

Decision

IN THE MATTER OF

GEORGE DUGDALE TRADING AS THE BURKLEIGH COMPANY; and FOREIGN PRODUCTS CORPORATION ET AL.

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

Docket 6270. Complaint, Dec. 22, 1954—Decision, Feb. 9, 1957¹

Order—the first ten paragraphs entered by consent and the last four after adversary proceedings—requiring a New York City importer from England of an alleged soil conditioner and fertilizer designated “Actumus” and a dealer in the product in Towson, Md., to cease representing falsely in advertising that said product was 100% organic humus, activating bacteria which create nitrates and creating fertility in the soil; and otherwise misrepresenting its nature, effectiveness, and comparative merits.

Michael J. Vitale, Esq., for the Commission.

Reddan & Ferguson, by *Egbert R. Ferguson, Jr.*, Esq., of Washington, D.C., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

STATEMENT OF THE CASE

On December 22, 1954, the Federal Trade Commission issued its complaint against George Dugdale, an individual trading as The Burkleigh Company, Foreign Products Corporation, and Edgar Kirby, individually and as an officer of said corporation (all hereinafter collectively called respondents), charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents, in connection with the sale and distribution of a product called “Actumus” alleged to be a soil conditioner or fertilizer, made certain false representations with respect to such product. Respondents appeared by counsel and filed a joint answer admitting the corporate and competition allegations of the complaint as well as the specific representations set forth therein, but denying any false representations or violation of the Act.

Pursuant to notice, hearings were thereafter held on March 8, June 20, and November 6, 1956, in Washington, D.C., before the

¹Respondents' motion to modify order was denied by the Commission on Oct. 9, 1957, 54 F.T.C. —.

undersigned hearing examiner, duly designated by the Commission to hear this proceeding. At the opening of the initial hearing, counsel submitted an agreement containing a consent order to cease and desist, executed by all parties, disposing of ten of the allegations of false representation contained in paragraphs 5 and 6 of the complaint, leaving in issue only subparagraphs 1, 6 and 11 of paragraphs 5 and 6.

The said agreement for consent order, dated March 8, 1956, which has been duly approved by the Director of the Bureau of Litigation of the Commission, contains an admission by respondents of the jurisdictional allegations of the complaint and provides that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents, with respect to the issues disposed of, waived all further procedural steps before the hearing examiner and the Commission, including the making of findings of facts or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered into in accordance with such agreement. It was also agreed that, with respect to said issues, the answer shall be considered as having been withdrawn and the record shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

It appearing that the order and agreement provide for appropriate disposition of the issues covered thereby, the same are hereby accepted and ordered filed upon becoming a part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and in accordance therewith, paragraphs 1 through 10 of said order are included in the order hereinafter made.

After the conclusion of the case-in-chief and prior to the commencement of respondents' defense, respondents filed a motion to take the deposition upon written interrogatories of an expert witness in London, England, pursuant to the provisions of Section 3.12 of the Rules of Practice. Counsel supporting the complaint filed an answer opposing such motion. Subsequently an order was issued providing for the taking of such deposition upon written direct and cross-interrogatories, which were thereafter in due course filed with

the undersigned. Pursuant to said order the deposition of the witness was taken before the United States Consul at the American Embassy in London, England, and forwarded to the undersigned under seal by the State Department. At the conclusion of the hearing on behalf of respondents, the deposition was offered and received in evidence. Thereafter an additional hearing was held on behalf of the counsel for complaint in rebuttal of respondents' defense.

All parties were represented by counsel, participated in the hearings and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All parties waived oral argument and, pursuant to leave granted, thereafter filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith specifically rejected.¹

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that George Dugdale is an individual trading under the name of The Burkleigh Company with his principal office and place of business located at Towson, Maryland; that Foreign Products Corporation is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 283 McKinley Avenue, East Orange, New Jersey; and that Edgar Kirby is an individual and vice president of said corporation, and formulates and controls its advertising policies and supervises the advertising of its dealers, with his office and principal place of business being the same as that of the corporation.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted and it is found that they are now and have been for more than two years last past en-

¹ 5 U.S.C. §1007(b).

