

Complaint

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IN THE MATTER OF

MME. C. J. WALKER MANUFACTURING COMPANY, INC.
ET AL.COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 6031. Complaint, Aug. 18, 1952—Decision, June 30, 1953*

Where a corporation and three officers thereof, engaged in the interstate sale and distribution of their "Madam C. J. Walker's" hair preparations, namely, their "Wonderful Hair and Scalp Preparation," "Wonderful Scalp Ointment" and "Wonderful Temple Salve"; in advertising in newspapers and periodicals and radio continuities, directly and by implication—

Represented falsely that their said "Hair and Scalp Preparation" contained penetrating oils that made the scalp healthy and put an end to short, thin, brittle, or falling hair, when the scalp was massaged therewith; that their "Double-Strength Scalp Ointment" was a competent and effective treatment for itchy scalp, dandruff, dandruff flakes, and tetter; and that massaging the temple areas with their "Wonderful Temple Salve" stopped hair falling out, and made the hair soft and silky with long-lasting texture and lustre;

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

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

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Robert Lee Brokenburr and *Mr. Willard B. Ransom*, of Indianapolis, Ind., 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 Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission

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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, Mme. C. J. Walker Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 617 Indiana Avenue, Indianapolis, Indiana. Respondents A'Leia R. Nelson, Violet D. Reynolds, and Marie Overstreet are president, secretary and treasurer, respectively, of the corporate respondent, and formulate, direct and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been engaged in the sale and distribution in commerce of drugs and cosmetic products, as "drugs" and "cosmetics" are defined in the Federal Trade Commission Act. Designations used by respondents for said products and the formula and directions for use thereof are as follows:

Designation: Madam C. J. Walker's Wonderful Hair and Scalp Preparation.

Formula:	Pounds
Petrolatum.....	100.00
Beeswax.....	1.00
Copper Sulphate.....	5.00
Precipitate sulphur.....	3.00
Coconut oil.....	3.00
Perfume.....	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Wonderful Hair and Scalp Preparation to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment; also known as Tetter Salve).

Formula:	Pounds
Petrolatum	100.00
Beeswax	1.00
Copper Sulphate.....	10.00
Precipitate Sulphur.....	3.00
Coconut Oil.....	1.00
Perfume	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Scalp Ointment to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Temple Salve.

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Formula :	Pounds
Petrolatum -----	100.00
Beeswax -----	1.00
Coconut Oil -----	1.00
Precipitate Sulphur -----	3.50
Perfume -----	1.00

Directions for use: "Apply Madam C. J. Walker's Wonderful Temple Salve into the thin parts three times per week."

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for, the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including, but not limited to advertisements inserted in nationally distributed newspapers and periodicals, circulars and by means of radio continuities transmitted across State lines; and respondents have disseminated and have caused the dissemination of advertisements concerning their said products by various means, including, but not limited to those aforesaid for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated, and caused to be disseminated, as hereinabove set forth, are the following:

Shhh!

Don't tell a soul!

Before using Glossine next time, remember this: it gives your hair *twice* the radiant luster if you massage your scalp with the penetrating oils of WONDERFUL HAIR & SCALP PREPARATION *first*! That's because hair beauty is scalp-deep!

It's the world's top beauty secret!

Don't tell a soul!

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Most women don't yet know the No. 1 rule of *Hair Beauty*.

HAIR BEAUTY IS SCALP-DEEP! (When mere hair-dressings only cover up deep-down causes of shabby hair, it really gets worse and worse and WORSE!)

BEFORE using a dressing, treat an itchy or flaking scalp, dandruff or tetter with Madam Walker's DOUBLE-STRENGTH SCALP OINTMENT . . . and before using a dressing, treat short, thin, brittle or falling hair by massaging your scalp with Madam Walker's HAIR & SCALP PREPARATION—and massaging thinning temple areas with her so-important TEMPLE SALVE.

NOT 'TILL THEN can you be sure of the silkiest, softest, longest-lasting texture and luster which have made GLOSSINE the famous queen of *all* the light-bodied pressing oils and hair dressings.

* * *

Hair Beauty is scalp deep!

Wise women have learned through the years that it takes more than a superficial hair dressing to have lovely hair. That's why, this year, they're massaging their scalps with the penetrating oils of MME. C. J. WALKER'S WONDERFUL HAIR & SCALP PREPARATION. It's a HEALTHY scalp which puts an end to short, thin, brittle, falling hair. So why put off this surest way to gorgeously NATURAL hair beauty . . . so thrillingly successful for thousands of women for nearly 50 years?

