

Complaint

IN THE MATTER OF
NORMAN L. ROTHSTEIN TRADING AS EUREKA WOOLEN
MILLS, ETC. ET AL.

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

Docket 5806. Complaint, Sept. 6, 1950—Decision, Nov. 15, 1951

Where an individual engaged in the sale and distribution of blankets, blanket robes, panting cloth and skirting cloth, along with two partners who acted as his sales agents and distributed blankets at wholesale—

- (a) Represented through circulars, newspaper advertising and other advertising media that his said blankets and other products were 100 percent wool, when in fact they contained in part fibers other than wool;
- (b) Misbranded certain blankets in violation of the Wool Products Labeling Act, through the use thereon of labels which stated in one place that they were "100% Wool" and in another "30% New, 70% Re-Processed"; with effect of confusing and deceiving the purchasing public as to their fiber content, and with capacity and tendency so to do;
- (c) Misbranded certain piece goods and blankets in that they failed to affix thereto the stamp, tag, label or other means of identification giving the information required by said Act;
- (d) Sent out samples of swatches and specimens of their wool products to prospective customers without labels to show their fiber content and other information required by said Act; and
- (e) Made use of the term "Virgin" as descriptive of wool products which were not composed wholly of Virgin wool which had never been used, or reclaimed, reworked, reprocessed or reused from any spun, woven, knitted, felted or manufactured or used product;

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

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

Mr. Jesse D. Kash for the Commission.

Mrs. Clarissa Shortall and *Mr. Richard C. Shortall*, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Norman L. Rothstein, an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and

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Humboldt Bay Woolen Co. and Edwin B. Schwinger and Richard N. Goldman, copartners trading and doing business as Goldman-Schwinger & Co., hereinafter referred to as respondents, have violated the provisions of said Acts and Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Norman L. Rothstein is an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., with his office and principal place of business located at Eureka, California.

Said respondent is now and for more than a year last past has been engaged in the distribution of blankets, blanket robes, panting cloth and skirting cloth.

Respondents Edwin B. Schwinger and Richard N. Goldman are individuals and copartners trading and doing business as Goldman-Schwinger & Co. with their office and principal place of business located at 24 California St., San Francisco, California. Said individuals are sales agents for respondent Norman L. Rothstein, trading as Eureka Woolen Mills, and are now and for more than a year last past have been engaged in the wholesale distribution of blankets.

PAR. 2. In the course and conduct of their aforesaid business, respondent Norman L. Rothstein, trading as above set forth and for the purpose of inducing the purchase of his blankets, panting cloth and skirting cloth has circulated and is now circulating among prospective purchasers throughout the United States by United States mails circulars, newspaper advertising, and other advertising media many statements and representations concerning his said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

[Swatch]

[Swatch]

FOR YOUR BLANKET NEEDS

For the first time we offer you our Standard Hotel Blanket direct from our Mill.

Specifications are as follows:

CONTENT.....	100% wool
MEASUREMENTS.....	double bed size 72" x 84"
WEIGHT.....	over 4 pounds
EDGES.....	whip stitched

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We are pleased to quote the following attractive prices f. o. b. your establishment:

HEATHER GREY-----	\$6.90
FOREST GREEN, DEEP BLUE and MAROON-----	7.90

(please examine the above swatches for quality and color)

On orders of six or more blankets we will letter on each blanket individually the name of your establishment in three inch script. There will be no charge for this additional service.

At the time of this offering we are able to quote almost immediate delivery.

Trusting that we may have the pleasure of filling your blanket needs, we are

Very truly yours,

EUREKA WOOLEN MILLS,
Blanket Division.

HUMBOLDT BAY WOOLENS

EUREKA WOOLEN MILLS,
Eureka, California.

OF INTEREST TO YOU

For the convenience of your students, the Eureka Woolen Mills have instituted a new service to simplify choosing fine quality woolens.

Enclosed, you will find samples of present lines of our skirt and dress weight materials, and suit and coat weight woolens.

Our materials are all-wool and are from 58 to 60 inches wide.

From the enclosed samples your students may make their selections and order from our mill by direct mail.

As a woolen mill, we retain only a few bolts of each running pattern, so when making your selection, a second choice would be appreciated.

The Eureka Woolen Mills are located where long staple coastal wool is produced and have been manufacturing fine woolens for over 60 years.

We shall be pleased to be of service to you.

Sincerely,

EUREKA WOOLEN MILLS.

PAR. 3. Through the statements and representations set forth above respondent Normal L. Rothstein trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and Humboldt Bay Woolen Co. represents and has represented that his blankets and other products are made of 100 percent wool.

The foregoing representations are grossly exaggerated, false and misleading and in truth and in fact, respondents' blankets and other woolen material are not composed entirely of wool but contain in part fibers other than wool.

PAR. 4. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool or reused wool, as these terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regula-

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tions promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said Act and said Rules and Regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and said Rules and Regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid are blankets which carry labels showing conflicting fiber content information. Among and typical of the conflicting labels used respondents as aforesaid is the following:

Humboldt Bay

All Purpose Blanket

Manufactured by

EUREKA WOOLEN MILLS

100% Wool*

Approx. 3½ pounds

62 x 82 inches

*30% New, 70% Re-Processed

The use on a blanket of a label which states in one place that said blankets are composed of "100% wool" and at another place states the content as "30% new, 70% re-processed" is conflicting and has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said blankets, and is a violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

PAR. 5. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported and distributed in commerce by respondents are piece goods and blankets. Exemplifying respondents' practice of violating said Act and the Rules and Regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said Act and the said Rules and Regulations by failing to affix to said wool products a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said Act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool,

(4) each fiber other than wool where said percentum by weight of such fiber was five percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product nonfibrous loading, filling, or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said Act with respect to such wool product, or the registered identification number of such person or persons as provided for in Rule 4 of the Regulations as amended.

