

Syllabus

IN THE MATTER OF
AMERICAN BUSINESS COUNSELORS, INC., ETC. ET AL.

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

Docket 5910. Complaint, Aug. 7, 1951—Decision, Mar. 20, 1952

While it may be true, as insisted in the instant case, that the expression "blue ribbon" has come into general acceptance as a symbol of quality, which simply denotes excellence, and not that a product has been adjudged highest in a competitive contest, such a position does not appear tenable where the expression is not used merely as the trade name of a product or in a general way to connote quality, but is used along with such expressions as "awarded the blue ribbon for excellence", and others indicative of highest recognition in a competitive contest with other similar products.

Where a corporation which formerly traded under the name "American Bakers Council", and thereafter as "Independent Bakers Council of America", and its president, engaged in acting as commercial counselors and in the competitive interstate sale of merchandising programs, including advertising and promotional material, to wholesale bakers engaged in the competitive sale of bread—

- (a) Falsely represented the size of their business and the extent of their operations in certain of their advertising material, through referring to their "Midwest Offices" at a Chicago address, and to their "Eastern Offices" at a New York one.

The facts being that while they utilized an independent business or secretarial service at each of said addresses for the purpose of forwarding mail, receiving telephone calls and supplying temporary office facilities to their traveling salesmen, they had never maintained an office of their own in either of said cities; and

Where said corporation and its president, in selling to wholesale bakers, usually to only one in each town, their said sales program, which included suggested advertising for use in newspapers and radio continuities, suggested news stories for use by the local paper, the supplying of "blue ribbon" bands to be placed on the loaves of bread and blue ribbons to be worn by the bakery's salesmen or routemen, and a large blue ribbon to be awarded the baker in a public presentation, usually made by them under the name "American Bakers Council of America", with as much publicity as possible—

- (b) Represented and supplied to others the means of representing that competitive contests were conducted by them or at their instance to determine the relative quality or merit of products of different bakeries, and that a particular product had been awarded a prize or other distinction in such a competitive contest, through such statements in said advertisements, in which a blue ribbon was depicted, as "[name] BREAD CO. WINS FIRST PRIZE AWARD as the *finest* White Bread in the United States FROM AMERICAN BAKERS COUNCIL * * *", and through such statements, following discontinuance of use of the words "FIRST PRIZE", and emphasis upon the award of the "blue ribbon", as "[name] FINE BREAD Awarded the

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BLUE RIBBON for Excellence—one of the *finest* White Breads in the United States! FIRST IN FRESHNESS—FLAVOR—QUALITY—UNIFORMITY—CLEANLINESS and VALUE”, together with a depiction of a blue ribbon upon which appeared “Awarded the BLUE RIBBON for EXCELLENCE of FRESHNESS, FLAVOR, QUALITY * * * by INDEPENDENT BAKERS COUNCIL of America”;

The facts being that, while respondents had arrangements with certain testing laboratories under which the laboratory examined or tested the breads of their customers, any bread meeting certain minimum standards was eligible for the so-called blue ribbon award; and there had never been any competitive contest;

With tendency and capacity to mislead and deceive a substantial number of wholesale bakers and retail dealers and a substantial portion of the purchasing public with respect to their business status and their customers' products, and as a result, to cause such wholesale bakers to purchase their sales program, and such retail dealers and members of the public to purchase the products of their customers; and with result of placing in the hands of others an instrumentality whereby they were enabled to mislead and deceive retail dealers and the purchasing public; whereby substantial trade was diverted unfairly to them from their competitors, and to their customers from competitors of such customers;

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

As regards the use by respondents of the word “council” in their trade names as misleadingly representing or implying that such organizations were nationwide trade associations of wholesale bakers: it appeared that in view of the facts involved, the use of the word “council” was not unwarranted, since the name “American Bakers Council” was used for only a few months, and as respects the name “Independent Bakers Council of America”, that each wholesale baking concern purchasing their sales promotion plan automatically becomes a member of the council and is represented by an officer on the council's advisory board, and that membership in the organization entitled the member to other services besides use of the merchandising plan, including counsel on matters of advertising, packaging, production, etc.

