

Decision

IN THE MATTER OF

KORDOL CORPORATION OF AMERICA ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6088. Complaint, June 8, 1953*—Decision, Feb. 27, 1956*

Order requiring a corporation in New York City to cease representing falsely in advertising in newspapers, etc., and by radio broadcasts that the drug preparation "Kordolin" which it sold and distributed was an effective treatment for, and would afford complete and permanent relief from the aches and pains of all kinds of arthritis, rheumatism, lumbago, neuritis, and sciatica; was an amazing new discovery; and was more effective as an analgesic than aspirin.

Mr. Joseph Callaway for the Commission.

Mock & Blum, of New York City, for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 24, 1953, issued and subsequently served its original complaint in this proceeding upon respondents Kordol Corporation of America, a corporation, and Lewis S. Block and Lillian B. Block, individually and as officers of said corporation, to which complaint the respondents filed answer. Thereafter, on June 8, 1953, the Commission issued its amended complaint naming the identical respondents, to which amended complaint the respondents filed their answer.

The amended complaint under which this proceeding was tried charges the respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter hearings were held in due course in which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner therefore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the amended complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument thereon not having been requested; and said hearing examiner, having duly considered the record herein, finds that this

* Amended complaint. Original complaint issued Mar. 24, 1953.

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proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Kordol Corporation of America, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 618 Lexington Avenue, New York 22, New York. Respondents, Lewis S. Block and Lillian B. Block, whose address is 301 Oxford Road (formerly 214 Trenor Drive), New Rochelle, New York, are the President and Secretary respectively of the corporate respondent. While the amended complaint charges that both of the individual respondents, during the periods herein mentioned, have at all times, controlled and directed the corporate policies and practices, including the practices specifically found herein to exist, the uncontradicted evidence discloses that the male respondent, Lewis S. Block, was the sole director of the policies and practices of the corporate respondent and that Lillian B. Block, his wife, while acting as Secretary, exercised no such control but, on the contrary, respondent Lewis S. Block was in sole control and the active and ultimate authority on business practices of the corporate respondent, on the basis of which finding of fact the complaint will, by the order hereinafter set forth, be dismissed as to the respondent, Lillian B. Block.

PAR. 2. The respondents are now, and for approximately one year next preceding the issuance of the complaint herein, have been engaged in the business of selling and distributing a drug preparation, as the word "drug" is defined in the Federal Trade Commission Act. The designation used by respondents for their said drug preparation, the formula and directions for use thereof are as follows:

Designation: "Kordolin"

Formula: Acket (Salicylamide)	2 grains
Calcium Succinate	1½ grains
Acetphenetidin	1 grain
Caffeine	½ grain
Vitamin B ₁	1 mgm

Directions for use:

For the greatest benefit from KORDOLIN—the following dosage is recommended:

Take 2 Kordolin tablets with water 3 times a day until relief is obtained. When relief is obtained, dosage may be reduced to one tablet three times a day. If pain still persists or is accompanied by fever or other complications consult your physician. Children should take Kordolin in accordance with doctor's instructions. Do not take larger dosages than directed except upon the advice of your physician.

PAR. 3. Respondents cause their said drug preparation when sold to be transported from the place of business of the corporate respondent in the State of New York to purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparation between and among the various States of the United States. Respondents' volume of business in such commerce is substantial, the sales of said products approximating \$100,000 a year.

PAR. 4. Subsequent to March 21, 1938, in the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning their said preparation, Kordolin, via United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including newspapers of general circulation, radio continuities, circulars, folders and other advertising matter for the purpose of inducing and which were likely to induce directly or indirectly the purchase of said preparation.

Among and typical, but not all inclusive, of the statements and representations so aforesaid disseminated are the following:

At last—just released!