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

PAR. 6. In addition to the acts and practices hereinabove set forth, the respondents, to promote the sale of their wool products in commerce, have sent out samples of swatches and specimens of their wool products to prospective customers without labeling said sample swatches and specimens to show their respective fiber contents and other information required by the Wool Products Labeling Act of 1939, and using the term "Virgin" as descriptive of their wool products when the products so described are not composed wholly of Virgin wool which has never been used, or reclaimed, reworked, repossessed or reused from any spun, woven, knitted, felted or manufactured or used product.

PAR. 7. The aforesaid acts, practices and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act as amended, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated November 15, 1951, the initial decision in the instant matter of Trial Examiner John W. Addison, as set out as follows, became, on that date, the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on September 6, 1950, issued and subsequently served its complaint in this proceeding upon Norman L. Rothstein, individually and trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., and Edwin B. Schwinger and Richard N. Goldman, individually and as copartners trading and doing business as Goldman-Schwinger & Co., charging them with the use of acts, practices and methods in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act and constituting unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After filing their original answers to the complaint, respondents requested and obtained leave to withdraw said answers and to substitute therefor answers admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearings as to the facts. These substitute answers were in due course filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answers thereto, all intervening procedure having been waived, no proposed findings and conclusions having been presented by counsel, and oral argument not having been requested; and said trial examiner having considered the record herein, 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. Norman L. Rothstein is an individual trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., with his office and principal place of business located at Eureka, California.

Said respondent is now and for more than a year last past has been engaged in the distribution of blankets, blanket robes, panting cloth and skirting cloth.

Respondents Edwin B. Schwinger and Richard N. Goldman are individuals and copartners trading and doing business as Goldman-Schwinger & Co. with their office and principal place of business

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located at 24 California St., San Francisco, California. Said individuals are sales agents for respondent Norman L. Rothstein, trading as Eureka Woolen Mills, and are now and for more than a year last past have been engaged in the wholesale distribution of blankets.

PAR. 2. In the course and conduct of their aforesaid business, respondent Norman L. Rothstein, trading as above set forth and for the purpose of inducing the purchase of his blankets, panting cloth and skirting cloth has circulated and is now circulating among prospective purchasers throughout the United States by United States mails circulars, newspaper advertising, and other advertising media many statements and representations concerning his said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

[Swatch]

[Swatch]

FOR YOUR BLANKET NEEDS

For the first time we offer you our Standard Hotel Blanket direct from our Mill. Specifications are as follows:

CONTENT.....	100% wool
MEASUREMENTS.....	double bed size 72" x 84"
WEIGHT.....	over 4 pounds
EDGES.....	whip stitched

We are pleased to quote the following attractive prices f. o. b. your establishment:

HEATHER GREY.....	\$6.90
FOREST GREEN, DEEP BLUE AND MAROON.....	7.90

(please examine the above swatches for quality and color)

On orders of six or more blankets we will letter on each blanket individually the name of your establishment in three inch script. There will be no charge for this additional service.

At the time of this offering we are able to quote almost immediate delivery. Trusting that we may have the pleasure of filling your blanket needs, we are
Very truly yours,

EUREKA WOOLEN MILLS,
Blanket Division.

HUMBOLDT BAY WOOLENS

EUREKA WOOLEN MILLS,
Eureka, California.

OF INTEREST TO YOU

For the convenience of your students, the Eureka Woolen Mills have instituted a new service to simplify choosing fine quality woollens.

Enclosed, you will find samples of present lines of our skirt and dress weight materials, and suit and coat weight woollens.

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Our materials are all-wool and are from 58 to 60 inches wide.

From the enclosed samples your students may make their selections and order from our mill by direct mail.

As a woolen mill, we retain only a few bolts of each running pattern, so when making your selection, a second choice would be appreciated.

The Eureka Woolen Mills are located where long staple coastal wool is produced and have been manufacturing fine woolens for over 60 years.

We shall be pleased to be of service to you.

Sincerely,

EUREKA WOOLEN MILLS.

PAR. 3. Through the statements and representations set forth above, respondent Norman L. Rothstein, trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills and Humboldt Bay Woolen Co., represents and has represented that his blankets and other products are made of 100 percent wool.

The foregoing representations are grossly exaggerated, false and misleading and in truth and in fact, respondents' blankets and other woolen material are not composed entirely of wool but contain in part fibers other than wool.

PAR. 4. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool or reused wool, as these terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said Act and said Rules and Regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said Act and said Rules and Regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid are blankets which carry labels showing conflicting fiber content information. Among and typical of the conflicting labels used by respondents as aforesaid is the following:

Humboldt Bay

All Purpose Blanket

Manufactured by

EUREKA WOOLEN MILLS

100% Wool*

Approx. 3½ pounds

62 x 82 inches

*30% New, 70% Re-Processed

The use on a blanket of a label which states in one place that said blankets are composed of "100% wool" and at another place states the content as "30% new, 70% reprocessed" is conflicting and has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said blankets, and is a violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

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

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

PAR. 6. In addition to the acts and practices hereinabove set forth, the respondents, to promote the sale of their wool products in commerce, have sent out samples of swatches and specimens of their wool products to prospective customers without labeling said sample swatches and specimens to show their respective fiber contents and other information required by the Wool Products Labeling Act of 1939, and using the term "Virgin" as descriptive of their wool products when the products so described are not composed wholly of Virgin wool which has never been used, or reclaimed, reworked, re-

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possessed or reused from any spun, woven, knitted, felted or manufactured or used product.

