

Complaint

51 F. T. C.

IN THE MATTER OF
FOSTER-MILBURN COMPANY AND STREET & FINNEY,
INC.

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

Docket 5937. Complaint, Nov. 20, 1951—Decision, Mar. 25, 1955

Consent order requiring a corporation in Buffalo, N. Y., and its advertising agency, to cease advertising falsely that the drug preparation "Doan's Pills" constituted a cure or remedy for diseases and disorders of the kidneys and bladder and would relieve symptoms thereof.

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

Mr. William L. Pencke and *Mr. Joseph Callaway* for the Commission.

Denning & Wohlstetter, of Washington, D. C., and *Ballantine, Bushby, Palmer & Wood*, of New York City, 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 Foster-Milburn Company, a corporation, and Street & Finney, Inc., a corporation, hereinafter referred to as respondents, have 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 Foster-Milburn Company is a corporation organized under the laws of the State of New York and having its office and principal place of business in Buffalo, New York.

PAR. 2. Said respondent is now and has been for more than five years last past engaged in the business of selling and distributing a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said preparation, the formula, and directions for use thereof are as follows:

Formula:

Designation: Doan's Pills	Per pill
Theobromine—sodium salicylate.....	1. 0 grains
Buchu.....	
Uva Ursi.....	Not more than
Extractives of Buchu.....	2. 56 grains
Extractives of Uva Ursi.....	
Vitamin A.....	505 USP units
Volatile Oil (buchu by odor).....	0. 015 minims
Carbohydrates (sugars and starch).....	2. 52 grains

Directions for Use:

Before each meal and at bed time take 3 pills followed by a full glass of water. Children 4 or 6 pills daily.

The said respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in its said preparation in commerce between and among the various States of the United States. Said course of trade has been and is substantial.

PAR. 3. Street & Finney, Inc., is a corporation organized, existing and doing business under the laws of New York, with its office and principal place of business at 330 W. 42nd Street in the city and State of New York.

Said respondent is now and has been for more than five years last past engaged in the business of conducting an advertising agency, preparing, disseminating and causing to be disseminated advertisements for vendors of various commodities, including the preparation "Doan's Pills" of respondent Foster-Milburn Company.

PAR. 4. Said respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of said medicinal preparation, said respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning said preparation, Doan's Pills, 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 are likely to induce, directly or indirectly, the purchase of said preparation, including, but not limited to the Miami Herald, Miami, Florida, the Washington Daily News, and Photoplay; and respondents have disseminated and caused the dissemination of advertisements concerning said preparation by various means, including, but not limited to, the advertisements referred to above, for the purpose

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of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Among the statements and representations contained in said advertising disseminated as aforesaid, (and especially in the Miami Herald, a newspaper published in Miami, Florida, on June 18, 1948), are the following:

Advertisement in the Miami Herald, Miami, Florida, June 18, 1948:

Backache Leg Pains May Be Danger Sign Of Tired Kidneys

If backache and leg pains are making you miserable, don't just complain and do nothing about them. Nature may be warning you that your kidneys need attention.

The kidneys are Nature's chief way of taking excess acids and poisonous waste out of the blood. They help most people pass about 3 pints a day.

If the 15 miles of kidney tubes and filters don't work well, poisonous waste matter stays in the blood. These poisons may start nagging backaches, rheumatic pains, leg pains, loss of pep and energy, getting up nights, swelling, puffiness under the eyes, headaches and dizziness. Frequent or scanty passages with smarting and burning sometimes shows there is something wrong with your kidneys or bladder.

Don't wait! Ask your druggist for Doan's Pills, used successfully by millions for over 40 years. They give happy relief and will help the 15 miles of kidney tubes flush out poisonous waste from the blood. Get Doan's Pills.

Advertisement in Washington Daily News, November 7, 1950:

Happy Is The Day When Backache Goes Away

As we get older, stress and strain, overexertion, excessive smoking or exposure to cold sometimes slows down kidney function. This may lead many folks to complain of nagging backache, loss of pep and energy, headaches, and dizziness. Getting up nights or frequent passages may result from minor bladder irritations due to cold, dampness or dietary indiscretions.

If your discomforts are due to these causes, don't wait, try Doan's Pills, a mild diuretic. Used successfully by millions for over 50 years. While these symptoms may often otherwise occur, it's amazing how many times Doan's gives happy relief—help the 15 miles of kidney tubes and filters flush out waste. Get Doan's Pills today!

Advertisement in the magazine "Photoplay" of May 1951.

Happy is the Day When Backache Goes Away * * *

When kidney function slows down, many folks complain of nagging backache, loss of pep and energy, headaches and dizziness. Don't suffer longer with these discomforts if reduced kidney function is getting you down—due to such common causes as stress and strain, over-exertion or exposure to cold. Minor bladder irritations due to cold or wrong diet may cause getting up nights or frequent passages.

Don't neglect your kidneys if these conditions bother you. Try Doan's Pills—a mild diuretic. Used successfully by millions for over 50 years. While often otherwise caused, it's amazing how many times Doan's gives happy relief from

these discomforts—help the 15 miles of kidney tubes and filters flush out waste. Get Doan's Pills today.

PAR. 7. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represent as follows:

A. That the use of Doan's Pills, as directed, is a cure or remedy for diseases, disorders and dysfunction of the kidneys and will relieve the symptoms and conditions arising by reason thereof, among them being backache, leg pains, rheumatic pains, headaches, dizziness, loss of pep and energy, swelling, puffiness under the eyes, frequent or scanty passages with smarting and burning, and getting up nights.

B. That poisonous waste matter and excess acids in the blood cause the symptoms and conditions enumerated in Paragraph A above and that the use of Doan's Pills, as directed, will remove or cause the kidneys to remove such poisonous waste matter and excess acids and thereby relieve said symptoms and conditions.

C. That the process of aging, stress and strain, over-exertion, excessive smoking and exposure to cold or dampness slows down kidney function, resulting in backaches, headaches, dizziness, loss of pep and energy, and that the taking of Doan's Pills, as directed, will relieve such resultant symptoms and conditions.

D. That the use of Doan's Pills, as directed, is a cure or remedy for diseases and disorders of the bladder and will relieve the symptoms and conditions resulting therefrom, among them being getting up nights and frequent or scanty passages with smarting or burning.