At drug and cosmetic counters and Walker beauty shoppes—or direct from us MME. C. J. WALKER MFG. CO., DEPARTMENT N-3, INDIANAPOLIS 2, INDIANA.

PAR. 6. By and through the use of the foregoing statements and representations and others similar thereto, not specifically set out herein, respondents have represented, directly and by implication, that their preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation contains penetrating oils that make the scalp healthy and put an end to short, thin, brittle and falling hair, when the scalp is massaged with that preparation; that their preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment is a competent and effective treatment for itchy scalp, dandruff, dandruff flakes and tetter; that massaging the temples with their preparation designated as Madam C. J. Walker's Wonderful Temple Salve causes hair to grow thicker in the thinning temple areas.

PAR. 7. The said statements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact neither respondents' preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation nor any of respondents' other said preparations are capable of contributing in any manner to the health of the scalp, nor do any of them have any therapeutic value in relieving the condition of short, thin or brittle hair or preventing falling hair. Neither respondents' preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment nor any of respondents' other said prepara-

tions is a competent or effective treatment for dandruff or tetter. Said preparations will only temporarily relieve an itching scalp and only temporarily cause the disappearance of dandruff flakes. Neither the application of respondents' preparation designated as Madam C. J. Walker's Wonderful Temple Salve, or the application of any of respondents' other said preparations, by massage or otherwise, causes hair to grow thicker where it is thin.

PAR. 8. The use by the respondents of the foregoing false, misleading and deceptive statements and representations, and others of similar nature, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and to induce the purchase of substantial quantities of said products as a result of such mistaken and erroneous belief.

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

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 August 18, 1952, issued and subsequently served its complaint in this proceeding upon the respondents, Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondents' answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it (no evidence being offered for or on behalf of the respondents), and such testimony and other evidence were duly filed and recorded in the office of the Commission. Thereafter, the proceeding came on for consideration by the hearing examiner on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by respective counsel, and said hearing examiner, on December 10, 1952, filed his initial decision.

The Commission, having reason to believe that said initial decision did not constitute an adequate disposition of this matter, subsequently placed this case on its own docket for review, and on May 4, 1953, it issued, and thereafter served upon the parties, its order setting time within which objections to a tentative decision of the Commission attached to said order, and reply thereto, might be filed. No objections having been filed within the time permitted, the proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, 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 Mme. C. J. Walker Manufacturing Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 617 Indiana Avenue, Indianapolis, Indiana. Respondents A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet are president, secretary, and treasurer, respectively, of the corporate respondent and with others formulate, direct, and control the policies, acts and practices of said corporation. The address of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution in commerce of drugs and cosmetic products, as "drugs" and "cosmetics" are defined in the Federal Trade Commission Act. Designations used by respondents for said products and the formula and directions for use thereof are as follows:

Designation: Madam C. J. Walker's Wonderful Hair and Scalp Preparation.
Formula:

	<i>Pounds</i>
Petrolatum -----	100.00
Beeswax -----	1.00
Copper Sulphate -----	5.00
Precipitate Sulphur -----	3.00
Coconut Oil -----	3.00
Perfume -----	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Wonderful Hair and

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Scalp Preparation to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment; also known as Tetter Salve).

Formula :	<i>Pounds</i>
Petrolatum -----	100.00
Beeswax -----	1.00
Copper Sulphate -----	10.00
Precipitate Sulphur -----	3.00
Coconut Oil -----	1.00
Perfume -----	1.00

Directions for use: "After hair has been shampooed with Madam C. J. Walker's Shampoo or Shampoo Soap, apply Madam C. J. Walker's Scalp Ointment to the scalp with the finger tips and massage well into the scalp three times per week."

Designation: Madam C. J. Walker's Wonderful Temple Salve.

Formula :	<i>Pounds</i>
Petrolatum -----	100.00
Beeswax -----	1.00
Coconut Oil -----	1.00
Precipitate Sulphur -----	3.50
Perfume -----	1.00

Directions for use: "Apply Madam C. J. Walker's Wonderful Temple Salve into the thin parts three times per week."

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated and have caused the dissemination of advertisements concerning their said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said products, including advertisements inserted in nationally distributed newspapers and periodicals, circulars, and by means of radio continuities transmitted across state lines; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said products by various means, including, but not limited to, those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said

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products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated, and caused to be disseminated, are the following:

Shhh!

Don't tell a soul!