As respects the charge that respondents by referring to the “American Bakers Council” or the “Independent Bakers Council of America” as a “Division”, falsely represented that their business was a large organization with divisions or branches for different industries: it appeared that while respondents' operation had until shortly theretofore been confined to the baking industry, respondents were entering into other fields as well and that such had been their intention from the beginning; and, such being the fact, that the representation in question could not be regarded as wholly without factual basis.

As regards the charge that respondents falsely represented that their organization was twenty-seven years old, the record disclosed that said statement appeared only once in a Texas newspaper with respect to a local bakery and was due to error or inadvertance on the part of the local baker or newspaper reporter, that the material was not supplied by respondent, and that the

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use of the statement was without their knowledge or consent; and such charge held not sustained.

As respects the charge that respondents, through referring to the testing of bread in "our laboratory facilities" represented that such facilities were actually owned, maintained and operated by them: it appeared that such facilities were those of certain independent testing laboratories which, pursuant to respondents' arrangements, examined bread submitted to them by respondents; and that respondents' reference to their laboratory facilities did not necessarily mean that they themselves actually owned or operated laboratories, and did have an arrangement with reputable testing laboratories for said purpose constituted sufficient factual basis for the use of the challenged phrase, it appearing immaterial and without public interest as a practical matter whether the testing was done in laboratories owned by them or in those owned and operated by others but doing the testing under contract with them.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Ronald Walker and *Tuttle & Tuttle*, of Los Angeles, Calif., 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 American Business Counselors, Inc., a corporation, and William Donald Dunkle, individually and as president of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Business Counselors, Inc., is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business at 672 South Lafayette Park Place, Los Angeles, California.

Respondent William Donald Dunkle is president of said corporation and as such formulates, controls and directs the policies and practices of said corporate respondent and is responsible for the operation and management thereof. Said individual respondent also traded as American Bakers Council and presently trades and does business under the name of Independent Bakers Council of America; his principal office and place of business in said several capacities is the same as that of the corporate respondent.

PAR. 2. Said respondents are now, and for several months last past have been, engaged in acting as commercial counselors, and in the business of advertising, promotion and the sale of merchandising

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programs, including promotional material consisting of circulars, prize award ribbons, certificates, radio and newspaper releases and other advertising and display matter to wholesale bakers. Respondents cause all of said promotion material, when sold, to be transported from their said place of business in California to the purchasers thereof located in the several States of the United States other than the State of California. There has been at all times mentioned herein a course of trade in the sale of said advertising material so sold and distributed by respondents in commerce and said course of trade has been and is substantial.

In the sale and distribution of said advertising promotion plan and material, respondents are in competition with other corporations, partnerships and individuals engaged in the sale and distribution of similar commodities in commerce between and among the various States of the United States. Respondents' customers and others engaged in the wholesale bread baking business, and selling in turn to retailers of bread, are also in competition in commerce with each other.

PAR. 3. In the course and conduct of their business, respondents solicit the purchase of their said advertising program by wholesale bakers through circular letters, leaflets and broadsides, in which, among others, the following statements and representations are made:

Western Offices, 672 Lafayette Park Place, Los Angeles 5, California; Mid West Offices, 30 West Washington Street, Chicago, Illinois; Eastern Offices, 15 Park Row, New York City, New York

ABC Bulletin Issued from Western Offices American Business Counselors Incorporated

American Bakers Council

A Division of American Business Counselors, Inc.

Independent Bakers Council of America

ABC Bakery Division of American Business Counselors, Inc.

