

IN THE MATTER OF
BOSTWICK LABORATORIES, INC.

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

Docket 5785. Complaint, June 26, 1950—Decision, Mar. 30, 1953

Where a corporation engaged in the interstate sale and distribution of four insecticides designated "Hep Aerosol Insect Killer", "Bostwick Super-Aerosol Insect Killer", "Bostwick Safe-lex Insect Killer", and "Bostwick Moth Proofer", in competition with other concerns similarly engaged; in advertising its said products through circulars and fliers, and counter display cards and advertising mats distributed to its wholesale distributors, who in turn distributed some of them to retailers for their use—

- (a) Represented that its said "Hep" and "Super-Aerosol" products were safe and would not cause injury to humans, birds, fish, and pets, and, in the case of the latter, to plants;

The facts being that indiscriminate use of said preparations, by virtue of the percentages of DDT and petroleum distillate therein contained, might cause damage to the health of those exposed to the spray; and that they were safe only when used as directed on the label;

- (b) Represented that said "Super-Aerosol" and said "Safe-lex" preparations would kill or destroy all crawling insects in the treated premises; the facts being that an average kill would be about eighty percent and thus repeated applications were necessary from time to time;
- (c) Represented that said "Super-Aerosol" killed insects more quickly than other insecticides; the facts being its relative killing time was not much different from that of many other of the common aerosols nor from that of a wide variety of commercial insecticides;
- (d) Represented that its said "Safe-lex", because of its methoxychlor content, killed practically every household insect twice as fast as DDT preparations and that it was safer for use under all circumstances than all other insecticides;

The facts being a housewife would not observe any difference between killing time of such an insecticide based on methoxychlor and one containing DDT, and other insecticides are as safe to use;

- (e) Represented that its said "Safe-lex" would not stain materials which it contacted; the facts being that it would do so if held too close to surfaces being treated but not if directions for use on the label were observed;
- (f) Represented that its said "Moth Proofer" was effective in protecting garments for a year and was the only preparation on the market which mothproofed;

The facts being that dry-cleaning or laundering reduced the effectiveness of a preceding treatment, the treated articles would be effectively mothproofed

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for the aforesaid or any other period only if not dry-cleaned or laundered during said period, and there are other preparations, including those applied by dipping and washing, which are as effective in mothproofing;

- (g) Represented that methoxychlor was more effective than DDT for killing insects, that the latter product has been barred for use near children and pets, that the Department of Agriculture had recommended that methoxychlor be substituted for DDT to control insect pests, and that the former killed more than the latter;

The facts being that the only restriction by said Department was one outlawing its use on dairy animals and in dairy barns to keep milk pure; the only recommendation of said Department in the matter was for the substitution of methoxychlor for DDT for the control of flies in dairy barns and on dairy animals; as respects the relative effectiveness of the two, in general methoxychlor was effective against a much smaller range of insects than DDT; and

- (h) Placed in the hands of distributors and dealers a means and instrumentality whereby the public might be misled as to the properties and value of its said insecticides through furnishing circulars, fliers, advertising mats, and display cards containing such representations;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous belief that such representations were true, whereby trade was unfairly diverted to it from its competitors who did not misrepresent their insecticides, thereby causing substantial injury to competition in commerce:

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

While it did not appear that the cautions and directions for use on the labels of the containers of respondent's various products were inadequate; and the failure of respondent's advertising to repeat certain cautions and directions with respect to some of its claims, and to refer to them in respect of other claims, left the advertising exaggerated, misleading and deceptive in most instances, and simply false in a few, and while the cessation of the latter and the qualification of the former by respondent, prior to the issuance of the complaint, was persuasive evidence of respondent's cognizance of the tendency of such representations to mislead and deceive and might to some extent indicate the lack of intention to do so: intent is immaterial in such a proceeding and constitutes no defense, as is also true in the case of voluntary cessation or modification.

As respects certain other charges in the complaint, there was no evidence that respondent had represented that its "Safe-lex" would not discolor, except in connection with the caution "when used as directed" or that the directions for use on the container label were not ample, truthful, and sufficient: representations that its said "Hep", "Super-Aerosol", and "Safe-lex" preparations would kill all flying insects on the premises were true for all practical purposes, and there was no substantial or satisfactory evidence that its "Safe-lex" was injurious or not safe.