PAR. 8. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of Doan's Pills, as directed or otherwise, is not a cure or remedy for nor will they have any therapeutic value in the treatment of any disease, disorder or dysfunction of the kidneys or bladder and will not relieve or have any beneficial effect upon any symptom or condition which may arise by reason of any disease, disorder or dysfunction of such organs. The use of said pills, as directed or otherwise, will not remove, or cause the kidneys to remove, poisonous waste matter or excess acids from the blood or have any beneficial effect upon any symptom which may result therefrom.

PAR. 9. The use by the respondents of the said advertisements containing materially misleading statements and representations has had, and now has, the tendency and capacity to mislead a substantial number of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce the

purchase of substantial quantities of respondent Foster-Milburn's preparation by reason of said erroneous and mistaken belief.

PAR. 10. 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.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the therapeutic qualities of Doan's Pills, a preparation containing drugs as "drug" is defined in the Act.

Respondent Foster-Milburn Company is a corporation organized under and existing by virtue of the laws of the State of New York, with its office and principal place of business located at 468 Dewitt Street, Buffalo, New York. It sells and distributes the Doan's Pills preparation in commerce throughout the entire United States.

Respondent Street & Finney, Inc., is also a New York corporation, with its office and principal place of business at 76 Ninth Avenue in the city of New York, New York. It is engaged in the advertising business and, in conjunction therewith, has prepared and disseminated throughout the United States advertisements for various commodities, including the preparation Doan's Pills.

Following issuance of the complaint and the filing of an answer thereto, numerous hearings were held. "Testimony adduced at said hearings has included that of certain experts called by counsel supporting the complaint and that of certain experts called by respondents, and other evidence has been taken, all as contained in the record herein consisting of one volume of pleadings, five volumes of testimony and seventeen volumes of exhibits."¹ Reception of further evidence was deferred in order to permit negotiations looking to the possibility of a consent settlement.

These negotiations have been completed and a consent settlement was agreed upon, which was submitted in the form of a Stipulation For A Consent Order. This is signed by both corporate respondents, by counsel for respondents and by counsel supporting the complaint, and is approved by the Director and the Assistant Director of the Commission's Bureau of Litigation. A memorandum of transmittal urging acceptance of this consent settlement is signed by counsel supporting the complaint and approved by the Director and Assistant

¹ Stipulation For Consent Order, paragraph 5, page 2.

Director of the Commission's Bureau of Litigation, the Chief of the Division of Scientific Opinions, Bureau of Investigation of the Commission, and by counsel for respondents. Thereafter, an amendment to the Stipulation For A Consent Order was agreed upon and submitted. The entire agreement of the parties is embodied in the stipulation as amended.

The stipulation, as amended, provides, among other things, that respondents admit all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the answer to the complaint heretofore filed by respondents shall be withdrawn; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulation is "for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint nor does it constitute a license or permission to respondents or either of them to represent either directly or indirectly that the Federal Trade Commission has approved any advertising heretofore used or proposed to be used"; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties waive further hearings before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the rules of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The other essential provisions of the agreement are embodied in five numbered paragraphs (6 to 10, inclusive) of the stipulation, which are as follows:

6. Each Doan's Pill at the time the complaint herein was issued and at present contains:

Theobromine Sodium Salicylate (of which the sodium salicylate component is .42 grain).....	1.0 grain
Extract of Buchu.....	0.5 grain

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Extract of Uva Ursi..... 1.5 grains
 Vitamin A..... 500 USP units

7. The Respondents, in their recommendations for use, direct that the product be taken at the rate of three pills four times a day with a glass of water. The product, taken as so directed, provides a daily dosage of 12 grains of theobromine sodium salicylate (of which the sodium salicylate component is approximately 5 grains), 6 grains of extract of buchu, 18 grains of extract of uva ursi and 6,000 USP units of Vitamin A.

8. The challenge of the therapeutic value of the product, set forth in the complaint, goes to the product whether taken as directed or otherwise. The record herein shows differences of opinion among the expert witnesses who testified with regard, among other things, to (a) the relationship between kidney function and bladder irritation and factors and symptoms mentioned in the advertisements quoted in the complaint herein and in the circular packaged with the product; and (b) the therapeutic actions and effectiveness of the product.

9. It is stipulated and agreed that the requirements of the public interest will best be served and all of the issues in this proceeding disposed of by the entry of an Order in the form set out in paragraph numbered 13 below,² in conjunction with an agreement by the Respondents, which they hereby make, as follows:

The theobromine sodium salicylate content and the sodium salicylate content of each pill will be increased and the directions for use changed so that Doan's Pills, when taken as directed, will provide a daily dosage of not less than 30 grains of theobromine sodium salicylate, as compared with the present 12 grains, and a total daily dosage of not less than 30 grains of sodium salicylate (including the sodium salicylate content in the theobromine sodium salicylate) as compared with the present 5 grains.

10. The Respondents contemplate that upon the increase of the theobromine sodium salicylate and sodium salicylate provided for above, the additional ingredients of Doan's Pills (other than coating and filler) will be extract of buchu, extract of uva ursi and Vitamin A.

The fact that evidence has been presented in this proceeding does not militate against approval and acceptance of the stipulation as amended. The order agreed upon covers all the issues raised in the complaint. Accordingly, respondents' answer herein is withdrawn, and the stipulation, as amended, is accepted. Based upon the complaint and the stipulation as amended, this proceeding is found to be in the public interest, and the following order is issued:

It is ordered, That Respondents Foster-Milburn Company, a corporation, and Street & Finney, Inc., a corporation, and their respective officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of Doan's Pills or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

² The order hereinafter adopted and issued is taken in full from paragraph 13 of the stipulation as amended.

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 through inference:

(a) That said product, used as directed or otherwise, is a cure or remedy for or will have any therapeutic value in the treatment of any disease, disorder or dysfunction of the kidneys or bladder or that it will relieve or have any beneficial effect upon any symptom or condition which may arise by reason of any disease, disorder or dysfunction of such organs.

(b) That said product, used as directed or otherwise, will remove, or cause the kidneys to remove, poisonous waste matter or excess acids from the blood or have any beneficial effect upon any symptom or condition which may result therefrom.

2. Disseminating or causing to be disseminated 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 product, which contains any of the representations prohibited in Paragraph 1 hereof.