Your local newspaper will carry publicity stories on your award . . . Your route salesmen will wear ribbons in gold and blue acclaiming that they handle **FIRST PRIZE WINNING WHITE BREAD . . .**

Your grocers will wear gold and blue ribbons acclaiming to all that **THEY HANDLE THE FINEST WHITE BREAD IN THE UNITED STATES . . .**

Your loaf will be scored in our laboratory facilities . . .

. . . Radio station spot announcements spread the word of your winning the first prize award over the air . . .

. . . your **FIRST PRIZE WHITE BREAD . . .** each loaf may carry . . . a **BAND** in brilliant color in which is reproduced your **FIRST PRIZE AWARD EMBLEM**

PAR. 4. By means of the statements and representations set forth in Paragraph Three hereof, and others of similar import not herein specifically set out, respondents represent and imply that they maintain branch offices in Chicago and New York; that American Bakers Council and Independent Bakers Council of America are nation-wide trade

associations of Wholesale bakers; that American Business Counselors, Inc. is a large business organization, maintaining divisions or branches of various industries, including the baking industry; that contests are held by said organizations, resulting in first prize and blue ribbon awards; and that such awards will be publicized in local newspapers and through radio announcements; that the salesmen of respondents' wholesale customers and the grocers who purchase bread from said wholesalers will be supplied with blue and gold ribbons showing that first prize was awarded to said wholesale baker for the finest white bread in the United States; and that the bread submitted by said wholesale bakers is tested and scored in laboratory facilities maintained by respondents.

PAR. 5. To purchasers of said merchandising and sales promotion plan respondents furnish membership certificates, blue ribbons, blank forms of broadsides, form letters, suggested newspaper publicity stories and radio continuities to be used by said purchasers and their retail customers in advertising their respective brands of white bread. Typical but not all-inclusive of the statements and representations made in said promotional material are the following:

Certificate of Membership

----- Elected to membership in Independent Bakers Council of America. The above named firm and individual shall be entitled to receive the full benefits of membership

FIRST PRIZE WINNER
AWARDED FIRST PRIZE
FINEST WHITE BREAD
IN THE UNITED STATES

TRY THIS PRIZE WINNING LOAF
FRESH AT YOUR GROCERS

NAME BREAD CO. WINS
FIRST PRIZE AWARD

QUALITY BAKERY WINS FIRST PRIZE AWARD FOR BAKING ONE OF THE FINEST LOAVES OF WHITE BREAD IN THE UNITED STATES

We are justly proud that ----- bread has been selected
for this honor in our community

EXPERTS KNOW BEST! They choose NAME BREAD.

HOUSEWIVES! . . . Do you know that (-----) has just been awarded
bread
the BLUE RIBBON as one of the FINEST white breads in the whole United States --? INDEPENDENT BAKERS COUNCIL OF AMERICA, a national organization of baking authorities, and *they* should know

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The Independent Bakers Council of America, after testing it in their laboratory facilities, awarded (-----) a BLUE RIBBON For Six Points of Excellence.
bread

Awarded the BLUE RIBBON for Excellence of Freshness Flavor Quality Uniformity Cleanliness Value by Independent Bakers Council of America.

No wonder ----- was awarded the BLUE RIBBON for quality.
bread

It's the perfect white bread and discriminating local housewives have known that for years.

Ask for the Bread with the Blue Ribbon on It!

Suggested letter to grocers (to me mimeographed or multigraphed on letter-head of baking company) :

To our grocer friends :

...
"This exploitation campaign will be broad in scope and grocery outlets will be supplied with original and distinctive devices that are bound to bring your store a flood of new business and keep your cash register ringing.

"Our problem includes a series of large and impressive ads in the newspapers, a consistent rotation of radio announcements and miscellaneous store display materials. Your clerks will be supplied with handsome gold embossed silk ribbons which will call attention to the BLUE RIBBON AWARD."

