maintained its principal office and place of business at 8181 East Jefferson Avenue, Detroit, Mich. Respondents William F. Koch and Louis G. Koch are individuals who have acted respectively as president and treasurer of respondent Koch Laboratories, Inc. Respondents William F. Koch and Louis G. Koch have been actively engaged in the conduct of the business of respondent Koch Laboratories, Inc., and have directed and controlled the sales and advertising policies of such corporate respondent.

PAR. 2. Respondents for many years prior to the time when this proceeding was instituted engaged in the business of selling and distributing certain preparations designated as "Glyoxylide," "B-Q," and "Malonide Ketene Solution," which preparations have been offered for sale and sold by respondents as treatments for various diseases and conditions of the human body and in animals. The respondents have manufactured said preparations and caused them to be transported from Detroit, Mich., to purchasers thereof located in various States of the United States other than the State of Michigan and in the District of Columbia, and during the period aforesaid have maintained a course of trade in said preparations in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business the respondents have disseminated, and have caused the dissemination of, advertisements concerning said preparations by the United States mails and various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated, and have caused the dissemination of, advertisements concerning such preparations by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in advertisements in periodicals, pamphlets, circulars and other promotional matter disseminated as aforesaid and caused to be disseminated or mailed by respondents subsequent to March 21,

1938, to doctors of medicine, including homeopathic physicians and other practitioners of the healing arts, including naturopaths, in furtherance of the sale and distribution of their preparations, are the following statements and representations:

THE BASIS OF IMMUNITY is, after all, the vital principle, the OXIDATION MECHANISM. When its catalysis ceases, death is the result. When its activity wanes, the toxins that support pathogenic germ activity, that produce allergy, or that cause cancer, are not destroyed in the body, and can execute their effects. All of these toxins depend upon their free valencies between carbon atoms, between carbon and oxygen, and between carbon and nitrogen for their pathogenic photochemic action.

OUR SYNTHETIC ANTITOXINS not only activate oxygen, but they activate the toxic free valencies of germ and allergy poisons to accept the activated oxygen and thus become burned to harmless structures. Therefore, our active principles are fundamentally and universally useful.

* * * Certain polymerization phases have specific pathogenic action, while others have no action at all. The rapidity of the recovery from virus caused disease after one dose of our Benzoquinone solution or one of the transition forms, Glyoxylide or Malonide, can only be accounted for by this assumption, for recovery from early acute infantile paralysis has taken place in twenty-four hours and measles recovers regularly in twelve hours.

SYNTHETIC ANTITOXINS

For the INFECTIONS—

* * *

1:4 Benzoquinone,

* * *

For the ALLERGIES—

Malonide * * *

Ketene * * *

For CANCER, and the DEGENERATIVE diseases—

Glyoxylide, $O=C=C=O$

* * * * *

GLYOXYLIDE

* * *

for

ALLERGY

CANCER

INFECTION

* * *

B-Q

* * *

Findings

48 F. T. C.

FOR THE INFECTIONS AND THEIR SEQUELAE.

In both coronary occlusion and obliterative endarteritis besides the allergy to such toxins as that in tobacco which excite the angiospasm and the hypertrophic response in the cells of the intima, the pain of the vascular spasms and muscle spasms occurring with occlusion and circulatory failure are due to the presence of incompletely burned materials produced by muscle contraction in the absence of a supply of oxygen and glucose. In such areas the oxidation catalyst must also be exhausted, and a fresh supply behaves specifically in reducing the pain and correcting the pathology. The spasms and hyperplasia of the original allergic response are quickly corrected and sufficient circulation is soon restored to the part to burn up the pain producing products of muscle spasm through the catalysis of the glyoxylide. The toxic substances and their effects are thus removed and with reasonable time the whole pathology is corrected.

* * *

ANGIONEUROTIC OEDEMA * * *. Condition seemed almost fatal for a half-hour before glyoxylide was given intramuscularly. In less than two minutes relief was perhaps 80 percent. Recovery complete within one hour.

