

IN THE MATTER OF
ROYAL APPLIANCE COMPANY, INC. AND DAVID E.
RESNICK

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6122. Complaint, Aug. 31, 1953—Decision, Jan. 14, 1954

Where a corporation and its responsible officer competitively engaged in the sale and distribution in the District of Columbia and adjoining States, among other things, of television receivers and replacement parts and in the furnishing of television repair services under contracts whereby they undertook to keep sets in good repair; in advertising their products in newspapers and other advertising media—

- (a) Represented that they would keep television receivers sold by them in good working order for a period of two years, any necessary repairs to be made within a reasonable time after being requested;

The facts being that while such contracts, issued for a consideration, so provided, they did not in many instances comply with such contracts during the second year or provided such service only after undue and unreasonable delay;

- (b) Represented that they would either remove television receivers to one of their four places of business and return them the same day fully repaired and in proper working order, or repair such receivers in the homes of the owners;

The facts being their repairmen constantly refused to repair such receivers in the home; and when they were removed to respondents' place of business for repair, respondents returned them to their owners in many instances only after many days or weeks of delay;

- (c) Falsely represented that they would estimate the cost of necessary parts or services or both parts and services to place television receivers in proper working order and would provide such service and parts for approximately the amount of such estimate;

The facts being their estimates were not bona fide; prices ultimately charged by them for repair in virtually all instances did not approximate their estimates and sometimes exceeded them by more than twice as much; and in most instances where the final charge exceeded the estimate, they failed to apprise the customers of such increase to obtain authorization for the performance of the work, but required nevertheless the payment of the total amount before they would release the receivers to the owners; and

- (d) Represented that they owned, operated, or maintained offices or branches in four different locations in the metropolitan area of Washington, D. C.; when in fact they operated one place of business only in said area:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

Costantini & Raffel, of Washington, D. C., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 31, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint, hereby

(1) Admit all the jurisdictional allegations set forth in the complaint.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting that they have engaged in any of the acts or practices stated therein to be in violation of law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Royal Appliance Company, Inc., is a corporation, organized and existing under the laws of the State of Maryland, which had its principal office and place of business at 1911

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on January 14, 1954, and ordered entered of record as the Commission's findings as to the facts, conclusions, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Nichols Avenue SE., in the City of Washington, D. C., until approximately July 1, 1953, at which time, both it and respondent suspended the operation of said business.

Respondent David E. Resnick is an individual and, although presently president of said corporation, was secretary-treasurer during the pertinent and applicable time period. He individually formulated all the policies and controlled and managed all of the affairs of said corporation and would do so in future. His principal office and place of business had been the same as that of the corporate respondent.

PAR. 2. Respondents, until approximately July 1, 1953, were engaged in the sale and distribution, among other things, of television receivers and replacement parts. An essential and integral part of respondents' said business was the furnishing of television repair services. In connection with their said repair service, respondents issued contracts whereby they agreed to keep television sets in good repair for a period of two years. Respondents caused their said television sets, when sold, to be transported from their place of business in the District of Columbia to purchasers located in the District of Columbia and in the States of Maryland and Virginia and caused their said service contracts and various other written instruments of a commercial nature, issued and made use of in connection therewith, to be transported by means of the United States mails and otherwise to various persons located in the District of Columbia and in the States aforesaid.

Respondents maintained a course of trade in said products and service contracts and various other instruments issued in connection therewith in commerce in the District of Columbia and between the District of Columbia and other States, and such course of trade was substantial.

PAR. 3. In the course and conduct of their said business, respondents have been in substantial competition in commerce with other corporations and with individuals and partnerships engaged in the sale of television receivers and repair parts therefor.

PAR. 4. In the course and conduct of their aforesaid business, respondents have made certain statements and representations concerning said products by means of advertisements inserted in newspapers and other advertising media of general circulation in the States of Maryland and Virginia and in the District of Columbia. Typical, but not all inclusive, of such representations are the following:

ROYAL GIVES YOU THIS SENSATIONAL 2 YEARS SERVICE ON ANY TV SET OF YOUR CHOICE. The only Appliance Store in Washington * * * and in the United States to offer you one full year of unconditional guarantee * * * and an extra year of service free of any cost.

