

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 misleading trade names; misrepresenting dealer as manufacturer; and furnishing fictitious price tags; in connection with the assembling, sale and distribution of fountain pens.

Closed without prejudice, for the reason that respondents had abandoned most of the practices complained of over two years prior to issuance of the complaint, that all of the evidence was received prior to date of the last hearing—some 5½ years past; that respondents have not manufactured fountain pens for a number of years;

and that the Commission is of the opinion that the public interest does not require any further action at this time.

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.

STERLING DRUG, INC. ET AL., New York, N. Y., Docket 5237. Complaint, October 19, 1944. Order, December 24, 1952.

Charge: Advertising falsely and misleadingly as to ailments, therapeutic properties of product, and testimonials; and failing to reveal relevant facts; in connection with the sale and distribution to wholesale drug dealers of "Ironized Yeast Tablets."

Dismissed without prejudice, for the reason that the allegations of the complaint were directed to practices engaged in in a situation existing more than 8 years past; that continuation of the proceeding looking to a decision on the merits of issue presented by pleadings prepared so long ago might serve no present useful purpose; and that there is no assurance that the expenditure of additional time in the trial of such issues would be in the public interest.

Mr. E. L. Smith and *Mr. George M. Martin* for the Commission.

Rogers, Hoge & Hills and *Mr. L. B. Stoughton*, of New York City, for respondents.

RICHARD HUDNUT ET AL., New York, N. Y., Docket 2973. Complaint, November 6, 1936. Amended, May 25, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in violation of sections 2 (a) and 2 (e) of the Clayton Act, as amended, in the allowance of more favorable discounts to certain purchasers than to others including, respectively, (a) individual retail stores not furnished facilities and services of paid demonstrators, (b) those furnished such facilities and services, (c) chain-store organization operating less than 20 stores, treated as a unit, with a corresponding exception, and similar chain stores not thus excepted, (d) chain stores operating more than 20 stores and so treated, with a similar exception, and those not so excepted, and (e) wholesale distributors; and in the supplying of such facilities and services to some but not all of respondents' purchasers in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.²

² By order dated June 5, 1942, count II of the *original* complaint, which charged a violation of section 5 of the Federal Trade Commission Act in the assignment to certain of respondents' customers of the services of sales persons as demonstrators, and in the payment of a "push money" bonus of 5 percent on the sales made by the clerks handling respondents' products in the stores of certain of respondents' customers, as an inducement to push the merits of respondents' products over competing products, was dismissed; as

Dismissed for the reasons, as set forth in the Commission's order, that subsequent to the reception of evidence, the Commission promulgated Trade Practice Rules for the Cosmetic and Toilet Preparations Industry which evidence an interpretation by it of section 2 (e) under which that section would be violated only if "demonstrator service" was not accorded to all "competing" purchasers upon proportionally equal terms; that the rules specifically provide that one type of service may be offered to some customers and an alternate type to others, and set out some of the methods by which it might be determined whether a course of conduct resulted in "proportionally equal terms" to all customers—none of which provisions were in existence when the proceeding was tried; that the injustice of entering an order to cease and desist upon a state of facts permitted by the rules is apparent, and that a proceeding initiated in the light of the present rules would be so different in pleadings and evidence from those in this case, that the Commission could not in good conscience do other than enter its order of dismissal.

Commissioner Carretta did not participate for the reason that the oral argument was heard on November 8, 1950, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

Mr. Eldon P. Schrup, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

Baldwin, Todd & Lefferts, of New York City, for respondents.

ELMO, INC., ET AL., Philadelphia, Pa., Docket 2974. Complaint, November 6, 1936. Amended, March 25, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators," in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture and sale and distribution in commerce of cosmetics and toilet preparations.³

was count III of the amended and supplemental complaint which similarly charged a violation of section 5 of the Federal Trade Commission Act through the furnishing of demonstrators whereby purchasers and prospective purchasers of the stores concerned were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.