KORDOLIN TABLETS

gives you

fast relief

from Aches and Pains of

ARTHRITIS * * * RHEUMATISM

Muscular Aches, Lumbago, Neuritis and Sciatica

If you suffer the agonizing pains of rheumatism, arthritis, sciatica or neuritis * * * here's important news! An amazing discovery is being released through drug stores as of NOW without a prescription! It is KORDOLIN—*7 times as effective as old-fashioned aspirin remedies*. Yet KORDOLIN is nontoxic.

For KORDOLIN contains ACKET, an exclusive brand of Salicylamide. This blessed pain-relieving element is combined with other medically proved ingredients. It took years of research to perfect this amazing formula known as KORDOLIN.

KORDOLIN is offered only after the most thorough pre-testing. People afflicted with rheumatic and arthritic pains found their first glorious freedom from agony with KORDOLIN.

Friends, do you suffer the nagging pains of arthritis and rheumatism? Then here's wonderful news! KORDOLIN may be your answer for amazing fast relief. Yes, KORDOLIN is many times as effective as old-fashioned remedies. Here's why. KORDOLIN contains pain-relieving ACKET—an exclusive brand of Salicylamide—in combination with other medically approved ingredients.

It took years of research to perfect this formula which is nontoxic when taken according to directions. And make no mistake. People afflicted with arthritic and rheumatic pains * * * in many cases people suffering from lumbago, neuritis, sciatica—have told us they found glorious relief from pain with KORDOLIN.

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So don't spend another day of misery when wonderful KORDOLIN is at all drug stores. No prescription needed, but hurry! Present supplies are limited.

PAR. 5. It is found and determined that through use of the afore-said advertisements and others of similar import, respondents have represented, directly and by implication, that their preparation Kordolin, taken as directed, is: (1) An adequate, effective and reliable treatment for, and will afford complete and permanent relief from, the aches and pains of all categories of arthritis, rheumatism, lumbago, neuritis, sciatica, as well also the related aches and pains which are the natural corollaries or concomitants of these morbid conditions; (2) that said preparation is an amazing new discovery and (3) that said preparation is seven times more effective as an analgesic than other preparations containing aspirin.

PAR. 6. To refute the verity of the foregoing representations and imputations on the part of respondents, all of which are found and concluded as above as result of a reading and reasonable interpretation of their advertisements, the Commission introduced the testimony of two eminently qualified medical practitioners, each with many years of specialization in the treatment of, and experimentation in, the field of medicine as it relates to arthritis, rheumatism and related subjects. Supplementing this testimony, which will be hereinafter considered, the parties entered into a stipulation of record, to the effect that the Commission had available and willing to testify in substantiation of the first mentioned two witnesses, two additional witnesses whose experience and qualifications are of record in this proceeding, and the respondents, while so stipulating, did so without conceding or admitting to be true the testimony of the last mentioned witnesses.

Respondents, represented by counsel who conducted cross-examination of the witnesses testifying in support of the complaint, offered no testimony in their defense although tendering four exhibits, none of which were received in evidence so, as the record stands, the testimony which forms the basis of these findings, is unrefuted by countervailing testimony or evidence.

PAR. 7. The terms "rheumatism" and "arthritis" are general terms, sometimes used and understood by the public as referring to any of a number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, fibrositis, bursitis, rheumatoid arthritis, osteoarthritis, rheumatic fever and infectious arthritis, all of which are characterized by manifestations of pain, stiffness and inflammatory and destructive changes in the joints and tissues of the body.

"Sciatica" is an inflammation of the sciatic nerve, the predominant symptom of which is extreme pain along the path of the sciatic nerve; that the administration of Kordolin, taken as directed, would have very little effect on such pains beyond a partial or temporary relief for a short time; Kordolin taken as directed would have very little effect on severe pain occasioned by sciatica and in the matter of minor pains of sciatica would afford only partial or temporary relief for a period of not longer than one hour.

