

Complaint

IN THE MATTER OF

IRVING KAUFMAN TRADING AS STYLE SCARF CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-122. Complaint, Apr. 19, 1962—Decision, Apr. 19, 1962

Consent order requiring an importer in New York City to cease violating the Flammable Fabrics Act by importing and selling in commerce silk scarves and fabric which were so highly flammable as to be dangerous when worn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Irving Kaufman, an individual, trading under his own name and as Style Scarf Co., hereinafter referred to as respondent, has violated the provisions of said Acts, and the Rules and Regulations promulgated under the Flammable Fabrics 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 Irving Kaufman, whose address is 44-55 Kisenia Boulevard, Flushing, N.Y., is an individual trading under his own name and as Style Scarf Co. Respondent's former office and principal place of business was located at 145 West 40th Street, New York, N.Y.

PAR. 2. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, in commerce; has imported into the United States; and has introduced, delivered for introduction, transported and caused to be transported, in commerce; and has transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were silk scarfs.

PAR. 3. Respondent, subsequent to July 1 1954, the effective date of the Flammable Fabrics Act, has sold and offered for sale, articles

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of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric, as the term "fabric" is defined in the Flammable Fabrics Act, had been shipped and received in commerce.

Among the articles of wearing apparel mentioned above were silk scarfs.

PAR. 4. Respondent, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, has imported into the United States, sold and offered for sale in commerce, and has introduced, delivered for introduction, transported or caused to be transported in commerce, and has transported or caused to be transported for the purpose of sale or delivery after sale in commerce, as "commerce" is defined in the Flammable Fabrics Acts, as amended, fabric as the term "fabric" is defined therein which was, under the provisions of Section 4 of the aforesaid Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 5. The acts and practices of respondent herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

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ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Irving Kaufman, whose address is 44-55 Kisen Boulevard, Flushing, N.Y., is an individual trading under his own name and as Style Scarf Co. Respondent's former office and principal place of business was located at 145 West 40th Street, New York, N.Y.

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

ORDER

It is ordered, That respondent Irving Kaufman, an individual, trading under his own name or as Style Scarf Co., or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or
- (b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. (a) Importing into the United States; or
- (b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported in commerce, as the term "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any fabric which under the provisions of Section 4 of said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

3. Selling or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

HUDSON VITAMIN PRODUCTS, INC.

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

Docket C-123. Complaint, Apr. 19, 1962—Decision, Apr. 19, 1962

Consent order requiring a New York City distributor of drug products to cease making misleading therapeutic claims in advertising for its preparations, as in the order below indicated.

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 Hudson Vitamin Products, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hudson Vitamin Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 89 Seventh Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of various preparations containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent for certain of its said various preparations, the formulas thereof and directions for use are as follows:

I. Designation:

Hudson Geriban Liquid

Formula:

Each fluid ounce supplies:

Thiamine (B-1)-----	5 mg.
Riboflavin (B-2)-----	5 mg.
Niacinamide -----	100 mg.
Panthenol -----	4 mg.
Pyridoxine (B-6)-----	1 mg.
Vitamin B-12-----	3 mcg.

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Methionine ----- 100 mg.
 Choline Bitartrate----- 100 mg.
 Iron (as Iron Ammonium Citrate)----- 100 mg.
 Plus other factors as found naturally in Yeast Extract. Alcohol
 12% by volume.

Directions:

As a supplement to the daily diet, one (1) tablespoon daily, preferably after a meal. In iron deficiency anemia—one (1) tablespoon two (2) or three (3) times daily, preferably after meals, or as directed by a physician.

II. A. *Designation:*

Hudson Vitamin B-12 (5 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B-12 activity 5 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

B. *Designation:*

Hudson Vitamin B-12 (10 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B-12 activity 10 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

C. *Designation:*

Hudson Vitamin B-12 (25 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B-12 activity 25 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

D. *Designation:*

Hudson Vitamin B-12 (50 mcg.)

Formula:

Each tablet contains (Cobalamin) Vitamin B-12 activity 50 mcg.

Directions:

One (1) tablet daily, or as directed by a physician for nutritional supplementation.

III. *Designation:*

Hudson Enzotoc

Formula:

Each tablet contains:

Pepsin (1:3000 N.F.) ----- 190 mg.
 Papain ----- 30 mg.
 Aspergillus Oryzae----- 30 mg.
 Oxbile Extract----- 150 mg.
 Pancreatin ----- 300 mg.
 Dehydrocholic Acid----- 30 mg.

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Directions:

One (1) or two (2) tablets, SWALLOWED WHOLE, with water, during or after each meal.

THESE TABLETS ARE NOT TO BE CHEWED OR CRUSHED

IV. *Designation:*

Hudson Femtabs.