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Before *Mr. Frank Hier*, hearing examiner.
Mr. George M. Martin for the Commission.
Cohen & Schine, of Bridgeport, Conn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Bostwick Laboratories, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bostwick Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 706 Bostwick Avenue, Bridgeport 5, Connecticut.

PAR. 2. Respondent Bostwick Laboratories, Inc., is now and for several years last past has been engaged in the sale and distribution of four preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Insect Killer" and "Bostwick Moth Proofer," all of which are advertised and represented as insecticides.

(1) The formula for Hep Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Pyrethrins.....		0.200
DDT (Dichlorodiphenyltrichloroethane).....		2.000
Sesame Oil Extractives:		
Sesamin.....		.166
Other Extractives.....		.834
Petroleum Distillate.....		11.800
<i>Inert Ingredients</i>		
Propellant.....		85.000

Directions for Use:

INSTRUCTIONS
 FOLLOW CAREFULLY

GENERAL

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes.

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FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed frame and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.
2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.
3. Avoid contamination of food stuffs and cooking utensils.
4. To avoid possible staining, hold dispenser three feet away from object.
5. Avoid excessive inhalation.

(2) The formula for Bostwick Super-Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*	-----	1.000
DDT (Dichlorodiphenyltrichlorethane)	-----	1.000
Pyrethrins	-----	.200
Sesame Oil Extractives:		
Sesamin	-----	.166
Other Extractives	-----	.834
Petroleum Distillate	-----	11.800
<i>Inert Ingredients</i>		
Propellant	-----	85.000
*0.88 percent 2, 2-bis (P-Methoxyphenyl)		
1, 1, 1-Trichlorethane and		
12 percent Other Isomers and Reaction Products		

Directions for Use:

GENERAL

To release mist—follow instructions on top of dispenser. Hold container upright and aim spray away from you.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

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CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bedframe and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelop ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.
2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.
3. Avoid contamination of food stuffs and cooking utensils.
4. To avoid possible staining, hold dispenser three feet away from object.
5. Avoid excessive inhalation.

(3) The formula for Bostwick Safe-lex Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*	-----	3.000
Pyrethrins	-----	.200
Petroleum Distillate	-----	10.800
Sesame Oil Extractives:		
Sesamin	-----	.166
Other Extractives	-----	.834
<i>Inert Ingredients</i>		
Propellant	-----	85.000
* 2.64 percent 2, 2,—bis (P-Methoxyphenyl)		
1, 1, 1—Trichlorethane and		
.36 percent Other Isomers and Reaction Products.		

Directions for Use:

DIRECTIONS

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes. To avoid possible staining, hold dispenser three feet away from object.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds, in average room.

KILLS MOTHS

KILLS MOTHS, EGGS, LARVAE BY CONTACT. Spray Thoroughly, Pay Particular Attention to Seams and Folds. Repeat monthly unless

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articles are stored in Moth-Tight Container. Spray interior surfaces of containers, closets and trunks.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places, baseboards, floor coverings, wall cracks; and in the case of fleas—sleeping quarters of animals. Spray 45 to 60 seconds for average size room. Repeat when necessary.

ANTS: Spray ant trails in areas around door sills and window frames. Repeat as required.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed-frame and springs. Aim spray into cracks and crevices and about the base boards, walls and floors of bedrooms.

(4) The formula for Bostwick Moth Proofer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
Methoxychlor, Technical* -----	5
Petroleum Distillate -----	26
Inert Ingredients -----	69

* 5 percent Methoxychlor equivalent to
4.4 percent, 2, 2, 2,—bis (P-Methoxyphenyl)
1, 1, 1,—trichloroethane and
0.6 percent Other Isomers and Reaction Products

Directions for Use:

GENERAL INSTRUCTIONS

1. Articles to be treated should be clean.
2. Spray from a distance of 18 inches to 24 inches in a room free from drafts. Avoid prolonged inhalation of spray.
3. Treatment should be repeated after dry cleaning or laundering to assure continued effectiveness.
4. When treating garments, *treat in accordance with detail instructions given in attached booklet.*
5. To spray moth proofer—aim away from body. Hold container upright and away from you. Move dispenser uniformly and continuously over articles treated. Follow instructions on top of dispenser.

