

Complaint

IN THE MATTER OF

JOSEPH SALADOFF TRADING AS BONDED THRIFT
STAMP CO. AND CROWN TRADING STAMP CO.CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6201. Complaint, Apr. 8, 1954—Decision, Oct. 3, 1954

Consent order requiring a Philadelphia seller of a sales promotional plan consisting of the sale of trading stamps to retail merchants for distribution to their customers and the redemption of the stamps by him in the form of various articles of merchandise, to cease representing falsely that his business was bonded, that merchants purchasing his plan would be assured of increased business, etc.

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

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

Mr. Harry Arronson and *Mr. Leon Edelson*, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission(having reason to believe that Joseph Saladoff, an individual, trading as Bonded Thrift Stamp Co. and Crown Trading Stamp Co., hereinafter referred to as the respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph Saladoff is an individual, trading and doing business as Bonded Thrift Stamp Co. and Crown Trading Stamp Co. with his office and principal place of business located at 136-138 North Fifth Street in the City of Philadelphia, Pennsylvania.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the sale and distribution of a sales promotion plan which consists of the sale of trading stamps to retail merchants for distribution to their customers and the redemption of the trading stamps by respondent with premiums in the form of various articles of merchandise. In connection with the sales promotion plan respondent furnishes to his customers various advertising folders, booklets and display sheets advertising and explaining the plan.

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Respondent causes and has caused said stamps to be transported from his place of business in the State of Pennsylvania to purchasers thereof at their points of location in the various States of the United States other than Pennsylvania. Respondent also causes and has caused the premiums to be shipped and transported from his place of business in the State of Pennsylvania to the merchant retailers who purchase his sales promotion plan and also in many instances to the customer of said merchant retailer who has accumulated the number of trading stamps listed for said premium; both the merchant retailer and his customers are located in States of the United States other than Pennsylvania.

There is now, and has been for more than two years last past, a course of trade in said stamps and premiums by said respondent in commerce between and among the various States of the United States.

PAR. 3. In connection with and in furthering the sale of his stamps and premiums, respondent has furnished to his salesman for use in soliciting orders a sales contract or order blank in which it is stated:

Business Builder for retail stores

All premiums for filled booklets will be supplied by the company without any additional cost.

BUSINESS INCREASE GUARANTEED

PAR. 4. Through representations made in advertising, contracts, forms, circulars and form letters distributed by respondent, and through oral representations made by his salesman, respondent has represented that his business is bonded or that compliance with the sales contract is assured by a bond; that the sales promotion plan, including the trading stamps and premiums, will assure and can be depended upon to afford an increase in sales on the part of merchants subscribing to or purchasing the same; that he supplies premiums to his customers for display purposes which become their property without cost; and that he will redeem all the stamps delivered by the merchants to their customers and all such premiums will be delivered without additional cost to the merchant or the merchant's customers.

Respondent's agents have also represented to merchants that only a selected few in each trade area will be sold the trade promotion plan including the stamps and premiums.

PAR. 5. The aforesaid representations are false, misleading and deceptive. In truth and in fact, respondent is not bonded nor has any bond been obtained to assure compliance with the terms of the contract or sales agreement between respondent and his merchant customers, nor to assure delivery of the premiums to the customers of the merchant. The use of said promotional plan will not increase the sales

of the merchant customers in many instances. Respondent has in many instances attempted to collect for the premiums supplied to the merchant customer for display purposes or attempted to recover the merchandise. In many instances respondent has failed to deliver the premiums offered for the redemption of the stamps and in other instances has demanded a fee for delivery of the premiums. Respondent does not sell to selected customers but, on the contrary, offers to sell and sells his sales plan to any merchant who will purchase same without regard to geographic location or whether other merchants in the community have purchased the plan.

PAR. 6. Through the use of the word "Bonded" in his trade name, respondent has further falsely represented that he is bonded or under bond to assure compliance with the terms of his sales agreement and to assure delivery of the premiums for which his trading stamps are to be redeemed.

PAR. 7. The use by respondent of the false, misleading and deceptive statements and representations with respect to his trading stamps and promotion plans has had and now has the capacity and tendency to mislead purchasers of said stamps and promotional plans into the erroneous and mistaken belief that such statements and representations are and were true and to induce the purchase of said stamps and promotional plans and to induce members of the public to patronize the dealers who purchase said stamps and promotional plans because of such erroneous and mistaken belief.

PAR. 8. The acts and practices of respondent, as hereinabove set forth, are all to the 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

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 3, 1954, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 8, 1954, issued and subsequently served its complaint upon the respondent, Joseph Saladoff, an individual trading as Bonded Thrift Stamp Co., and Crown Trad-

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ing Stamp Co., whose office and principal place of business is located at Nos. 136-138 North Fifth Street, Philadelphia, Pennsylvania. Respondent is engaged in the sale and distribution of sales promotional plans involving the use of trading stamps, which plans and stamps he sells to retail merchants for their use in promoting sales and, on the basis of the stamps distributed by the retail merchants to customers, awards premiums in the form of various articles of merchandise.