Before using Glossine next time, remember this: it gives your hair *twice* the radiant luster if you massage your scalp with the penetrating oils of WONDERFUL HAIR & SCALP PREPARATION *first!* That's because hair beauty is scalp-deep!

It's the world's top beauty secret!

Don't tell a soul!

* * *

Most women don't yet know the No. 1 rule of *Hair Beauty* HAIR BEAUTY IS SCALP-DEEP! (When mere hair-dressings only cover up deep-down causes of shabby hair, it really gets worse and worse and WORSE!)

BEFORE using a dressing, treat an itchy or flaking scalp, dandruff or tetter with Madam Walker's DOUBLE-STRENGTH SCALP OINTMENT . . . and before using a dressing, treat short, thin, brittle or falling hair by massaging your scalp with Madam Walker's HAIR & SCALP PREPARATION—and massaging thinning temple areas with her so-important TEMPLE SALVE.

NOT 'TILL THEN can you be sure of the silkiest, softest, longest-lasting texture and luster which have made GLOSSINE the famous queen of *all* the light-bodied pressing oils and hair dressings.

* * *

Hair Beauty is scalp-deep!

Wise women have learned through the years that it takes more than a superficial hair dressing to have lovely hair. That's why, this year, they're massaging their scalps with the penetrating oils of MME. C. J. WALKER'S WONDERFUL HAIR & SCALP PREPARATION. It's a HEALTHY scalp which puts an end to short, thin, brittle, falling hair. So why put off this surest way to gorgeously NATURAL hair beauty . . . so thrillingly successful for thousands of women for nearly 50 years?

At drug and cosmetic counters and Walker beauty shoppes—or direct from us MME. C. J. WALKER MFG. CO., DEPARTMENT N-3, INDIANAPOLIS 2, INDIANA.

* * *

PAR. 5. By and through the use of the foregoing statements and representations, respondents have represented, directly and by implication, that their preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation contains penetrating oils that make the scalp healthy and put an end to short, thin, brittle, or falling hair, when the scalp is massaged with that preparation; that their preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment is a competent and effective treatment for itchy scalp, dandruff, dandruff flakes, and tetter; that massaging the temple areas

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with their preparation designated as Madam C. J. Walker's Wonderful Temple Salve will stop hair falling out, and make the hair soft and silky with long-lasting texture and lustre.

PAR. 6. Said statements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact neither respondents' preparation designated as Madam C. J. Walker's Wonderful Hair & Scalp Preparation nor any of respondents' other said preparations have any therapeutic value in relieving the condition of short, thin, or brittle hair or preventing falling hair. Neither respondents' preparation designated as Madam C. J. Walker's Double-Strength Scalp Ointment nor any of respondents' other said preparations is a competent or effective treatment for dandruff or tetter. Said preparations will only temporarily relieve an itching scalp and only temporarily cause the disappearance of dandruff flakes. Neither the application of respondents' preparation designated as Madam C. J. Walker's Wonderful Temple Salve, nor the application of any of respondents' other said preparations, by massage or otherwise, will stop hair falling out or make the hair soft and silky with long-lasting texture and lustre.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true and to induce the purchase of substantial quantities of said products as a result of such mistaken and erroneous belief.

CONCLUSION

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

ORDER

It is ordered, That the respondents Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and its officers, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers 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, or distribution of

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their products designated as Madam C. J. Walker's Wonderful Hair and Scalp Preparation, Madam C. J. Walker's Wonderful Scalp Ointment (also known as Double-Strength Scalp Ointment and Tetter Salve) and Madam C. J. Walker's Wonderful Temple Salve, or of any other product or products containing substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from:

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

(a) That any of said preparations will improve the health of the scalp, or be of any therapeutic value in relieving the condition of short, thin, or brittle hair, or prevent hair from falling;

(b) That any of said preparations is a competent or effective treatment for dandruff or tetter, or that it will be of any value in the treatment of dandruff, tetter, or an itching scalp in excess of temporarily relieving the itching or dissolving loose dandruff flakes so that they may be removed; or

(c) That the use of any of said preparations accompanied by the massage of the temple areas, or otherwise, will stop hair from falling out or make the hair soft and silky with long-lasting texture and lustre.

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

It is further ordered, That respondents 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 this order.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

BEMIS BRO. BAG Co., St. Louis, Mo., Docket 4994. Complaint, July 8, 1943. Order, July 8, 1952.

Charge: Misbranding or mislabeling as to unit size of product; in connection with the manufacture and interstate sale and distribution of tarpaulins, upon the labels of which, following the word "SIZE", there appeared figures purporting to show the dimensions, such as "12 x 14", "8 x 10", and "4 x 6", when in fact the actual dimensions were substantially less.