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gaged in the sale and distribution of a product, alleged by them to be a soil conditioner or fertility builder, called "Actumus". Respondent Foreign Products Corporation imports Actumus from England and sells it in commerce, principally to dealers; Respondent Dugdale, one of such dealers, sells Actumus in commerce directly to customers. In the course and conduct of their businesses, respondents cause said product to be transported from their respective places of business in Maryland and New Jersey to purchasers thereof located in various other states of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in commerce in said product. In the course and conduct of their businesses, respondents are in substantial competition in commerce with other corporations, firms, partnerships and individuals likewise engaged in the sale and distribution of such products.

III. The Unlawful Practices

A. *The Issues*

The principal issues in this case are whether respondents falsely represented that Actumus:

- 1) is the final and stable end-product of conversion of organic matter into humus, or, in other words, is humus;
- 2) activates certain bacteria which create nitrate and other elements necessary for plant life;
- 3) creates fertility in the soil, and its action as a soil conditioner continues to increase; and
- 4) is entirely natural and 100 percent organic.

B. *The False Representations*

There is no substantial issue that respondents made the foregoing representations concerning the product Actumus. Numerous circulars, labels, pamphlets and advertisements of respondents received in evidence as exhibits establish beyond question that all of the foregoing representations were made by respondents. With respect to the first three, respondents' answer admitted the making of such representations in the course and conduct of their businesses in commerce. The fourth representation, that Actumus is entirely natural and 100 percent organic, was not alleged in the complaint and accordingly was not referred to in the answer. However, the record clearly establishes that in both the labels appearing on the product and advertising circulars distributed in commerce, respondents made this representation.

While the complaint did not recite this particular representation, it alleged as false not only the representations set forth specifically but others of similar import not specifically set out therein. While under certain circumstances the failure to include such a representation might well remove it from among the issues in the case, here the facts that the complaint made reference to representations not specifically set out therein, the representation was fully and completely proven, and the issue was fully litigated by both parties, including cross-examination by respondents concerning this representation of witnesses called in support of the complaint, make it appropriate to include it among the issues and to make appropriate findings of fact and conclusions of law with respect thereto. Since the record establishes beyond dispute that all of the foregoing representations were made, the primary issue for disposition is whether or not such representations are false and misleading. They are considered *seriatim*:

1. Actumus is Humus.

Respondents represented that Actumus is the final and stable end-product of conversion of organic matter into humus or in other words, that Actumus is humus. Counsel supporting the complaint, called four witnesses, an expert chemist who made several chemical analyses of Actumus to determine its composition and ingredients, and three highly qualified agronomists and soil specialists. Mr. Hoffman, a chemist with seventeen years experience employed in the Soil and Conservation Research Branch of the Agricultural Research Service of the Department of Agriculture, made chemical analyses of three different samples of Actumus, which analyses were received in evidence as exhibits and indicated the constituent elements as well as certain other chemical properties of Actumus.

Dr. Anderson, special assistant to the Chief of the Soil and Water Conservation Research Branch and a soil specialist with 38 years of experience in the field, testified that based upon the chemical analysis of Actumus, it is not humus and is not the final and stable end-product of conversion of organic matter into humus. He testified that humus is the decomposed more or less stable part of the organic matter of the soil. It is formed by the partial decomposition of organic matter in the soil and hence is difficult to define exactly because it is always changing as the result of such decomposition. Humus is matter which is well decomposed but is not the end-product of all decomposition, which would no longer be organic matter and hence would not be humus. According to Dr. Anderson, Actumus contains far too much mineral matter to be classified as

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humus. He also said that the analyses revealed far too little nitrogen to classify Actumus as humus, because in humus the carbon-nitrogen ratio usually runs from 1 to 10 to 1 to 18, whereas the analyses showed Actumus to contain from 37% to 42% carbon and less than $\frac{1}{2}$ of 1% of nitrogen. The analyses also showed that the product contained less than $\frac{1}{2}$ of 1% of potash and only $\frac{5}{100}$ of 1% of phosphorous.