CONCLUSION

The aforesaid acts, practices and methods of the respondents, as found herein, were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and section 5 of the Federal Trade Commission Act as amended, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Norman L. Rothstein, individually and trading as Eureka Woolen Mills, Humboldt Bay Woolen Mills, and Humboldt Bay Woolen Co., or under any other name, and Edwin B. Schwinger and Richard N. Goldman, individually and as copartners trading and doing business as Goldman-Schwinger & Co., or under any other name, jointly or severally their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of blankets or other wool products in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from:

1. Misrepresenting in any way the constituent fiber or material used in its merchandise or the respective percentages thereof;

2. Describing, designating or in any way referring to any product or portion of a product which is "reprocessed wool" or "reused wool" as "wool";

3. Using the word "wool" to describe, designate or in any way refer to any product or portion of a product which is not the fiber from the fleece of the sheep or lamb, or hair of the Angora goat or Cashmere goat, or hair of the camel, alpaca, llama or vicuna which has never been reclaimed from any woven or felted product.

It is further ordered, That respondents, individually or trading as above described, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, transportation, or distribution of such products in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding blankets or other wool products as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain or in any way are represented as containing, "wool," "reprocessed wool," or "reused wool" as these terms are defined in said Act, by

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1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such product;

2. Failing to securely affix to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight of

(1) wool,

(2) reprocessed wool,

(3) reused wool,

(4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and

(5) the aggregate of all other fibers;

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

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

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided, further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 15, 1951].

IN THE MATTER OF
MURRAY MENTZER AND SOLOMON W. WEINGAST DOING
BUSINESS AS PRECISION APPARATUS COMPANY

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

Docket 4732. Complaint, Mar. 17, 1942—Decision, Nov. 20, 1951

Mutual conductance is an engineering technical term used to designate one of the characteristics of a radio tube, and is the ratio of a change in output current to the change in grid voltage which produces the change in current; so that an analysis of the mutual conductance of a tube and an expression thereof in terms of micromhos is a means of precisely and scientifically expressing the ability of a tube to respond to a change in grid voltage.

The overall worth of a tube is obviously dependent upon the merit of its various characteristics, among which are mutual conductance, amplification factor, plate resistance, and emission; and a change in one direction on the part of certain of them causes some corresponding variation in values for another.

Tube checking instruments offered and sold to the radio service and repair trade include mutual conductance testers which are held in high esteem by radio servicemen, and which, during the periods involved in the instant proceeding, included mutual conductance testers which determined and reported mutual conductance under static conditions, and those which determined such conductance under other conditions and reported the results quantitatively in micromhos or both quantitatively and qualitatively through a "replace-good" meter reading. Such tube checking instruments also include emission testers which in no sense afford a test of mutual conductance.

Where two partners engaged in the manufacture and interstate sale and distribution of certain tube checking radio instruments which, during part of the time concerned, they designated as "Dynamic Mutual Conductance Tube Testers" and which (1) were calibrated to compare the plate current of a suspected tube with that yielded by another tube selected for its adequacy in all characteristics, including emission and mutual conductance, so that a comparative reading indicating the presence of plate current value in a suspected tube similar to that of a new tube constituted a rough appraisal of the overall value of the tube under check rather than a scientific test of the merit of any separate tube characteristic; (2) enabled the user of the instrument to select the proper setting so that the meter reading would indicate "replace", "good", or "weak" depending on the average amount of current flowing through the tube and meter in comparison to that of a known-to-be-good sample tube or tubes; and (3) could not be used for checking tubes for which no data appeared in the roller chart furnished with the equipment—

- (a) Made use, in certain catalogs, of the designation "Precision Dynamic Mutual Conductance Tube Testers" in referring thereto and represented through

such designations and other language, along with the failure to state that an actual determination in micromhos was not made available, that their said instruments were mutual conductance testers capable of performing all the functions of such devices, and that through their use the mutual conductance of radio tubes could be determined; and

- (b) Represented that their tester was a mutual conductance testing instrument or type thereof which, by segregating and appraising such change in plate current as resulted from a change or variation in voltage placed by their device upon the grid of the tube under check, would afford a qualitative evaluation, determination and test of the mutual conductance of an electronic tube through comparing the value thus disclosed with that displayed by tube of known merit; through use of the term "mutual conductance" in such trade or product names as "Combination Dynamic Mutual Conductance Type Tube Testers and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester" and explanatory matter which had reference to the properties and attributes of their devices, coupled with their failure to reveal that such change in plate current as resulted from a change in voltage placed by the device upon the grid was not evaluated incident to the determination of tube merit;

The facts being that apart from such value as the device possessed in checking emission, it was limited to a comparison of the averages of total plate currents occurring in a known-to-be good tube and a tube under check; it did not, and by reason of its construction could not, compare a tube of known merit and a suspected one by comparing those variations in their respective plate currents which stemmed from a similar change or variation in voltage applied to their grids; and it was not a mutual conductance tube tester or type thereof within the understanding of members of the radio repair and service trade;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their instruments and thereby induce the purchase of a substantial quantity thereof;

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

The statement, among others, that calibration of the meter in micromhos was not afforded and that the merit indication was set forth on a "replace-weak-good scale" so as to "thereby avoid the confusion of a useless micromho scale" in determining tube merit, was not sufficient to counteract or avoid the representation otherwise made as to the nature of respondents' device as above noted.