Formula:

Each tablet contains:

Ammonium Chloride.....	330 mg.
Homatropine Methylobromide.....	0.5 mg.
Caffeine Alkaloid.....	3.3 mg.
Vitamin B-1 (Thiamine HCl).....	2.0 mg.
Vitamin B-2 (Riboflavin).....	1.0 mg.
Vitamin B-6 (Pyridoxine HCl).....	0.5 mg.
Calcium Pantothenate.....	1.0 mg.
Niacinamide	5.0 mg.

Directions:

(Two (2) tablets three (3) times daily after meals, starting ten (10) days before expected date of menstrual period. The diet should contain high protein content and low-salt. If menstrual cramps occur when menstrual flow begins, medication may be continued until complete relief is obtained.

PAR. 3. Respondent causes its said preparations, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other 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 said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and has disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Geriban Liquid", are the following:

If you are tired, have a poor appetite, and feel generally below par—due to an iron nutritional deficiency, (your physician is qualified to determine this) GERIBAN may well give you the lift you need.

PAR. 6. Through the use of the said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Geriban Liquid" will be of benefit in the treatment of tiredness, poor appetite and feelings of being below par.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Geriban Liquid" will not be of benefit in the treatment of tiredness, poorness of appetite or feelings of being below par, except in a small minority of persons whose tiredness, poor appetite and feelings of being below par are symptoms of an established deficiency of one or more of the nutrients provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who have poor appetite and who feel below par, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Geriban Liquid". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who have poor appetite, and who feel below par, these symptoms are not caused by an established deficiency of one or more of the nutrients provided by "Hudson Geriban Liquid", and that in such persons the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparations designated "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", and "Hudson Vitamin B-12 (50 mcg.)" are the following:

Blood impoverishment of Vitamin B-12 may result in tiredness, poor appetite and weakened resistance (your physician is qualified to determine this).

PAR. 9. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" and "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite and weakened resistance.

PAR. 10. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, neither "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", nor "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite or weakened resistance, except in a small minority of persons whose tiredness, poor appetite and weakened resistance are symptoms of an established deficiency of the nutrient provided by the preparations.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who experience feelings of tiredness, who have poor appetite, and who have weakened resistance, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" or "Hudson Vitamin B-12 (50 mcg.)". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons experiencing tiredness, who have poor appetites, and who have weakened resistance these symptoms are not caused by an established deficiency of the nutrient provided by "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", or "Hudson Vitamin B-12 (50 mcg.)", and that in such persons the said preparations will be of no benefit.

PAR. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Enzotoc", are the following:

* * * before food can be used by the body it must be digested. This process is the responsibility of enzymes which sometimes fall short of their duties, causing discomfort in the form of indigestion, nausea, distention, belching and heartburn. * * * If you are troubled with faulty digestion—order ENZOTOC today.

PAR. 12. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that "Hudson Enzotoc" will be of benefit in the treatment of indigestion, nausea, distention, belching and "heartburn".

PAR. 13. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Enzotoc" will not be of benefit in the treatment of indigestion, nausea, distention, belching or "heartburn", except in a small minority of persons whose indigestion, nausea, distention, belching and "heartburn" are symptoms of an established deficiency of one or more of the enzymes or bile derivatives provided by the preparation.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest to persons who have indigestion, nausea, distention and "heartburn" and who belch that there is a reasonable probability that they have symptoms which will respond to treatment by the use of "Hudson Enzotoc". In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons who have indigestion, nausea, distention and "heartburn", and who belch, these symptoms are not caused by an established deficiency of one or more of the enzymes or bile derivatives provided by "Hudson Enzotoc", and that in such persons the said preparation will be of no benefit.

PAR. 14. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondent's preparation designated "Hudson Femtabs", are the following:

FEMTABS offer symptomatic relief from many of the distressing symptoms caused by premenstrual tension, such as anxiety, depression, irritability, headache, etc.

PAR. 15. Through the use of said advertisements and others similar thereto not specifically set out herein, respondent has represented, and is now representing, directly and by implication, that "Hudson Femtabs" will be effective in relieving presently existing anxiety, depression, irritability, headache and other presently existing symptoms of premenstrual tension.

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PAR. 16. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Hudson Femtabs" will not be effective in relieving any presently existing symptom of premenstrual tension.

PAR. 17. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules;

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hudson Vitamin Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 89 Seventh Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered. That respondent Hudson Vitamin Products, Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in

connection with the offering for sale, sale or distribution of the preparations designated "Hudson Geriban Liquid", "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)", "Hudson Vitamin B-12 (50 mcg.)", "Hudson Enzotoc" and "Hudson Femtabs", or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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 by implication:

(a) That "Hudson Geriban Liquid" will be of benefit in the treatment of tiredness, poor appetite or feelings of being below par, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the nutrients provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(b) That "Hudson Vitamin B-12 (5 mcg.)", "Hudson Vitamin B-12 (10 mcg.)", "Hudson Vitamin B-12 (25 mcg.)" or "Hudson Vitamin B-12 (50 mcg.)" will be of benefit in the treatment of tiredness, poor appetite or weakened resistance, unless such advertisement expressly limits the effectiveness of the preparations to those persons whose symptoms have been caused by an established deficiency of the nutrient provided by the preparations and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparations, and that in such persons the preparations will not be of benefit.