OBLITERATIVE ENDARTERITIS * * *. Obliterative endarteritis, both legs and feet to the knees. Much pain, bedfast. Amputation at knees requested by surgeon. Blood sugar 380. One dose glyoxylide followed in three months by much improvement and in six months by complete recovery. Blood sugar 80. No return of trouble. * * *

* * * Hay fever, asthma, severe sinusitis, generalized, pigmented, itching hives constantly. * * * One dose of glyoxylide was given in May, 1934. Recovery complete in all respects within six months.

DEMENTIA PRAECOX * * *. Recovery was complete in two years after two injections of glyoxylide solution. * * *

EPILEPSY * * *. One dose of glyoxylide solution given August 12, 1929 was followed by a gradual recession of the disease, so that by the twelfth week only a few petit mal were observed and thereafter recovery became complete, with no more fits. * * *

PSORIASIS * * *. At the time of glyoxylide injection body was generally covered, hair and nails affected. Ears almost separated from scalp. Recovery completed and heart action returned to normal fourteen weeks after one injection of glyoxylide * * *.

* * * POLIOMYELITIS * * *. Recovery started to show within ten minutes after the first injection [Glyoxylide] * * *.

According to reports by expert clinicians more is accomplished in *tuberculosis* in three months by one dose of *Glyoxylide* than by five years of sanitarium care. Many of the most advanced cases of *tuberculosis of the lungs and bones* recover on one dose.

The results in *leprosy, malaria, syphilis, multiple sclerosis, and infantile paralysis* are good, but no statistical estimates have been made as yet.

* * *

Cases of *insanity* and *epilepsy* have responded well also. Thus the field of action is general, and the efficiency is extraordinary.

* * *

ONE OR TWO DOSES are sufficient generally for complete recovery, where this is possible.

* * *

SELECTION OF THE REMEDY

* * * They are all good.

ARTHRITIS * * *. One dose of glyoxylide was given in December, 1927, pain was soon better and in three months she was able to walk a few steps. In one year recovery had become about ninety per cent of normal and has so remained. * * *

TUBERCULAR ARTHRITIS AND OSTEOMYELITIS * * *. One dose of glyoxylide given July 23, 1934 was followed by rapid decrease in the pain and a steady restoration of joint and bone to normal, functionally and structurally, with perfect use of leg and full motion within nine months. * * *

A case of *abscess of the prostate* with *septicemia* becoming worse after Sulfa-thiazole recovered splendidly following a dose of *Glyoxylide*.

In a series of some three hundred cases of asthma, eczema, and hay fever, over eighty-five per cent made full recoveries on one or two doses of Glyoxylide.

WE RECOMMEND

BQ

1:4 BENZOQUINONE

IN THE TREATMENT OF ALL INFECTIONS
AND THEIR SEQUELAE INCLUDING

Gonorrhea, Salpingitis, Sinusitis, Meningitis, Infantile Paralysis, Septicaemia, Streptococcus Sore Throat, Pneumonia, Undulant Fever, Malaria, Coronary Thrombosis, The Allergies, Diabetes, Cancer, Arthritis, Degenerative Diseases. * * *

MALONIDE, KETENE SOLUTION, has served well in the *Allergies, Infections and Cancer*, * * *.

* * *

A boy of two with double *pneumonia* and *osteomyelitis* of the left tibia which had to be opened the full length; the prognosis given by all attendants was early death. Two doses of the Malonide Ketene solution brought full recovery with rapid recuperation. * * *

A case of *postoperative meningitis* caused by the *Staphylococcus Pyogenes Aureus*, that had passed beyond the convulsive stage into *coma*, and was expected to pass on any minute, made a rapid recovery (ten days) on one dose of *malonide ketene* solution.

AN EFFICIENT SINGLE DOSE TREATMENT FOR DIABETES

On a Full Carbohydrate Diet Without Insulin

* * *

The period of observation includes scattered cases treated since 1922 and recent systematic studies. The cases treated cover about every type known, including a few of diabetes insipidus.