"Neuritis" is an inflammation of the nerves, the predominant symptom of which is pain along the course of a nerve which, as in the case of sciatica, may be of severe or minor nature; that Kordolin, taken as directed, would provide only short temporary relief not in excess of one hour in the less severe or the minor pains of neuritis and could not be relied upon to usually and ordinarily completely relieve the pains of neuritis and this would be equally true of the pains of sciatica.

"Neuralgia" is a vague term to describe pain and aches in the vicinity of nerves and at times affecting the structures, such as muscles and tendons, surrounding the nerves; predominant symptom is severe pain—in fact some of the worst pain known to human suffering, especially in trigeminal neuralgia, and Kordolin would have no therapeutic effect on this type although in the minor pains of neuralgia Kordolin might afford a partial temporary relief for about an hour but under no circumstances would the pain of neuralgia be completely relieved.

"Lumbago" is an inflammation of the lower back or lumbar muscles, termed lumbarmyositis, with concomitant pain and disability, which pains may be either severe or minor; upon severe pains Kordolin has very little effect and in minor pains a short term relief of about one hour but the product, taken as directed, could not be relied upon to usually or ordinarily relieve the pains of lumbago completely.

"Bursitis" is an inflammation of the bursal sacs found frequently around the joints, which sacs contain fluid necessary for proper functioning of the joint; the bursal sacs often are involved in the very painful inflammatory process known as bursitis, the predominant results being extreme pain, disability and limitation of motion; bursitis sometimes gives rise to severe pains and in other instances minor pains and on the severe pains Kordolin would have no effect while on the minor pains the relief would be short-lived continuing for about an hour but could not usually be relied upon to relieve the pain of bursitis completely.

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"Osteoarthritis" is a degenerative form of arthritis involving the articulating ends of the bone as characterized by overgrowth of bone formation or spurs; Kordolin, taken as directed, would afford partial or temporary relief from these pains but could not be relied upon to usually or ordinarily relieve the pain completely, the analgesic effect lasting about an hour.

"Infectious arthritis" is the involvement of a joint by a specific germ which can be identified and gives rise to an extremely excruciating painful condition and upon this type of arthritis Kordolin would have no effect at all. This is the one type of arthritis concerning which the medical profession knows the cause, it being uniformly the result of bacterial infection.

"Rheumatoid arthritis" is one of the severer types of arthritis which involves the entire joint structure including the bone, the cartilage, the lining of the capsule, the capsule itself and at times the structures surrounding the joints, including the muscles and tendons; the condition may result in severe as well as minor pain and in the first instance Kordolin would have very little therapeutic effect and in the latter instance may afford partial relief of about an hour but Kordolin taken as directed cannot be relied upon to usually or ordinarily relieve such pains.

"Rheumatism" is a general term for any illness which is characterized by pain in and around the joints; the important types may be grouped under the specific headings of rheumatoid arthritis, osteoarthritis, so-called nonarticular rheumatism or nonarticular arthritis such as fibrositis, bursitis, tendonitis, neuritis, lumbago, sciatica and gout or gouty arthritis. In rare instances there is an infectious arthritis where such is caused by the introduction into the joint of a specific germ as a meningitis or pneumococcus or gonococcus.

Branching off from the foregoing are many subdivisions all of which would be different to the technician but would be designated by the layman as "rheumatism." Rheumatism includes the whole group of diseases characterized by pain in the joints or pain surrounding the joints and muscles.

Having to do with the general subject of "muscular aches and pains" concerning which respondents extol their product as beneficial for the relief of such aches and pains, and considering this category separate and distinct from rheumatism and arthritis generally, such aches and pains could be caused by a host of contributing factors and Kordolin would afford relief for a short period or for about one hour; muscular aches and pains, whether systemic or traumatic, or of other origin, cannot ordinarily be completely relieved by use of the product.