(c) That "Hudson Enzotoc" will be of benefit in the treatment of indigestion, nausea, distention, belching or "heartburn", unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms have been caused by an established deficiency of one or more of the enzymes or bile derivatives provided by the preparation and, further, unless the advertisement clearly and conspicuously reveals the fact that in the great majority of persons these symptoms are caused by conditions other than those which may

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respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(d) That "Hudson Femtabs" will be effective in relieving presently existing anxiety, depression, irritability or headache due to premenstrual tension or any other presently existing symptom of premenstrual tension.

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 of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1, above, or which fails to comply with the affirmative requirements of paragraph 1, above.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

CARTER PRODUCTS, INC., ET AL.

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

Docket 7943. Complaint, June 15, 1960—Decision, Apr. 25, 1962

Order requiring the manufacturer of "Rise" shaving cream and its advertising agency to cease disparaging competing products in deceptive television commercials as they did in a video sequence showing a man shaving in obvious discomfort when the "ordinary" aerated lather on his face, represented as dried out, was not shaving cream at all but a substance specially prepared to simulate shaving cream.

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 Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation, and S. Heagan Bayles, an individual, hereinafter referred to as respondents, have violated the provisions of the 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 Carter Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Two Park Avenue, New York, N.Y.

Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 575 Lexington Avenue, New York, N.Y.

Respondent S. Heagan Bayles is an individual and his address is 575 Lexington Avenue, New York, N.Y.

PAR. 2. Respondent Carter Products, Inc., is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of a shaving cream designated "Rise", and various other products, to distributors and to retailers for resale to the public.

Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is now, and for some time last past has been, an advertising agency of the respondent Carter Products, Inc., and now prepares and places, and for some time last past has prepared and placed, advertising material for publication, including television commercials including but not limited to that hereinafter set forth, to promote the sale of the aforesaid "Rise" and other products.

Respondent S. Heagan Bayles is an official or employee of Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., and is the executive in charge of the "Rise" account. As such he actively participated in and was in charge of the preparation and dissemination of the "Rise" advertisements hereinafter set forth.

PAR. 3. In the course and conduct of its business, respondent Carter Products, Inc., now causes, and for some time last past has caused, the said "Rise" when sold to be shipped from its factories or plants in the various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains and at all times mentioned herein has maintained a substantial course of trade in said product, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of its business at all times mentioned herein, respondent Carter Products, Inc., has been in substantial competition, in commerce, with other corporations and firms in the sale of shaving cream.

In the conduct of its business, at all times mentioned herein respondent Sullivan, Stauffer, Colwell & Bayles, Inc., has been in sub-

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stantial competition, in commerce, with corporations, firms and individuals in the advertising business.

PAR. 5. Respondents, by means of the aforesaid television commercials, which include visual demonstrations of a male actor shaving, first with what is represented to be a competing shaving lather which appears to have dried out on his face causing him to wince in discomfort resulting from shaving with the competing lather; next the actor is shown shaving in apparent comfort with "Rise" which appears to remain "moist and creamy", have represented, directly or by implication, that competing lathers dry out in the course of a shave making shaving more difficult and uncomfortable while "Rise" stays "moist and creamy" throughout a shave resulting in an easier and more comfortable shave.

PAR. 6. The aforesaid representations, including the visual demonstrations, are false, misleading and deceptive. In truth and in fact, that which is represented as being a competing lather is not a lather or shaving cream at all. It is a formulation specially prepared and used in said demonstration and is not a product used for shaving purposes. Said demonstration is not a valid comparison of the respective qualities of "Rise" and competing products as shaving lathers and tends to disparage competing lathers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive representations, demonstrations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of "Rise" by reason of said erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has been, and is being, unfairly diverted to respondent Carter Products, Inc., from its competitors and substantial injury has thereby been, and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the competitors of respondent Carter Products, Inc., and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Edward F. Downs supporting the complaint.

Mr. William L. Hanaway and *Mr. John J. Campbell*, of New York, N.Y. for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation and S. Heagan Bayles, an individual, hereinafter called respondents, are charged with false advertising of "Rise", an aerosol shaving cream manufactured and sold by respondent Carter Products, Inc., in violation of the Federal Trade Commission Act. Each of the respondents has denied, in substantial part, the violations alleged. Hearings have been held and proposed findings, conclusions of law and order have been submitted by respective counsel. The matter is now before the undersigned hearing examiner for final consideration. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Respondent Carter Products, Inc., is a corporation, organized and doing business under the laws of the State of Maryland, with its office and principal place of business located at Two Park Avenue, New York, N.Y.

2. Respondent Sullivan, Stauffer, Colwell & Bayles, 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 575 Lexington Avenue, New York, N.Y. The individual respondent S. Heagan Bayles is the Chief Executive Officer and Chairman of the Board of Directors of the corporate respondent Sullivan, Stauffer, Colwell & Bayles, Inc. His address is also located at 575 Lexington Avenue, New York, N.Y.