The respondent causes and has caused its said insecticides, when sold, to be shipped from its place of business located in the State of Connecticut to retail purchasers and distributors thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said insecticides, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said insecticides in commerce

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as aforesaid, respondent has made and is now making numerous statements and representations concerning said products through the medium of circulars and fliers, counter display cards and advertising mats, all of which are distributed to its distributors and retail customers. Said distributors and retailers use said circulars, fliers, and display cards and advertising mats for the purpose of advertising respondent's products. Among and typical of the statements and representations contained in said advertising matter are the following:

(1) Hep Aerosol Insect Killer

Safe—Hep is . . . non-injurious . . .

Economical—when used according to directions rids average size room of flying insects up to 75 times.

(2) Bostwick Super-Aerosol Insect Killer

New Double-quick Killer

Kills, many more insects Faster!

Here's a new, more powerful insect killer that really gets 'em all! Gets 'em double-quick—with half the work! One whiff and they're through.

* * * Harmless to animals, plants.

* * * Safe for man, animals. * * *

New * * * faster, super-killer gets 'em all!

This season, every home can be free of flying and crawling pests.

(3) Safe-lex Aerosol Insect Killer

Won't stain or discolor * * *

For faster action—for freedom from flying and crawling pests.

Safe-lex . . . this wonder push-button spray, contains the sensational Dupont discovery—Methoxychlor—that kills practically every household insect twice as fast as DDT.

Now, the first safe insect killer is here! It's safe near children, pets and food!

New, Non-Poisonous Insect Killer! Safer near children, food and pets. (In connection with said advertisement there appears a picture of a woman spraying said preparation over the heads of children, a dog and over food.)

(4) Bostwick Moth Proofer

Amazing new formula mothproofs suit or coat for one Year.

* Warning. Beware of terms like "Moth-Treated." Only Bostwick "Moth-Proofs".

(5) General Representations:

Already DDT is barred for use near children, food, pets.

In its warning statement the Dept. of Agriculture makes this recommendation . . . "the entomologists now recommend that methoxychlor, another effective insecticide, be substituted for DDT to control insect pests".

Wonder ingredient Methoxychlor—KILLS MORE . . . FASTER!

PAR. 4. By and through the use of the foregoing statements and representations and others of the same import, respondent represented

1. that its Hep Aerosol Insect Killer is safe and will not cause injury to humans, birds, fish and pets and that its use as directed will kill all flying insects which may be in the treated premises.

2. that Bostwick Super-Aerosol Insect Killer is non-toxic and safe when used in the presence of humans, plants and animals; keeps the premises free of flying and crawling pests and kills insects quicker than other insecticides.

3. that Safe-lex Aerosol Insect Killer will not stain or discolor materials which it contacts; will destroy all flying and crawling pests located in the treated premises; that, because of its methoxychlor content, it kills practically every household insect twice as fast as DDT preparations; is non-poisonous and safe for use; that it may be sprayed over the heads of children and pets and over food without possibility of ill effects and is safer for use under all circumstances than all other insecticides.

4. that Bostwick Moth Proofer is effective in protecting garments from moth damage for a year and is the only preparation on the market which mothproofs.

5. that DDT has been barred for use near children and pets; that the Department of Agriculture has recommended that methoxychlor be substituted for DDT to control insect pests and that methoxychlor kills more insects than DDT.

PAR. 5. The aforesaid representations are grossly exaggerated, misleading and deceptive. In truth and in fact:

1. Hep Aerosol Insect Killer is safe only when used strictly in accordance with the directions. Its use cannot be depended upon to kill all flying insects in the treated premises.

2. Bostwick Super-Aerosol Insect Killer is non-toxic and safe only when used strictly in accordance with the directions. It cannot be depended upon to keep the treated premises free of flying and crawling pests. It will not kill insects in a significantly quicker time than many other insecticides.

3. Safe-lex Aerosol Insect Killer will stain or discolor materials which it contacts unless used strictly in accordance with the directions and cannot be depended upon to destroy all flying and crawling pests located in treated premises. The killing action of methoxychlor is not significantly quicker than DDT. This preparation may be harmful if sprayed over the heads of children, pets and over food. It is safe and non-poisonous only when used strictly as directed. There are other insecticides which are as safe to use as Safe-lex.