In reaching its conclusion, the Commission was of the opinion that such correlation as existed between a marked decrease in the average value of plate current and a decrease in mutual conductance, stated as roughly proportional, should be rejected as the controlling factor in determining whether the device herein concerned was a mutual conductance type tube tester. To conclude otherwise would be to ignore the testimony adduced in the proceeding by numerous engineers and other expert witnesses called by counsel supporting the complaint who expressed opinions to the effect that respondents' product did not indicate values which could be directly inter-

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preted in terms of mutual conductance, and that inasmuch as its reading was limited to the average value of plate current flowing through the complete cycle of power impressed upon the plate, such device did not in any way indicate the effect of any modification that might be made by a signal impressed upon the control grid itself. And in such connection there was also to be weighed and appraised the testimony of other witnesses relating to the understanding of members of the radio repair and service trade of the term "mutual conductance" when used to designate a tube testing instrument.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. Clark Nichols* for the Commission.

James & Franklin, of New York City, for respondents.

COMPLAINT¹

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 Murray Mentzer and Solomon W. Weingast, copartners doing business as Precision Apparatus Company, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Murray Mentzer and Solomon W. Weingast are copartners doing business as Precision Apparatus Company. Their place of business is at 647 Kent Avenue, Brooklyn, New York. They are now, and for several years last past have been, engaged in manufacturing and selling radio testing equipment among which are radio tube testing instruments designated by respondents as "Dynamic Mutual Conductance Tube Testers."

In the course and conduct of their business as aforesaid, the respondents cause and for several years last past have caused their said instruments, when sold, to be transported from their said place of business in Brooklyn, New York, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and all times mentioned herein have maintained, a course of trade in said instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said instruments, re-

¹ The complaint is published as amended by an order of the Commission dated October 24, 1947.

spondents have made certain false, deceptive and misleading statements, and representations with respect to the character of their said instruments, such representations being made in advertisements inserted in trade journals and catalogs circulated generally among the purchasing public. Among and typical of such statements and representations so used and circulated are the following:

The most perplexing issue confronting the radio service engineer is the choice of tube testing equipment that will definitely and unfailingly solve all tube test problems with constant accuracy and reliability. With this thought foremost in mind "PRECISION" engineers have devoted a great deal of research and development in collaboration with the engineering divisions of leading tube manufacturers, conducting all varieties of tests on thousands of tubes. The outcome of these tests, as performed on a large number of tube test circuits, firmly convinced the engineering staff that the resultant tube tester designed MUST definitely be based on two All-Important characteristics of a radio tube:

1. Dynamic Mutual Conductance.
2. Cathode Structure or Emission.

Neither one of these fundamental factors can be neglected.

The "PRECISION" Dynamic Mutual Conductance Test Tube Circuit, incorporated in all "PRECISION" Dynamic Electronometers (series 910, 912, 915, 920 and 922) has been designed with the foregoing as its foundation * * *.

TUBE ANALYZING FEATURES

*A DYNAMIC TUBE TESTER employing an exclusive "PRECISION" engineered circuit, which in one operation, effectively tests all radio receiving tubes for both MUTUAL CONDUCTANCE and CATHODE STRUCTURE.

Respondents also refer to and describe their said instruments as "Dynamic Mutual Conductance Type Tube Tester."

PAR. 3. Through the use of the aforesaid statements and representations, respondents represent that their said instruments are mutual conductance tube testers, capable of performing all of the functions of such a tester and that by their use the mutual conductance of radio tubes can be determined.

PAR. 4. The said statements and representations set forth in paragraph 2, above, and other similar import, not specifically therein set forth but disseminated in the same manner as those set out in paragraph 2, are false, misleading and deceptive. In truth and in fact, respondents' said instruments cannot properly be designated and described as mutual conductance tube testers and they are not capable of testing the mutual conductance of radio tubes.

PAR. 5. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the character, quality and performance ability of their said instruments and to in-

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duce the purchase of a substantial quantity of said instruments as a result of the erroneous and mistaken belief so engendered.

PAR. 6. 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 March 17, 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 issuance of said complaint and the filing of respondents' answer thereto, 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 said testimony and other evidence were recorded and filed in the office of the Commission. This proceeding subsequently came on for hearing before the Commission upon the motion of counsel supporting the complaint to amend the complaint in certain respects to conform to the proof, and on October 24, 1947, the Commission, having duly considered such motion, issued its order granting the motion and amending the complaint in the respects stated in such order. Additional testimony and other evidence in support of and in opposition to the allegations of the complaint, as amended, subsequently were introduced before the trial examiner and 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, as amended, the answer of respondents, as amended, the testimony and other evidence received prior and subsequent to the date upon which the order amending the complaint was issued, recommended decision of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint, as amended (counsel for respondents having failed to appear on the day designated for oral argument in this matter); 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. Respondents, Murray Mentzer and Solomon W. Weingast, individuals trading as copartners under the name of Precision Apparatus Company, for several years prior to the institution of this proceeding were engaged in the manufacture and sale of radio testing equipment, among which were radio tube checking instruments designated during a part of such period of time as "Dynamic Mutual Conductance Tube Testers," with their place of business at 647 Kent Avenue, Brooklyn, New York. Subsequent to the closing of this case for the taking of testimony, notice for the record was filed by counsel for respondents that Mr. Mentzer departed this life on July 23, 1949.

PAR. 2. Respondents, in the course and conduct of their business as aforesaid, caused their said instruments, when sold, to be transported from their place of business in Brooklyn, New York, to purchasers thereof located in various other States of the United States and in the District of Columbia, and during the period mentioned hereinabove respondents maintained a course of trade in said instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the sale of their tube checking instruments, respondents have made various statements and representations with respect to the character of their equipment, which representations have been made in advertising circulars and catalogs circulated generally among the purchasing public.

(a) Among and typical of the statements and representations so used and circulated are the following, which appeared in the catalog of respondents bearing the date of 1940:

COMBINATION DYNAMIC MUTUAL CONDUCTANCE TUBE TESTER AND
33 RANGE ROTARY SELECTIVE A. C.-D. C. MULTI-RANGE SET TESTER.