Dr. Anderson said that in view of the analyses of Actumus it was unnecessary to conduct actual tests in the soil because it was not humus, and the minute quantities of nitrogen, potash and phosphate in it established that it would have little or no effect upon the fertility of the soil when used in the quantities indicated by respondents. He testified that humus is not actually a fertilizer in the ordinary sense but is more in the category of a soil conditioner. Soil conditioners improve the tilth and friability of the soil but do not furnish plant nutrients or food like fertilizers do. He also said that in view of the high ash content of Actumus, ranging from 21% to 43%, it could not be either humus or a soil conditioner. Soil conditioners are made up primarily of organic matter, with only minute quantities of ash or mineral substances. Even assuming Actumus to be a soil conditioner, the very best of them known to science are applied to the soil in quantities so far in excess of those recommended by respondents for the use of Actumus as to indicate that it could not possibly be effective as a soil conditioner.

Dr. Bentz, an agronomist with the University of Maryland and a soil specialist, also testified that Actumus is not humus and is not the final and stable end-product of conversion of organic matter into humus. He agreed that humus was the organic portion of the soil consisting of material formed by the partial decomposition of vegetable or animal matter and was not the final and stable end-product of such conversion. The final and stable end product would be mineral or inorganic matter and accordingly could not be classified as humus. Dr. Bentz further said that Actumus could not be classified as humus because it did not contain a sufficient percentage of organic carbon, and the extremely high mineral or ash content found therein is not normally found in humus. He stated that in his opinion, in the quantities recommended by respondents, Actumus would have no effect in improving the fertility of the physical condition of the soil. He further said that the term "stable humus" is a very relative one, referring to humus which is decomposing at a slower rate than raw humus but is nevertheless decomposing, and that an end-product could never be reached as the final result

of all decomposition which could be called humus. Humus is actually organic matter during the process or stages of decomposition. Dr. Bentz agreed with Dr. Anderson that the minute fractions of nitrogen, phosphorous and potash established that Actumus had no value whatsoever as a fertilizer in the quantities recommended. He also agreed that in the quantities recommended Actumus would have no beneficial affect on the physical condition or tilth of the soil. He further stated that as humus decomposes and nears the end of the chain when only the more stable ingredients are left, it does not become more powerful and consequently go farther as humus than in its earlier stages. The improvement in soil tilth occurs as the organic matter is broken down and not at the end of the chain of decomposition.

Dr. McVickar, Chief Agronomist with the National Plant Food Institute and a soil specialist, agreed with the foregoing opinions of Drs. Anderson and Bentz concerning Actumus. He too said that the analyses of Actumus clearly revealed that it was not humus. Among other things, he pointed out that humus should have a 10 to 1 ratio of carbon and nitrogen, whereas the analyses showed the ratio in Actumus to be in excess of 75 to 1. He stated that in his opinion Actumus in the quantities recommended would have no effect whatsoever. He said that his evaluation of the product was both as a plant nutrient and as a soil conditioner or substitute for humus.

Respondents' defense was limited to the testimony of one user of Actumus, and the deposition of Dr. Reginald Milton previously referred to herein. Neither of these witnesses testified that Actumus was humus or that it was the end-product of the conversion of organic matter into humus, and accordingly the proof that it is not humus stands undisputed in the record. Mr. McDannel, a farmer who used Actumus but concededly was not an expert, testified concerning certain observations of the soil and plants grown therein that he made in connection with his use of Actumus. Dr. Milton, a consultant biochemist in London, England who was employed by the English exporters of the product to conduct certain tests of it, testified concerning two growing experiments he made of the product with lettuce and tomatoes, respectively, and a third test concerning the activation of bacteria and fixation of nitrogen, but respondents offered no evidence that Actumus was humus or the end-product of the decomposition of organic material into humus.