The treatment material consists of catalytic dilutions of the carriers of aerobic oxidation which we have described in the past elsewhere. (1) These substances are 1:4 Benzoquinone and its transition products of Glyoxylide, (O=C=C=O), and Malonide, (O=C=C=C=O), and also Ketene. * * *

* * *

Findings

48 F. T. C.

After the remedy is injected one should watch for periodic reactions which play their part in the recovery process. These have already been described. * * * They generally come at three and a half day or three-week intervals until recovery is complete. If an interfering factor prevents recovery it should be identified and removed and the dose repeated. * * *

The curative fields of Glyoxylide and Benzoquinone overlap. From experience, Benzoquinone is recommended in the simple allergies, the acute infections, and diabetes; while Glyoxylide is preferred in the chronic infections and their sequelae, cancer, arthritis, and the degenerative diseases. * * *

One dose is given, and then plenty of time allowed for the recovery process to manifest itself. Acute infections respond very quickly. For example, early acute gonorrhea generally recovers in one or two days after one dose, but the chronic conditions require a period that is proportionate to the length of time the disease has been established in the individual and his ancestry. It may take three to six months, or even a year or two, for complete recovery. However, the dose is not repeated so long as recovery or good reactions are evident. Thus many of the so-called incurable diseases get entirely well on one dose. But the dose may be repeated if desired. * * *

Acute Appendicitis, * * *. Twenty-four hours after treatment of one dose of benzoquinone, white count was 13,500, pain nearly gone, no vomiting or nausea, desiring food, pulse 92, temperature 99°. Forty-eight hours after treatment white count 10,350, temperature normal, pulse 80, feeling good, slight sore spot still remaining in appendix region, recovery rapid thereafter.

PAR. 5. Through use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein which purport to be descriptive of the benefits to be derived from use of respondents' preparations, the respondents have represented directly and by implication that the preparation designated "Glyoxylide" is an adequate treatment for and possesses substantial therapeutic value in the presence of any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity; that the product "B-Q" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of all infections and their sequelae including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases; and that the preparation "Malonide Ketene Solution" constitutes an adequate treatment for and possesses substantial therapeutic value in the presence of the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and post operative meningitis. Through use of the expressions "for the infections," "for the allergies,"

and "for cancer, and the degenerative diseases" to describe and refer to the properties of their preparations, respondents have represented respectively that their products are of therapeutic value in the treatment of all infections, allergies, cancer and degenerative diseases.

PAR. 6. Designated in respondents' pamphlets and literature as constituting the Koch method, respondents' products have been sold in ampules variously containing 2 cubic centimeters or $2\frac{1}{2}$ cubic centimeters of solution and are designed to be administered by intramuscular or by intravenous injection. The premise or theoretical basis for the efficacy attributed by respondents to their method is that natural immunity or resistance to disease is brought about by a vigorous oxidation mechanism and that such state of the mechanism destroys and renders harmless germ structures and cancer producing organisms. It is stated by respondents in the advertising that tissues deficient in catalysts promoting and accelerating oxidation lose their immunity or power to burn up the germs causing disease. The substances contained in respondents' products, according to the writings and literature used in promoting the sale thereof, are oxidation catalysts which are described as being synthetically derived and very unstable and delicate in nature.

To the product "Glyoxylide" respondents ascribe the formula $O=C=C=O$ and in substance designate this preparation in some of the promotional matter as an aqueous solution of 1 part Glyoxylide to 1 trillion parts of water. The product "B-Q," also referred to as "1:4 Benzoquinone," is an aqueous solution of 1 to 1 million parts of water. "1:4 Benzoquinone" is a recognized chemical entity. "Malonide Ketene Solution," sometimes referred to by respondents as "Ketene," is stated by respondents to have two components. To the component which respondents designated as "Malonide" they ascribe the chemical formula of $O=C=C=C=O$, which substance is said to be prepared as an aqueous solution of 1 part malonide and 1 trillion parts of water. The formula $O=C=C=C=O$ is the formula of carbon suboxide, a known product. $H_2C=C=O$, the formula of the other component, is referred to also as "Ketene." "Ketene," that is, the formula $H_2C=C=O$, is a known product.