3. The respondent Carter Products, Inc., is now, and has been engaged in the manufacture, advertising, offering for sale, sale and distribution of a shaving cream designated "Rise," and other products, to distributors and retailers for resale to the public.

4. Respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is now, and has been, an advertising agency handling the "Rise" advertising account for the respondent Carter Products, Inc., and prepares and places advertising material for publication, including television commercials, to promote the sale of "Rise" shaving cream and other products. The individual respondent S. Heagan Bayles is and was at the time of the advertising complained about, the executive of Sullivan, Stauffer, Colwell & Bayles, Inc. in charge of the "Rise" account. His specific duties with respect to the "Rise" account will be discussed in paragraph 12 hereof.

5. In the course and conduct of its business, respondent Carter Products, Inc., now causes, and has caused the said "Rise" shaving cream, when sold, to be shipped from its factory located in Cranberry, New Jersey, to purchasers located in various states of the United States and in the District of Columbia, and maintains, and has maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act and is, and has been, in substantial competition, in commerce, with other corporations and firms in the sale of shaving cream.

6. In the conduct of its business respondent Sullivan, Stauffer, Colwell & Bayles, Inc., is, and has been, in substantial competition in commerce, with corporations, firms and individuals in the advertising business.

7. The television commercials complained about were 60-second commercials telecast on television stations during the period between December 2, 1959, and the first week in February 1960, and include visual demonstrations of a male actor shaving, first, after applying to his face what was orally represented to be an "ordinary" shaving cream lather which disappeared rapidly and appeared to dry out on his face shortly after application, causing him to wince in discomfort while attempting to shave with the competing lather. However, this "ordinary" shaving cream was not a shaving cream at all but was a white creamy-looking substance prepared by respondent Carter Products, Inc., to simulate shaving cream, and contained properties which caused it to disappear rapidly and appear to dry out immediately after being applied to the face of the actor (CX 16). It actually contained 90 percent water and a 10 percent solution of "ultra-wet 60L", without perfume, and was pressurized in a can. "Ultra-wet 60L" is a surface or foaming agent produced by Atlantic Refining Company and has the property of producing foams. Mr. Edwin L. Brewster, Director of Control for respondent Carter Products, Inc., testified that he received a telephone request to prepare and send to Mr. Richardson's¹ office some cans of lather for use on television commercial shorts which would come out of the can "in a good puff and would disappear rapidly." He then obtained the "ultra-wet 60L" from Atlantic Refining Company. This was mixed with water and placed in a can under pressure and was used in the television commercial to simulate "ordinary" shaving cream lather (CX 16). This mixture resembling shaving cream did not contain any soaps or fatty acid salts usually found in shaving cream lathers. These soaps and

¹ Mr. Richardson is Vice President in charge of sales and advertising for respondent Carter Products, Inc.

fatty acid salts prevent shaving cream from breaking down. In the next visual sequence the actor is shown shaving in apparent comfort with "Rise" which appears to remain moist and creamy. Along with the visual demonstration in the television commercial was an audio portion which stated the following:

Guard against razor scratch . . . the scratches, scrapes and burns you often get with ordinary aerated lathers that dry out on your face and let your whiskers dry out too. But now there's a new instant lather that stays moist and creamy—keeps your whiskers wet and soft all through your shave—gives you closer, more comfortable shaves.

8. Through and by the use of said television commercials, respondents have represented, directly and by implication, that competing lathers dry out in the course of a shave making shaving more difficult and uncomfortable while "Rise" stays moist and creamy throughout the shave, resulting in an easier and more comfortable shave. Said representations, including the visual demonstrations, are false, misleading and deceptive in a material respect. Through the use of the specially prepared substance which respondents represented in the television commercials to be "ordinary" lather, and which completely dried out and broke down in approximately one minute after ejection from the can as demonstrated during the course of the hearing, respondents thus represented that competing lathers dry out in the same manner, which is contrary to the truth and constitutes disparagement of competing lathers. As demonstrated at the hearing, neither "Rise" nor two other competing commercial lathers dried out as quickly as the special formula used in the first television sequence. Seven other lathers appearing in RXI through RX10 did not, according to these exhibits, dry out in one minute as did the special formula. In its own defense, respondent Carter Products, Inc., offered and there was received in evidence the results of certain tests made by respondent Carter Products, Inc., to support its claim that more than 50 percent of the competing aerated shaving creams on the commercial market dry out faster than "Rise." Even assuming this contention to be true, this does make the representation by respondent Carter Products, Inc. in its television commercial any less a misrepresentation. Since a shaving cream was not used in the purported comparison, such demonstration does not prove the superiority of "Rise" over any competing shaving cream, to say nothing of its claimed superiority over other competing lathers. Accordingly, it was deceptive for respondents to imply that the demonstration in said commercial proves the superiority of "Rise" over competing shaving creams.