* * *

A complete service laboratory incorporating the "PRECISION" engineered
"DYNAMIC MUTUAL CONDUCTANCE" tube tester * * *

* * *

TUBE ANALYZING FEATURES

A DYNAMIC TUBE TESTER * * * which in one operation, effectively
tests all radio receiving tubes for both MUTUAL CONDUCTANCE and CATH-
ODE STRUCTURE.

* * *

The most perplexing issue confronting the radio service engineer is the choice
of tube testing equipment that will definitely and unfailingly solve all tube test
problems with constant accuracy and reliability.

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With this thought foremost in mind, "PRECISION" engineers have devoted a great deal of research and development in collaboration with the engineering divisions of leading tube manufacturers, conducting all varieties of tests on thousands of tubes. The outcome of these tests, as performed on a large number of tube test circuits, firmly convinced the engineering staff that the resultant tube tester design MUST definitely be based on two ALL-Important characteristics of a radio tube:

1. Dynamic Mutual Conductance
2. Cathode Structure or Emission

Neither one of these fundamental factors can be neglected.

The "PRECISION" Dynamic Mutual Conductance Tube Test Circuit, incorporated in all "PRECISION" Dynamic Electronometers (Series 910, 912, 915, 920 and 922) has been designed with the foregoing as its foundation * * *

* * *

* * * it can be readily seen that the over-all Quality or Merit of a tube is absolutely dependent on both MUTUAL CONDUCTANCE and EMISSION, neither one of which can possibly be neglected.

* * *

As previously outlined, the over-all Quality or Merit of a tube is absolutely dependent on both MUTUAL CONDUCTANCE and EMISSION. For this reason, the "PRECISION" Dynamic Electronometer circuit places the TUBE MERIT METER only in the plate or output section of the tubes under test, and in this manner, the resultant meter reading is directly and simultaneously proportional to both CATHODE EMISSIVE quality and MUTUAL CONDUCTANCE and accordingly will reject all tubes which, as previously explained, may be the cause for little or no volume, noisy or distorted operation, or fading reception.

* * *

PRECISION DYNAMIC MUTUAL CONDUCTANCE TUBE TESTERS

* * *

(b) Among and typical of the statements and representations used and circulated by respondents are the following, which appeared in a catalog of Precision Apparatus Company under date of 1941:

COMBINATION DYNAMIC MUTUAL CONDUCTANCE TYPE TUBE TESTER AND 33 RANGE ROTARY SELECTIVE A. C.-D. C. MULTI-RANGE SET TESTER

* * *

A complete service laboratory incorporating the "PRECISION" engineered "DYNAMIC MUTUAL CONDUCTANCE" type tube tester * * *

* * *

TUBE ANALYZING FEATURES

A DYNAMIC TUBE TESTER employing an * * * engineered circuit, which in one operation, effectively tests all radio receiving tubes for both DYNAMIC MUTUAL CONDUCTANCE and CATHODE STRUCTURE. * * *

* * *

PRINCIPLES OF DYNAMIC MUTUAL CONDUCTANCE TUBE TESTING

The most perplexing issue confronting the radio service engineer is the choice of tube-testing equipment that will permanently remove the "QUESTION MARK" from his tube test problems, and thereby definitely and unfailingly solve them with constant accuracy and reliability. With this thought foremost in mind, "PRECISION" engineers have devoted unlimited time in extensive research and development, in collaboration with the engineering divisions of leading tube manufacturers.

All varieties of tests were conducted on thousands of tubes, from which two vital points stood out above all others, which finally dictated that "the resultant tube tester design MUST definitely be based on the two all-important characteristics of a radio tube."

1. Dynamic Mutual Conductance.
2. Cathode Structure or Emission.

* * *

NEITHER ONE OF THESE FUNDAMENTAL FACTORS CAN EVER BE NEGLECTED!

* * *

In other words, direct micromho readings are ABSOLUTELY MEANINGLESS unless the tube tester can duplicate the exact voltages and loads under which the particular tube in question is ACTUALLY operating in the specific receiver from which it has been removed, and would furthermore require reference to the tube's characteristic curves in order to determine what the mutual conductance SHOULD BE under the particular conditions in which the receiver is using this tube.

* * * it is found that it is impossible to design a SIMPLE instrument which could definitely duplicate all various applications of a given tube. Therefore, it would be meaningless, let alone misleading, to say that we are going to calibrate our tester numerically in micromhos when the merit indication may just as well be on a simple three-colored REPLACE-WEAK-GOOD scale and thereby avoid the confusion of a useless micromho scale, and at the same time be able to immediately determine the worth of a tube.

In the final analysis, our reason for putting a tube into a tester is not to determine how many micromhos the meter can be MADE to read under purely ARBITRARY conditions, but rather the very simple question of "IS THIS TUBE GOOD, WEAK, OR DECIDEDLY BAD?" and our English reading scale immediately tells the story.

The foregoing thoughts have strictly guided the development of the "PRECISION" Dynamic Mutual Conductance type tube test circuit, as incorporated in all "PRECISION" Dynamic Electronometers, Series 910, 912, 914, 915, 920, 922, and 954 * * *

* * *

To familiarize ourselves with the principles of this exclusive "PRECISION" innovation, let us briefly observe the operation of a simple pentode such as the 2A5, in a standard power output stage, shown in diagram A, with the addition of a current-indicating meter in the plate circuit. * * *

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Diagram B shows the "PRECISION" Dynamic Electronometer circuit set up to test the same type 2A5. It is interesting to note and compare the remarkable similarity between this schematic and that shown in Diagram A.