³ By order dated June 5, 1942, count II of the *original* complaint which charged a violation of section 5 of the Federal Trade Commission Act in the assignment to certain of respondents' customers of the services of sales persons as demonstrators to sell to customers and prospective customers of the retail stores, they being required likewise to sell the products of such other manufacturers as were displayed and carried for sale by said retail stores, was dismissed; as was count II of the amended complaint which similarly charged a violation of section 5 of the aforesaid act through the furnishing of demonstrators whereby purchasers and prospective purchasers were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on May 21, 1947, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

Mr. Eldon P. Schrup, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

Conlen, LaBrum & Beechwood, of Philadelphia, Pa., for respondents.

CHARLES OF THE RITZ, INC., ET AL., New York, N. Y., Docket 3017. Complaint, December 19, 1936. Amended, May 8, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in supplying of "demonstrators," in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.⁴

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that the oral argument was heard on November 17, 1950, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

Mr. Eldon P. Schrup, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

Olvany, Eisner & Donnelly, of New York City, for respondents.

PRIMROSE HOUSE, INC., New York, N. Y., Docket 3039. Complaint, January 26, 1937. Amended, May 3, 1939. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" and in the similar supplying to some, but not all, purchasers,

⁴ By order dated June 5, 1942, count II of the *original* complaint which charged a violation of section 5 of the Federal Trade Commission Act in (a) the assignment by respondents to certain favored purchasers of the services of sales persons as demonstrators to sell to customers and prospective customers of the retail stores concerned respondents' preparations, they being likewise required to sell similar products of other sellers and distributors which might be carried for sale by the particular retail store, and in (b) the payment to the sales persons or clerks of certain favored purchasers of bonuses or "push money," in excess of the compensation otherwise received by them, to push the merits of respondents' products in opposition to or disregard of similar products sold and distributed by competitors and carried for sale by such purchasers in competition with respondents' own products, was dismissed; as was count II of the amended and supplemental complaint which similarly charged a violation of said section through the furnishing of demonstrators whereby purchasers and prospective purchasers of the stores concerned were misled and deceived into believing the personnel in question were store sales personnel, working only in the interest and under the control of the respective stores concerned, and competitors and the public were otherwise prejudiced.

of "give-away promotions" and "20% promotions" involving the consignment of certain of respondent's products to be given away or sold at a 20 percent discount, and the presence, in some instances, of so-called "beauty counselors," furnished by respondent, to assist in the conduct of such promotions, in violation of section 2 (e) of the Clayton Act; in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.⁵

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on May 6, 1947, prior to his appointment to the Commission.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, hearing examiners.

Mr. Eldon P. Schrup, *Mr. James I. Rooney*, *Mr. Frank Hier*, *Mr. Philip R. Layton* and *Mr. Fletcher G. Cohn* for the Commission.

Chadbourne, Hunt, Jaechel & Brown, of New York City, for respondent.

COTY, INC., New York, N. Y., Docket 4435. Complaint, December 27, 1940. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce of cosmetics and toilet preparations.

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on November 15, 1950, prior to his appointment to the Commission.

Before *Mr. John L. Hornor*, hearing examiner.

Mr. Frank Hier, *Mr. Fletcher G. Cohn* and *Mr. Philip R. Layton* for the Commission.

Cowdert Brothers, of New York City, for respondent.

BOURJOIS, INC., ET AL., New York, N. Y., Docket 4436. Complaint, December 27, 1940. Order, January 9, 1953.

Charge: Discriminating in price, etc., in the supplying of "demonstrators" in violation of section 2 (e) of the Clayton Act as amended, in connection with the manufacture, sale, and distribution in commerce, of cosmetic and toilet preparations.

⁵ By order dated June 5, 1942, count II of the amended and supplemented complaint which charged a violation of section 5 of the Federal Trade Commission Act in the furnishing by respondent to certain favored purchasers of the services of sales persons as demonstrators, held out deceptively, as alleged, directly or indirectly, as part of the store sales personnel, and so considered by the public and as solely interested in store sales as a whole, was dismissed.

Dismissed for the reasons set forth in the preceding dismissal, Richard Hudnut et al., D. 2973, p. 1562; Commissioner Carretta not participating for the reason that oral argument was heard on November 9, 1950, prior to his appointment to the Commission.

Before *Mr. John L. Hornor*, hearing examiner.

Mr. Frank Hier, Mr. Philip R. Layton and Mr. Fletcher G. Cohn for the Commission.