Dismissed without prejudice, upon motion filed by counsel supporting the complaint and assented to by counsel for respondent, for the reason that respondent has executed and filed an affidavit which sets out that it is observing the rules for the canvas cover industry and has done so at all times since their promulgation on April 18, 1951; that it has particularly been observing rule 2 which "contains specific provisions relative to the size of canvas, both as to the finished and cut size," and intends "to continue to observe and abide by all the provisions of said rule"; that "the failure to properly mark such materials as to cut size is the sole basis of the charge in the complaint"; and that "the Commission is of the opinion that under the circumstances the public interest does not require further proceedings in this matter".

The Commission dismissed four other similar complaints, also issued on July 8, 1943, for the same reason, the first three on July 8, 1952, and the last on July 21, 1952, as follows:

THE HETTRICK MANUFACTURING Co., Toledo, Ohio, Docket 4996; FRANK M., DAVID W., and THOMAS C., POWERS TRADING AS POWERS & Co., Chicago, Ill., Docket 4997; H. WENZEL TENT & DUCK Co., St. Louis, Mo., Docket 4998; and CANVAS PRODUCTS Co., St. Louis, Mo., Docket 4995.

Mr. B. G. Wilson for the Commission.

Mr. Spencer M. Thomas, of St. Louis, Mo., for Bemis Bro. Bag Co.

Marshall, Melhorn, Wall & Block, of Toledo, Ohio, for The Hettrick Manufacturing Co.

White, Williams & Scott, of Philadelphia, Pa., for Powers & Co.

Anderson, Gilbert, Wolford, Allen & Bierman, of St. Louis, Mo., for H. Wenzel Tent & Duck Co.

Dunbar & Curby, of St. Louis, Mo., for Canvas Products Co.

BOND STORES, INC., and LOUIS A. GOOD, New York, N. Y., Docket 5650. Complaint, April 25, 1949. Order, July 9, 1952.

Charge: Misrepresenting business status and identity, and offering deceptive inducements to deal, in connection with the securing of information as to current addresses and employment of persons delinquent in their payments to respondent Bond Stores, clothing manufacturers with stores in principal cities in various states; on the part of said corporation and respondent Good, its vice president in charge of its credit department, through the use of certain letters and cards mailed to those believed to have information concerning the alleged delinquent debtor or mailed directly to the debtor.

Said letters and cards, as parts of the scheme for obtaining information by subterfuge, purported to be requests for information from the "Surety Investigating Company," purportedly engaged in issuing "surety," "employment," or other bonds; from the "Research Bureau, Reclassification Department," Washington, D. C., as a Government agency or branch inquiring into the qualifications of the addressee for employment; from the "Goodwin-Roberts System," a business enterprise engaged in the business of locating heirs to estates and supervising the same; and from the "National Inheritance Bureau", engaged in examining titles, locating missing heirs, etc., and rendering "expert estate advisory service"; the facts being that said supposed enterprises were mere names used as a lure to solicit the desired information.

Dismissed without prejudice, following the approval and acceptance of a proposed stipulation and agreement executed on February 8, 1952, "it appearing that the Chief, Division of Litigation, on behalf of counsel supporting the complaint, and respondents" "have reached an accord upon the terms of a proposed informal stipulation and agreement"; "that negotiations therefor were instituted prior to the date upon which specific procedures looking to the disposition of cases by consent settlement were provided by amendment to the Commission's Rules of Practice";

That under said terms respondents agree, without admitting that they have violated the Federal Trade Commission Act, not to use certain of the acts and practices complained of, as therein set forth; that Commission approval of the stipulation and agreement does not in any way prejudice its right to resume formal proceedings against respondents in the future should it deem such action warranted; and that the public interest would be best served by the settlement of the proceedings through such approval.

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Charles S. Cox and *Mr. L. J. Fransworth* for the Commission.

Mr. Louis B. Arnold, of Washington, D. C., for respondents.

AMERICAN CIGARETTE & CIGAR CO., INC., New York, N. Y., Docket 4826. Complaint, August 28, 1942. Order, July 12, 1952.