9. Respondents contend that said television commercial was not false or deceptive for the reason that respondents were not comparing "Rise" with all competing lathers but only with those that dry out quickly. After referring to "ordinary" lathers and the discomforts of shaving with them, the television commercials complained about, state:

... but now there's a new instant lather ... that stays moist and creamy ... keeps your whiskers wet and soft all through your shave ... gives you closer, more comfortable shaves. Its RISE patented small bubble lather ... The richest, wettest lather ever made.

By using this language respondents represented that the new product "Rise" is the only lather that stays moist and creamy, and, among the aerated lathers on the market, "Rise" is the richest, wettest lather ever made. It will be noted that respondents did not state that "Rise" is one of the richest, wettest lathers but the richest, wettest lather. Therefore, this contention must be rejected.

10. Respondents' contention that they used a substance other than shaving lather in the filmed commercials because of technical photographic problems is rejected. Reasonable latitude is and should be granted to advertisers and advertising agencies in the use of "make-up" where necessary to meet the technical requirements of photography. However, this is not a license to misrepresent the truth as to a material fact. It is undisputed that respondents used "Rise" shaving lather in the television commercials complained about. If respondents could successfully photograph "Rise" shaving lather, they could also successfully photograph a competing or competing shaving lathers. Representatives of respondents testified that their reason for using the specially prepared substance which resembled shaving cream but contained ingredients which caused it to disappear and dry up considerably faster than ordinary shaving cream was to dramatize the difference between "Rise" and "ordinary" lathers. Even so, it was not necessary to prepare and use a phony substance resembling shaving cream and represent this to the public as a competing shaving cream, inferior to "Rise". Respondents also contend that, since the thrust of the complaint is directed toward respondents' use of the substitute substance in the filmed comparison with "Rise" and no attack is made with respect to the truth of the audio portion of the filmed commercial quoted in paragraph 7 hereof, the allegations of the complaint have not been established. There is no merit in this contention. As previously found herein, the visual and audio portions of the filmed commercial have been and should be considered together, in their entirety.

not separately. Taken as a whole, they constitute a misrepresentation of a material fact.

11. Respondent Carter Products, Inc., urges that, since the television commercials under inquiry have been permanently and voluntarily discontinued and respondents do not intend to resume their use, no order is necessary. The evidence shows that the Federal Trade Commission initiated its investigation of the television commercials on or about February 1, 1960, and respondents discontinued their latest exhibition on or about February 9, 1960. The complaint herein was thereafter issued on June 15, 1960. Respondent Carter Products, Inc. has filed in the record an affidavit by one of its officers certifying that this respondent has permanently abandoned the use of the television commercials complained about and does not intend to resume their exhibition at any time in the future. This action on the part of Carter Products, Inc. in discontinuing the use of the films is commendable. However, the facts and circumstances which exist in this case do not justify dismissal of the complaint on the ground that respondents have discontinued the exhibition of the films complained about. The respondents did not discontinue their exhibition until after the Commission began its investigation and after the Commission's "hand was on respondent's shoulder." As stated by the Commission in *Argus Cameras, Inc.*, Docket No. 6199: "Dismissal of a complaint in cases of this general character is not the usual procedure. It should not be done unless there is a clear showing of unusual circumstances which in the interest of justice require it." No unusual circumstances are shown or even claimed to exist in this proceeding which would justify dismissal on these grounds.

12. The individual respondent S. Heagan Bayles requests that the complaint be dismissed as to him for the reason that Mr. Bayles had no individual responsibility for the preparation or dissemination of the television commercials complained about. As has been found in paragraph 4 above, Mr. Bayles is the Chief Executive Officer and Chairman of the Board of Directors of respondent Sullivan, Stauffer, Colwell & Bayles, Inc., and in charge of the "Rise" account for Sullivan, Stauffer, Colwell & Bayles, Inc. The complaint alleges that Mr. Bayles is the executive in charge of the "Rise" account for Sullivan, Stauffer, Colwell & Bayles, Inc., and "as such he actively participated in and was in charge of the preparation and dissemination of the "Rise" advertisements hereinafter set forth". For this reason counsel supporting the complaint seeks an order against the respondent corporation Sullivan, Stauffer, Colwell & Bayles, Inc., and its officers and also against Mr. S. Heagan Bayles