Provided, however, That nothing in this order contained or provided shall be construed as prohibiting Respondents or either of them from disseminating or causing to be disseminated in commerce, as "commerce" is defined in the Federal Trade Commission Act, any and all claims and representations of the character set forth below, when made with respect to a product (whether sold under the name of Doan's Pills or under any other name) constituted and recommended for use as provided in Paragraphs 9 and 10 of the stipulation by which Respondents have agreed that the Order, of which this proviso is a part, may be entered in the disposition of this proceeding. The claims and representations referred to above are as follows:

"Factors often present in our daily lives such as over-exertion, the stresses and strains of active life and emotional upsets may be accompanied by such discomforts as backache, headache, dizziness and muscular aches and pains. Also factors such as dietary indiscretions may contribute to mild bladder irritations.

"When taken for the conditions described above Doan's Pills often help relieve such discomforts by their analgesic action, by a soothing effect to allay bladder irritation and by their mild diuretic action."

DECISION OF COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon the hearing examiner's initial decision herein filed January 10, 1955, accepting a

stipulation for a consent cease and desist order theretofore submitted by the parties pursuant to Rule V of the Commission's Rules of Practice; and

The Commission, by order entered February 18, 1955, having extended until further order of the Commission the date on which said initial decision would otherwise become the Commission's decision under Rule XXII; and

The Commission having now determined that the initial decision is adequate and appropriate to disposed of this proceeding:

It is ordered, That the aforesaid initial decision shall, on March 25, 1955, become the decision of the Commission, it being understood, however, that the proviso contained in the order to cease and desist shall not be construed as an approval, express or implied, by the Commission of any of the claims or representations therein referred to, or of any other claims or representations, when made with respect to any product, whether constituted and recommended for use as provided in paragraphs 9 and 10 of the stipulation by which respondents agreed that the order of which said proviso was a part may be entered in disposition of this proceeding, or otherwise.

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 contained in said initial decision.

Decision

IN THE MATTER OF
PHILIP MORRIS & COMPANY, LTD., INC.

Docket 4794. Complaint, Aug. 5, 1942—Decision, Mar. 27, 1955

Order dismissing complaint charging false advertising of cigarettes, on the ground that it was not in the public interest to proceed further on advertising claims which had been abandoned, and particularly in view of abandonment of the use of hygroscopic agent which was the basis for the advertising.

Mr. Frederick J. McManus and *Mr. Daniel J. Murphy* for the Commission.

Lee, Toomey & Kent, of Washington, D. C., and *Pennie, Edmonds, Morton, Barrows & Taylor* and *Conboy, Hewitt, O'Brien & Boardman*, of New York City, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the Hearing Examiner upon motion of respondent to dismiss this proceeding without prejudice, affidavit in support thereof, and answer to respondent's motion filed by counsel in support of the complaint.

On December 29, 1952, the Commission issued its order to cease and desist¹ in this proceeding from which an appeal was taken to the United States Court of Appeals for the District of Columbia. Thereafter, on motion of the Commission, the United States Court of Appeals on August 28, 1953,² entered its order vacating the order to cease and desist issued by the Commission and remanded the petition for review to the Federal Trade Commission for reconsideration and such disposition as public interest, the facts and the law may warrant. Thereafter, on May 19, 1954, the Commission issued its order that this proceeding be reopened and remanded to the Hearing Examiner for the receipt of such further testimony and evidence as may be offered in support of and in opposition to the allegations of the complaint, which order was modified on November 26, 1954, by adding thereto that the Hearing Examiner should receive such further testimony and other proper evidence as may be offered as to the continuing public interest or lack of it in this proceeding. Prior to the taking of any testimony by the Hearing Examiner under the order of the Commission remanding this proceeding, the respondent filed its motion to dismiss without prejudice and affidavit in support thereof.

¹ 49 F. T. C. 703, 732.

² 5 S. & D. 790.

In his affidavit in support of said motion, O. Parker McComas, President of Philip Morris & Company, Ltd., Inc., stated: that the respondent had abandoned its advertising that the smoke from its "Philip Morris" brand of cigarettes is less irritating to the throat than the smoke from cigarettes of other leading brands; that said respondent had abandoned the use of the hygroscopic agent which was the basis for said advertising; and that the respondent had abandoned any advertising representing that the smoke from its said cigarettes will not leave an after taste. It was further stated in said affidavit that it is not the intention of the respondent to resume said advertising or the use of said hygroscopic agent. In its answer to respondent's motion and affidavit, counsel in support of the complaint stated, that on the basis of the facts regarding abandonment of the questioned advertising and the use of the hygroscopic agent and the intention not to resume such advertising or the use of the former hygroscopic agent, that no objection is offered to respondent's motion to dismiss the complaint without prejudice.

The Hearing Examiner, having considered said motion and affidavit in support thereof, the answer of counsel in support of the complaint thereto, and the record herein, and being now duly advised in the premises, is of the opinion that it is not in the public interest to proceed further on advertising claims which have been abandoned, particularly in view of the change of the composition of the cigarettes so far as the hygroscopic agent is concerned and the expressed intention of the respondent not to resume said advertising.

It is therefore ordered, That the complaint herein be, and the same is hereby, dismissed without prejudice.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on March 27, 1955, become the decision of the Commission.

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IN THE MATTER OF
NEW YORK COFFEE AND SUGAR EXCHANGE, INC.,
ET AL.

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

Docket 6235. Complaint, Oct. 7, 1954—Decision, Apr. 1, 1955

Consent order requiring the Coffee Exchange, the Coffee Clearing Association and their officials, to cease using restrictive contracts for trading in coffee for future delivery—specifically the “S” contract specifying Santos as the only Brazilian point of origin of coffee for futures trading in the United States, modified to include three other Brazilian ports, coffee from which was deliverable only at fixed penalties under values for Santos coffee—and to permit trading in all types of coffee in general use in this country.

Before *Mr. William L. Pack*, hearing examiner.

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

Van Vorst, Siegel & Smith, of New York City, for New York Coffee and Sugar Clearing Ass'n, Inc. and along with—

Covington & Burling, of Washington, D. C., for New York Coffee and Sugar Exchange, Inc. and certain members thereof.

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 the parties herein—after referred to as respondents have violated the provisions of Section 5 of the Federal Trade Commission 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 this respect as follows:

PARAGRAPH 1. Respondent, New York Coffee and Sugar Exchange, Inc., hereinafter referred to as “Respondent Exchange,” was incorporated as the “Coffee Exchange of the City of New York” under a special act of the New York State Legislature on June 2, 1855. The only important change in the corporate setup of the Respondent Exchange since its organization occurred in 1916 when its scope was extended to include sugar and its name was changed to that which it now has. It is a non-stock membership corporation with its office and principal place of business being located in the city of New York, New York.