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4. Bostwick Moth Proofer is not ordinarily effective in protecting garments from moth damage for a year because of the fact that its effectiveness is destroyed when garments previously treated are washed or dry cleaned. There are other preparations on the market which are equally effective from the mothproofing standpoint.

5. DDT has not been barred for use near children and pets. The Department of Agriculture has not recommended that methoxychlor be substituted for DDT to control insect pests except for spraying dairy cows. Methoxychlor preparations are more effective against certain species of insects than DDT while there are other species of insects against which DDT preparations are more effective. It cannot be truthfully stated, therefore, that methoxychlor preparations possess greater effectiveness than DDT preparations as to all insects.

PAR. 6. By furnishing the circulars, display cards and advertising mats containing the statements and representations set out in Paragraph Three hereof to its distributors and dealers, respondent placed in the hands of said distributors and dealers a means and instrumentality by and through which the public may be misled as to the properties and value of its insecticides.

PAR. 7. In the course and conduct of its aforesaid business, respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce of insecticides designed for similar purposes as those sold and distributed by respondent as aforesaid, and particularly insecticides containing DDT.

PAR. 8. The use by the respondent of said false and misleading statements and representations in connection with the sale of its aforesaid insecticides had the tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous and mistaken belief that such statements and representations were true, and because of such erroneous and mistaken belief to purchase substantial quantities of respondent's said insecticides. In consequence of all of the foregoing, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent their insecticides, and thereby substantial injury is being and has been done to competition in commerce.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1950, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said 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 said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner on November 14, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for the respondent and counsel supporting the complaint filed with the Commission appeals from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeals and oral arguments of counsel; and the Commission having granted the appeal of counsel supporting the complaint in substance and having denied the appeal of counsel for the respondent 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bostwick Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 706 Bostwick Avenue, Bridgeport 5, Connecticut.

PAR. 2. Respondent Bostwick Laboratories, Inc., is now and for several years last past has been engaged in the sale and distribution of four preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Insect

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Killer" and "Bostwick Moth Proofer," all of which are advertised and represented as insecticides.

(1) The formula for Hep Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Pyrethrins -----		0.200
DDT (Dichlorodiphenyl-trichloroethane) -----		2.000
Sesame Oil Extractives:		
Sesamin -----		.166
Other Extractives -----		.834
Petroleum Distillate -----		11.800
<i>Inert Ingredients</i>		
Propellant -----		85.000

Directions for Use:

INSTRUCTIONS
FOLLOW CAREFULLY

GENERAL

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed frame and springs. Repeat as necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.

2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.

3. Avoid contamination of foodstuffs and cooking utensils.

4. To avoid possible staining, hold aerosol dispenser three feet away from object.

5. Avoid excessive inhalation.

(2) The formula for Bostwick Super-Aerosol Insect Killer and directions for use are as follows:

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<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*	-----	1.000
DDT (Dichlorodiphenyltrichlorethane)	-----	1.000
Pyrethrins	-----	.200
Sesame Oil Extractives:		
Sesamin	-----	.166
Other extractives	-----	.834
Petroleum Distillate	-----	11.800
<i>Inert Ingredients</i>		
Propellant	-----	85.000
* .88 Percent 2, 2,—bis (P-Methoxyphenyl) 1, 1, 1,—Trichlorethane and 12 Percent Other Isomers and Reaction Products		

Directions for Use:

GENERAL

To release mist—follow instructions on top of dispenser. Hold container upright and aim spray away from you.

FLYING INSECTS

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds in average room.

CRAWLING INSECTS

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places. Spray 45 to 60 seconds for average size room. Repeat when necessary.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bedframe and springs. Repeat when necessary.

ANTS: Spray ants and ant trails. When possible, envelope ants in mist.

CAUTION

1. Don't spray directly on skin or animals. In case of accidental contact, wash with soap and water.
2. Protect birds, fish and pets in rooms being sprayed. Remove from room or place protective covering over them.
3. Avoid contamination of food stuffs and cooking utensils.
4. To avoid possible staining, hold dispenser three feet away from object.
5. Avoid excessive inhalation.