Note that separate plate, screen and grid voltages and loads are applied to the respective elements of the tube under test and it is thereby being tested in the manner for which the tube has been designed * * * * *

As previously outlined, the over-all quality or merit of a tube is absolutely dependent on both DYNAMIC MUTUAL CONDUCTANCE and EMISSION.

For this reason, the "PRECISION" Dynamic Electronometer circuit places the TUBE MERIT METER only in the plate or output section of the tubes under test, and accordingly the resultant meter reading is directly and simultaneously proportional to both CATHODE EMISSIVE quality and DYNAMIC MUTUAL CONDUCTANCE and will reject all tubes which do not come up to the standards as determined from the original laboratory tests from which the tube-chart data is gathered. * * *

PRECISION DYNAMIC MUTUAL CONDUCTANCE TYPE TUBE TESTERS

* * *

COMBINATION DYNAMIC MUTUAL CONDUCTANCE TYPE TESTER
AND 37 RANGE SUPERSENSITIVE AC-DC MULTIRANGE TESTER
SERIES 954

The Series 954, combination tube tester and Supersensitive multirange set tester is truly a COMPLETE SERVICE LABORATORY answering the ever-increasing demand for one compact unit providing every facility for the accurate and reliable solutions of tube test and all measurement problems arising from modern Radio (A. M. and F. M.), Television, Industrial and Laboratory practice.

* * *

PAR. 4. Before proceeding to a consideration of the circuit contained in respondents' instrument, brief reference to the structure and purpose of radio vacuum tubes is appropriate. Vacuum tubes are sometimes referred to as diode, triode, tetrode, or pentode, depending on whether the tube has 2, 3, 4, or 5 electrodes, respectively. An evacuated glass envelope or bulb houses these tube elements. The three electrodes which comprise a triode are the cathode, grid, and plate, the triode being the simplest form of tube having mutual conductance. Upon application of a voltage to the heater, which also is housed within the glass envelope, the heat causes the cathode to emit electrons which flow to the plate during periods when the plate is polarized positively and attracting these electrons, each of which has a negative potential. The grid or third electrode is placed between the cathode and the plate and is ordinarily a screen of open wire mesh which permits the electrons to flow through to the plate. In the absence of some other force, as long as the plate is positive in relation to the cathode, there will be a flow of electricity through the tube. The application of a voltage on the grid affects the flow of

electrons to the plate, which flow relatively increases as the voltage becomes more positive and is stayed when more negative. A vacuum tube essentially acts as a valve in controlling the flow of the electricity. There are, however, no connections within the tube itself between the three electrodes.

In the home radio set, various operating voltages are utilized to cause the basic elements of a typical tube to function. The signal placed on the air by a transmitting station is collected by the antenna and that signal is applied to the grid upon its appearance in the input circuit of the tube. After being greatly modified in the output circuit of the tube, it passes along and through the receiver and emerges as intelligence. The prime purpose of the tube is to modify these signals.

The circuit contained in respondents' instrument is so designed that a voltage is made available to the grid electrode of the tube which may be adjusted to desired value. The plate is connected to a meter in the instrument through a shunt or variable resistor which makes it possible to adjust the sensitivity or the response of the meter. The circuit from the meter is continued to a source of variable voltage which polarizes the plate of the tube positively. The voltages applied to the grid and to the plate are not D. C. voltages. They are 60-cycle A. C. voltages taken from a common power source and are in phase with each other. They therefore simultaneously sweep from zero to a maximum and back to zero. The current through the meter (plate) conforms, but inasmuch as the meter itself has too much inertia to follow such rapid fluctuations, the meter remains steady at the average value of the sweeps of current.

The operations of respondents' tube checker entails the use of a roller chart, furnished with their equipment by respondents, containing data for hundreds of tube types in common use. In preparing this chart, respondents secure known-to-be-good samples of a particular type of tube from the manufacturer. These tubes are inserted in the checker and appropriate voltage sweeps are selected which will bring the reading on the meter to the "good" scale. This is worked out in such manner that, when a certain lessened value of average plate current ensues, the meter will instead read only at the weak or bad part of the scale. The various settings are printed on the chart and by reference thereto the user of respondents' instrument can select the proper settings and his meter reading for the suspected tube will swing to a position which may be either at replace, good or weak, depending on the average amount of current flowing through the tube and meter in comparison to that of a known-to-be-good sample tube

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or tubes. Respondents' instrument cannot be used for checking tubes for which no data appears in the chart.

PAR. 5. Mutual conductance is an engineering technical term used to designate one of the characteristics of a radio tube. It is the ratio of a change in output current to the change in grid voltage which produces the change in current. Thus, an analysis of the mutual conductance of a tube and an expression thereof in terms of micromhos is a means of precisely and scientifically expressing the ability of a tube to respond to a change in grid voltage. The mutual conductance of a tube is considered to be high if a large change in output current results from a small change in grid voltage.

Available to the radio industry and used for the testing of mutual conductance during the periods mentioned in this proceeding have been proportional mutual conductance testers which determine and report mutual conductance under static conditions and mutual conductance testers which determine mutual conductance under other conditions and report the result either quantitatively in micromhos or both quantitatively and qualitatively through a "replace-good" meter reading. The foregoing instruments determine and report the mutual conductance value of the tube separate and apart from the other tube characteristics. The instruments conventionally used in laboratories for measuring dynamic mutual conductance have complex circuits and included in the voltages utilized in such analyzers are constant D. C. potentials for the electrodes which can be applied in a manner simulating the actual conditions under which the tube has been designed to operate. One instrument being sold into radio repair shop channels for testing mutual conductance, prior to the time when this proceeding was instituted, differs from the two analyzers widely used in laboratories but it likewise affords a constant operating voltage for the grid of the tube under test and contains a patented circuit for determining mutual conductance through measuring, by means of a "bridge output circuit," the changes in plate current resulting from a signal voltage additionally applied to the grid. Mutual conductance testers are held in high esteem by radio servicemen. Among the other tube checking instruments offered for sale and sold to the radio service and repair trade are emission testers which in no sense afford a test of mutual conductance.