Threafter there was filed with the Federal Trade Commission a stipulation between the parties, dated August 2, 1954, providing for entry against respondent of a consent order, which said stipulation appears of record in this formal proceeding. By the terms thereof the parties agree that the complaint and said stipulation shall constitute the entire record herein, withdrawal of the answer heretofore filed by respondent on May 17, 1954, being moved and hereby granted; that respondent admits all of the jurisdictional allegations set forth in the complaint; that the parties waive hearing before a hearing examiner or the Commission as also the making of findings of fact and conclusions of law by the hearing examiner or by the Commission; that respondent waives the right to file exceptions or to demand oral argument before the Commission as also all further and other procedure before the hearing examiner or the Commission to which, but for the execution and filing of the aforesaid stipulation, the respondent might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission. Said stipulation specifically waives any and all right, power or privilege to challenge or contest the validity of the order hereinafter made and further provides that the complaint forming the basis of this proceeding may be used in construing the terms of the said order which order may be altered, modified or set aside in the manner provided by law for other orders of the Commission where such action is sought.

On the basis of the foregoing, the undersigned Hearing Examiner concludes that this proceeding is in the public interest and, in conformity with the action in said stipulation contemplated and agreed upon, makes the following order:

ORDER

It is ordered that the respondent Joseph Saladoff, an individual now trading as Bonded Thrift Stamp Co., Crown Trading Stamp Co., or under any other name or names, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of

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sales promotional plans, trading stamps or premiums, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That his business is bonded, or that any bond or other assurance has been given to provide compliance with his sales agreement.

(b) That merchants subscribing to or purchasing respondent's sales promotion plan, including trading stamps and premiums, will be assured of increased business.

(c) That premiums which are to become the property of the merchant customer subscribing to or purchasing respondent's plan, will be supplied to his merchant customers for display or other purposes, unless such premiums are in fact so furnished and supplied on such basis, and no attempt is or will be made to collect for or to recover said premiums.

(d) That premiums will be delivered by respondent and without additional cost or charge to the merchant, or the merchant's customers, who send in respondent's stamps for redemption, unless respondent in all instances delivers all premiums, and without imposing or attempting to collect a charge or fee therefor; or misrepresenting in any other manner the terms or conditions under which premiums are to be delivered or supplied by respondent in connection with the redemption of stamps purchased from respondent.

(e) That the sale of respondent's plan or stamps will be restricted to only a few or to a limited number of selected merchants in each trade area, unless such sales thereof are so limited.

2. Using the word "Bonded," or any word or words of similar import or meaning, as a part of a trade name under which respondent does business.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered that the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of October 3, 1954].

IN THE MATTER OF
EDWARD L. MILLEN COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6193. Complaint, Mar. 12, 1954—Decision, Oct. 5, 1954

Order requiring a Brookline, Mass., seller of insecticides designated "Cedar Wall" and "Cedar Wall with DDT" to cease advertising falsely that "Cedar Wall" contained DDT, that the two products repelled moths and carpet beetles and prevented damage to clothes and fabrics and that "Cedar Wall" was fully guaranteed.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Ezekiel Wolf, of Boston, Mass., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 5, 1954, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on March 12, 1954, issued its complaint herein under the Federal Trade Commission Act and thereafter duly served said complaint upon the above-named and styled respondent. This complaint alleges in substance that the respondent for more than one year last past has been engaged in the business of selling and distributing certain products in commerce and has sent certain false and misleading advertising to his dealers for display and distribution to the purchasing public in which respondent claimed concerning his products, designated as "Cedar Wall" and "Cedar Wall With DDT," that when such products were applied to closet walls or to clothes, as the case might be, they would repel moths and other insects and would prevent insect damage to clothes and other fabrics. It is further alleged that during this period respondent has made representations that his said products were either fully or unconditionally guaranteed by him. The foregoing alleged acts, practices and representations

of the respondent, subsequently particularized in the Findings of Fact herein, if true, were and are unfair methods of competition and unfair and deceptive acts and practices in commerce and constitute violations of Section 5 (a) of the Federal Trade Commission Act, as amended, 52 Stat. 111-112; 15 U. S. C. A., Sec. 45 (a).¹ Use of the words "guarantee" and "guaranteed" in advertising, without clear and unequivocal disclosure of the actual security afforded to the buyer has been repeatedly prohibited by the Commission and such rulings have been sustained by the courts. The numerous cases are digested in C. C. H. Trade Regulation Reports, 10th Ed., Par. 5099.30.