Respondent William F. Koch affirms that he has isolated the compound $O=C=C=O$, designated by him as "Glyoxylide." In the opinion of other scientific witnesses, including one trained in the field of biochemistry whose testimony was introduced in this proceeding by counsel supporting the complaint, the compound $O=C=C=O$ does not exist. A basis for this opinion is that various attempts to prepare the anhydride of glyoxylic acid, as reported in the scientific litera-

Findings

48 F. T. C.

ture, have been failures. Assuming that it exists, however, it would constitute the anhydride of glyoxylic acid. If combined with water, $O=C=C=O$ would be transformed into glyoxylic acid and the transition normally would be a rapid one. With respect to the compound "Malonide," an aqueous solution of carbon suboxide when diluted to 10 to the minus 12 power would become malonic acid probably within an hour. $H_2C=C=O$, or Ketene, combined with water rapidly will form acetic acid, which acid is known to many persons because of its presence in vinegar.

Inasmuch as it is asserted by respondents that their products are identical except with respect to the grade of their activity, further differentiation between them is unnecessary for the purposes of this proceeding. It is apparent, however, from the statements set out hereinbefore, that respondents' products represent highly dilute solutions. With respect to the product "Glyoxylide," for example, the relationship proportionately between 1 part $O=C=C=O$ and 1 trillion parts of water can be said to approximate mathematically that which 1 second bears in point of time to the total seconds which have elapsed since the year 29738 B. C. down to the date on which this case was orally argued before the Commission. There is testimony in the record to the effect that certain of the highly dilute solutions under consideration here cannot be distinguished from water by any tests known to chemical science.

PAR. 7. The testimony of various scientific witnesses which was introduced into the record by counsel supporting the complaint is to the effect that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and allergies are not caused by a defect of the oxidation mechanism of the body, and that although a decline in metabolic processes may cause more susceptibility to some types of infection, other forms of pathogenic germ activity are not dependent on the state of the oxidation mechanism. Moreover, the administration of substances such as thyroid and nitrophenols, which are known to increase oxidation in the body, are not effective treatments for infections, allergic diseases, or degenerative diseases, and in many cases they tend to make the disease worse or adversely affect the patient. In the opinion of certain of the witnesses, no valid scientific basis exists for ascribing to respondents' products any beneficial role whatsoever in connection with carbohydrate or glucose oxidation.

The witnesses testifying in support of the complaint have had wide experience in various fields of medical science, including biochemistry, internal medicine, pediatrics and communicable diseases, pathology,

diseases of the metabolism, and degenerative diseases, and they affirm, in substance, that respondents' products, irrespective of the dilution in which they may be used, are of no value in the treatment of any disease or disorder whatsoever. Although these witnesses have not prescribed respondents' products or observed their effects in concrete cases, their broad knowledge, individually and in the aggregate, respecting the fields under inquiry is such that their testimony should be accorded very great weight.

Considered also is the evidence introduced into the record pertaining to several series of scientific experiments entailing the administration in various dilutions of diperoxide of diformaldehyde. The subjects were mice having tumors of spontaneous origin or in which various types of growths had been induced. The experimental procedures also utilized other groups of mice, for purposes of control, which received no injections of the peroxide. The conclusion of the scientific witness who conducted these experiments at an eastern university is that the product there under study had no effect, inhibitory or stimulatory, on such growths. The experiments with diperoxide of diformaldehyde are relevant to a consideration of the products here involved inasmuch as this peroxide is allied to the product designated "Glyoxylide" and appears to have been used earlier by respondent William F. Koch in the treatment of cancer.

The record here further reveals that a commission appointed pursuant to legislation enacted by the Legislative Assembly of the Province of Ontario, Canada, to inquire into treatments offered for cancer, in rendering official report under date of February 7, 1942, to the Minister of Health, stated that, in nine cases of cancer "treated by Glyoxylide" and observed until final termination, no curative or remedial effects were observed from the standpoint either of prolongation of life, regression of tumor, or suppression of symptoms.