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Respondent New York Coffee and Sugar Clearing Association, Inc., hereinafter referred to as "Respondent Association," is a stock corporation organized and doing business under the laws of the State of New York with its office and principal place of business being located in New York City, New York.

Respondent Gustavo Lobo, Jr., is President of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Lobo & Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 99 Wall Street, New York 5, New York.

Respondent Leon Israel, Jr., is Vice President of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Leon Israel & Bros., which is a clearing member of Respondent Association. His office and principal place of business is located at 101 Front Street, New York 5, New York.

Respondent William F. Prescott is Treasurer of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers, and likewise is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Farr & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 120 Wall Street, New York 5, New York.

Respondent G. W. Knauth is Secretary of the Respondent Exchange for the year 1954, as well as a member of its Board of Managers; he is a stockholder in Respondent Association and is affiliated with the New York Sugar Refining Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 100 Wall Street, New York 5, New York.

Respondent Jack R. Aron is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with J. Aron & Co., Inc., which is a clearing member of Respondent Association. His office and principal place of business is located 336 Magazine Street, New Orleans, Louisiana.

Respondent Louis Blumberg is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with J. Aron & Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 91 Wall Street, New York, New York.

Respondent Alfred Boedtke is a member of the Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Volkart Brothers Company, which is a clearing member of Respondent Association. His office and principal place of business is located at 60 Beaver Street, New York 4, New York.

Respondent Adrian C. Israel is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with A. C. Israel & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 95 Front Street, New York 5, New York.

Respondent Chandler A. Mackey is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with C. A. Mackey & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 111 Wall Street, New York 5, New York.

Respondent Phillips R. Nelson is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with Ruffner, Burch & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 98 Front Street, New York 5, New York.

Respondent S. A. Schonbrunn is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with S. A. Schonbrunn & Co., which is a clearing member of Respondent Association. His office and principal place of business is located at 77 Water Street, New York 5, New York.

Respondent Gustav Wedell is a member of Respondent Exchange; he is a stockholder in Respondent Association and is affiliated with The East Asiatic Co., Inc., which is a clearing member of Respondent Association. His office and principal place of business is located at 103 Front Street, New York 5, New York.

The aforesaid respondents, Jack R. Aron, Louis Blumberg, Alfred Boedtke, Adrian C. Israel, Chandler A. Mackey, Phillips R. Nelson, S. A. Schonbrunn, and Gustav Wedell, individually as members and also as representatives of other members of New York Coffee and Sugar Exchange, Inc., do not constitute the entire membership of the Respondent Exchange which is approximately 314 with the number and membership of Respondent Exchange varying from year to year so that it is impracticable to specify here by name each and all of the present members of the Respondent Exchange without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding the aforementioned individuals, both individually as members and as representatives of the entire member-

ship of said respondent, and all such members as a group are therefore made respondents herein and hereinafter are referred to as "respondent members."

PAR. 2. The purposes of the Respondent Exchange, as set forth in its charter, are:

1. To provide, regulate and maintain a suitable building, or rooms, for the purchase and sale of coffee and other similar articles in the city of New York.
2. To adjust controversies between its members.
3. To inculcate and establish just and equitable principles in trade.
4. To establish and maintain uniformity in its rules, regulations, and usage.
5. To adopt standards of classifications.
6. To acquire, preserve, and disseminate useful and valuable information, and generally,
7. To promote the coffee and sugar trades in the city of New York, to increase their amounts and to augment the facilities with which they may be conducted.

The government of the Respondent Exchange is vested in a Board of Managers, consisting of three officers, the president, vice president and treasurer, and twelve members divided into two classes of six members each, with one class automatically retiring each year. This board combines in one body all of the executive management, legislative, regulative and quasi-judicial functions exercised by the Respondent Exchange in its daily operations. The by-laws of the Respondent Exchange provide that the president of the Respondent Exchange shall, subject to the approval of the Board of Managers, appoint approximately twenty standing committees.

Among these is a committee on coffee which consists of five members, at least one of whom, the chairman, must be a member of the Board of Managers; and two members must be identified with the Mild Coffee Trade. This committee considers, reports and recommends to the Board of Managers, for its action, such matters pertaining to coffee as they consider advisable and beneficial to the interests of the Respondent Exchange.

The by-laws of the Respondent Exchange provide that "no contract for the future delivery of Coffee shall be recognized, acknowledged or enforced by the Exchange or any Committee or Officer thereof, unless both parties thereto shall be members of the New York Coffee and Sugar Exchange, Inc., provided, however, that members shall

offer their contracts for clearance to the New York Coffee and Sugar Clearing Association, Inc., which shall become by substitution a party thereto in place of a member, and, thereupon, such Association shall become subject to the obligations thereof and entitled to all the rights and privileges of a member in holding, fulfilling or disposing thereof."

The by-laws of the Respondent Exchange further specifically provide that all contracts for the future delivery of coffee shall be in a form set forth in said by-laws.

The by-laws of Respondent Exchange cannot be altered or amended unless same has been approved by a two-thirds vote of the Board of Managers present and voting, and ratified by a majority vote of the respondent members voting by ballot, at an election held for that purpose, of which proper notice has been given.

PAR. 3. The purpose of the Respondent Association, with respect to coffee, is the purchase and sale of coffee for future delivery and the acquisition by purchase or otherwise of contracts, made in accordance with the by-laws, rules and regulations of the Respondent Exchange "for the purchase or sale of Coffee * * * for future delivery, and the assumption of the obligations arising thereunder; the settling, adjusting and clearing for compensation of such contracts; the buying, selling, receiving, carrying, storing and delivering of Coffee * * * but only in connection with the foregoing purchases."

PAR. 4. Respondent Association has less than 100 stockholders, each of whom is a member of respondent Exchange. Each of said stockholders individually, or the firm or corporation with which he is affiliated, is known as a "clearing member" of Respondent Association. Respondent members enter into contracts with each other for the future delivery of coffee in accordance with the by-laws, rules and regulations of the Respondent Exchange, and in so doing avail themselves of the facilities and services furnished by said Respondent Exchange. Such contracts, thus entered into by respondent members, are cleared through the Respondent Association by its clearing members of the Respondent Association, with the result that the Respondent Association assumes the obligations of the respondent members of the Respondent Exchange under such contracts.