(3) The formula for Bostwick Safe-lex Aerosol Insect Killer and directions for use are as follows:

<i>Active Ingredients</i>		<i>Percent</i>
Methoxychlor (Technical)*	-----	3.000
Pyrethrins	-----	.200
Petroleum Distillate	-----	10.800
Sesame Oil Extractives:		
Sesamin	-----	.166
Other Extractives	-----	.834

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Inert Ingredients

Propellant----- 85.000

* 2.64 percent 2, 2,—bis (P-Methoxyphenyl)
 1, 1, 1—Trichlorethane and
 .36 percent Other Isomers and Reaction Products.

Directions for Use:

DIRECTIONS

To release mist, lift off protective cap, then press rubber-like button, holding container upright and away from you. Do not turn upside down. When using indoors, close doors and windows; open after 15 minutes. To avoid possible staining, hold dispenser three feet away from object.

Flying Insects

FLIES, MOSQUITOES, FLYING MOTHS, GNATS, SAND FLIES: Spray toward center of room with circular motion. For average room (10x10x10 feet) spray 5 or 6 seconds.

HORNETS, WASPS, LARGE FLYING INSECTS: Spray 12 seconds, in average room.

Kills Moths

KILLS MOTHS, EGGS, LARVAE BY CONTACT. Spray Thoroughly, Pay Particular Attention to Seams and Folds. Repeat monthly unless articles are stored in Moth-Tight Container. Spray interior surfaces of containers, closets and trunks.

Crawling Insects

ROACHES, WATERBUGS, SILVERFISH, FLEAS: Direct mist into cracks, crevices, and recesses behind cabinets, sink, stove, dark hiding places, baseboards, floor coverings, wall cracks; and in the case of fleas—sleeping quarters of animals. Spray 45 to 60 seconds for average size room. Repeat when necessary.

ANTS: Spray ant trails in areas around door sills and window frames. Repeat as required.

BEDBUGS: Take bed apart, direct mist into tufts, folds, along seams. Spray bed-frame and springs. Aim spray into cracks and crevices and about the base boards, walls and floors of bedrooms.

(4) The formula for Bostwick Moth Proofer and directions for use are as follows:

<i>Active Ingredients</i>	<i>Percent</i>
*Methoxychlor, Technical-----	5
Petroleum Distillate-----	26
Inert Ingredients-----	69

*5% Methoxychlor equivalent to
 4.4%, 2, 2, 2,—bis (P-Methoxyphenyl)
 1, 1, 1,—Trichloroethane and
 0.6% Other Isomers and Reaction
 Products.

Directions for Use:

GENERAL INSTRUCTIONS

1. Articles to be treated should be clean.
 2. Spray from a distance of 18 inches to 24 inches in a room free from drafts.
- Avoid prolonged inhalation of spray.

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3. Treatment should be repeated after dry cleaning or laundering to assure continued effectiveness.

4. When treating garments, *treat in accordance with detail instructions given in attached booklet.*

5. To spray moth-proofer—aim away from body. Hold container upright and away from you. Move dispenser uniformly and continuously over articles treated. Follow instructions on top of dispenser.

The respondent causes and has caused its said insecticides, when sold, to be shipped from its place of business located in the State of Connecticut to retail purchasers and distributors thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said insecticides, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said insecticides in commerce as aforesaid, respondent has made numerous statements and representations concerning said products through the medium of circulars and fliers, counter display cards and advertising mats, all of which are distributed to its wholesale distributors who, in turn, distribute some of said material to retailers. Said distributors and retailers use said circulars, fliers and display cards and advertising mats for the purpose of advertising respondent's products. Among and typical of the statements and representations contained in said advertising matter are the following:

(1) Hep Aerosol Insect Killer

Safe—Hep is * * * noninjurious * * *

Economical—when used according to directions rids average size room of flying insects up to 75 times.

(2) Bostwick Super-Aerosol Insect Killer

New double-quick Killer

Kills many more insects Faster! Here's a new, more powerful insect killer that really gets 'em all! Gets 'em double-quick—with half the work! One whiff and they're through.

New . . . faster super-killer gets 'em all!

This season, every home can be free of flying and crawling pests.

Non-toxic, non-flammable and won't stain when used as directed. * * *
Harmless to Animals, Plants * * * and safe for man, animals * * * Safe
New Insecticide * * *

It's non-inflammable, non-toxic and non-staining (see directions) * * *
3. Safe . . . non-inflammable.