PAR. 8. In opposition to the allegations of the complaint, respondents have introduced testimony and other evidence relating to specific instances in which their products have been administered to human patients or to animals and other testimony respecting the opinions which certain of the witnesses who are doctors of medicine or practitioners of other healing arts have formed as to respondents' products. These opinions, formed primarily on the basis of their use of such preparations, are to the general effect that respondents' products have significant therapeutic value. It is urged by respondents that this testimony including that pertaining to instances of actual use demonstrates that their products have substantial therapeutic value.

It is the view of the Commission that the evidence relating to the case histories of these selected cases is unconvincing and that it con-

Findings

48 F. T. C.

stitutes a wholly inadequate basis for a conclusion that respondents' products possess therapeutic value. For instance, very grave doubts are warranted as to the correctness of the diagnoses made in various instances and this is particularly true in certain of the cases where, in the absence of corroborative biopsy, the patient was deemed to have cancer or to have had a recurrence of cancer. The improvement in condition apparently manifested in some instances following administration of one of respondents' products undoubtedly was attributable to such conventional therapeutic treatment as was rendered to the patient previously, simultaneously or subsequently rather than to the effects of the administration of respondents' products. In other instances the particular disease being treated belongs in that category of disorders the symptoms of which may be subject to complete or substantial remission causing them to disappear, perhaps to reappear months or years later, and in still others the diseases themselves are self-limiting and/or their symptoms are of definite duration.

In no single category of the diseases and ailments does the testimony relating to clinical use in specific cases embrace a substantial number of cases, and in reference to more than 20 of such categories the testimony in each instance relates to use of respondents' treatment on one patient. The evaluation of a therapeutic preparation, however, requires study of a substantial number of cases correctly diagnosed. Evaluation, moreover, usually contemplates some knowledge of the ratio of cures to trials. Considering that respondents' products have been in existence for more than two decades, there is a singular lack of test data or information obtained from controlled clinical work to corroborate the representations for therapeutic value used by respondents in promoting the sale of these products.

PAR. 9. The preponderant weight of qualified scientific opinion is that the oxidation processes have no direct bearing on natural immunity, that the degenerative diseases and the allergies are not caused by a defect of the oxidation mechanism, and that respondents' products have no beneficial role whatsoever in carbohydrate or glucose oxidation. On the basis of the greater weight of the evidence received in this proceeding, it is the conclusion of the Commission that respondents' preparations possess no therapeutic value and that their use in any dilution will not benefit any disease or condition of the human body or in animals.

PAR. 10. The statements appearing in the advertising and promotional matter used by respondents, of which the statements contained in paragraph 4 hereof are typical and which, as found in paragraph 5 hereof, represent directly and by implication that respondents' prod-

ucts have therapeutic value in the treatment of the diseases, disorders, and conditions referred to, including those statements which represent directly and by implication that the efficacy of respondents' products and their method of treatment is attested, demonstrated or proved by the results afforded in the clinical use of such preparations, constitute false representations of material facts. The Commission, therefore, finds that such advertisements are false and misleading and constitute false advertisements.

Respondents contend that no public interest exists in this proceeding for the reason that dissemination of the advertising statements has been restricted to members of the medical profession having the requisite training to understand and evaluate therapeutic claims made for medicinal products. As previously stated, respondents' promotional literature has been disseminated to doctors of medicine, including homeopathic physicians, and to practitioners of other healing arts including naturopathy. It is noted, moreover, in this connection that representations phrased in somewhat different language but similar in general import to certain of the advertising statements appearing in paragraph 4 hereinbefore, particularly as they relate to the treatment of cancer, also have appeared in media coming to the attention of the lay public. An example is certain folders furnished by respondents for distribution to patients of practitioners purchasing respondents' preparations. It is not true, therefore, that the dissemination of respondents' advertising matter has been limited to such persons as have the requisite training to accurately appraise the false representations of material facts appearing in the advertising, but, even if that situation had obtained, the provisions of, and the public policy expressed in the Federal Trade Commission Act, as amended, would require the corrective action being taken in this proceeding to eliminate the false representations found to have been made.

PAR. 11. The use by respondents of the advertising matter heretofore described has had the capacity and tendency to deceive and mislead prospective purchasers and purchasers of respondents' products into the belief that the statements and representations are true and, by reason of the erroneous and mistaken beliefs so engendered, to induce the purchase of respondents' products.