On August 9, 1954, the respondent in due course filed his answer, denominated as his "Admission," which admits all the material allegations of the complaint and further, without any reservation, waives all intervening procedures in further proceedings as to the said facts alleged in the complaint.

The undersigned Hearing Examiner on August 15, 1954, was duly designated by the Commission to hear this proceeding and perform other duties herein according to law, in the place and stead of Frank Hier, the Hearing Examiner theretofore appointed by the Commission for such purposes.

Upon the whole record the Hearing Examiner finds that the respondent has been fully afforded due process of law in all particulars and that by his said answer the respondent has elected not to contest the facts but to submit this matter for decision upon the pleadings by waiving hearing and all other intervening procedures, as fully provided for in Rule VIII of the current Rules of Practice of the Commission, effective August 3, 1951, of which respondent had due legal notice as well as specific notice in the complaint itself of the effect of his answer prior to the filing thereof.²

¹ Misrepresentation of the effectiveness of insecticides has been repeatedly found to be unlawful and ordered discontinued by the Commission. The cases are digested in C. C. H. Trade Regulation Reports, 10th Ed., Par. 5081.358. See *Gulf Oil Corporation v. F. T. C.*, (C. C. A. 5, 1945), 150 F. 2d 106, 1944-1945 Trade Cases, Par. 57, 382, affirming 38 F. T. C. 242 (1944).

² Rule VIII (a) insofar as pertinent here provides:

"If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or law * * * and the right to appeal * * *."

And Rule VIII (c) provides:

"Admission in the answer * * * of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission the * * * (hearing) examiner and the Commission shall be deemed authorized, without further notice to

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Therefore the undersigned Hearing Examiner now finds that this proceeding is substantially in the public interest, and upon the whole record, including the material facts alleged in the complaint, all of which are admitted in the answer, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent Edward L. Millen is an individual doing business as Edward L. Millen Company with his office and principal place of business located at Brookline, Massachusetts.

2. Respondent is now and for more than one year last past has been engaged in the business of offering for sale, selling and distributing a product designated "Cedar-Wall" and a product designated "Cedar Wall With DDT." The formulas and directions for use of these products are as follows:

Formulas:

Cedar Wall—Active: Cedar Wood Oil	3½%
Inert: Genuine Ground Red Cedar Wood, Cement and Plastic Binders	96½%
Cedar Wall with DDT	
Active: Cedar Wood Oil	3½%
Dichloro Diphenyl Trichlorethane	2%
Inert: Genuine Ground Red Cedar Wood, Cement and Plastic Binders	94½%

Directions:

Cedar Wall: (for brush application) to a 5 lb. bag add 3 to 3½ qts. of water in a clean pail. To a 10 lb. bag add 6 to 7 qts. of water in a clean pail. Stir to uniform consistency of heavy whipped cream. Allow to stand for ten minutes before applying. For application with a trowel use less water and mix to trowel consistency. APPLICATION—Clean closet thoroughly and spread old newspapers on the floor. Use a 2½ to 3 inch flat paint brush. Scoop up a quantity of Cedar-Wall on the side of the brush and daub on to surface to the thickness of a penny (about ⅛ inch). Don't apply any thinner coat and not too thick in the corners.

respondent, to find the facts, to draw conclusions therefrom, and to enter an appropriate order." (Parenthetical word after omission accords to present official title.)

The Commission's earlier rule to like effect was sustained in *Hill, et al., v. F. T. C.*, (C. C. A. 5, 1941), 124 F. 2d 104, 106, wherein it was held that an order of the Commission based upon pleaded and admitted facts was valid without a hearing and the presentation of evidence. The Court said that even without the Commission's rule:

"* * * it is fundamental that judicial admissions are proof possessing the highest possible probative value. Indeed, facts judicially admitted are facts established not only beyond the need of evidence to prove them, but beyond the power of evidence to controvert them. A fact admitted by answer is no longer a fact in issue."

Cedar-coat the entire inside of closet but not the floor, doors or wood trim. Clean up floor and wood trim with a wet rag or sponge. Brush and pail can be cleaned easily with water.

Cedar-Wall with DDT: Same as above but add: Closet walls should be lightly sprayed once a year with 5% DDT solution. Clothes should be sprayed with an approved insecticide spray, being careful to treat all seams and folds of garments before storage.

Respondent causes his products when sold to be transported from within the Commonwealth of Massachusetts to purchasers thereof, located in various other States of the United States and maintains and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States. His volume of trade in such commerce has been and is substantial.

3. Respondent is now, and at all times hereinafter mentioned has been, in substantial competition with other individuals and with corporations, partnerships and firms engaged in the sale in commerce of insecticides.