PAR. 6. In the advertising statements appearing in Paragraph Three, subparagraph (a), which were contained in the 1940 catalog of Precision Apparatus Company, the instrument is designated, among other things, as a complete service laboratory incorporating respondents' Precision engineered "Dynamic Mutual Conductance"

tube tester, which in one operation effectively "tests" all radio receiving tubes for both mutual conductance and cathode structure, and reference is made to certain technical data appearing at another page of the catalog. In addition to statements emphasizing that mutual conductance and cathode emission are bases for the engineering design of the instrument's circuit, these data further state that certain schematic diagrams there portrayed demonstrate great similarity between respondents' circuit and the operation of a tube in a standard audio power output stage. In this connection, it appears to the Commission that, for a pentode tube in its normal state of operation, a separate voltage conventionally is afforded for the grid entirely independent of the signal intended to be modified. Other language contained in the advertising represents that the meter reading is placed in the output section of the tubes under test and that the resultant meter reading is directly and simultaneously proportional to both cathode emissive quality and mutual conductance. Nowhere is it stated in this advertising that an actual determination in micromhos is not made available. The Commission has concluded, therefore, that the advertising statements set forth in Paragraph Three, subparagraph (a), as formerly used by respondents, have constituted representations that respondents' instruments designated variously as "Precision Dynamic Mutual Conductance Tube Testers" and as "Combination Dynamic Mutual Conductance Tube Tester and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester" are mutual conductance testers capable of performing all of the functions of such a device, and that by the use of this instrument the mutual conductance of radio tubes can be determined.

In the advertising subsequently used by respondents, many of the statements referred to in the foregoing paragraph are retained, as is the schematic diagram purporting to depict the circuit used in respondents' equipment and the reference in such connection to the remarkable similarity of the Precision circuit to the circuit of a vacuum tube. Added, however, to the descriptive material are the statements, among others, that calibration of the meter in micromhos is not afforded and that the merit indication appearing on the meter is set forth instead on a replace-weak-good scale so as to "thereby avoid the confusion of a useless micromho scale" in determining tube merit. Nowhere in the advertising is it revealed that such change in plate current as results from a change in voltage placed by respondents' device upon the grid is not evaluated incident to the determination of tube merit. The Commission is of the view that the explanatory matter appearing in the advertising having reference to the

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properties and attributes of respondents' devices, including the suggestions made in connection with the schematic circuit diagrams, serves in substantial measures to confirm and to heighten the impressions engendered by respondents, use of the words "Mutual Conductance" in the product names and elsewhere in the advertising. Respondents' use of the term "Mutual Conductance" in the trade or product names "Combination Dynamic Mutual Conductance Type Tube Tester and 33 Range Rotary Selective A. C.-D. C. Multi-Range Set Tester," "Precision Dynamic Mutual Conductance Type Tube Testers," and "Combination Dynamic Mutual Conductance Type Tube Tester and 37 Range Super-Sensitive AC-DC Multi-Range Set Tester" and otherwise as set forth in Paragraph Three, subparagraph (b), hereof, in the circumstances here, at the very least constitutes a representation that respondents' tester is a mutual conductance testing instrument or a type thereof which, by segregating and appraising such change in plate current as results from a change or variation in the voltage placed by respondents' device upon the grid of a radio tube under check and through comparing such value with that displayed by a tube of known merit, will afford a qualitative evaluation, determination and test of the mutual conductance of an electronic tube.

PAR. 7. Respondents conceded at the outset of this proceeding that their instrument does not afford a quantitative expression of mutual conductance in micromhos, but contend that their use of the words "Mutual Conductance" in the product names and in the advertising statements is justified for the reason, among others, that within reasonable limits and with such degree of accuracy as is required in the repair and servicing of radios, the values afforded determine whether a tube is good or bad for mutual conductance. Introduced into the record by respondents is the testimony of engineers and other expert witnesses who expressed the view that, when less current is flowing at the plate of the tube being checked than that afforded by a known-to-be-good tube, such decrease will be proportional to the decrease in mutual conductance which has occurred. Respondents rely also on other testimony to the effect that this instrument responds to the average or composite mutual conductance of a radio tube over the range or sweep of the voltages applied when a tube is being tested. Appropriate for consideration in this connection also is a report received into the record as rendered by Squier Signal Laboratory which states that the meter indications obtained on the Precision equipment were found to vary "almost proportionally" with the actual mutual conductance of the tubes examined and that the percentage deviation from proportionality between actual mutual conductance and the

meter readings was not more than fifteen percent. The conclusion set forth in this report is that respondents' equipment is "of the 'mutual conductance' type." According to a report of the Evans Signal Laboratory, Army Service Forces, respondents' circuit measures characteristics of a tube which vary in proportion with its mutual conductance.

The overall worth of a tube obviously is dependent upon the merit of its various characteristics, among which are mutual conductance, amplification factor, plate resistance, and emission. A change in one direction on the part of certain of them causes some corresponding variation in values for another. This interrelation between and among the tube elements and characteristics moreover is illustrated by the algebraic equations which are used in identifying various tube values. For example, mutual conductance is expressed as amplification factor divided by plate resistance and by rearrangement of the equation, plate resistance can be expressed as amplification factor divided by the mutual conductance.