Olvany, Eisner & Donnelly, of New York City, for respondents.

FREDERICK HERRSCHNER trading as VICTORY VITAMIN Co., Chicago, Ill., Docket 5442. Complaint, June 11, 1946. Order, January 9, 1953.

Charge: Advertising falsely or misleadingly as to medicinal, remedial, and healthful qualities of product, ailments, and symptoms, and scientific or relevant facts, in connection with the offer and sale of vitamin medicinal preparations by respondent, including his "Victory Vitamins," "Calcium Pantothenate Capsules," "Wheat Germ Oil, etc.," "Garlicaps," and "Liver, Iron, and B₁ Capsules"; in that respondent falsely and misleadingly represented, among many other things, significance of ailments, symptoms, and conditions as pointing to vitamin deficiencies, tests made in said connection, deficiencies in said respects in the ordinary diet, effects on health and physical function of various vitamins, and effect and qualities of his various preparations.

Dismissed without prejudice, on motion by counsel supporting the complaint, for the reason that the business concerned is no longer conducted by respondent but by a corporation which distributes numerous other products, and that the advertising practices complained of have been abandoned, revised, or modified, and the Commission's opinion that there was no present public interest in carrying the proceeding further.

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

Mr. William L. Pencke for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

UNITED STATES TRAVEL AGENCY, INC., ET AL., Washington, D. C., Docket 5738. Complaint, January 25, 1950. Order, January 12, 1953.

Charge: Falsely representing Government connection through use of misleading corporate name (furthered by corporate respondent's failure to use the abbreviation "Inc.") in connection with solicitation and sale, as travel and tourist agents, of transportation, hotel accommodations and incidental services appertaining thereto.

Dismissed for the reason that, some months after complaint was issued, a new corporation was chartered in the name of "United Travel Agency, Inc." and subsequently conducted all respondent's former

business except that dealing with clubs or business organizations, which continues to be conducted under the name objected to but used in immediate conjunction with the words "Not a Government Agency" conspicuously displayed, and including the abbreviation "Inc."; it appearing, therefore, that respondents have, in good faith, already taken all the corrective action which could be required by an order to cease and desist.

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

Mr. R. P. Bellinger and *Mr. Michael J. Vitale* for the Commission.

Mr. Wilbur N. Baughman and *Mr. Harry A. Bowen*, of Washington, D. C., for respondents.

Mr. Harry A. Bowen, of Washington, D. C., and *Hale, Stimson & Russell*, of New York City, for American Society of Travel Agents, Inc., intervenor.

NEW STANDARD PUBLISHING CO., INC., ET AL., Richmond, Va., Docket 4697. Complaint, February 4, 1942. Findings and order to cease and desist, May 25, 1951. Order dismissing complaint, January 19, 1953.

Charge and findings: Misrepresenting prices, terms, and conditions, including alleged special offers, etc., and making use of numerous deceptive practices; in connection with the sale by respondent corporation, and its President, through salesmen furnished with advertising literature and other material, of "Doubleday's Encyclopedia," Annual Supplements or Year Books therefor, and other publications such as "The New Century Dictionary," "Funk & Wagnall's Practical Standard Dictionary," "The Nature Library," sets of classics, and some other items such as bookcases and pencils; in that, among other things, they thus—

Falsely and misleadingly represented that the books were offered at a special price for a limited time only, were given away as an advertising plan to a limited number of selected persons; that the price of the books shown in the contract was the total price; that the salesmen were those of the publisher; that the books had been approved by educational authorities; and made various other false and misleading statements pertaining to their said offers; and

Made use of the misleading trade name "Commercial Finance" in the conduct of their business and made various misrepresentations pertaining to said supposed separate concern to enforce payments.

Dismissed, after hearing by the Commission, following the decision of the Court of Appeals for the Fourth Circuit in *New Standard Publishing Co., Inc., et al. v. Federal Trade Commission*, February 9, 1952, 194 F. (2d) 181, which, for the reasons therein set forth, vacated the Commission's order entered on May 25, 1951, 47 F. T. C. 1350,

without prejudice "to the entry of such order as may be appropriate under present circumstances, should the Commission see fit to pursue the case further."

Commissioner Carretta not participating.

Before *Mr. Randolph Preston*, hearing examiner.