From a suggested form letter "on the letterhead of local newspaper:"

... However, white bread being the principal source of food energy gives a deep and important significance to the fact that the Independent Bakers Council of America saw fit to award the quality blue ribbon to (name of bakery) for producing one of the finest white breads baked in the United States. ... We are assured by the management of the (name of bakery) that this powerful newspaper advertising campaign will be carried on to bring this blue ribbon quality award forcibly to the minds of our readers who are YOUR CUSTOMERS ...

From the Lubbock, Texas, Morning Avalanche of September 27, 1950 under a picture showing, among others, respondent Dunkle holding a large award ribbon :

... the award was made to the local company last night for producing the loaf of bread judged best by the ABC from thousands sent in from all parts of the nation by competing bakers. ... This is the first time in the twenty-seven year history of the ABC that a Texas Bakery has won the award.

The Independent Bakers Council of America put ----- through a rigid
(bread)
test before it was awarded the blue ribbon for six points of excellence ...

PAR. 6. By means of the foregoing statements and representations and many others to the same effect not herein specifically set out, respondents represent and imply that the wholesale bakers who purchase said sales promotion plan are members of a national organization of their industry; that the bread of each of the purchasers of respondents' merchandising plan is bread which has won or which has been awarded first prize in competitive contests as the finest or

one of the finest white breads in the United States, or which has been awarded the Blue Ribbon of Excellence for freshness, flavor, quality, uniformity, cleanliness, and value; that the awards are made by experts of The Independent Bakers Council, a national organization of baking authorities, on the basis of rigid tests performed by them in their laboratory facilities on thousands of loaves of bread submitted from all parts of the United States; that said organization has been in existence for over 27 years, and that housewives have known for years that bread awarded the Blue Ribbon is the perfect white bread; that the advertising and exploitation program by said wholesale bakers is extensive, including many forms of advertising media and that their retail customers will be supplied with a variety of display materials and blue silk ribbons, all pointing to the Blue Ribbon Award, and resulting in vastly increased sales.

PAR. 7. All of the statements, representations and implications set forth and described in Paragraphs Three to Six hereof are false, deceptive and misleading. In truth and in fact respondents maintain no Midwestern offices in Chicago or Eastern offices in New York and the addresses listed for said cities are merely the offices of commercial mail and telephone services. Neither said American Bakers Council nor said Independent Bakers Council of America is a national trade organization of wholesale bakers actively engaged in promoting the welfare and common interests of the members of such organizations. Both designations are employed by respondent William D. Dunkle as trade names in connection with said sales promotion scheme; American Business Counselors, Inc. is a corporate device, operated and managed entirely by respondent Dunkle, and does not maintain any divisions or branches of the baking or any other industry; and said corporate and trade names are used by respondent Dunkle conjointly to further the impression that said business is a large and substantial organization consisting of a number of independent divisions. Respondents' so-called awards of first prizes, blue ribbons and other distinctions are not the result of contests or prize competitions participated in by many wholesale bakers, but on the contrary constitute a scheme to increase the sale of bread, and the dissemination of circulars, broadsides, newspaper stories and radio announcements of said purported awards and the display of blue ribbons in various ways are all part of said scheme to mislead the public into the belief that said prizes and awards are the result of competitive tests conducted by an impartial organization of experts. Respondents maintain no laboratory facilities for the testing and scoring of bread, but employ an independent laboratory to test and score bread submitted by purchasers of their said sales promotion plan, and said tests are