(3) Safe-lex Aerosol Insect Killer

Non-staining

For faster action—for freedom from flying and crawling pests.

Safe-lex . . . this wonder push-button spray, contains the sensational Dupont discovery—Methoxychlor—that kills practically every household insect twice as fast as DDT.

Now, the first safe insect killer is here! It's safe near children, pets and food!

New, Non-Poisonous Insect Killer! Safer near children, food and pets. (In connection with said advertisement there appears a picture of a woman spraying said preparation over the heads of children, a dog and over food.)

(4) Bostwick Moth Proofer

Amazing new formula mothproofs suit or coat for one Year.

*Warning. Beware of terms like "Moth-Treated." Only Bostwick "Moth-Proofs."

(5) General Representations:

Already DDT is barred for use near children, food, pets.

In its warning statement the Dept. of Agriculture makes this recommendation . . . "the entomologists now recommend that methoxychlor, another effective insecticide, be substituted for DDT to control insect pests."

Wonder ingredient Methoxychlor—KILLS MORE . . . FASTER!

PAR. 4. By and through the use of the foregoing statements and representations and others of the same import, respondent represented:

1. that its Hep Aerosol Insect Killer is safe and will not cause injury to humans, birds, fish and pets and that its use as directed will kill all flying insects which may be in the treated premises;

2. that its Super Aerosol Insect Killer is non-toxic, and safe, and will not injure humans, plants or animals; and that said product keeps the premises free of flying and crawling pests and kills insects more quickly than other insecticides;

3. that Safe-lex Aerosol Insect Killer will not stain materials which it contacts; that it will destroy all flying and crawling pests located in the treated premises; that, because of its methoxychlor content, it kills practically every household insect twice as fast as DDT preparations; that it is non-poisonous and safe for use; that it may be sprayed over the heads of children and pets and over food without possibility of ill effects and is safer for use under all circumstances than all other insecticides;

4. that Bostwick Moth Proofer is effective in protecting garments from moth damage for a year and is the only preparation on the market which mothproofs;

5. that DDT has been barred for use near children and pets; that the Department of Agriculture has recommended that methoxychlor

be substituted for DDT to control insect pests and that methoxychlor kills more insects than DDT.

PAR. 5. Some of the aforesaid representations are exaggerated, misleading, false and deceptive.

Hep Aerosol Insect Killer and Bostwick Super-Aerosol Insect Killer have as active ingredients DDT and petroleum distillate. The indiscriminate use of said aerosol preparations containing the percentages of DDT and petroleum distillate stated above may cause damage to the health of human beings who may be exposed to the spray by virtue of three factors. (1) Inhalation of these materials continually may produce, in susceptible individuals, direct injury to the lungs from the petroleum distillate. The injury would consist of a chronic type of lung irritation. (2) Continued inhalation of the DDT suspended in the air as a mist may cause systemic effects, including irritation of the nervous system and possible liver damage. Both items are to be feared especially in elderly people who would be more susceptible to the effects. (3) Constant contact of petroleum distillates with the skin is known to produce dermatitis in susceptible individuals. This result especially is to be feared in the case of the skin of babies.

However, the evidence indicates that the danger from the distillate stated in (1) and (3), as the products are used, is not significantly real.

The said insecticides are safe, non-toxic, and non-injurious to human beings, birds, fish, and animals only when used as directed on the label. Indiscriminate use will be avoided if the cautions in the directions for use printed on the label are observed.

Bostwick Super-Aerosol Insect Killer and Safe-lex Aerosol Insect Killer will not kill or destroy all crawling insects in the treated premises. The average kill will be about eighty percent. Since there is normally a residue of the insects, repeated applications are necessary from time to time, but even this treatment would not obtain one-hundred-percent kill as a practical matter.

The relative killing time of insects by Bostwick Super-Aerosol Insect Killer is not much different from many of the other common aerosols on the market and as a practical matter is not any different in killing time than a wide variety of commercial insecticides.

While on the basis of laboratory tests there may be some increased and faster killing of flies by methoxychlor over DDT, it is not twice as fast. As a practical matter a housewife would not observe any difference between the killing time of an insecticide such as Safe-lex Aerosol Insect Killer based on methoxychlor and an insecticide or an aerosol containing DDT.