Charge: Advertising falsely or misleadingly, and misbranding or mislabeling, in that respondent falsely advertised, through periodicals, newspapers, radio broadcasts, and otherwise, that finger stains of persons using its Pall Mall cigarettes become much lighter or disappear completely, when Pall Malls are smoked exclusively, and made other similar misrepresentations, and also represented that its said cigarettes filtered the smoke in such a way as to get rid of throat irritations; and in that it represented, through the use of a coat of arms resembling that of the British royal family and other distinctive English coats of arms, and through the legends on containers of its Pall Mall "Georges" cigarettes that its said products had received the indorsement or seal of approval of the royal family of Great Britain, were of English origin and manufacture, and were made in London, where it had a factory or store.

Dismissed without prejudice, upon order to show cause why the proceeding should not be dismissed for want of prosecution, it appearing that the only hearing, held on May 20, 1943, for the purpose of receiving testimony in support of the complaint, was limited to the identification and introduction into evidence of certain advertising exhibits; and that "the answer filed by the attorney in support of the complaint" to said order, "admits that all but two charges of the complaint are moot" and that as to the said two charges he had made no showing of justification for the long delay in the proceeding and had made no request for the taking of further testimony.

Before *Mr. W. W. Sheppard* and *Mr. Earl J. Kolb*, hearing examiners.

Mr. J. R. Phillips, Jr. and *Mr. Frederick McManus* for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondent.

IRVING A. GRUBMAN trading as EVER-CHARGE PRODUCTS, Los Angeles, Calif., Docket 5419. Complaint, February 4, 1946. Order, August 12, 1952.

Charge: Advertising falsely or misleadingly as to qualities or properties of products, and assuming or using misleading trade or product names in said respect, in connection with the sale and distribution

of a powdered preparation designed for use in storage batteries and designated Ever-Charge, through falsely representing that said product charges batteries, ends battery troubles, prolongs life of batteries, etc.

Dismissed without prejudice, upon motion filed by counsel supporting the complaint, and without objections on behalf of the respondent, it appearing therefrom that respondent had discontinued and abandoned the business involved; that there was no reason to believe that he would resume same; and that a proceeding against respondent by the Post Office Department involving substantially the same matters was settled by its acceptance of an affidavit of discontinuance in which respondent stated that his enterprise had been discontinued and abandoned; and the Commission being of the opinion, after duly considering the motion and the record, that under the circumstances the public interest did not require further corrective action at that time in this matter.

Before *Mr. Charles B. Bayly*, hearing examiner.

Mr. E. L. Smith and *Mr. Jesse D. Kash* for the Commission.

Mr. Noah Roark, of Dallas, Tex., and *Mr. Bert M. Keating*, of Denver, Colo., for respondent.

YOUNGS RUBBER CORP., New York, N. Y., Docket 5277. Complaint, February 12, 1945. Order, August 19, 1952.

Charge: Dealing on exclusive and tying basis, in violation of section 3 of the Clayton Act, in connection with the manufacture and sale by respondent, 1 of the 2 largest producers and distributors of rubber prophylactics in the United States, with a potentially dominant position in said industry and competitively engaged therein, of its first-grade prophylactics.

As alleged, said respondent, engaged in the sale of its said products principally to corporate chain wholesale drug organizations, retailer owned wholesale drug organizations, "short line wholesalers, and corporate chain retail drug organizations throughout the several States, competitively engaged in the resale of the aforesaid and allied products, sells the same on condition that purchasers will not deal in competitive products, and that its wholesaler customers will sell its products to retail drugstores only; effect of which sales and contracts and of said conditions, etc., had been or might be to substantially lessen competition or tend to create a monopoly in the line of commerce involved.

Dismissed without prejudice, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment, upon the Commission's complaint, respondent's answer, testimony and other evidence, hearing examiner's

recommended decision and exceptions thereto, and briefs and oral arguments; and following the disposition by the Commission of the exceptions to the recommended decision, the Commission being of the opinion that the allegations of the complaint had not been sustained by the greater weight of the evidence.

Before *Mr. Charles B. Bayly*, hearing examiner.

Mr. James I. Rooney for the Commission.

Poppenhusen, Johnston, Thompson & Raymond, of Chicago, Ill., and *Mr. Meyer Cohen*, of New York City, for respondent.

JULIUS SCHMIDT, INC., New York, N. Y., Docket 5278. Complaint, February 12, 1945. Order, August 19, 1952.

Charge: Dealing on exclusive and tying basis in violation of section 3 of the Clayton Act, in connection with the manufacture and sale by respondent, 1 of the 2 largest producers and distributors of rubber prophylactics in the United States, the allegations of the complaint being similar to those in the *Youngs Rubber Corporation case*.