2. Actumus Activates Bacteria Which Create Nitrate.

As previously found, respondents represented that Actumus activates bacteria which create nitrate from the air as well as other

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elements necessary for plant life. Dr. Anderson said that this statement was false and that no known material behaves that way. He further said that it was possible by scientifically accepted tests to determine bacterial count in the soil, but that soil scientists did not attach much significance to such determinations. Dr. Bentz too said that this representation was false because the only thing which activates bacteria is a source of plant food in sufficient quantity, which was not present in Actumus. Dr. McVickars said that the statement was false because it would be necessary to have a generous supply of nitrogen present to activate bacteria, whereas the nitrogen content of Actumus was exceedingly low.

The only evidence offered by respondents with respect to this issue, admittedly one of a technical nature requiring expert evaluation, was Dr. Milton's deposition and his experiment in counting the bacteria present and determining nitrogen fixation in soil treated with Actumus in comparison with untreated soil. According to Dr. Milton, his experiment revealed that Actumus brought about a vigorous growth of aerobic microorganisms of the type associated with nitrogen fixation, and produced measurable quantities of nitrate within the course of several days. Dr. Milton's report of this experiment, which was received in evidence as one of respondents' exhibits, does show that the soil treated with Actumus had a substantially higher bacterial count and a greater amount of nitrogen fixation than the soil which was not treated. However, in answer to certain cross interrogatories, Dr. Milton admitted that his experiments were of a preliminary nature and were not suitable for statistical treatment because they had not been replicated. He further admitted that the experiment could not be considered more than an indication that future tests should be carried out on a much larger scale before scientifically-acceptable conclusions could be drawn. In his opinion, the preliminary tests warranted further study of the product. Dr. Anderson, recalled by counsel supporting the complaint in rebuttal, testified that Dr. Milton's tests proved nothing, that he would attach no weight to them, and that Dr. Milton had admitted that they were inconclusive at best and only a pointer. Dr. Anderson said that Dr. Milton's tests with respect to determining bacterial count and nitrogen fixation were neither standard nor conventional. Dr. Anderson said there is an established, well-recognized, worldwide method of determining nitrate in the soil, and that the method used by Dr. Milton is unknown to American scientists.

As previously indicated, counsel supporting the complaint objected strenuously to reception of the deposition on the ground that he

was deprived of adequate cross-examination. Obviously this is true to a degree of all depositions upon written interrogatories, but goes to their weight rather than to their admissibility. However, weight is a significant factor now that there exists conflict in the testimony between the experts called in support of the complaint and Dr. Milton. Additionally, determination of credibility is enhanced substantially by an opportunity to observe the witness under oath and competent cross-examination. For these reasons as well as the eminent qualifications of the witnesses called in support of the complaint, their testimony that Actumus does not activate bacteria which create nitrate from the air as well as other elements needed for plant life is credited. In this connection it should be noted that respondents offered no proof of any kind that Actumus activates bacteria which creates "other elements" needed for plant life. For the foregoing reasons, the weight of evidence appears strongly to sustain this allegation of the complaint.

3. Actumus Creates Fertility in the Soil.

As previously found, respondents represented that Actumus creates fertility in the soil and that its action as a soil conditioner continues to increase. The chemical analyses of Actumus reveals that the elements contained therein having a propensity to increase fertility, such as nitrogen, potash and phosphorous, were so minute as to be of no effect in the quantities recommended for usage, and indeed in far greater quantities. Because the product contained less than $\frac{1}{2}$ of 1% of nitrogen and potassium and only $\frac{1}{20}$ of 1% of phosphorous, it would require the use of thousands of pounds to apply any appreciable amount of such fertilizing materials to an acre of land. Respondents argue that the complaint alleged that Actumus was a fertilizer, that the record establishes that it was not, and that respondents did not claim it to be. This is a misinterpretation of the complaint. The representation in question was the characterization by respondents of Actumus as a "fertility builder". The complaint in fact specifically alleges that respondents did not characterize Actumus as a "fertilizer". Respondents argue that because the experts called by counsel for the complaint evaluated Actumus as fertilizer, among other things, and the record establishes that respondents did not call Actumus a fertilizer, such experts' conclusions that Actumus is worthless as a builder or provider of fertility in the soil are of no value. This overlooks the basic issue. While it is true that respondents did not call their product a fertilizer, they did represent it to be a fertility builder and to create and enhance fertility in the soil. The distinction seems to be one purely of semantics.