Aerosols such as Safe-lex Aerosol Insect Killer will stain materials if held too close to surfaces that are being treated. However, the di-

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rections for use set forth on the Safe-lex label direct that the dispenser be held three feet away from the object, and this distance is sufficient to prevent staining or discoloring. There are other insecticides on the market which are as safe to use as respondent's Safe-lex Aerosol Insect Killer.

Respondent's instructions for the use of Bostwick Moth Proofer provide that treated articles should be re-treated after dry cleaning or laundering. It is apparent that the processes of dry cleaning or laundering either destroy or to a substantial degree reduce the effectiveness of the preceding treatment, and that the treated article will be effectively mothproofed for a period of a year, or any other period, after treatment only if it is not dry cleaned or laundered during the period. There are other preparations on the market which are as effective as Bostwick Moth Proofer from the mothproofing standpoint, including those applied by dipping and washing.

DDT has not been barred for use near children and pets. In 1949 the United States Department of Agriculture outlawed the use of DDT on dairy animals and in dairy barns to keep milk pure, and this is the only restrictive regulation in effect.

The only definite recommendation of the United States Department of Agriculture for the substitution of methoxychlor for DDT is for the control of flies in dairy barns and the control of flies on dairy animals.

With respect to the relative effectiveness of methoxychlor and DDT preparations for killing insects, there are some instances where methoxychlor is effective and DDT is not. This is true on Mexican bean beetles. On roaches, however, methoxychlor is less effective than DDT. In general methoxychlor is effective against a much smaller range of insects than DDT.

PAR. 6. There is no evidence that respondent has represented that its product Safe-lex Aerosol Insect Killer will not discolor except in connection with the caution "when used as directed," or that the directions for use on the container label are not ample, truthful and sufficient.

PAR. 7. The representations that respondent's Hep Aerosol Insect Killer, Bostwick Super-Aerosol Insect Killer and Safe-lex Aerosol Insect Killer will kill all flying insects in the treated premises, for all practical purposes, are true.

PAR. 8. There is no substantial or satisfactory evidence that respondent's Safe-lex Aerosol Insect Killer is injurious or not safe. The evidence to this effect is speculative and far-fetched.

PAR. 9. By furnishing the circulars, display cards and advertising mats containing the statements and representations set out in Para-

graph Three hereof to its distributors and dealers, respondent placed in the hands of said distributors and dealers a means and instrumentality by and through which the public may be misled as to the properties and value of its insecticides.

PAR. 10. In the course and conduct of its aforesaid business, respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships and individuals likewise engaged in the sale and distribution in commerce of insecticides designed for similar purposes as those sold and distributed by respondent as aforesaid, and particularly insecticides containing DDT.

PAR. 11. The use by the respondent of said false and misleading statements and representations in connection with the sale of its aforesaid insecticides has had the tendency and capacity to mislead and deceive purchasers and prospective purchasers of respondent's said insecticides into the erroneous and mistaken belief that such statements and representations were true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said insecticides. In consequence of all of the foregoing, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent their insecticides, and thereby substantial injury is being and has been done to competition in commerce.

PAR. 12. In 1949 respondent qualified the representations hereinabove set out in Paragraph Three (1) as to its product Hep Aerosol Insect Killer by adding the words "when used as directed" or "follow directions" and by listing the insects which it will kill in lieu of the words "all flying insects," and has not since then used such representations except as so qualified.

PAR. 13. Respondent in 1949 discontinued as unprofitable the manufacture and sale of its product Super-Aerosol Insect Killer and has not since that time advertised it as hereinabove described in Paragraph Three (2).

PAR. 14. Respondent since June, 1950, has not advertised its product Safe-lex nor made any of the representations hereinabove described in Paragraph Three (3).

PAR. 15. As to respondent's product Bostwick Moth Proofer, the representation that it is the only preparation on the market which mothproofs as hereinabove found in Paragraph Three (4) was discontinued in 1950 and has not since been used. The representation that this product gives year-round protection from moths has since 1950 been qualified by the words "simply follow directions," which directions state that re-treatment of the garment must be given if the garment is laundered or dry-cleaned.