Respondents' instrument has been calibrated to compare the plate current of a suspected tube with that yielded by another tube selected in the first instance for its adequacy in respect to all characteristics, including emission and mutual conductance. A comparative reading indicating the presence of plate current values in a suspected tube similar to those of a new tube essentially constitutes a rough appraisal of the overall value of the tube under check rather than a scientific test of the merit of any separate tube characteristic. By the same token, a reading revealing a marked decrease in current indicates merely a decrease in overall merit even though such decrease may be attributable to a realignment of values among the separate tube characteristics, including mutual conductance.

Another way of expressing such correlation as exists between a marked decrease in the average value of plate current and a decrease in mutual conductance is to state that the marked decrease in current is proportional, or roughly or almost proportional, to the decrease in mutual conductance. The Commission is of the opinion that this relationship should be rejected as the controlling factor in a determination of whether respondents' instrument is a mutual conductance type tube tester. To conclude otherwise would be to ignore the testimony adduced in this proceeding by numerous engineers and other expert witnesses called by counsel supporting the complaint who have expressed opinions to the effect that respondents' product does not indicate values which can be directly interpreted in terms of mutual conductance, and that inasmuch as its reading is limited to the average

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value of plate current flowing through the complete cycle of power impressed upon the plate, such device does not in any way indicate the effect of any modification that might be made by a signal impressed upon the control grid itself. Weighed and appraised also in this connection is the testimony of other witnesses whose examinations related to the understanding of members of the radio repair and service trade of the term "Mutual Conductance" when used to designate a tube testing instrument.

Apart from such value as it possesses in checking emission, respondents' instrument is limited to a comparison on the averages of total plate currents occurring in a known good tube and a tube under check, each of which plate currents results from two voltages in phase with each other, one voltage being applied to the grid and the other on the plate. Respondents' instrument does not compare a tube of known merit and a suspected tube under check by comparing those variations or changes occurring in their respective plate currents which stem from a similar change or variation in voltage applied to the grids of such tubes. No instrument can be accurately designated and described as a mutual conductance type checking instrument unless it either qualitatively or quantitatively appraises or evaluates such change in plate current as solely results from a change or variation in grid voltage. Because the instrument here under consideration lacks an input circuit by means of which a signal can be impressed upon the control grid and does not contain an output circuit by means of which such signal could be interpreted if present, no test or appraisal of mutual conductance, comparative or otherwise, is provided by respondents' checker. Upon the basis of the greater weight of the testimony and other evidence which has been adduced in this proceeding, including that testimony adduced by those witnesses whose examinations related to the understanding of members of the radio repair and service trade of the term "mutual conductance" when used to designate an instrument offered for the testing of tubes, the Commission finds that respondents' instrument is neither a mutual conductance tube tester nor a type thereof, and concludes that the advertising representations stemming from respondents' use of the term "mutual conductance" in the various product or trade names by which their scientific equipment has been designated, and otherwise in the advertising therefor, as found in Paragraph Six hereof, are false, deceptive and misleading.

PAR. 8. The use by respondents of the aforesaid false and misleading statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public

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with respect to the character, quality and performance ability of said instruments and to induce the purchase of a substantial quantity of respondents' instruments as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The aforesaid acts and practices of respondent Solomon W. Weingast, as herein found, have been 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 upon the complaint of the Commission, as amended, the answer of respondents, as amended, testimony and other evidence introduced before a trial examiner of the Commission prior to and subsequent to the date upon which the order amending the complaint was issued, recommended decision of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint, as amended (counsel for respondents not having appeared for oral argument), and the Commission having made its findings as to the facts and its conclusion that the respondent Solomon W. Weingast has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Solomon W. Weingast, individually and doing business as a copartner under the name of Precision Apparatus Company, or trading under any other name, and said respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of instruments heretofore designated variously as "Precision Dynamic Mutual Conductance Tube Testers" and "Precision Dynamic Mutual Conductance Type Tube Testers," or any substantially similar device whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Using the term "Mutual Conductance" or any other word or term of similar import or meaning in any trade or product name for respondent's instrument;

(2) Representing that respondent's instrument is a mutual conductance testing instrument or a mutual conductance type testing instrument, or representing in any manner, through use of the term "Mutual Conductance" or any other word or term of similar import or

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meaning, that respondent's instrument determines mutual conductance or indicates the quality or merit of the mutual conductance of a vacuum tube by appraising, comparatively or otherwise, such change in plate current as results from a change or variation in voltage placed by respondent's device upon the grid of a radio tube.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent Murray Mentzer, deceased.

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

Complaint

IN THE MATTER OF
NATHAN AND BURTON SAMORS DOING BUSINESS AS
QUALITY PATCH COMPANY AND TEXTILE BY-PROD-
UCTS COMPANY

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

Docket 5915. Complaint, Aug. 16, 1951—Decision, Nov. 24, 1951

Where two partners engaged in conducting a mail order business in the sale of patches and remnants of cloth to the general public—

- (a) Represented through advertisements in various magazines that the assortments offered by them consisted chiefly of pieces of cloth of full width with which the purchaser could make dozens of such things as aprons, curtains, table cloths, quilts, rompers, and pillows;

The facts being that there were ordinarily included in said assortments only a small number of pieces of sufficient size to make any of the articles above enumerated, and the balance consisted of scraps, trimmings, and small irregular pieces; and

- (b) Falsely represented that patterns and new trimming ideas were furnished free to the purchasers; the fact being it was necessary to purchase an "assortment" before said articles were furnished, and their cost was included in the assortment's price;

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 into the purchase of substantial quantities of their said products in reliance thereon:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. John C. Williams for the Commission.

Horvitz & Horvitz, of Fall River, Mass., 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 Nathan Samors and Burton Samors, co-partners, doing business as Quality Patch Company and Textile By-Products Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would