Dismissed without prejudice, Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment, upon the Commission's complaint, respondent's answers, testimony and other evidence, the hearing examiner's recommended decision, briefs and oral argument of counsel, the Commission being of the opinion that the allegations of the complaint had not been sustained by the greater weight of the evidence.

Before *Mr. Charles B. Bayly*, hearing examiner.

Mr. James I. Rooney for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

THE PRINTWELL CO., also trading as U. S. NAME-PLATE CO., and NATION-WIDE WHOLESALERS, and MAURICE WILLINS ET AL., Chicago, Ill., Docket 5166. Complaint, May 25, 1944. Order, September 5, 1952.

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to business status, composition and manufacture of product, special price, free product, source or origin of product, quality, and pretended lifetime guarantee; in connection with the offer and sale by respondents, engaged in a retail mail-order business, of billfolds, nameplates, identification tags, and "Waltham push button" fountain pens, in that, as alleged, among other things, respondents are not wholesalers, the billfolds are not made of "genuine leather," the pens are not "fine deluxe" quality, equipped with penpoints made of gold, nor made by the Waltham Watch Co., and the so-called "guarantee of lifetime service" is not a guarantee at all, but merely a contract whereby the manufacturer agrees for the life of the purchaser

to make necessary repairs and adjustments at a flat rate of 25 cents each time the pen is sent in, which amount is more than that charged respondents for the pen by the manufacturer.

Dismissed without prejudice, for the reason that the Commission was of the opinion, from the facts of record, that respondents were no longer carrying on the complained-of practices and there was no reason to believe they would renew them and that the public interest would not be served by further proceedings in the matter at the time; it appearing, among other things, following complaint, answer, testimony and other evidence, and stipulation of counsel agreeing that the Commission might finally dispose of the matter without further intervening procedure, and a letter from counsel for respondents, that many of the representations alleged to have been illegal "were made by these respondents in reliance upon prior representations of the seller or manufacturer of the product misrepresented," "that the Commission has taken appropriate action to prevent the continuation of said representations by the sellers and manufacturers of said products in those cases wherein such action was deemed to be required in the public interest," and that respondents have not been engaged for several years in the sale of any of the merchandise involved in these proceedings.

Before *Mr. George Biddle*, hearing examiner.

Mr. William L. Pencke for the Commission.

Messrs. Arthur and Edward Goldblatt, of Chicago, Ill., for respondents.

THE NUTRI-VAC Co., Milwaukee, Wis., Docket 5314. Complaint, March 10, 1949.¹ Order, September 29, 1952.

Charge: Advertising falsely or misleadingly as to scientific or relevant facts, and medicinal and therapeutic qualities of product; in that respondent, in connection with the offer and sale of its "Nutri-Vac," falsely and misleadingly represents, among other things, through advertisements in newspapers and magazines, and in cards, leaflets, folders, circulars, and radio continuities, that a lack of vitamin A leads to lowering of resistance to certain infections, and causes certain eye diseases and inflammations; that vitamin C improves the central nervous system, that an adequate intake of vitamin D insures good bones and teeth; and that use of its preparation will prevent underweight and other conditions arising from vitamin and mineral deficiencies, etc.; the facts being that vitamin A deficiency of such a degree as to result in lowering bodily resistance to infectious diseases rarely exists in this country; many diseases and inflammations are not caused by a lack thereof; and that other representations made

¹ Amended.

above as to the need of such vitamins and minerals and the efficacy of their said product were false and misleading.

Dismissed without prejudice, the Commission being of the opinion, with the case before it upon the complaint, answer, testimony and other evidence, the hearing examiner's recommended decision, and exceptions, and briefs, "that of the misrepresentations alleged in the complaint some were not made as alleged, others were discontinued a substantial time prior to the issuance of the complaint, and others not sustained by the proof, and that no corrective action by it is necessary in other respects."

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

Mr. William L. Pencke for the Commission.

Frank and Arthur Gettleman, of Chicago, Ill., for respondent.

HARRY SACHNOFF doing business as PARK ROW PEN Co. and ARGO PEN-PENCIL Co., INC., New York, N. Y., Docket 3975. Complaint, June 14, 1945.¹ Order, October 6, 1952.