Such contracts for the future delivery of coffee are entered into by respondent members for their own account or for the account of others who either have an interest in coffee or are speculating. Such contracts provide for the purchase and sale of a specified amount of green coffee of certain grades and qualities at a certain price for delivery at a certain place within a certain month in the future.

Such contracts for future delivery on Respondent Exchange ordinarily are not actually performed by making or taking delivery of the coffees specified therein but are offset by other contracts which assume a contrary obligation.

PAR. 5. "Transactions in futures," as exemplified in the buying and selling of coffee for future delivery by the respondent members on the Respondent Exchange and Respondent Association, are affected with a national public interest. The prices for the coffee involved in such futures contracts are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the actual prices to the producers and consumers of coffee. There is a direct relationship existing between the prices specified in a contract for delivery of coffee at a future date and the "spot" price of that same coffee on this date.

In order for the respondent members to be enabled successfully to offset their obligations to sell and purchase under futures contracts, that is, in order to "hedge," the "spot" prices must be based upon the future market. As a result, those who purchase and sell coffee on the "spot" market continually turn to the prices determined in the Respondent Exchange for future deliveries of coffee.

PAR. 6. Coffee consists of some two dozen species or growths and is grown in many countries of Central and South America and Africa. Brazil, the largest producer, accounts for about 47% of the world's supply of coffee. None is produced in the continental United States. The American trade deals almost exclusively in coffee which is grown in the Western Hemisphere. The trade makes a broad distinction between coffees produced in Brazil, which are described as "Brazils" and all the others, which are described as "milds."

Furthermore, Brazilian coffees are classified into several growths, which, broadly speaking, bear the names of the ports in Brazil through which, for the most part, they are exported, one of which, for example, is Santos.

There is also a variation among the "milds." They typically bring a better price than Brazils. Colombian, other Central and South American coffees, some Arabian and some African coffees are the principal "milds."

A beverage may be made from any one coffee but the product usually sold commercially to consumers is a blend. While the composition of any given blend ordinarily is a trade secret, it is known that the standard brands of good coffee in the United States are a blend of 15 to 40 percent of mild Columbian and Central American coffees with the balance being of Brazilian coffees.

The United States is the largest coffee consumer in the world, taking approximately 65% of the world's exportable production. In 1953 this country imported 2.78 billion pounds of coffee valued at almost one and a half billion dollars. Fifty percent of the total coffee imported into the United States is from Brazil. About forty percent of all imports from Brazil (or about twenty percent of total imports) enters the United States through the port of New York. Approximately fifty percent of such Brazilian coffee shipped to New York (or about ten percent of total imports) is shipped from the port of Santos, Brazil, with the bulk of the balance being shipped from the three other Brazilian ports which are referred to in Paragraph 10. A substantial part of this Brazilian coffee coming into New York is scheduled for processing by its owners and is usually not available for other purposes.

PAR. 7. Respondents collectively are engaged in interstate commerce, as such "commerce" is defined in the Federal Trade Commission Act, in the business of operating a coffee futures market. Each of the respondents, individually, enters into contracts or furnishes services or facilities, or both, which constitute a separate business as well as a part of said futures market business.

Said futures market business is based upon contracts for the purchase and sale of coffee for future delivery entered into by and between respondent members on their own account, or for the account of others located in many foreign countries and in States other than the State of New York. Said contracts are traded in on the Respondent Exchange under the terms of its by-laws and rules and by the use of its services and facilities. Thereafter, said contracts are cleared through Respondent Association by respondent members, in the manner hereinbefore described, with the result that said Association assumes the obligations of respondent members under said contracts.

Involved in said futures market business, and without which said business could not be conducted, is the continuous transmission of great quantities of money or credit, documents, information, and communications between the State of New York and many other States of the United States and also many foreign countries.

Furthermore, many of respondent members are also directly engaged, for their own account or for the accounts of others, in the purchase and sale of coffee in some form, in connection with which they ship, or cause to be shipped, such coffee from many foreign countries into the United States and also between and among the several States of the United States, or both. Involved in, and part of, said interstate commerce, so engaged in by a substantial number of

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said respondent members, is the purchase and sale of coffee for future delivery under the terms of the aforesaid contracts traded in as aforesaid.

PAR. 8. Competition exists, on the Respondent Exchange and in the Respondent Association, between the respondent members as well as between such members and others who, while not members, act through some respondent members, in the purchase and sale of contracts for future delivery of coffees produced in different parts of Brazil as well as those produced in other parts of the world, regardless of ports of importation into the United States and regardless of the grades, growths and qualities of such coffees; competition also exists between some of the respondent members and between such members and others in the purchase and sale of coffee in some form: except insofar as both types of such competition have been restricted and restrained by the illegal agreement, understanding and planned common course of action between and among the respondents and the acts and practices performed by said respondents as part of and in pursuance thereto, as hereinafter set forth.

PAR. 9. The Respondent Exchange, acting for itself and also on behalf of its officials and the respondent members, the respondent members themselves, and the Respondent Association acting for itself and the respondent members, have, since about 1946, entered into and maintained, and are still maintaining, an agreement, understanding and planned common course of action to restrict and restrain, and are still restricting and restraining the entering into of, and trading in, contracts on the Respondent Exchange for the buying and selling of coffee for future delivery and also the actual buying and selling of coffee itself.

PAR. 10. Pursuant to and in furtherance of the aforesaid agreement, understanding and planned common course of action, respondent members, in accordance with the provisions of the by-laws of the Respondent Exchange, hereinbefore set forth in Paragraph 2, did, in conjunction with, and in cooperation with, Respondent Exchange, in November 1948, adopt and have since maintained a form of contract for the buying and selling of coffee for future delivery by respondent members on Respondent Exchange, which unreasonably restricts, restrains and limits competition in interstate and foreign commerce in coffee and the entering into of, and trading in, contracts in interstate and foreign commerce on Respondent Exchange and in Respondent Association, for the future delivery of coffees of grades, growths and qualities other than those covered by said form of contract.