in his individual capacity. As stated by the Commission in the matter of *Kay Jewelry Stores, Inc. et al*, Docket No. 6445: "The Commission has wide discretion in determining the necessity of attaching individual liability to insure the full effectiveness of an order to cease and desist". The respondent corporation Sullivan, Stauffer, Colwell & Bayles, Inc., had approximately 420 employees at the time of the hearing and its total billings are in excess of 60 million dollars per year. Some of these employees are engaged in marketing, copy, art work and area media, i.e., the selection of the type of advertising for the particular advertiser, such as magazines, newspapers, billboards, radio or television, etc. The evidence shows that Mr. Bayles is an executive officer of Sullivan, Stauffer, Colwell & Bayles, Inc., and his duties in connection with the "Rise" account were confined largely to setting the policy levels between his agency and respondent Carter Products, Inc. Mr. Bayles does not and did not have the responsibility of preparing and disseminating the "Rise" advertising films complained about. Copywriters, artists and employees in the television department of Sullivan, Stauffer, Colwell & Bayles, Inc., prepared the story-boards (CX1-5) and then, under competitive bids, the actual making of the films from the story-boards was awarded to an independent film producing company who photographed and produced the films complained about. After the films had been produced and delivered to Sullivan, Stauffer, Colwell & Bayles, Inc., its media department arranged with the television stations for their broadcast. In summary, Mr. Bayles' participation in the "Rise" advertising was limited to setting the policy level between his agency and the respondent Carter Products, Inc.; the day-to-day responsibility for actually preparing the "Rise" advertising films was in the hands of two men at Sullivan, Stauffer, Colwell & Bayles, Inc., Mr. Barrett Welch, Management Supervisor, and, under him, Mr. Roland Marx, an account executive. The evidence is undisputed that Mr. Bayles had no knowledge that the substance "ultra-wet 60L" was going to be used in the film commercials instead of shaving cream. In the *Matter of Wilson Tobacco Board of Trade, Inc., et al*, Docket 6262, the order to cease and desist issued by the hearing examiner was directed against certain respondents in their individual capacities, as well as in their capacities as officers and directors of corporate respondents upon the basis of allegations in the complaint charging the named respondents both in their individual and official capacities. However, the initial decision did not contain any finding that these respondents acted in any capacity other than as officers and direc-

tors of the various corporate respondents, nor did the Commission believe there was any evidence to support such a finding. Even though the respondents did not raise the question on appeal in that case, the Commission held that there was no evidence in the record to justify a conclusion that these individuals, as such, might induce evasion of the terms of the order by corporate respondents and no other circumstances appeared pointing to the necessity of directing the order against these parties in their individual as distinguished from their official capacities. Accordingly, the Commission modified the order so as to limit its effect to the named respondents only in their capacities as officers and directors of the corporate respondents, and not against them in their individual capacities. To the same effect are *In the Matter of Neville, Inc., et al.*, Docket 6405 and *In the Matter of Kay Jewelry Stores, Inc., et al., supra*. Here, there is no evidence in the record to justify any conclusion that Mr. Bayles might induce evasion of the terms of the order by corporate respondents and no other circumstances appear pointing to the necessity of directing the order against Mr. Bayles in his individual as distinguished from his official corporate capacity. Therefore, the order to be issued herein will not be directed against Mr. Bayles in his individual capacity.

CONCLUSIONS

13. The use by respondents of the aforesaid false, misleading and deceptive representations, demonstrations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were, and are, true and into the purchase of substantial quantities of "Rise" shaving cream by reason of said erroneous and mistaken belief. As a consequence, substantial trade in commerce has been unfairly diverted to respondent Carter Products, Inc., from its competitors and substantial injury done to competition in commerce. Said acts and practices were, and are, to the prejudice and injury of the public and of the competitors of respondent Carter Products, Inc., and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Carter Products, Inc., a corporation, Sullivan, Stauffer, Colwell and Bayles, Inc., a corporation, their

officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of shaving cream or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Disparaging the quality or properties of any competing product or products, through the use of false or misleading pictures, depictions or demonstrations either alone or accompanied by oral or written statements, or otherwise.

Representing directly or by implication that pictures, depictions or demonstrations either alone or accompanied by oral or written statement accurately portray or depict the superiority of any product over competing products when such portrayal or depiction is an inaccurate comparison of any such product with competing products.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

Respondents herein have been charged with violation of Section 5 of the Federal Trade Commission Act. The matter is now before us on respondents' appeal from an initial decision of the hearing examiner holding that the allegations of the complaint had been sustained by the evidence and ordering two of the respondents to cease and desist from the practices found to be unlawful.

Respondents are Carter Products, Inc., manufacturer of the shaving cream "Rise" and other products; Sullivan, Stauffer, Colwell & Bayles, Inc., an advertising agency handling the "Rise" advertising account; and S. Heagan Bayles, an executive of the advertising agency. In substance, they are charged in the complaint with falsely and deceptively representing in television commercials that shaving creams competing with "Rise" dry out during the course of a shave while "Rise" stays moist and creamy, and with using false and deceptive visual demonstrations in such commercials to make this representation.

There is no dispute as to the following facts: A television commercial typical of those challenged by the complaint opens by depicting a silhouette of a man shaving; the down stroke of the razor being followed by a jagged line, and a voice saying "Guard Against Razor Scratch". After the picture and the words are repeated, there is a close-up of a man shaving in obvious discomfort. The lather which has been applied to his face appears dried out. Superimposed on this picture are the words "Ordinary Lathers Dry Out". The announcer says "The scratches, scrapes and burns you often get with ordinary

aerated lathers that dry out on your face . . . and let your whiskers dry out, too. Your razor tugs and pulls."