Mr. Clark Nichols, *Mr. Randolph W. Branch* and *Mr. William L. Pencke* for the Commission.

Mr. Henry Ward Beer, of New York City, for New Standard Publishing Co., Inc. and Julius B. Lewis.

Mr. J. Raymond Tiffany, of Hoboken, N. J., for Doubleday-Doran & Co., Inc.

STEWART-ALLEN CO., INC., New York, N. Y., Docket 5931. Complaint, October 25, 1951. Order, February 7, 1953.

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and furnishing means of misrepresentation and deception, in connection with the sale and distribution of pipes made in the United States from imported briar root, in that respondent, competitively engaged as aforesaid, furnishes display and price cards for the use of retail dealers, which bear the words "Importer Briar," stamps said words upon the pipes, and distributes circulars to the trade upon which are printed the words "Finest Quality Imported Briar Pipes," falsely representing thereby that its said pipes were manufactured abroad and imported into the United States.

Dismissed for the reasons, among others, that the stamping of the words "Imported Briar" upon the bowls of pipes of domestic manufacture is a common trade practice and that such words signify to the trade and the public generally only that the wood of which the bowls and stems are made has been imported; that use of the words "Finest Quality Imported Briar Pipes," as aforesaid, was discontinued more than one year prior to the issuance of the complaint, and the words "Pipes Made of Imported Briar," substituted; and that the evidence is insufficient to support a finding of any substantial preference for pipes of foreign make.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Jesse D. Kash and *Mr. J. J. McNally* for the Commission.

Mr. Charles Bennet, of New York City, for respondent.

EAGLE CONE CORP. ET AL., New York, N. Y., Docket 5935. Complaint, November 20, 1951. Order, February 9, 1953.

Charge: Entering into a planned common course of action, agreement or understanding to raise and maintain the price at which ice cream cones should be sold, on the part of respondent Eagle Cone Corp., three other corporations, and a partnership, which, engaged in

the manufacture and competitive interstate sale and distribution of ice-cream cones, including sugar cones, and cake cones, in various sizes, represented about 95 percent of the production of such products sold in and from the metropolitan area of New York and occupied a dominant position in said industry; with the effect of substantially hindering competition as to price between and among said respondents and others, and with a dangerous tendency so to do.

Initial decision dismissing the complaint for the reason that careful consideration of the entire record, including testimony and evidence as to prices, failed to establish that respondents did in fact, as alleged, enter into any such planned common course of action, agreement or understanding, was affirmed by order dated February 9, 1953, which ruled on and denied the appeal of counsel supporting the complaint from said initial decision.

Said order, in denying said appeal, considered the testimony of the attorney-examiners, which, as alleged by counsel, supported a finding that respondents did agree that at least certain prices of ice cream cones would be raised; reached the opinion that their testimony was not supported and supplemented to the extent necessary for the record to furnish substantial evidence sustaining the findings proposed by said counsel; and that there was no error in its rejection by the hearing examiner, necessitating in turn a dismissal of the complaint and a rejection of other findings and conclusions proposed by him either as immaterial or unwarranted.

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

Mr. George W. Williams for the Commission.

Pariser & Pariser, of New York City, for Eagle Cone Corp., S & S Cone Corp. and Consolidated Wafer & Cone Corp.

Mr. Leonard Yohay, of Brooklyn, N. Y., for Yohay Baking Co.

Mr. Ned J. Parsekian, of East Orange, N. J., for Hudson Cone Co., Inc.

RIPLEY MANUFACTURING CORP., New York, N. Y., Docket 5940. Complaint, December 26, 1951. Order, February 27, 1953.

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and misrepresenting directly, in the use of the words "Tailor-Made Clothes" by respondent, engaged in the manufacture of men's clothing, and in the retail sale thereof directly to the consuming public through a number of retail stores operated by wholly owned subsidiary corporations, located in New York, Philadelphia, Jersey City, Newark, and Boston, in that—

Respondent, as alleged, made use of the aforesaid statement "Tailor-Made" in newspapers, on sales slips, on tags and labels affixed to the clothing, on signs appearing on the outside of some of its retail stores, on letterheads, and by commercial announcements on television, and

other advertising media, and thereby represented that its clothing was made to the order and measurement of the individual purchaser, when, in fact, it was made in large quantities in a series of stock or standard sizes, by production-line factory method, such as commonly employed in the manufacture of readymade apparel, whereby each of a large number of persons, most of whom are not tailors, performs an individual operation or a few operations on each garment in process of completion, with the stitching being done principally by machine.