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wholly meaningless and of no significance for the reasons that they do not constitute a basis for any award, are not conducted to determine the superiority of any one product of competing bakers and the bread tested does not show that degree of excellence as to the six points listed in the various advertising media which would justify any prizes or Blue Ribbons as the finest or one of the finest white breads in the United States. Moreover, the bread produced by virtually all independent wholesale bakers of the United States shows little variation in quality or other characteristics for the reason that all of them use approximately the same formula or recipe. Independent Bakers Council of America has not been in existence for twenty-seven years, in fact this trade name has been in use for less than one year and neither Independent Bakers Council of America nor Bakers Council of America is a council as that term is generally understood. While it is true, as represented by respondents in their suggested advertising literature, that the exploitation campaign is a successful means of increasing sales, such increase is due to the fact that the purchasing public accepts the false and misleading representations as to prize awards as true. There are many members of the purchasing public who prefer to purchase merchandise which has been awarded prizes for excellence by trade organizations or independent laboratories and investigators. Said newspaper articles, radio continuities and other media of publicity purporting to give the details of the Blue Ribbon and Prize awards are in fact prepared by respondents in advance in the form of blanks which are filled in with the respective names, addresses and other data of respondents' customers, and constitute a part of the advertising promotion plan sold to them by respondents as aforesaid.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive practices, statements and representations as hereinabove set forth has had and now has the tendency and capacity to and does mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations are true and as a result thereof a substantial number of the purchasing public were and are induced to buy the products of respondents' customers. By said acts and practices respondents also place in the hands of purchasers of their said sales promotion plan a means and instrumentality whereby they may and do deceive the purchasing public as to the true facts in regard to said Blue Ribbon and Prize Awards. As a further consequence of the aforesaid acts and practices of respondents, trade has been diverted unfairly, to respondents from their competitors and to the customers of respondents from their competitors.

PAR. 9. The aforesaid acts and practices of respondents as herein

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alleged are all to the prejudice and injury of the public and respondents' competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition 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 March 20, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 7, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence, and oral argument of counsel (the filing of proposed findings and conclusions having been waived); and the hearing 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 American Business Counselors, Inc., is a corporation organized, existing and doing business under the laws of the State of Delaware, with its office and place of business located at 672 South Lafayette Park Place, Los Angeles, California. Respondent William Donald Dunkle is president of the corporation and formulates, controls and directs its policies and practices and is responsible for its operation and management. Respondents have also

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traded under the name American Bakers Council and are now doing business under the name Independent Bakers Council of America. Respondents are engaged in the business of acting as commercial counselors and in the sale of merchandising programs, including advertising and promotional material, such programs and material being sold largely to wholesale bakers.

PAR. 2. Respondents cause and have caused their merchandising programs and advertising and promotional material, when sold, to be transported from their place of business in the State of California to purchasers located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between various States of the United States.

PAR. 3. In the sale and distribution of their products, respondents are and have been in substantial competition with other corporations and individuals and with partnerships engaged in the sale and distribution of similar products in commerce among and between various States of the United States. Respondents' customers are also in competition in such commerce with others engaged in the wholesale sale of bread.

PAR. 4. This proceeding involves certain representations made by respondents in advertising material distributed by them among prospective purchasers of their merchandising programs, and in promotional and advertising material supplied purchasers for use by such purchasers in carrying out the merchandising program and advertising the purchaser's product to the public. The first issue raised by the complaint is whether respondents, by referring to certain purported branch offices maintained by them, have misrepresented the size of their business and the extent of its operations. In certain of their advertising material, respondents have referred to their "Mid West Offices, 30 West Washington Street, Chicago, Illinois" and their "Eastern Offices, 15 Park Row, New York City, New York." Actually, while respondents have utilized an independent business or secretarial service at each of these addresses for the purpose of forwarding mail, receiving telephone calls and supplying temporary office facilities to respondents' traveling salesmen, respondents have never maintained an office of their own in either of these cities. It is therefore concluded that respondents' references to their so-called branch offices were unwarranted and misleading.