The picture then shifts to a can of "Rise" from which a rich, creamy lather is being released onto a man's hand and the words "Stays Moist and Creamy" are flashed on the picture. This is followed by a series of pictures which include a portrayal of a man shaving, his expression indicating that he is experiencing a most comfortable shave. Throughout this sequence, the announcer continues, "But now there's a new instant lather . . . that stays moist and creamy . . . keeps your whiskers wet and soft all through your shave . . . gives you closer, more comfortable shaves. It's Rise patented small bubble lather . . . the richest, wettest lather ever made. Instead of drying out on your face . . . Rise wetter lather puts more moisture into whiskers . . . keeps them wet and soft . . . all through your shave. Guards against razor scratch . . . Gives you closer, more comfortable shaves in half the time. Shave with Rise . . . the wetter lather that doesn't dry out on your face."

The record discloses, and respondents concede, that the so-called "ordinary" lather used in the commercial was not a shaving cream but a substance specially prepared by Carter to simulate shaving cream. As found by the hearing examiner, the substance contained 90 per cent water and a solution of "ultra-wet 60 L", a surface or foaming agent which has the property of producing foam. It did not contain any soaps or fatty acid salts, the ingredients ordinarily used to keep a shaving cream from breaking down, and was formulated in such manner that it would come out of a can "in a good puff and would disappear rapidly".

The record also shows that there are a number of aerated shaving creams that do not dry out in the course of a shave.

Relying primarily on the aforementioned evidence the hearing examiner held that respondents had falsely and deceptively represented in their commercials that all shaving creams competing with "Rise" dry out in the course of a shave while "Rise" does not. He further held that respondents had falsely and deceptively represented that the visual demonstration included in the commercial proved the superiority of "Rise" over competing shaving creams.

The principal argument made by respondents in their appeal is that the hearing examiner misinterpreted the commercials in question and that his conclusion as to what was said in such advertising is not supported by the record. Respondents contend first of all that the commercial was not a comparison of "Rise" with all competing shaving creams, as found by the examiner, but a comparison of "Rise" with

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"ordinary" shaving creams. They next contend that the record shows that an "ordinary" shaving cream is an inferior shaving cream that dries out on the user's face and that the substance used in the commercial as an "ordinary" shaving cream did in fact have the appearance of a dried-out lather. They argue, therefore, that since the purpose of the commercial was merely to dramatize the difference between "Rise" and a dried-out lather, the use of a simulated product in this dramatization or demonstration was not deceptive.

Respondents point out in this connection that witnesses who had participated in the preparation of the advertising in question had testified unanimously that it was their intention to compare "Rise" only with those competing shaving creams which were without merit or of inferior quality. These witnesses also testified that the word "ordinary" was used in the commercial to refer to such inferior products. Individual respondent, Bayles, testified in this connection as follows: "—it might be well here to say by 'ordinary' what we mean. If you look it up in the dictionary it means commonplace, and it means without merit; it means inferior. That is the definition out of the large Merriam-Webster dictionary." He also testified "We are talking about those lathers which are ordinary and dry out, and 'ordinary' means inferior quality. Those lathers that qualify as ordinary lathers that dry out, yes, we were competing against those". He also testified "We were not competing with lathers that were of the same quality or could be considered of the same quality as Rise." Respondents also contend that it is clear from the audio portion of the commercial that the comparison was made between "Rise" and "ordinary" aerated lathers "that dry out on your face".

We are not impressed with this argument or with the testimony upon which it is based. In the first place, it is noted that "Rise" is referred to in the various commercials as "the richest, wettest lather ever made" and as "the lather that doesn't dry out". The representation is also made that "*No other lather* lets you shave so close" (italic supplied). Moreover, we find it exceedingly difficult to believe that respondents would compare "Rise", a product claimed to be "unique" and "superior", with only the lowest quality shaving creams. In any event, this testimony is wholly irrelevant to the point under consideration. What respondents intended to say in their advertising has no bearing on the question of what was actually said. Nor does it appear from an examination of the advertising that the phrase "that dry out on your face" is a qualification of the term "ordinary aerated lathers" as respondents seem to contend. In the context in which it is used, this phrase is merely a representation that such lathers do dry out.

Elsewhere in the advertising respondents flatly state "Ordinary Lathers Dry Out".

When viewed and heard in its entirety, there can be no doubt that the commercial compares "Rise" with all other competing aerated shaving creams. Neither the word "ordinary" nor any other part of the commercial indicates that respondents are distinguishing between low quality and high quality lathers. Insofar as the viewer can determine from the advertising an ordinary shaving cream is merely a shaving cream other than "Rise". Consequently, we believe that respondents' advertising conveys the impression that all aerated lathers competing with "Rise" dry out. Since the record shows that this is untrue, the representation is a false disparagement of those aerated shaving creams that do not dry out during the course of a shave.