PAR. 8. Concerning the treatment of the above-described ailments included in the generally used terms "arthritis" and "rheumatism," there is no drug or combination of drugs howsoever administered which will constitute an adequate, effective or reliable treatment or cure. Kordolin tablets, taken as directed, will not stop the "agonizing pains of rheumatism, arthritis, sciatica or neuritis" nor will those who suffer rheumatic or arthritic pains find "glorious freedom from agony" upon taking Kordolin as directed; that sufferers would get only short term, partial and temporary relief lasting about an hour when pains were not "agonizing" or "severe"; nor would they be relieved of "another day of misery" nor would they experience "amazing fast relief" from the "nagging pains of arthritis and rheumatism."

PAR. 9. Kordolin is not a "new" or "amazing discovery" for the use for which it is recommended, for the reason that all of the component substances of Kordolin have been known for many years and the pharmacological action of salicylamide, calcium succinate, acetphenetidin, caffeine and Vitamin B₁ or thiamin hydrochloride is well known and understood by the medical profession; that the combination of these drugs does not represent a type of drug synergy which would produce a marked or sustained relief of pain nor would same be an effective long term analgesic.

Arthritis and most of the rheumatoid diseases are diseases for which there are no known causes and for which there is, as yet, no specific remedy. Such being the case the researchers' work has dealt primarily with techniques and medications which will bring relief to these patients in an attempt to alleviate the pain, to increase the range of motion, to re-educate muscles and the like; there have been a host of such medications and techniques and the object has been to narrow them down to the most effective of the lot.

Of the ingredients contained in Kordolin, salicylamide is the chief analgesic and the only other substance which can, perhaps, be classified as such in this combination is acetphenetidin appearing in a quantity of 1-grain per Kordolin tablet, although the chief action of this drug is not analgesic. If, therefore, we take 2 grains of salicylamide and 1 grain of acetphenetidin, (treating the latter as an analgesic), we have a total of 3 per tablet which compared with a 5 grain tablet of aspirin gives a ratio in analgesic effect per tablet of 5 to 3 in favor of aspirin.

All of the salicylates (of which salicylamide is one), are approximately the same in their analgesic effects.

Extensive practical, laboratory, experimental and clinical experience and research has been had by the medical profession, not only

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with salicylamide, but also with other salicylates such as acetylsalicylic acid (the latter otherwise commonly known as aspirin, the ordinarily used form of tablet containing five grains of salicylate), but also with, among other substances, calcium succinate, caffeine, acetphenetidin and Vitamin B₁; that salicylamide is the chief analgesic or pain relieving agent of respondents' product and, according to the formula of respondents' product, each Kordolin tablet contains two grains of salicylamide; that the term "acket," as used in said formula, is synonymous with salicylamide (or aspirin), and respondents have so stated in their advertisement that "Kordolin contains Acket, an exclusive brand of Salicylamide." If, therefore, we compare the analgesic effect of one Kordolin tablet with one aspirin tablet we have a result of almost two to one in favor of aspirin. Therefore, the recommended dosage of Kordolin being two tablets, the taking of such would equal but one aspirin tablet. Salicylamide is approximately equal, grain for grain, to any other sodium salicylate or acetylsalicylic acid.

In view of the foregoing it is found that Kordolin is not "seven times as effective as old-fashioned aspirin remedies" and not "seven times as effective as aspirin" (the latter quote as represented in several exhibits of respondents' advertisements of record, although not quoted or set forth in the representative advertisements cited in the complaint), but on the contrary is no greater as an analgesic agent than aspirin in comparable doses.

PAR. 10. The drug preparation "Kordolin," however taken, will not constitute an adequate, effective or reliable treatment for any arthritic or rheumatic condition, including sciatica, neuritis, neuralgia, lumbago, bursitis, osteoarthritis, infectious arthritis, rheumatoid arthritis or gout, nor will said preparation arrest the progress or effect a cure of any such conditions. The said drug preparation, however taken, will not arrest, dispense with nor ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary and partial relief afforded by its salicylate content as an analgesic. The said drug preparation will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition and will afford but partial relief of a temporary duration from minor aches, pains and discomforts.