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Findings

ROYAL
APPLIANCE CO. INC.
SALES SERVICE

Picture of
man holding
television set

SHE'S O. K. NOW
and BACK HOME
THE SAME DAY!
ON CALL
24 HOURS A DAY

ANY MAKE TELEVISION REPAIRED
2 YEARS SERVICE
FREE PICK UP, DELIVERY & ESTIMATES
TV REPAIRS
IN YOUR HOME
or
1 DAY SERVICE

FREE ESTIMATES	REPAIRS ON CREDIT
N.W.—S.W.	N.E.—S.E.
DU. 1400	LU 4-7000
SILVER SPRING, ARL.-ALEX.	
JU. 7-5484	JA. 4-1883

ROYAL
CONSOLIDATED TV SERVICES

PAR. 5. By means of the foregoing statements and representations, respondents, directly and by implication, represented:

1. That they would keep television receivers sold by them in good working order for a period of two years, any necessary repairs to be made within a reasonable time after being requested.

2. That they would either remove television receivers to one of their four places of business and return them the same day fully repaired and in proper working order or repair such receivers in the homes of the owners.

3. That they would estimate the cost of necessary parts or services or both parts and services to place television receivers in proper working order and would provide such service and parts for approximately the amount of such estimate.

4. That they owned, operated, or maintained offices or branches in four different locations of the metropolitan area of Washington, D. C.

Conclusion

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PAR. 6. All of the aforesaid representations, statements and implications were false, exaggerated, deceptive, and misleading. In truth and in fact:

1. While respondents issued service contracts to purchasers of television receivers, for a consideration, which provided that they would render necessary service to keep such receivers in good working order for a period of two years, they did not in many instances comply with such contracts during the second year or provided such service only after undue and unreasonable delay.

2. Respondents' television repairmen consistently refused to repair television receivers in the home; and when said receivers were removed to respondents' place of business for repair, respondents returned them to their owners in many instances only after many days or weeks of delay.

3. The estimates given by respondents on the cost of television repairs were not bona fide estimates. The prices ultimately charged by respondents for television repairs in virtually all instances did not approximate the estimates given by them, and sometimes exceeded said estimates by more than twice as much. In most instances where the final charge exceeded the estimate, respondents failed to apprise their customers of such increase in price or to obtain authorization for the work prior to performing the same, but nevertheless required the payment of the total amount before they would release the television receivers to the owners.

4. Respondents operated only one place of business located at 1911 Nichols Avenue S. E., Washington, D. C.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had the tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were true, and to induce the purchase of said products and the entering into service contracts because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of respondents were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER

It is ordered, That respondents, Royal Appliance Company, Inc., a corporation, and its officers, and David E. Resnick, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of television receivers or other electronic equipment and service contracts, in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or by implication, that they will keep such products in good working order for a period of two years or for any other specified period of time, unless in fact the services necessary to accomplish that result be provided within a reasonable time after notification by customer or vendee during such specified time period.

2. Representing, directly or by implication, contrary to the fact, that repairs on such products will be made either in the home or in one day or in any other specified period of time.

3. Either giving so-called estimates or representing that they will give estimates for repairs on such products, which are not in fact bona fide estimates or which bear no reasonable relationship to the prices ultimately charged for such repairs.

4. Representing, directly or by implication, that they maintain more places of business than is actually the fact.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

(Sgd.) Royal Appliance Co., Inc.

ROYAL APPLIANCE COMPANY, INC.

(Sgd.) By David E. Resnick, Pres.

(Sgd.) David E. Resnick

DAVID E. RESNICK, individually.

Date : December 1, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 14th day of January, 1954.

IN THE MATTER OF
YAMI YOGURT PRODUCTS, INC., AND RICHARD TILLE,
INDIVIDUALLY AND AS AN OFFICER THEREOF AND
ALSO DOING BUSINESS AS INTERNATIONAL YOGURT
COMPANY

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6066. Complaint, Nov. 25, 1952—Decision, Jan. 21, 1954

Where a corporation and an officer thereof who did business also at the same address under a separate trade name, engaged in the interstate sale and distribution of food products for use in making yogurt, respectively known in the case of the product of the former as "Yami Yogurt Culture," and in that of the latter as "International Yogurt Culture" and "International Roselle Yogurt Culture"; in advertising their said products in newspapers and magazines, etc. and by radio—

- (a) Falsely represented that proteins in yogurt are in predigested form, that proteins and minerals are more rapidly assimilable and milk nutrients more easily absorbed by the blood by reason of being in the form supplied by yogurt, and that the casein and albumin of cow's milk fermented with yogurt culture are transformed into more highly digestible form;
- (b) Falsely represented that yogurt promotes digestion and intestinal hygiene, helps to digest other foods, promotes longevity and helps to prevent senility; that its use builds, restores, and insures good health, is effective in preventing typhoid, paratyphoid, diphtheria and dysentery, and is a cure or remedy for constipation, ulcers, gastritis, enteritis, colitis, dyspepsia, diarrhea, dysentery, celiac disease, colon troubles, and stomach distress;
- (c) Falsely represented that it is a benefit in cases of pulmonary diseases, keeps the digestive tract clean, lessens the nausea or stomach sickness associated with pregnancy, results in fine complexions or improves the complexion; and
- (d) Falsely represented that yogurt softens or tenderizes meat and that through yogurt one may eat himself to health:

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. Earl J. Kolb*, hearing examiner.