Charge: Misbranding or mislabeling and furnishing means of misrepresentation in connection with the interstate sale of fountain pens and combination pen-pencils in that respondent, engaged in the assembling and competitive sale of such products at wholesale—

Stamped penpoints with the symbol "14K" or "14Kt." in large and conspicuous letters, and the words "gold plate" or "gold plated" in such small or faint letters as to be practically illegible; when in fact they were made of steel thinly electroplated with soft gold of about 22 karats fineness which, while cheaper for electroplating than 14 karat, does not result in penpoints with the hardness and wearing qualities produced by 14 karat gold;

Stamped certain penpoints with the word "Durium", although there is no metal or substance known as "Durium"; and stamped penpoints thinly plated with gold as foresaid with the words "Warranted Duripoint" or "Iridium Tipped"; thereby causing the belief that they possessed special qualities;

Furnished to the retail dealer with each fountain pen a so-called "Lifetime guarantee" which recited that in the event of dissatisfaction and the return of the pen and 25 cents in stamps, they would supply new parts; and thereby falsely represented that their products were of such superior quality and durability that they would last a lifetime and were guaranteed for life, when in fact they regularly sold the pens at wholesale at from \$18 to about \$72 per gross and the so-called "Lifetime Guarantee" was merely a contract whereby respondents agreed for the life of the purchaser to make repairs and adjustments at a flat rate of 25 cents each time, which was more than

¹ Amended.

the price at which they sold some of the products to dealers in the regular course of business;

With the result of furnishing retail dealers with a means of deceiving the purchaser with respect to the price, value and quality of said pens; whereby trade was unfairly diverted to respondents from their competitors who did not falsely represent their products, to the injury of competition in commerce.

Dismissed for the reason, as set forth in the Commission's order, that it appeared from a memorandum submitted for the record that respondent corporation was dissolved pursuant to the laws of New York State on February 27, 1945, and that the individual respondent, Mr. Sachnoff, "departed this life on December 10, 1950," under which circumstances, the Commission was of the opinion that the proceedings should be terminated.

Before *Mr. Lewis C. Russell* and *Mr. Andrew B. Duvall*, hearing examiners.

Mr. Karl Stecher and *Mr. William L. Pencke* for the Commission.

Mr. Henry J. Easton and *Mr. Abbey L. Warshauer*, of New York City, for respondents.

MOUNT VERNON UNIVERSITY, INC., also operating and trading as MOUNT VERNON UNIVERSITY, CHRIST COLLEGE, and CHRIST SEMINARY; ET AL., Washington, D. C., Docket 5512. Complaint, October 14, 1947. Order, October 17, 1952.

Charge: Advertising falsely or misleadingly as to business status and operations, in that respondents, located on two floors of a four-story building in Washington, engaged in the sale and distribution of courses in various subjects of higher learning, in residence and by correspondence—

Falsely represented through newspaper advertisements, catalogs, and letterheads that they conducted and operated a university, college, and seminary, as generally understood, with a competent faculty of qualified professional men, adequate classrooms, dormitories and libraries, which was recognized by standard accrediting organizations and in turn recognized credits from all accredited colleges, was approved for G. I. training by the Government, offered work leading to a number of recognized academic degrees, and furnished complete outlines of study in the respective subjects offered under the supervision of a qualified and experienced dean or administrative officer.

The facts, among others, as alleged, were that—

Its "board of trustees," "board of administration," and "board of directors" did not function so as to administer the affairs of an educational institution, their school was not equipped to teach the numerous subjects offered, their educational standards were wholly insufficient

to satisfy minimum requirements of any standards in the educational field, their degrees, so-called, were not earned and conferred, did not constitute degrees in the accepted meaning of the term and were of no meaning or effect whatever, and honorary degrees issued by them were conferred upon persons who merited no such distinction; and that

Use by them of such terms as "College," "University" and "Seminary" and the placing of academic degrees after the names of numerous individuals listed by them, and of such designations as "Dean," "Registrar," etc., falsely implied the existence of a substantial institution of higher learning, with a qualified faculty and experienced administrators; the school had no authority to confer the degrees and diplomas, which often were sold for \$50; and the representation, along with various others, that the school was accredited by the National Association of Christian Schools—which had no standing among recognized associations of schools or accreditation—was grossly misleading.

Dismissed by order which, after sustaining the hearing examiner's conclusions that the participation of respondent Leas in the affairs of respondent corporation, Mount Vernon University, Inc., was of such a nature that he should be included in any order to cease and desist which might be issued, dismissed the complaint as to all respondents since it appeared that the receipts of the corporate respondent for tuition were trivial, its financial backing was negligible, some of the individual respondents were no longer connected with it, others did not participate in the practices alleged, there was no present likelihood that the practices concerned would be continued or resumed, and there was no present public interest in carrying the proceeding further.

Commissioner Carretta did not participate for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

Before *Mr. John P. Bramhall* and *Mr. William L. Pack*, hearing examiners.