Respondents contended, by their answer as well also by statements of counsel during the course of the proceedings, that their representations as aforesaid did not amount to the holding out of a "cure" of "a complete and permanent cure" of the ailments described. However, an over-all reading of those representations, such as;

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Kordolin contains a blessed pain relieving element *in combination with other medically proved ingredients.*

and

You have tried other *remedies*, but remember results are what count.

and

Why spend *one more* day of misery * * *.

and

If you have tried ordinary *remedies*, the best that were available up to this minute, here's the most important news that has come your way.

leads to the inescapable conclusion by fair reasoning that the very object of the language used was to put over the idea of a complete cure of the conditions enumerated,¹ and nowhere, in said advertisements or representations, can there be found any statement or intimation that the true limit of therapeutic effectiveness of Kordolin is that of an analgesic for the temporary amelioration or relief of a symptom, to wit, pain. There is nowhere any evidence that respondents made any effort to negate a representation, holding out or hope of lasting relief or cure, which could have been done, had respondents been so minded, by the use of appropriate wording.²

PAR. 11. Respondents' representations concerning the drug preparation "Kordolin," as hereinabove found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false and misleading advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents, Kordol Corporation of America and Lewis S. Block, as hereinabove found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

For the reasons stated and facts found as set forth in Paragraph One hereinabove, the complaint as to the named respondent, Lillian B. Block, will be dismissed.

ORDER

It is ordered, That the respondents, Kordol Corporation of America, a corporation, and its officers and Lewis S. Block, individually

¹ *Aronberg v. F.T.C.*, 132 F. 2d 165, 168.

Hall v. U.S., 267 F. 795, 798.

² *F.T.C. v. Rhodes Pharmacal Co.*, Docket No. 5691 (Comm. Opinion).

and as an officer of said corporation, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the drug preparation "Kordolin" or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

(b) is a new discovery or an amazing new discovery of scientific research;

(c) is more effective in any degree as an analgesic than is aspirin in comparable doses.

(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 respondents' said preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

(3) *Further ordered*, That the complaint as to the named respondent, Lillian B. Block, as an individual, be, and the same is hereby, dismissed.

ON APPEAL FROM INITIAL DECISION

By MASON, Commissioner.

Respondents here were charged with disseminating in commerce false advertising for a drug preparation designated Kordolin recommended as an adequate, effective and reliable treatment for, and as affording complete and permanent relief from, aches and pains of all kinds of arthritis, rheumatism, lumbago, neuritis and sciatica. The complaint also attacked representations that Kordolin is an amazing new discovery and is seven times more effective as an analgesic than preparations containing aspirin. On August 15, 1955, the hearing examiner filed his initial decision which required respondents to cease and desist, among other things, from representing that Kordolin:

(a) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the underlying causes, symptoms or manifestations of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

It is with the provisions of this quoted subparagraph (a) of the order that this appeal is concerned. Specifically, counsel in support of the complaint has appealed from the inclusion in this subparagraph of the term "underlying causes."

He contends that since the terms "underlying causes," "symptoms" and "manifestations" are in the disjunctive in the quoted subparagraph, then insofar as "underlying causes" are concerned, the subparagraph could be read as follows:

(a) will afford any relief of severe aches, pains and discomforts of arthritis, rheumatism, lumbago, neuritis or sciatica, or any other arthritic or rheumatic condition, or have any therapeutic effect upon any of the underlying causes of any such condition in excess of affording temporary and partial relief of minor aches and pains of these ailments or of other minor muscular aches and pains;

When so read, he points out, the subparagraph implies that temporary and partial relief of minor aches and pains may have an effect upon the underlying causes of the ailments enumerated. Counsel in support of the complaint contends vigorously that inclusion of the term "underlying causes" is without the scope of the complaint, contrary to the undisputed evidence and inconsistent with the hearing examiner's findings.