CONCLUSION

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

Order

48 F. T. C.

It appears from certain documents which have been filed on behalf of respondents that, subsequent to the institution of this proceeding, the respondent corporation, Koch Laboratories, Inc., was dissolved and that it does not exist as a corporation. In the circumstances, therefore, respondent Koch Laboratories, Inc., is not being included as a party to the order to cease and desist which is issuing separately herein. The documents referred to contain indication also that the sale and distribution of the products here involved have been discontinued by the respondent individuals. In the opinion of the Commission, however, the public interest, in the circumstances here, requires issuance of an order prohibiting the respondent individuals from resuming or otherwise continuing the use of the unfair and deceptive acts and practices which were being used at the time and subsequent to the time when the complaint in this case was issued.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore designated by it, recommended decision of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the above-named respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents William F. Koch and Louis G. Koch 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 the preparations designated "Glyoxylide," "B-Q," also referred to as "1:4 Benzoquinone," "Malonide Ketene Solution," and the components of said last-named preparation designated as "Malonide" and "Ketene," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from:

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

(a) That the preparation "Glyoxylide" is an adequate treatment for cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneurotic oedema, obliterative endar-

teritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, osteomyelitis, allergy, infection, abscess of the prostate gland, septicaemia, or insanity, or that said preparation has any therapeutic value in the treatment of any of such conditions;

(b) That the preparation "B-Q" constitutes an adequate treatment for any of the infections or sequelae thereof, gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, any of the allergies, diabetes, cancer, arthritis, or any degenerative disease, or that said preparation possesses any therapeutic value in the treatment of any of such conditions;

(c) That the preparation "Malonide Ketene Solution," or either of its components "Malonide" and "Ketene" constitutes an adequate treatment for any of the allergies or infections, diabetes, cancer, double pneumonia, osteomyelitis, or post-operative meningitis, or that said preparations possess any therapeutic value in the treatment of any of such conditions;

(d) That any of said preparations possess therapeutic value or that their use will be of benefit in the treatment of any disease of the human body or in animals.

(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 of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited under paragraph 1 hereof.

It is further ordered, that the respondents, William F. Koch and Louis G. Koch, 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 this order.

IN THE MATTER OF

CONSOLIDATED COMPANIES, INC., ET AL.

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

Docket 5879. Complaint, May 7, 1951—Decision, Sept. 1, 1951

Where a corporate broker or manufacturer's agent, associated with two corporations which were engaged in the wholesale and retail grocery business in Louisiana and elsewhere, were, like it, under the control and management, through stock ownership, of four families, and members of the families of officers, directors and other key employees; included one of the largest wholesalers of food products in the state, owner and operator of thirty branch wholesale houses, and operator of associated companies in which certain of its stockholders had a substantial financial interest, and of wholesale and retail grocery companies owned in whole or in part by family members; and included, as the second, a large corporate operator of six branch wholesale grocery houses in said state, and, to a certain extent, of wholesale grocery organizations in Texas and in Mississippi, with controlling interests in two chains of nineteen and ten retail grocery stores in Baton Rouge and New Orleans, respectively, and with a large stock interest in said first named wholesaler—

Acting as the agent or representative of said two corporations, and subject to their control and that of members of said four families and that of members of the families of their officers, directors and key employees—

- (a) Received and accepted commissions or brokerage fees on purchases of food products made through it by said two corporations and associated companies, from many vendors in other states, and transmitted and paid said fees to members of said families and of families of officers and directors and other key employees of the three corporations, in the form of dividends on their stock in it; and

Where said two corporations, and various individuals, including their officers and directors, joined individually and collectively as the owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the three—

- (b) Received and accepted commissions or brokerage fees directly or indirectly upon the purchases of a substantial portion of said two corporations' requirements of food products:

Held, That such acts and practices of said respondents, corporate, individually and collectively, and each of them, in accepting and receiving commission or brokerage fees, directly or indirectly, under the circumstances set forth, constituted a violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.