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PAR. 16. Since the latter part of 1949 or early part of 1950, the first and third representations hereinabove described in Paragraph Three (5) have been discontinued.

CONCLUSIONS

1. The record herein does not show that the labels on the containers of respondent's various products contain cautions and directions for use, which are not adequate. The failure of respondent's advertising to repeat in its advertisements these cautions and directions in respect of some claims or to refer to them in respect of other claims leaves the advertising exaggerated, misleading and deceptive in most instances. In a few instances the representations are simply false. The cessation of the latter and the qualification of the former by respondent, prior to the issuance of the complaint, is persuasive evidence of respondent's cognizance of the tendency of these representations to mislead and deceive; it may to some extent indicate a lack of intention by respondent to mislead or deceive. Intent to deceive, of course, is immaterial in this proceeding and constitutes no defense.

2. Voluntary cessation or modification is neither defense to the proceeding nor a bar to an order requiring that which has already been voluntarily done (*Hershey Chocolate Co. v. Federal Trade Commission*, 121 F. (2d) 968).

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

ORDER

It is ordered, That respondent Bostwick Laboratories, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their insecticidal preparations designated as "Hep Aerosol Insect Killer," "Bostwick Super-Aerosol Insect Killer," "Bostwick Safe-lex Aerosol Insect Killer," and "Bostwick Moth Proofer," or any other insecticide of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from:

1. Representing, directly or by implication, that Hep Aerosol Insect Killer is safe and will not cause injury to human beings, birds,

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fish, and pets unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said product is safe only when used in accordance with the directions set out on the label;

2. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer kills all crawling insects in the treated premises;

3. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer kills insects in a faster time than other insecticides now on the market;

4. Representing, directly or by implication, that Bostwick Super-Aerosol Insect Killer is safe or is non-toxic or is harmless to human beings, plants or animals unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said product is safe, non-toxic or harmless to human beings and animals only when used in accordance with the directions set out on the label;

5. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer kills all crawling insects in the treated premises;

6. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer kills insects faster than insecticides containing DDT;

7. Representing, directly or by implication, that Safe-lex Insect Killer will not stain materials unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said insecticide will not stain materials which it contacts only when used in accordance with the directions set out on the label;

8. Representing, directly or by implication, that Safe-lex Aerosol Insect Killer is safer for use than all other commercial insecticides;

9. Representing, directly or by implication, that Bostwick Moth Proofer is effective in protecting woolen materials from moths for one year, or any specified period, unless, wherever such statement or statements are made, it is clearly disclosed in immediate connection therewith that said woolen materials must be re-treated after dry-cleaning or laundering;

10. Representing, directly or by implication, that Bostwick Moth Proofer is the only insecticide on the market that mothproofs;

11. Representing, directly or by implication, that DDT has been barred for use near children and pets by the United States Government or any other official agency or organization;

12. Representing, directly or by implication, that the United States Department of Agriculture has recommended that methoxychlor be substituted for DDT except for the control of flies around dairy barns and on dairy cows;

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13. Representing, directly or by implication, that methoxychlor kills more insects than DDT.

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

Commissioner Carretta not participating for the reason that oral argument in this proceeding was heard prior to his becoming a member of the Commission.

Complaint

IN THE MATTER OF

RICE COAT & SUIT COMPANY ET AL.

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

Docket 6069. Complaint, Dec. 12, 1952—Decision, Mar. 31, 1953

Where a corporation and its three officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and
- (b) Misbranded certain of said coats in that they were labeled or tagged as containing "100 Percent Wool Interlining", notwithstanding the fact that said interlinings were not 100% wool as "wool" is defined by said Act but were composed of reused or reprocessed wool, together with substantial quantities of nonwoolen fibers:

Held, That such acts and practices, under the circumstances set forth, constituted misbranding of wool products in violation of said Act and Rules and Regulations, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Brown & Koralchik, of Kansas City, Mo., 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 Rice Coat & Suit Company, a corporation, and Frank Rice, Louis Rice and Joseph Koralchik, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Rice Coat & Suit Company is a corporation, organized and existing under and by virtue of the laws of the State of Missouri; and respondents Frank Rice, Louis Rice and Joseph Koralchik are the president, vice-president-treasurer and secretary, respectively, of the said respondent corporation, and as such,