Under the terms of said contract, which is designated by said Respondent Exchange as the "S" contract and which was amended and modified by the respondent members in conjunction with Respondent Exchange in 1953, there was, and is, deliverable only coffee of certain specified grades which is grown in Brazil and shipped from a limited number of specified ports therein to the port of New York. Prior to said modifications, said contract specified Santos as the only Brazilian port of origin. After said modification, said contract specified four Brazilian ports of origin, including Santos, but provided that deliverable coffee, shipped from said Brazilian ports other than Santos, was deliverable only at fixed differentials under the values for deliverable coffee shipped from Santos.

Although there may have been and may be available on Respondent Exchange and in Respondent Association, for the purpose of buying and selling coffee for delivery in the future, contracts other than the aforesaid contract "S," the provisions of such other contracts, pursuant to and in furtherance of the aforesaid agreement, understanding and planned common course of action, were and are so prepared, constructed and construed by respondents so as to prevent, and they have and do actually prevent, the respondent members from dealing on the Respondent Exchange and through and by means of respondent Association in any contracts except the aforesaid contract "S."

PAR. 11. The purpose and effect of the aforesaid agreement, understanding and planned common course of action between and among the respondents and the acts and practices done in furtherance thereof, and pursuant thereto, have been and are:

1. To restrict and restrain unduly trading by respondent members in contracts for the future delivery of coffee in the Respondent Exchange and by and through Respondent Association;
2. To prevent the trading by the respondent members on the Exchange, and by and through Respondent Association, from being an adequate reflection of the interaction of a substantial part of the total supply and demand of coffee;
3. To prevent the prices of futures in coffee from reflecting the reasoned judgment of many traders on both sides of the market;
4. To permit and enable, and they have permitted and enabled, the prices of futures to be subject to false starts, erratic movements, concentration in trading, and maneuvers that both reflect and create expectations and trading patterns inconsistent with actual supply and demand;
5. To narrow the effective commodity basis for futures contracts, traded in by respondent members on Respondent Exchange and by

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and through Respondent Association, to coffee of certain specified grades which is grown in Brazil and shipped from four ports therein, including Santos, to the port of New York; and to tend to narrow said basis still further to said coffee shipped from only one of said ports, namely, Santos;

6. To tend to tie closely, at least for short periods of time, the prices of all coffees to those resulting from the trading on Respondent Exchange of contracts restricted to coffee production, and conditions of marketing, in a limited geographical area;

7. To prevent a substantial amount of "hedging" of coffee, including Brazilian coffee, in the futures market conducted by respondents;

8. To tend to bring about and result in prices at which coffees are actually bought, sold and delivered being inconsistent with competitive supply and demand conditions.

PAR. 12. In addition to the effects, as hereinbefore set forth, the aforesaid agreement, understanding and planned common course of action between and among the respondents and the acts and practices of the respondents, done in furtherance thereof and pursuant thereto, likewise have contributed to and promoted substantial increases in the prices which the consuming public has been required to pay for coffee, and have a dangerous tendency unduly to hinder competition in the purchase and sale of coffee in interstate and foreign commerce.

PAR. 13. Each of the respondents herein has, directly or indirectly, participated in, approved or adopted the aforesaid agreement, understanding and planned common course of action and the acts and practices done in furtherance thereof and pursuant thereto.

PAR. 14. The agreement, understanding and planned common course of action between and among the respondents, and the acts and practices done in furtherance thereof and in pursuance thereto, as hereinbefore alleged, have a dangerous tendency unduly to hinder and restrain competition between and among respondent members and between such members and others in the trading on Respondent Exchange, and by and through Respondent Association, of contracts for future delivery of coffee in commerce, as "commerce" is defined in the Federal Trade Commission Act, and have likewise restricted and restrained competition between and among respondent members and with others in the purchase and sale of coffee in commerce as same is defined by the Federal Trade Commission Act, and such agreement, understanding, planned common course of action and such acts and practices, all and singularly, are all to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 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 April 1, 1955, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges respondents with violation of the Federal Trade Commission Act through the use of contracts which unduly restrict and restrain trading on the respondent Exchange in coffee for future delivery. A stipulation has now been entered into by respondent New York Coffee and Sugar Exchange, Inc., its four officers who were named as respondents, and respondent New York Coffee and Sugar Clearing Association, Inc., and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the filing of an answer to the complaint is waived, and that the complaint and stipulation shall constitute the entire record in the proceeding; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, respondents specifically waiving any and all right, power and privilege to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided by the Federal Trade Commission Act for other orders of the Commission; and that the signing of the stipulation is for settlement purposes only and does not constitute an admission by any respondent that he or it has violated the law as alleged in the complaint.

The hearing examiner has considered such stipulation and the order therein contained. The order provides a proper basis for settlement and conclusion of this proceeding. Inasmuch as the order relates to the forms of contract or contracts offered for trading on the respondent Exchange, the public interest is adequately safeguarded

by an order against the respondents named in the cease and desist order contained in the stipulation, and the dismissal of the complaint is appropriate as to the respondents named as individuals, or as members of the Exchange, or as representatives of other members of the Exchange.

The stipulation is hereby accepted and made a part of the record, the following jurisdictional findings made, and the following order issued:

1. Respondent New York Coffee and Sugar Exchange, Inc. (hereinafter referred to as "respondent Exchange"), is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 113 Pearl Street, New York 4, New York.

Respondent New York Coffee and Sugar Clearing Association, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 66 Beaver Street, New York 4, New York.

Respondent Gustavo Lobo, Jr., is now and was President of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business, as President and member of the Board of Managers of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

Respondent Leon Israel, Jr., is now and was Vice President of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business, as Vice President and member of the Board of Managers of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

Respondent William F. Prescott was Treasurer of the respondent Exchange for the year 1954, as well as a member of its Board of Managers. His office and principal place of business for business of respondent Exchange is located at 113 Pearl Street, New York 4, New York.