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Based upon dictionary definitions and ordinary accepted usage of the English language, there hardly can be any difference between characterizing a product as a fertility builder instead of a fertilizer. A fertilizer is a substance which provides fertility to the soil. To fertilize is to make fertile or to build up fertility. Respondents' labels on the containers or cans in which Actumus is sold, several of which were received in evidence as exhibits, call the product "Actumus Fertility Builder", in capital letters much larger than any others on the label. This title is repeated several times. In the finest print on the label, reference is made to "soil conditioning action," and again to "the most economical conditioner," although the term "soil conditioner" is never used. Be that as it may, the largest print refers to the product as a fertility builder. Consequently, it is concluded that respondents represented beyond any doubt that Actumus was designed to build, enhance or create fertility in the soil. In addition, numerous samples of respondents' advertising also refer to Actumus in strong terms as an excellent fertility builder.

Dr. Anderson testified that no area of land would benefit materially from the application of Actumus according to respondents' directions and that while there were small traces of nitrogen, phosphorous and potash in the product, the quantities were too minute to expect any benefits therefrom or to do any appreciable good. It is clear from respondents' defense that they themselves do not consider Actumus to be a fertilizer or fertility builder, but instead contend that it is some kind of a soil conditioner. Dr. Bentz testified that Actumus in the amounts recommended was worthless as a source of fertility because, based upon its analysis, it would take 250 pounds of Actumus per 1,000 square feet to supply the necessary amounts of nitrogen and potash to improve fertility and the requisite amount of phosphate would still be short. Respondents recommended 1 pound of Actumus to 450 square feet of soil for average regular usage. Dr. McVickars agreed that in the amounts recommended, because of the lack of essential elements, Actumus would be worthless as a source of fertility in the soil.

Dr. Milton in his deposition testified that he was of the opinion that Actumus would increase the fertility of the soil, but it is clear that this opinion was based upon his conclusion that Actumus improved the condition of the soil through the increase of bacterial growth, and not because it added any plant nutrients to the soil. In addition to the test concerning bacterial count and nitrogen fixation, Dr. Milton conducted certain experiments with lettuce and tomatoes involving the use of two plots of ground, one treated with

Actumus and the other untreated. As in the case of the bacterial test, Dr. Milton admitted that the lettuce and tomato tests were inconclusive inasmuch as they were neither randomized or replicated. He again conceded that his tests were nothing more than a preliminary experiment to determine if it was worthwhile to carry out properly designed experiments and could not be regarded as more than pointers that future work should be carried out on a much larger scale before scientifically acceptable conclusions could be drawn.

In addition, even assuming Dr. Milton's tomato and lettuce experiments to be susceptible of scientific conclusions and statistical treatment, they are of slight value because he used far greater quantities of Actumus in his treated soil than recommended by respondents to their purchasers. Dr. Milton testified that he was given instructions by the English exporter of Actumus concerning the quantities to be used in his experiments. The record reveals through numerous exhibits, including one of the labels from the product, that respondents recommended an application of one pound of Actumus to 450 square feet of land for general garden usage. In some instances the directions referred to this as a maximum application, and stated that one pound could be used for as much as 900 square feet of gardening land. Dr. Milton's reports with respect to the tomato experiment reveal that he used one pound of Actumus for 25 tomato plants applied directly to each plant, and accordingly used approximately one pound of Actumus for 25 square feet, or 18 times as much as that recommended by respondents. In connection with his lettuce experiment he used $\frac{1}{2}$ ounce of Actumus per square foot in treating the soil, which would amount to approximately 14 times as much Actumus as recommended.