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

Mr. Alfred L. Fox, of Los Angeles, Calif., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 25, 1952, issued and

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is

subsequently served its Complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Act.

Subsequent to the issuance of the Complaint in this matter it was suggested that respondent Richard Tille was deceased, and by agreement there was substituted for respondent Richard Tille respondent Reny Tille, both as an individual respondent doing business as International Yogurt Company and as an officer of corporate respondent Yami Yogurt Products, Inc.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the Order consented to, and conditioned upon the Commission's acceptance of the Consent Settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its Findings as to the Facts and Conclusion and Order to Cease and Desist. It is understood that the respondents in consenting to the Commission's entry of said Findings as to the Facts, Conclusion and Order to Cease and Desist specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of the law.

3. Agree that the Consent Settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon and the Order to Cease and Desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Yami Yogurt Products, Inc., is a corporation organized, existing and doing business under and by virtue of the

served herewith, was accepted by the Commission on January 21, 1954 and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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laws of the State of California, with its office and principal place of business located at 8478 Melrose Place, Los Angeles, California.

Respondent Reny Tille is an individual and officer of corporate respondent, Yami Yogurt Products, Inc., and participates in the policies and practices of said corporation.

Respondent Reny Tille also trades and does business under the trade name, International Yogurt Company, whose office is also located at 8478 Melrose Place, Los Angeles, California. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter described.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the selling and distribution of food products as "food" is defined in the Federal Trade Commission Act. The product sold by corporate respondent is known as Yami Yogurt Culture and that sold by Reny Tille as International Yogurt Culture and International Roselle Yogurt Culture. Both of these products are used in making yogurt.

PAR. 3. Respondent Yami Yogurt Products, Inc., receives orders from customers located in the various States of the United States, and has its product shipped to these customers at their various locations in the United States from the Roselle Bacteriological Dairy Institute in La Trappe, Province of Quebec, Canada. Respondent Reny Tille, trading as International Yogurt Company, causes her said food product, when sold, to be transported from her place of business in Los Angeles, California, to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said food products in commerce between and among the various States of the United States. Respondents' volume of business in commerce in said food products is and has been substantial.

PAR. 4. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of advertisements concerning their said food products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and magazines of general circulation, by means of radio continuities and in circulars and leaflets for the purpose of inducing, and which are and were likely to induce, directly or indirectly, the purchase of said food products; and respondents have also disseminated, and are now causing the dissemination of, advertisements concerning their said food products by the aforesaid means for the purpose of inducing, and

which are and were likely to induce, directly or indirectly, the purchase of their said food products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of said advertisements, respondents represented, directly and by implication, that the proteins in yogurt are in predigested form; that proteins and minerals are more rapidly assimilable, and milk nutrients are more easily absorbed by the blood, by reason of being in the form supplied by yogurt; and that the casein and albumin of cow's milk fermented with yogurt culture are transformed into more highly digestible forms. Further, through the use of said advertisements, respondents represented that yogurt promotes digestion and intestinal hygiene, helps to digest other foods, promotes longevity and helps to prevent senility; that its use builds, restores, and insures good health, is effective in preventing typhoid, paratyphoid, diphtheria and dysentery, and is a cure or remedy for constipation, ulcers, gastritis, enteritis, colitis, dyspepsia, diarrhea, dysentery, celiac disease, colon troubles and stomach distress; that it is of benefit in cases of pulmonary diseases, keeps the digestive tract clean, lessens the nausea or stomach sickness associated with pregnancy, results in fine complexions or improves the complexion; that yogurt softens or tenderizes meats; and that through yogurt one may eat himself to health.