Respondent G. W. Knauth was Secretary of the respondent Exchange for the year 1954 and is now Treasurer of respondent Exchange as well as a member of its Board of Managers. His office and principal place of business, as an official of respondent Exchange, is located at 113 Pearl Street, New York 4, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named above, and the proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, New York Coffee and Sugar Exchange, Inc., a corporation, its successors, assigns, officers, directors, employees, agents and representatives; New York Coffee and Sugar Clearing Association, Inc., a corporation, its successors, assigns, officers, directors, employees, agents, and representatives; Gustavo Lobo, Jr., as President and member of the Board of Managers of respondent Exchange, his successors in each of said offices; Leon Israel, Jr., as Vice President and member of the Board of Managers of respondent Exchange, his successors in each of said offices; William F. Prescott, as Treasurer and member of the Board of Managers of respondent Exchange for the year 1954, and his successors in each of said offices; G. W. Knauth, as Secretary of respondent Exchange for the year 1954, and his successors in such office, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the operation of a coffee futures market, and in connection with the formation, adoption, entering into, trading in or the fulfillment of contracts for the purchase or sale of coffee in any form for future delivery in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any agreement, understanding or planned common course of action, whether express or implied, between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Restricting or limiting trading in coffee for future delivery exclusively to the contracts open for trading on the respondent Exchange as of the date of August 1, 1954;

2. Restricting or limiting trading on respondent Exchange in coffee for future delivery to any contract or contracts which have the effect of excluding as deliverable thereunder Arabica coffee, other than grades or types which are not suitable for futures trading because of inferior quality, insufficient supply, or lack of uniformity, from any country which, during the initial three of the four preceding calendar years, exported to the United States a yearly average of 750,000 or more bags (adjusted to a weight of 132.276 pounds per bag) of Arabica coffee.

Provided, however, That it shall be a defense to any charge that respondents have violated this order by the use in any contract or contracts of premiums or discounts, if respondents show (1) that such premiums and discounts, when adopted, were realistically related

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to values in the spot market, and (2) that such premiums and discounts were re-examined and readjusted not less frequently than every six months to relate realistically to values in the spot market and that all such readjusted discounts and premiums were incorporated in the contract or contracts thereupon opened for trading for new delivery months.

Provided, further, however, In the event of any modification or change, or discontinuance of, any futures contract open for trading on the respondent Exchange, nothing in this order shall be interpreted as prohibiting in any way the continued trading in any such futures contract only until the end of any delivery month for which an open interest has already been taken on such Exchange at the time of any such modification, change or discontinuance.

It is further ordered, That the complaint herein be, and it is herewith, dismissed as to Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott, G. W. Knauth, Jack R. Aron, Louis Blumberg, Alfred Boedtke, Adrian C. Israel, Chandler A. Mackey, Phillips R. Nelson, S. A. Schonbrunn and Gustav Wedell, as individuals, as members of the respondent Exchange and as representatives of other members of respondent Exchange but not as to Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott and G. W. Knauth as officials of the respondent Exchange.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, New York Coffee and Sugar Exchange, Inc., New York Coffee and Sugar Clearing Association, Inc., and Gustavo Lobo, Jr., Leon Israel, Jr., William F. Prescott, and G. W. Knauth as officials of the respondent New York Coffee and Sugar Exchange, Inc., 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 [as required by said declaratory decision and order of April 1, 1955].

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IN THE MATTER OF

RECIPE FOODS, INC., ET AL.

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

Docket 6286. Complaint, Jan. 11, 1955—Decision, Apr. 1, 1955

Consent order requiring one of the largest manufacturers of beverage syrup in the United States to cease, as an inducement to wholesale grocers and retail chain store organizations to discontinue handling competitive brands, buying and exchanging their stocks of competitive syrups either for cash or for credit against purchases of its own product; guaranteeing that their profits would be equalled or doubled and tripled if its products were handled exclusively; and selling stocks of competitive products obtained from them below cost and below competitors' prices.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Andrew C. Goodhope for the Commission.

Nyburg, Goldman & Walter, of Baltimore, Md., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that Recipe Foods, Inc., a corporation, Theodore Marks, an individual and its president, and Isadore S. Rosen, an individual and its vice president, hereinafter referred to as respondents, have violated the provisions of Section 5 of said Act (15 U. S. C. A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Recipe Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having its principal office and place of business located at 4805 Garrison Boulevard, Baltimore, Maryland, with a branch plant located at Terre Haute, Indiana.

Respondent Theodore Marks, is an individual and president of corporate respondent Recipe Foods, Inc.

Respondent Isadore S. Rosen, is an individual and vice president of corporate respondent Recipe Foods, Inc.

The individual respondents Theodore Marks and Isadore S. Rosen have at all times hereinafter mentioned controlled and directed corporate respondent Recipe Foods, Inc., and its policies and practices, including the methods, acts and practices mentioned herein.

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PAR. 2. Respondents are now and for many years have been engaged in the processing, canning, sale and distribution of food items, including mayonnaise, salad dressing, chili sauce and prune juice, and for the last two years have been engaged in the preparation, manufacturing and distribution of liquid beverage concentrates primarily for home consumption, (commonly known as and hereinafter referred to as beverage syrup). The respondents' beverage syrup is sold in approximately eight different flavors and is packaged in glass containers containing approximately $12\frac{3}{4}$ fluid ounces and is sold under the respondents' trade name "Bennett's Fix-A-Drink." Respondents sell and distribute their beverage syrup throughout the United States, principally through the medium of food brokerage concerns to wholesale grocers and retail chain store organizations.

Respondents are one of the largest manufacturers of beverage syrup and are a substantial and important competitive factor in the preparation, manufacture, sale and distribution of beverage syrup in the United States; their total sales of such product during the year 1953 being \$916,653 and from January 1, 1954 to July 30, 1954 being \$1,318,207.00.

PAR. 3. Respondents now sell, and for the last two years have been selling, their beverage syrup, above described, throughout the States of the United States and the District of Columbia and cause such products, when sold, to be transported from the place of manufacture or storage to purchasers thereof located in States other than the place of manufacture or storage and there is now, and has been, a constant current of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, in said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as herein described, respondents are now, and for the last two years have been, in substantial competition in the sale of beverage syrup in commerce between and among the various States of the United States and the District of Columbia with other corporations, persons, firms and partnerships likewise engaged in the preparation, manufacture, sale and distribution of beverage syrup.

PAR. 5. In the course and conduct of their business in commerce, above described, respondents have engaged and are now engaging in the following methods, acts and practices:

(a) As an inducement to wholesale grocers and retail chain store organizations to discontinue competing brands of beverage syrup and handle respondents' beverage syrup, the respondents have bought and exchanged and have offered to buy or exchange and are now buying or

exchanging and offering to buy or exchange the stocks of competitive beverage syrup stocks and handled by such wholesale grocers and retail chain store organizations either for cash or for credit against purchases of beverage syrup from respondents.