4. In the course and conduct of his business and for the purpose of inducing the purchase of his said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent in circulars, pamphlets and banners, sent by him to dealers for display and distribution to the purchasing public, has made certain claims with respect to his said products. Among and typical, but not all inclusive, of such claims are the following:

CEDAR WALL your closet with a Brush!

Repels Moths—Contains DDT.

CEDAR WALL with DDT repels and resists *moths* and carpet beetles. It is *moth-repellant* and will prevent *moth* damage to clothes and fabrics. It has been laboratory tested.

Just Brush On Moth-Repellant CEDAR WALL.

Fragrant enduring—contains DDT.

CEDAR WALL with DDT repels MOTHS. When applied to walls CEDAR WALL prevents MOTH damage.

Its FULLY GUARANTEED.

5. Through the use of the statements and representations herein-above set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, as follows:

(a) That the product designated "CEDAR WALL" contains DDT.

(b) That the products designated "CEDAR WALL" and "CEDAR WALL with DDT" repel moths and prevent damage by moths.

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(c) That "CEDAR WALL with DDT" repels carpet beetles, resists moths and carpet beetles and prevents damage to clothes and fabrics by moths.

(d) That "CEDAR WALL" is fully or unconditionally guaranteed.

6. The aforesaid statements and representations used and disseminated by respondent as hereinabove set forth, are false, misleading and deceptive. In truth and in fact:

(a) Respondent's product designated "CEDAR WALL" does not contain DDT.

(b) Respondent's products designated "CEDAR WALL" and "CEDAR WALL with DDT" will not repel moths or prevent damage by moths.

(c) "CEDAR WALL with DDT" will not repel carpet beetles, resist moths or carpet beetles nor will it prevent damage to clothes or fabrics by moths.

(d) The "guarantee" furnished by respondent does not in any manner relate to the effectiveness of "CEDAR WALL" as an insecticide. The guarantee furnished by respondent is only against cracking when penetrated by a nail or screw.

7. The use by respondent of the foregoing false, misleading and deceptive statements and representations, and others similar thereto, has the tendency and capacity to mislead a substantial portion of the purchasing public into erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said products. As a direct result of the practices of respondent, as aforesaid, substantial trade in commerce is and has been diverted to respondent from his said competitors and injury has been and is done to competition in commerce between and among the various States of the United States.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent herein.

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

ORDER

It is ordered that Edward L. Millen, an individual doing business as Edward L. Millen Company, or doing business under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the products designated "CEDAR WALL" and "CEDAR WALL with DDT" or any other product or products of substantially similar composition or possessing substantially similar properties, whether sold under these names or under any other name or names, forthwith cease and desist from representing directly or by implication:

- (1) That the product designated "CEDAR WALL" contains DDT.
- (2) That said products repel moths or prevent damage by moths.
- (3) That the product designated "CEDAR WALL with DDT" repels carpet beetles, resists moths or carpet beetles or prevents damage to clothes or fabrics by moths.
- (4) That "CEDAR WALL" is fully guaranteed unless such guarantee is unconditional, or that said product is guaranteed in any way unless the terms and conditions of the actual guarantee are disclosed in immediate conjunction therewith.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered that the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of October 5, 1954].

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IN THE MATTER OF
FRED SCHAMBACH

MODIFIED CEASE AND DESIST ORDER

Docket 5405. Order, Oct. 11, 1954

Order modifying, in accordance with orders of CA-DC, subparagraph "1" of the Commission's order of September 30, 1952,¹ so that it forbid Schambach to sell or distribute in commerce, lottery devices "which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme".

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

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

Nash & Donnelly, of Washington, D. C., for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence, and the recommended decision of the hearing examiner; and the Commission having made its findings as to the facts, concluded that respondent had violated the provisions of the Federal Trade Commission Act, and on September 30, 1952, issued an order to cease and desist against said respondent and his agents, representatives and employees; and

Respondent thereafter having filed in the United States Court of Appeals for the District of Columbia Circuit his petition to review and set aside said order to cease and desist; and that Court having considered the cause, on September 15, 1953, and October 9, 1953, and entered orders modifying said Commission order and affirming and enforcing the Commission's order as so modified; and

The Commission being of the opinion that subparagraph number "1" of its order and the preamble, insofar as applicable thereto, should be modified so as to accord with the judgment of the United States Court of Appeals for the District of Columbia Circuit, the same is hereby modified to read as follows:

It is ordered that respondent, Fred Schambach, his agents, representatives and employees, directly or through any corporate or any other device, do forthwith cease and desist from:

¹The original order had prohibited Schambach from supplying to others push cards or other lottery devices "which * * * are to be used, or which, due to their design, are suitable for use in the sale or distribution of * * * merchandise to the public." 49 F. T. C. 248, 255.