PAR. 6. The aforesaid statements and representations 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, the proteins in yogurt are not predigested. The proteins and minerals are not more rapidly assimilable and milk nutrients are not more easily absorbed by the blood, by reason of being in the form supplied by yogurt. The casein and albumin of cow's milk fermented with yogurt cultures are not, because of that treatment made more highly digestible. Yogurt does not promote digestion or intestinal hygiene, does not help to digest other foods. Its use does not promote longevity nor help to prevent senility. It does not build, restore or insure good health. Yogurt is not effective in preventing typhoid, paratyphoid, diphtheria, or dysentery. It is not a cure for constipation, ulcers, gastritis, enteritis, colitis, dyspepsia, diarrhea, dysentery, celiac disease, colon troubles or stomach distress, nor is its use of benefit in cases of pulmonary diseases. Yogurt does not keep the digestive tract clean, nor is it a competent treatment for nausea or stomach sickness associated with pregnancy. The use of yogurt will not in itself result in fine complexion or improve the complexion. The application of yogurt to meats will not soften or tenderize them. The use of yogurt will not enable one to eat himself to good health.

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PAR. 7. The use by respondent of the foregoing false and misleading statements and representations contained in said advertisements 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 said statements and representations are true and into the purchase of said products because of such erroneous and mistaken belief.

PAR. 8. The acts and practices of respondents, as herein found, 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 respondent Yami Yogurt Products, Inc., a corporation, and its officers, and respondent Reny Tille, an individual, trading under the name of International Yogurt Company or under any other name, 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 yogurt cultures do forthwith cease and desist from:

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

- (a) That the proteins in yogurt are in predigested form;
- (b) That proteins or minerals are more rapidly assimilable by reason of being in the form supplied by yogurt;
- (c) That milk nutrients are more easily absorbed by the blood by reason of being in the form supplied by yogurt;
- (d) That the casein or albumin of cow's milk by being fermented with yogurt culture are transformed into more highly digestible forms;
- (e) That yogurt promotes digestion or intestinal hygiene or helps to digest other foods;
- (f) That yogurt promotes longevity or helps prevent senility;
- (g) That yogurt builds, restores or insures good health;
- (h) That Yogurt is effective in preventing typhoid, paratyphoid, diphtheria or dysentery or is a cure or remedy for constipation, ulcers, gastritis, enteritis, colitis, dyspepsia, diarrhea, dysentery, celiac disease, colon troubles or stomach distress;
- (i) That yogurt is of benefit in cases of pulmonary diseases;
- (j) That yogurt keeps the digestive tract clean;

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(k) That yogurt lessens the nausea or "stomach sickness" associated with pregnancy;

(l) That yogurt results in fine complexions or improves the complexion;

(m) That the application of yogurt softens or tenderizes meats;

(n) That one may eat himself to good health by using yogurt.

Provided, however, That nothing herein contained shall be construed as preventing respondents from advertising or otherwise representing that Yami Yogurt is a recommended dietary supplement for individuals suffering from certain intestinal or digestive disturbances.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the Order to Cease and Desist.

Yami Yogurt Products, Inc.

By (sgd) Reny Tille, *Treasurer.*

(sgd) Reny Tille

RENY TILLE, trading as International Yogurt Co.

(Sgd) Alfred L. Fox, *Counsel for Respondents.*

Date: Nov. 20, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this 21st day of January 1954.

IN THE MATTER OF
THE B. F. GOODRICH CO.

Docket 5677. Complaint, July 8, 1949—Decision, Jan. 24, 1954

Charge: Discriminating in price by selling rubber and canvas footwear to some customers at higher prices than to others competitively engaged with the former in the resale of said products, in violation of subsection 2 (a) of the Clayton Act, as amended.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. James I. Rooney and *Mr. James S. Kelaher* for the Commission.

Mr. G. T. Kilmon and *Mr. R. G. Jeter*, of Akron, Ohio, and *Kirkland, Fleming, Green, Martin & Ellis*, of Washington, D. C., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached decision of the hearing examiner shall, on January 24, 1954, become the decision of the Commission.

Commissioner HOWREY not participating.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 8, 1949, issued and subsequently served its complaint in this proceeding upon the respondent The B. F. Goodrich Company charging it with having since June 19, 1936, violated and now violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936. After the filing and service of said complaint respondent answered. Issues joined hearings were thereafter held at which testimony and other evidence in support of the allegations of the complaint and in opposition thereto were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission. The testimony and other evidence offered and admitted were duly filed and recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing upon a motion by counsel for respondent, uncontested by counsel for the complaint, to dismiss the complaint, and the Examiner after a careful review of the entire record finds that this proceeding is not in the interest of the public.

The complaint charges respondent with having since June 19, 1936, violated and "now" violating the provisions of subsection (a) of