Respondents argue that in some of their literature reference is made to substantially stronger applications of Actumus than one pound per 450 square feet, some of which are approximately the same as that used by Dr. Milton, and accordingly contend that his usage conformed to such directions furnished to customers. While this is correct, it overlooks the fact that the primary and most frequently recommended usage was one pound per 450 square feet. This recommendation was not only contained on the label of the product but is found frequently in a number of the exhibits. The public has a right to rely upon such representations, and cannot be required to search the fine print of pamphlets and circulars to learn that under certain conditions and exceptions a larger application is recommended. The liquid application of Actumus used by Dr. Mil-

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ton in his bacteria test was also far in excess of that recommended by respondents for usual usage. As in the case of the bacteria experiment, Dr. Milton's conclusion that an improvement in soil condition would result in an increase of fertility is in conflict with the testimony of the experts called in support of the complaint, and is subject to the same deficiencies with respect to weight. The qualifications of the experts called in support of the complaint were most impressive.

Mr. McDannel, not an expert, testified that he believed Actumus was humus and that his experiments with it demonstrated an improvement in soil condition and plant growth. He referred to a test planting of 6 sunflower plants, 3 treated with Actumus and 3 untreated, in which those treated produced heavier roots. As in Dr. Milton's experiments, this experiment was neither randomized nor replicated and the results could well be attributable to other and unrelated factors, and hence are of no value as scientific data. Mr. McDannel apparently believed Actumus to be a soil conditioner and not a builder of fertility. Even assuming that Mr. McDannel's observations were correct, it is well established that such testimony based upon lay experience in individual cases is of little value as compared to expert testimony based upon scientific knowledge. The courts have frequently held that such testimony is of slight value, and that scientific testimony is that which counts.²

All of the witnesses called in support of the complaint agreed that in the quantities recommended Actumus would have no value as a soil conditioner. Actually, the complaint does not allege as false any representation by respondents that Actumus is a soil conditioner and accordingly that is not in issue. The only issue with respect to soil conditioning is whether or not Actumus' action, if any, as a soil conditioner continues to increase. Dr. Milton concluded that Actumus was an effective soil conditioner but his conclusions and experiments are subject to the infirmities alluded to herein. The record establishes, and it is undisputed, that its action, if any, as a soil conditioner would not continue to increase with the passage of time.

4. Actumus is Entirely Natural and 100% Organic.

As previously found, respondents represented that Actumus was entirely natural and 100% organic, and although this was not specifically set forth as one of the sample representations in the complaint, the issue was fully litigated and accordingly is appropriate for inclusion herein. The experts called in support of the complaint

²*Fulton Co. v. F.T.C.*, 130 F. 2d 85 (C.A. 9, 1942); *Irwin v. F.T.C.*, 143 F. 2d 316 (C.A., 8, 1944), and cases cited therein.

agreed that Actumus was not entirely natural and 100% organic because of its high ash or mineral content revealed by the chemical analyses. While, as contended by respondents, it is possible and permissible to refer to inorganic matter derived from organic matter as organic matter, Drs. Anderson and Bentz pointed out that it was impossible to have the high percentage of ash found in this product from an organic source. The analyses showed an ash or mineral content of 41% or more in the product. It is clear from an analysis of respondents' advertising that they used the terms "natural" and "100% organic" interchangeably. There is no evidence in the record to contradict the conclusions of the experts called in support of the complaint.

C. Concluding Findings

A preponderance of the reliable, probative and substantial evidence in the entire record convinces the undersigned, and accordingly it is found, that respondents, in the course and conduct of their businesses in commerce and for the purpose of inducing the purchase of their product, have made and are now making false, misleading and deceptive representations with respect thereto, by representing that Actumus:

- 1) is the final and stable end-product of conversion of organic matter into humus, or is humus;
- 2) activates bacteria which create nitrate and other elements necessary for plant life;
- 3) builds fertility in the soil or its action as a soil conditioner continues to increase; and
- 4) is entirely natural and 100% organic.