Respondents' counsel cross-examined the expert witnesses testifying in support of the complaint, offering no defense testimony except for tendering four exhibits which were not received in evidence, so the hearing examiner's findings are based on scientific testimony that is unrefuted by countervailing testimony or evidence. The hearing examiner so found and he also found affirmatively that respondents falsely represented that Kordolin is:

* * * (1) an adequate, effective and reliable treatment for, and will afford complete and permanent relief from, the aches and pains of all categories of arthritis, rheumatism, lumbago, neuritis, sciatica, as well also the related aches and pains which are the natural corollaries or concomitants of these morbid conditions * * *.

He further found expressly that Kordolin does not constitute an adequate, effective, reliable treatment for any of the enumerated conditions; that it will not arrest the progress or effect a cure of such conditions; that it will not arrest, dispense with nor ameliorate the aches, pains and discomforts of any such condition beyond the

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temporary and partial relief afforded by its salicylate content as an analgesic; and, finally, that it will have no significant effect upon severe aches and pains and will afford but partial relief of a temporary duration from minor aches and pains. Nowhere in the initial decision is there any finding, nor for that matter is there any record evidence, supporting the inclusion of the term "underlying causes" in subparagraph (a) of the order to cease and desist. On the contrary, we are of the opinion, and so find, that the evidence is undisputed that Kordolin will have no effect on "underlying causes." We conclude that the appeal by counsel supporting the complaint is well taken in that the inclusion of the term "underlying causes" in the order to cease and desist is in error.

The appeal from the hearing examiner's initial decision should be, and hereby is, granted and the initial decision, modified in accordance with the above, should be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision and supporting appeal brief, no brief in opposition thereto having been filed, and no oral argument requested; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal of counsel supporting the complaint from the initial decision of the hearing examiner should be granted and the initial decision modified and thereafter adopted as the Commission's decision:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by eliminating the term "underlying causes" from subsection (1) (a) of the order contained therein.

It is further ordered, That the findings, conclusion and order, as so modified, in the initial decision, be, and they hereby are, adopted as the findings, conclusion and order of the Commission.

It is further ordered, That 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.

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IN THE MATTER OF
BARCLAY HOME PRODUCTS, INC., ET AL.

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

Docket 6275. Complaint, Dec. 28, 1954—Decision, Feb. 27, 1956

Order requiring a manufacturer in Cohoes, N. Y., to cease misbranding pillows through affixing to them labels stating that the filling was "All New Material Consisting of Down" and "* * * White Goose Down—50%; White Goose Feathers—50%," respectively, when the content of the pillows was less than the percentages so stated by more than the tolerance allowed by the trade practice rules for the industry.

Mr. Ames W. Williams and *Mr. Charles S. Cox* for the Commission.

Mr. Ralph E. Becker, of Washington, D. C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charged the respondent corporation and its officers with having engaged in unfair and deceptive acts and practices and unfair methods of competition to the injury of the public and respondents' competitors through having falsely represented on labels attached to their feather and down pillows the kinds or types of filling material, and percentages of each, contained in such pillows. The respondents filed their answer admitting the jurisdictional allegations of the complaint, as well as the use of the representations alleged to have been false, but denied the falsity thereof. By stipulation it was agreed that there may be considered as part of the record in this case those portions of the records in certain other cases¹ "which relate to the feather and down industry generally, the practices in that industry, methods of sampling and analysis of feather and down products, the qualifications of and methods of analysis used by J. Davis Donovan and his associates." The filing of proposed findings of fact, conclusions and order was waived by counsel. On the basis of the entire record, this proceeding is found to be in the interest of the public, and the following findings of fact are made:

¹ The other related cases are:
Docket 6132, National Feather & Down Company;
Docket 6133, The L. Buchman Co., Inc., et al.;
Docket 6134, Burton-Dixie Corp., et al.;
Docket 6135, N. Sumergrade & Sons, et al.; and
Docket 6137, Northern Feather Works, Inc., et al.