PAR. 5. The next issue involves the use by respondents of the word "Council" in their trade names, American Bakers Council and Independent Bakers Council of America, the complaint charging that such use of the word represents or implies that such organizations are

nation-wide trade associations of wholesaler bakers. The name American Bakers Council was used by respondents for only a few months or until January 1951 when, after certain correspondence with the trade organization known as American Bakers Association, the name was discontinued by respondents and the name Independent Bakers Council of America adopted in its stead. Under respondents' plan of operation, each wholesale baking concern purchasing respondents' sales promotion plan automatically becomes a member of the Council and a certificate of membership is issued to it. An officer of each company is made a member of the Council's Advisory Board. At the time of the hearing in the present proceedings (in September 1951), the membership of the Council numbered some 72 wholesale baking concerns located in some 26 different States of the United States. While up to that time no meeting of the Council's membership had been held, preparations were being made for a meeting in Chicago during the following month and an announcement of the meeting had already been sent to the membership. Membership in the organization entitles the member, in addition to the use of the merchandising plan, to other services of the organization, such as news bulletins pertaining to the baking industry, counsel on matters of advertising, packaging, production, accounting, sanitation, etc. In view of these facts, the examiner is of the opinion that the use by respondents of the word "Council" as a part of the name of their organization is not unwarranted.

PAR. 6. The complaint next charges that by referring to the American Bakers Council or the Independent Bakers Council of America as a "Division" of their business, respondents have represented, contrary to fact, that their business is a large organization, with divisions or branches for different industries. While it is true that until recently respondents' operations have been confined to the baking industry, respondents are now entering other fields as well and this appears to have been their intention from the beginning of the organization. In the circumstances it appears that the representation in question cannot be regarded as wholly without factual basis.

PAR. 7. A further charge in the complaint is that respondents have falsely represented that their organization is 27 years old. The record discloses that this statement appeared only once, in a news article in a Texas newspaper with respect to a local bakery, and that the statement was due to error or inadvertence on the part of the local baker or the newspaper reporter. The material for the article (insofar as the matter of age is concerned) was not supplied by respondents and the use of the statement in question was without their knowledge or consent. It is therefore concluded that this charge in the complaint has not been sustained.

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PAR. 8. In some of their advertising, respondents refer to the testing of bread in "our laboratory facilities." The complaint challenges the use of this language, charging that it constitutes a representation that the laboratory facilities referred to are actually owned, maintained and operated by respondents. The facilities referred to are, in fact, those of certain independent testing laboratories which, pursuant to arrangements made with them by respondents, examine bread submitted to them by respondents for that purpose. In the examiner's opinion the reference by respondents to their laboratory facilities does not necessarily mean that respondents themselves actually own or operate laboratories. The fact that respondents do have an arrangement with reputable testing laboratories for the testing of bread would appear to be sufficient factual basis for the use of the statement in question. As a practical matter it would appear to be immaterial and without public interest whether the testing is done in laboratories owned by respondents or in laboratories owned and operated by others but doing the testing under contract with respondents.

PAR. 9. By far the most serious issue raised by the complaint is whether respondents have represented and placed in the hands of others the means of representing that bread produced and sold by various baking concerns purchasing respondents' sales program has been awarded a prize or recognition in a competitive contest with other breads, when in fact, the complaint charges, no such contest has been held. Respondents' sales program is sold to wholesale bakers, usually only one in each town or city, and includes, among other things, suggested advertising for use in newspapers and radio continuities and also suggested news stories for use by the local paper. Respondents also supply "blue ribbon" bands to be placed on the loaves of bread, as well as blue ribbons to be worn by the bakery's salesmen or routemen. In addition, respondents supply a large blue ribbon to be awarded the baker in a public presentation, the presentation usually being made by respondents under the name American Bakers Council or Independent Bakers Council of America. In connection with the presentation, as much publicity as possible is sought, particularly in the local newspaper. In all of this advertising and publicity, emphasis is placed on the purported fact that the baker has been awarded a "first prize" or "blue ribbon." Typical of statements appearing in the earlier advertising (1950) are the following:

(NAME) BREAD CO. WINS
FIRST PRIZE AWARD
as the *finest* White Bread
in the United States!
FROM
AMERICAN BAKERS COUNCIL
National Organization of Baking Authorities

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Included in the advertisement was a picture of a blue ribbon, on which the following appeared:

FIRST
PRIZE
WINNER
Awarded
FIRST
PRIZE
FINEST
WHITE
BREAD
IN THE
UNITED
STATES
AMERICAN
BAKERS
COUNCIL

Beginning in January 1951 use of the words "first prize" was discontinued and emphasis placed upon the award of the "blue ribbon." These later advertisements have read substantially as follows:

(NAME) FINE BREAD
Awarded the
BLUE RIBBON for Excellence
one of the *finest* White Breads
in the United States!
FIRST IN
FRESHNESS—FLAVOR
QUALITY—UNIFORMITY
CLEANLINESS and VALUE

We are justly proud that (Name)
Fine Bread has been selected
for this honor in our community.
We have received this valued
citation for the FRESHNESS . . .
FLAVOR . . . QUALITY . . . UNIFORMITY
. . . CLEANLINESS . . . AND GOOD VALUE
OF our loaf. We pledge ourselves
to merit this BLUE RIBBON AWARD
always.

(Name) Fine Bread has been tested
and scored by the laboratory facilities
of the INDEPENDENT BAKERS COUNCIL
of AMERICA and met their quality
standards. (Name of town) house-
wives are invited to taste test
this fine bread . . . and enjoy the
loaf that has earned the BLUE
RIBBON AWARD.

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On the blue ribbon pictured in the advertisement has appeared the following:

Awarded
the
BLUE
RIBBON
for
EXCELLENCE
of
FRESHNESS
FLAVOR
QUALITY
UNIFORMITY
CLEANLINESS
VALUE
by
INDEPENDENT
BAKERS COUNCIL
of America

Actually, there has never been at any time, either under the old advertising or the new, any competitive contest. As stated above in connection with the issue as to laboratory facilities, respondents have arrangements with certain testing laboratories under which the laboratory examines or tests the breads of respondents' customers. The various breads sent to the laboratories from time to time are graded or scored by the laboratory with respect to certain characteristics, such as grain, texture, character and color of crust, taste, aroma, etc., and any bread meeting certain minimum standards is eligible for the so-called blue ribbon award. While respondents state that they do not accept a contract from a prospective purchaser of their sales plan until after his bread has been found satisfactory, and that in several instances customers have been required to submit additional samples of their bread when the first sample was found not to be satisfactory, the record further shows that in no case has a prospective customer been rejected or his bread denied the blue ribbon award. It appears clear from the record that any baker producing a reasonably good bread can obtain the award.

Respondents readily concede that the earlier advertising, in which reference was made to a "first prize," was misleading as representing or implying a competitive contest. It is urged, however, that this is not the case as to the later advertising, in which no reference is made to a "first prize" but only to the awarding of a blue ribbon for excellence. Respondents insist that the expression "blue ribbon" has come into general acceptance as a symbol of quality, that it simply connotes

good or high quality or excellence, not that the article or product has been adjudged highest in a competitive contest.

While in certain circumstances this might well be true, the position appears not to be tenable in the situation here presented. Here the expression "blue ribbon" is not used merely as the trade name of a product nor in any general way to connote quality. Rather, the advertising states expressly that the bread has been "awarded the blue ribbon for excellence" as "one of the finest white breads in the United States"; that the bread is "first in freshness, flavor, quality, uniformity, cleanliness and value"; and that "We are justly proud that (Name) Fine Bread has been selected for this honor in our community. We have received this valued citation for the freshness, flavor, quality, uniformity, cleanliness and good value of our loaf. We pledge ourselves to merit this blue ribbon award always." It is difficult to believe that the general public, upon reading such an advertisement, could have any impression other than that the bread in question had received highest recognition in a competitive contest with other breads in that community. Insofar as the effect upon the public is concerned, it would appear to make little difference whether the advertisement refers specifically to a "first prize" or to the award of a "blue ribbon." It is therefore concluded that respondents' advertising is unwarranted and misleading.