Mr. William L. Pencke for the Commission.

McNeill & Fuller and *Mr. P. W. Seward*, of Washington, D. C., for respondents.

M. B. WATERMAN PEN CO. ET AL., Chicago, Ill., Docket 5381. Complaint, September 14, 1945. Order, October 31, 1952.

Charge: Advertising falsely and misleadingly, and misbranding as to maker, composition, prices, special offers, durability, guarantees, and free goods; in connection with the sale and distribution of fountain pen and pencil sets, stamped with the name "Waltham."

Dismissed without prejudice, for the reason that respondents have not been engaged in the sale of the products involved for many years;

and that the Commission is of the opinion that the public interest would not be served by further proceedings in the matter.

Before *Mr. George Biddle*, hearing examiner.

Mr. Karl Stecher and *Mr. William L. Pencke* for the Commission.

Mr. Charles L. Schwartz, of Chicago, Ill., for respondents.

JOSEPH L. MORSE ET AL., doing business as BOOK GIVE-AWAY PLAN, Brooklyn, New York, Docket 4913. Complaint, December 23, 1946.¹ Order, November 3, 1952.

Charge: Falsely advertising private business as making surveys for business enterprises and maintaining a huge staff of experts; misrepresenting special offers, prices, history, composition, and free goods; in connection with the sale and distribution of sets of medical and encyclopedic books.

Closed without prejudice, for the reason that certain of respondents' complained-of practices had been discontinued for many years, and those which were continued were prohibited by the Commission's order of October 16, 1950, 47 F. T. C. 258, in *Unicorn Press et al.*, Docket 5488; and the Commission was of the opinion that the public interest involved would not be served by further proceedings.

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

Mr. Carrell F. Rhodes and *Mr. Jesse D. Kash* for the Commission.

Mr. Marcus Miller, of New York City, for respondents.

LO-WELL PENCIL Co., New York, N. Y., Docket 5407. Complaint, November 29, 1945. Order, November 4, 1952.

Charge: Falsely advertising merchandise as "free" when price thereof is included in the price of other merchandise required to be purchased; in connection with the sale and distribution of pencils.

Closed without prejudice, for the reason that the evidence presented was restricted to respondent's practices prior to the sole hearing, which was 6 years prior to the hearing examiner's recommended decision, and that it appeared respondent was not in any way responsible for the delay; that the Commission had no knowledge as to respondent's present practices and was "of the opinion that the public interest would be adequately protected by closing this matter without prejudice," and was further "of the opinion that there is great public interest in ending litigation".

Before *Mr. James A. Purcell*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Charles J. Hyman, of New York City, for respondent.

HERNARD MFG. Co., INC. ET AL., Mount Vernon, N. Y., Docket 5774. Complaint, May 4, 1950. Order, November 19, 1952.

¹ Amended.

Charge: Appropriating competitor's product and process; passing off; and furnishing means of misleading purchasers; in connection with the manufacture and sale of plastic-ceramic three-dimensional display letters.

Dismissed for the reason that the matter is essentially a private controversy; the Federal Trade Commission Act does not provide private persons an administrative remedy for private wrongs; and the record failed to establish sufficient public interest.

Before *Mr. John W. Addison* and *Mr. J. Earl Cox*, hearing examiners.

Mr. Jesse D. Kash for the Commission.

Mr. Sam Eisenberg, of Mount Vernon, N. Y., for respondents.

THE CONKLIN PEN CO., ET AL., Chicago, Ill., Docket 5208. Complaint, August 28, 1944. Order, December 22, 1952.

Charge: Falsely advertising identity and history of business; foreign branches; maker, quality, composition, durability of product; and dealer as manufacturer; in connection with the sale and distribution of fountain pens and pencils.

Closed without prejudice for the reason that respondents were shown to be fully entitled to use their trade and brand name, that all evidence relating to respondents' practices was received five and a half years ago, that the Commission is of the opinion that "respondents are no longer carrying on the complained-of practices" and that "the public interest does not require any further action".

Before *Mr. George Biddle*, hearing examiner.

Mr. Karl Stecher and *Mr. William L. Pencke* for the Commission.

Gottlieb & Schwartz and *Mr. Jack H. Oppenheim*, of Chicago, Ill., for respondents.

JOSEPH STARR ET AL., trading as STARR PEN CO., ETC., Chicago, Ill., Docket 5209. Complaint, August 28, 1944. Order, December 22, 1952.

Charge: Advertising falsely, and misbranding as to maker, composition, manufacture, prices, and guarantees of product; assuming