(b) As an inducement to wholesale grocers and retail chain store organizations to discontinue competing brands of beverage syrup and to stock and handle respondents' beverage syrup, the respondents have guaranteed and offered to guarantee and are now guaranteeing and offering to guarantee that if respondents' beverage syrup is stocked and handled exclusively in place of competitors' products that such wholesale grocers' or retail chain store organizations' profits during the year respondents' products are stocked exclusively will be equal to or will be more than or will double or will triple the total profits obtained on all competitive beverage syrups stocked and sold in the previous year.

(c) Sold or offered to sell and selling or offering to sell beverage syrups manufactured by competitors of respondents which were purchased or obtained by respondents from customers (as alleged in (a) above) to other customers, including competitors' customers, at prices below the cost of such products to the respondents and at prices substantially lower than the prices charged by respondents' competitors for the same products.

PAR. 6. The aforesaid methods, acts and practices of respondents, as alleged in Paragraph Five have had and now have the following capacity, tendency, purpose and effect:

(a) To induce grocery wholesalers and retail chain store organizations which are customers of competitors of respondents to discontinue purchasing, stocking and selling said competitors' beverage syrups and instead to purchase, stock and sell respondents' beverage syrup;

(b) To enable wholesale grocers and retail chain store organizations, who purchase beverage syrups from respondents which were originally manufactured and sold by competitors of respondents, to sell such beverage syrups at prices below those at which competitors' customers are able to sell the same products;

(c) Unreasonably to injure, hinder, hamper and restrain competing manufacturers and to demoralize their markets, in that by selling, or offering to sell, at low prices and below cost, products originally manufactured by competitors, the respondents have created a condition whereby grocery wholesalers and retail chain store organizations, who have been buying from competitors at regular prices, are forced either to discontinue such purchases, or, by continuing to purchase from competitors of respondent, risking the necessity of meeting the low

resale price offered by other wholesale grocers and retail chains, who purchase the same products from proposed respondent. The demoralization of the markets of competing manufacturers as above described, has the additional effect of hampering and restraining said competing manufacturers in acquiring new outlets or sources of distribution; such prospective customers of said competing manufacturers are faced with the necessity of competing with purchasers of the same products who have secured said products from respondent on more advantageous terms as above alleged;

(d) Unreasonably to injure, hinder, hamper, restrain and preclude competing manufacturers of competitive products from disposing of their merchandise to grocery wholesalers and retail chain store organizations, and unreasonably to lessen, eliminate, restrain, hamper and suppress competition in the sale of beverage syrup.

PAR. 7. The aforesaid methods, acts and practices of respondents, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondents from its competitors, and, in consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and the District of Columbia, and said methods, acts and practices are all to the prejudice and injury of the public and of respondents' competitors and customers of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the 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 April 1, 1955, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 11, 1955, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. Thereafter, a stipulation was signed by the parties providing for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted

to the above-named Hearing Examiner for his consideration in accordance with Rule V of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations set forth in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that all parties expressly waive the filing of answer, hearing before a Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission and all further and other procedure before the Hearing Examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon and specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered. It has been further stipulated and agreed that said stipulation, together with the complaint, shall constitute the entire record herein and that the complaint herein may be used in construing the terms of the said order to cease and desist, as hereinafter set forth, which may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission, and that the signing of said stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration by the Hearing Examiner on the complaint and the aforesaid stipulation for consent order dated February 11, 1955, the parties having expressly waived the filing of an answer, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed as part of the record herein by the Hearing Examiner who makes the following findings for jurisdictional purposes and order.

1. Respondent Recipe Foods, Inc., is now, and at all times mentioned herein has been, a corporation organized and existing by virtue of the laws of the State of Maryland with its office and principal place of business located at 4805 Garrison Boulevard in the city of Baltimore, State of Maryland.

Respondent Theodore Marks is an individual and president of corporate respondent Recipe Foods, Inc.

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Respondent Isadore S. Rosen is an individual and vice president of corporate respondent Recipe Foods, Inc.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Recipe Foods, Inc., a corporation, Theodore Marks, an individual and president, and Isadore S. Rosen, an individual and vice president of corporate respondent Recipe Foods, Inc., and any officers, representatives, agents and employees of corporate respondent, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of beverage syrup in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing, directly or indirectly, any of the following acts or practices or using any of the following methods:

1. Buying or exchanging or offering to buy or exchange the stocks of competitive beverage syrup stocked and handled by any wholesale grocers or retail chain store organizations either for cash or credit against purchases of beverage syrup from respondents.

2. Guaranteeing or offering to guarantee to wholesale grocers or retail chain store organizations that if respondents' beverage syrup is stocked and handled exclusively in place of competitors' products, such wholesale grocers' or retail chain store organizations' profits during the year respondents' products are stocked exclusively will be equal to or will be more than or will double or will triple the total profits on all competitive beverage syrups stocked and sold in the previous year.

3. Selling or offering to sell beverage syrups which were purchased by respondents from any of its customers and which were manufactured by competitors of respondents at prices below the cost of such products to the respondents or at prices lower than the prices charged by respondents' competitors for the same products.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 [as required by said declaratory decision and order of April 1, 1955].

Complaint

IN THE MATTER OF
KNOMARK MANUFACTURING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SECS. 2 (d) AND 2 (e) OF THE
CLAYTON ACT AS AMENDED

Docket 6264. Complaint, Nov. 19, 1954—Decision, Apr. 7, 1955

Consent order requiring one of the three largest manufacturers of shoe polishes, dyes, etc., including its "Esquire" brand, to cease discriminating in price between competing customers through (a) paying to some of them promotional allowances for furnishing services and facilities, and (b) furnishing certain others with facilities such as wire racks or dispensers for displaying its products and free demonstrator service, while not making proportional allowances or facilities available to competitors of those favored, in violation of subsections (d) and (e) of sec. 2 of the Clayton Act as amended; and to cease buying dealers' stocks of competing products and selling them to jobbers at reduced prices, and making cash payments to buyers of certain large customers without apprising their employers thereof, in violation of the Federal Trade Commission Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Paul R. Dixon and *Mr. William A. Mulvey* for the Commission.

Mr. Abraham Zemlock, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as the respondent in the caption hereof, and herein-after more particularly designated and described, has violated and is now violating the provisions of sub-sections (d) and (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. A., Sec. 13), and provisions of the Federal Trade Commission Act (15 U. S. C. A., Sec. 45), hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, Knomark Manufacturing Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 330 Wythe Avenue, Brooklyn, New York.