We will consider next respondents' contention that there was no deception in the use of a substance having the appearance of a dried-out lather for the purpose of dramatizing the difference between "Rise" and a dried-out lather. Here again the respondents ignore what was said in the commercial and direct their argument to what they say was the purpose of the advertising. Although it is true that respondents represented that "Rise" is superior to a dried-out lather, it is equally clear that they also represented that "Rise" is superior to competing aerated shaving lathers because these lathers dry out and "Rise" does not. The demonstration in the advertising purported to show why "Rise" is superior. The viewer could observe and see for himself that other lathers dry out while "Rise" remains "moist and creamy". To remove any doubts that this was the purpose of the demonstration, the words "Ordinary Lathers Dry Out" were superimposed on the picture. Since the product which was shown as dried out in the demonstration was a substance other than a shaving cream, having none of the characteristics of a shaving cream except the property of foaming, the demonstration did not show that competing lathers dry out faster than "Rise", although it conveyed the impression that it did. The demonstration did not prove what it purported to prove and was, therefore, false and deceptive. Since we believe, as respondents obviously did, that the demonstration would serve to induce members of the public to purchase "Rise" in preference to competing lathers, there is sufficient public interest to warrant the conclusion that the practice should be prohibited.

We might add in this connection that our views with respect to the use of television demonstrations that convey false or deceptive impressions to the public were fully set forth in our opinion in the

matter of *Colgate-Palmolive Company, et al.*, Docket No. 7736 (1961), and the rationale of that decision is equally applicable here.

Respondents have also appealed from the hearing examiner's rejection of their plea of abandonment. We have no reason to disturb the hearing examiner's holding on this point, however. The mere showing that respondents had discontinued the television commercials which gave rise to the charges herein does not lead us to believe that there will be no recurrence of the practices challenged in the complaint. Respondents did not stop using the commercials in question until after the Commission had begun its investigation. As we have previously stated,¹ the dismissal of a complaint on the ground of abandonment is rarely warranted in cases where the discontinuance does not occur until after the Commission has acted. Moreover, respondents' assurance of discontinuance relates only to the specific commercials and not to the practices at which the complaint is directed. There has been no showing of unusual circumstances which would indicate that entry of an order is unnecessary nor does it appear that there has been any change in the competitive conditions which may have influenced respondents to use advertising of the type under consideration. Consequently, we find no error in the hearing examiner's ruling on this point.

Respondents also contend that the order to cease and desist contained in the initial decision is too broad, vague, general and all-inclusive. We agree that the order goes too far but not for the reasons stated in respondents' brief. The order, as drafted, properly prohibits respondents from using false or misleading pictures, depictions or demonstrations to disparage the quality or properties of a product and from using representations that a picture, depiction or demonstration depicts or portrays the superiority of any product over competing products when a genuine or accurate comparison of the products has not been made. The order, however, would also prohibit respondents from "otherwise" disparaging the quality or properties of any competing product or products. This would prevent respondents from making truthful and nondeceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products.

¹ In the Matter of *Ward Baking Company*, Docket No. 6833 (1958) and *Firestone Tire and Rubber Company*, Docket No. 7020 (1959).

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Final Order

The complaint alleges and the record discloses that respondents have falsely disparaged competing products. The hearing examiner has found in this connection that respondents not only disparaged competing products by means of false and deceptive visual demonstrations, but that they had falsely represented that lathers competing with "Rise" dry out in the course of a shave making shaving more difficult and uncomfortable. Consequently, his order should have prohibited respondents from making such representations or from otherwise falsely disparaging competing shaving creams. The order will be modified accordingly.

All arguments made by respondents which have not been discussed herein are rejected.

To the extent indicated herein, the appeal of respondents is granted; in all other respects it is denied. The initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs in support thereof and in opposition thereto, no oral argument having been requested; and the Commission having rendered its decision granting in part and denying in part the aforementioned appeal and directing modification of the initial decision:

It is ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents Carter Products, Inc., a corporation, and Sullivan, Stauffer, Colwell & Bayles, Inc., a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of shaving cream or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Disparaging the quality or properties of any competing product or products, through the use of false or misleading pictures, depictions or demonstrations either alone or accompanied by oral or written statements.

(b) Representing directly or by implication that pictures, depictions or demonstrations either alone or accompanied by oral or written statements, accurately portray or depict the superiority of any product over competing products when such portrayal or depiction is not a genuine or accurate comparison of such product with competing products.

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And further, In the advertising, offering for sale, sale, or distribution of "Rise" shaving cream, or any other shaving cream, in commerce, as "commerce" is defined in the Federal Trade Commission Act, from misrepresenting the moisture retaining properties of competing shaving creams or otherwise falsely disparaging the quality or merits of competing products.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent S. Heagan Bayles in his individual capacity.

It is further ordered, That the hearing examiner's initial decision as modified herein be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Carter Products, Inc., and Sullivan, Stauffer, Colwell & Bayles, 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.