D. The Effect of the Unlawful Practices

The acts and practices of respondents, as hereinabove found, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, composition, properties and characteristics of respondents' product and thereby induce the purchase of substantial quantities thereof. As a result, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce, and engaged in the above-found acts and practices in the course and conduct of their businesses in commerce, as "commerce" is defined in the Act.

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2. The acts and practices of respondents hereinabove found are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Act.

3. As a result of the above-found acts and practices of respondents, substantial injury has been done to competition in commerce.

4. This proceeding is in the public interest, and an order to cease and desist the above-found unlawful practices should issue against respondents.

ORDER

It is ordered, That respondents, George Dugdale, an individual, trading as The Burkleigh Company, and his agents, representatives and employees, and Foreign Products Corporation, a corporation, and its officers, and Edgar Kirby, individually and as an officer of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce as "commerce" is defined in the Act, of the soil conditioner designated as "Actumus" or any other product containing substantially the same ingredients or possessing substantially the same properties, do forthwith cease and desist from representing, directly or by implication:

1. That if poor or depleted soil has reserve stores of any elements necessary for plant growth, Actumus has the selective ability to supply from such stores plant nutrients which may be lacking in the soil.

2. That a balanced supply of plant nutrients is made available at the correct time and speed through the use of Actumus; or that Actumus has any selective propensities with respect to the supply of plant nutrients.

3. That the soil may be organized into specific units through the use of Actumus.

4. That the laws of nature with respect to the supply of organic material or plant growth are in any manner affected by the use of Actumus; or that the use of Actumus assures an adequate supply of organic residue to benefit plant life.

5. That when used as directed the application of Actumus to plants or soil will increase the size of roots to any significant extent.

6. That the use of Actumus will be effective in the removal of weeds.

7. That the application of Actumus to eroded, depleted, or over-cropped soil will restore such soil to fertility.

8. That fertilizer does not exist, or that it exists only in the imagi-

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nation of ignorant people, or that the use of fertilizer is of no benefit to the soil.

9. That one pound of Actumus is equal to half a ton of manure or as effective as sixteen tons of compost; or misrepresenting in any manner the effectiveness of Actumus as compared to manure or compost.

10. That one pound of Actumus will produce 1500 gallons of liquid soil conditioner or that one teaspoonful of Actumus dissolved in twenty gallons of water makes an effective fertilizer or manure.

11. That Actumus is humus or the final and stable end-product of conversion of organic matter into humus.

12. That bacteria which create nitrate or other elements necessary for plant growth are activated or made available to plants through the use of Actumus.

13. That Actumus creates or has any effect on the fertility of soil, or acts with increasing effect as a soil conditioner.

14. That Actumus is entirely natural or 100% organic, or misrepresenting in any other manner its composition.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of February, 1957, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
FURS BY KENT ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6645. Complaint, Oct. 8, 1956—Decision, Feb. 13, 1957

Consent order requiring two furriers in York, Pa., to cease violating the Fur Products Labeling Act by misrepresenting the quality and price of certain fur products on tags, labels and invoices, and in newspaper advertisements; and by failing in other respects to comply with requirements of the Act.

Mr. S. F. House for the Commission.

Macleay, Lynch & MacDonald, of Washington, D.C., for P. Wiest's Sons.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued October 8, 1956, charges the respondents with violation of the provisions of the Fur Products Labeling Act and of the Federal Trade Commission Act, the respondents being Furs by Kent, a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 221 North Howard Street, Baltimore, Maryland; P. Wiest's Sons, a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at No. 14-20 Market Street, York, Pennsylvania; and Meyer Kimmelman and Anthony DeRito, individually and as officers of Furs by Kent, being respectively the President and Secretary-Treasurer of said corporation. The address of the individuals is No. 221 North Howard Street, Baltimore, Maryland.

After issuance and service of said complaint, all parties respondent entered into an Agreement for a Consent Order with counsel in support of the complaint disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of