PAR. 10. Respondents' acts and practices, as described in Paragraphs Four and Nine, have the tendency and capacity to mislead and deceive a substantial number of wholesale bakers and retail dealers and a substantial portion of the purchasing public with respect to respondents' business status and with respect to the products of respondents' customers, and the tendency and capacity to cause such wholesale bakers to purchase respondents' sales program and to cause such retail dealers and members of the public to purchase the products of respondents' customers as a result of the erroneous and mistaken belief so engendered. Respondents acts and practices serve also to place in the hands of others an instrumentality whereby they are enabled to mislead and deceive retail dealers and the purchasing public. In consequence, substantial trade has been diverted unfairly to respondents from their competitors and to the customers of respondents from the competitors of such customers.

CONCLUSION

The acts and practices of respondents, as hereinabove set out, are all to the prejudice of the public and of respondents' competitors and the competitors of respondents' customers, and constitute unfair methods of competition and unfair and deceptive acts and practices in

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commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, American Business Counselors, Inc., a corporation, and its officers, and William Donald Dunkle, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' merchandising plans or programs and of advertising and promotional material in connection therewith, do forthwith cease and desist from:

(1) Representing, directly or by implication, that an office is maintained by respondents in any city other than that in which an office or place of business is in fact maintained, occupied and used by respondents.

(2) Representing or supplying to others the means of representing, directly or by implication, that competitive contests are conducted by, or at the instance of respondents to determine the relative quality or merit of products of different bakeries, or that any particular product has been awarded a prize or other distinction in a competitive contest conducted by or at the instance of respondents.

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 March 20, 1952].

Syllabus

IN THE MATTER OF

LESTER ROTHSCILD TRADING AS GEN-O-PAK COMPANY, AMERICAN DEPOSIT SYSTEM, AND MANPOWER CLASSIFICATION BUREAU

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

Docket 5853. Complaint, May 23, 1951¹—Decision, Mar. 27, 1952

Where an individual engaged in the interstate sale of post cards and letters, coupled with a service to creditor purchasers for obtaining information concerning their delinquent debtors, under a plan whereby said customers addressed the cards, identified by a serial number, to their debtors or others from whom information was sought, and sent them to said individual who mailed them and thereafter returned from his Chicago place of business to the proper customers such replies as he received, and sent to the debtor or person supplying the information three pen points, worth about three cents and covered in the cards' purchase price, together with circulars advertising other products he sold;

In making use, in said connection of (1) a form of double post card which, headed by said individual's Chicago office and trade name, advised the consignee that "we are holding a package which we will send to you, upon receipt of the attached post card with complete identification filled in," and on the reply portion, addressed to said individual's trade name Chicago address, provided, under the instruction to "send the above package to", for the consignee's name and address, and under the caption, "party must be identified", for the name and address of the consignee's employer, "bank and friends", along with the caution that "all questions must be answered or package will not be sent"; and (2) another form of double post card designed to be sent to persons other than the debtor, and to elicit, on the same pretext, the desired information as to the debtor—

- (a) Falsely represented and placed in the hands of his customers a means of falsely representing to the customers' debtors and others from whom information concerning such debtors was sought, that the latter were consignees of packages of substantial value sent by firms other than said individual and in his hands, and that delivery could not be made because of lack of identification or address;

The facts being that said individual business had nothing to do with transportation or delivery of packages; the packages to which the cards referred were those he made up, containing the pen points and advertising matter; and his whole scheme was one of obtaining information by subterfuge; and

Where said individual making use of other form letters under the trade name, "Manpower Classification Bureau", followed by his Chicago address, and the caption "CLASSIFICATION NO. D" and the words "AREA 6 ZONE 211-51", requesting similar information from the addressee debtor or other person—

- (b) Falsely represented through the statements therein and the name "Manpower Classification Bureau", and placed in the hands of his customers

¹ Amended and supplemental.