The initial decision dismissing the complaint for the reason that the representation and practice were respectively so qualified and employed as not to be deceptive, as therein set forth, and that there was no evidence to show how the use of the phrase on respondent's letterhead could have induced the purchase of a suit from respondent in the mistaken belief that it was made to the individual measurements of the purchaser was affirmed by order dated February 27, 1953, which ruled on and denied appeal of counsel supporting the complaint from said initial decision.

Said order, in denying said appeal, noted that the words "tailor-made" mean, according to Webster's New International Dictionary, 1950 edition, "Made by a tailor or according to a tailor's fashion"; that the complaint did not allege that the clothes in question were not "tailormade" in such sense or in the equally correct sense by "tailors" working together; that while the evidence that "implicit in 'tailor-made' is the further meaning" of garments "made to the order and measurements of the individual" was persuasive, it was not established that such was the sole and exclusive meaning;

That the representation was not, therefore, totally false as in the *Heusner* case, 106 F. (2d) 596, 29 F. T. C. 1850, but must be taken as partially true, and that, accordingly, the respondents could not be required on the complaint to do more than make adequate disclosure that their clothes were not "made to the order and measurements of the individual"; and that, accordingly, counsel's appeal must be denied and an order dismissing the complaint by the hearing examiner affirmed.

Said decision, it was noted, is not to be taken as a holding of general application that factorymade clothes may be designated as "tailormade clothes," but only as based on the necessary assumption in the instant case that the respondents' clothes were "made by tailors." As to the question whether they were so made, such question was not presented by the complaint, and was, therefore, not decided.

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

Mr. Edward F. Downs and *Mr. George E. Steinmetz* for the Commission.

Mr. Arthur A. Singer and *Mr. Gilbert H. Weil*, of New York City, for respondent.

VITRIFIED CHINA ASSOCIATION, INC., ET AL., Washington, D. C., Docket 5719. Complaint, December 9, 1949. Order, March 6, 1953.

Charge: Entering into and carrying out an unlawful understanding and conspiracy to hinder and limit competition in price and otherwise in the manufacture, sale, and distribution of vitrified china hotel ware, and aiding and abetting said undertakings and practices through (a) cooperatively formulating, agreeing upon, and revising a list of base prices to be used; (b) agreeing upon amounts to be added to and deducted from such base list prices; and (c) agreeing upon terms and conditions upon which sales of said chinaware were to be made; on the part of respondent association (the members of which embrace substantially all manufacturers of vitrified chinaware in the United States and occupy a dominant and controlling position in the industry); 8 officers thereof; 12 manufacturer members; and 2 manufacturer nonmembers, who cooperated in said practices and activities; with the effect of substantially lessening and suppressing competition involved, and with other prejudicial effects and tendencies.

By decision of the Commission, appeals by respondents from initial decision of hearing examiner, which held that respondents, with the exception of one individual, had entered into agreements affecting the price of such hotel ware in violation of section 5 of the Federal Trade Commission Act, were granted without ruling individually on each appeal; appeal by counsel supporting the complaint from the initial decision on the ground that the order therein was too narrow in scope to provide effective relief, was denied; and the complaint was dismissed as not sustained by the evidence of record, for the reasons stated in the Commission's opinion by Commissioner Mead, as follows:

OPINION OF THE COMMISSION

By MEAD, *Commissioner*:

This proceeding is before the Federal Trade Commission upon appeals from an initial decision of a hearing examiner of the Commission holding that respondents, with exception of Frederic J. Grant, have entered into agreements affecting the price of a type of china known as hotel ware, in violation of section 5 of the Federal Trade Commission Act. These respondents have appealed to the Commission contending that this initial decision is not supported by the evidence of record. Counsel supporting the complaint in this proceeding also has appealed contending that the order, contained in the initial decision, is too narrow in scope to provide effective relief from respondents' practices found to be illegal.