FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1949, TO JUNE 30, 1950

IN THE MATTER OF

JOE KATZ AND MARSHALL MALTZ[1] DOING BUSINESS AS J. & M. SALES CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5559. Complaint, May 24, 1948—Decision, July 1, 1949

Where an individual engaged in the interstate sale and distribution of watches and other merchandise to dealers, operators, and other purchasers; in advertising in periodicals of general circulation for operators of push cards, to whom, in answer to their inquiries, he sent a letter describing his card sales plan—

(*a*) Furnished and supplied his customers with plans of merchandising which involved the operation of a lottery scheme in sales to the consuming public, including such typical push card deal as one providing that the customer who by chance selected from 72 feminine names displayed on the card, the name corresponding to that concealed under the card's master seal, received for the thirty-five cents, or for nothing, as determined by the accompanying number, one of the two more costly wrist watches sold therewith;

Thereby supplying to and placing the means of conducting lotteries in the hands of dealers, operators, and other purchasers, who sold his watches and other merchandise by means of said push card deal, whereby, whether the customer received a watch, other article, or nothing for the money he paid, was dependent wholly upon lot or chance, contrary to an estabilshed public policy of the United States Government and the public interest;

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[1] The Commission on July 1, 1949, issued an order closing case without prejudice as to respondent Marshall Maltz, as follows:

"This matter came on to be heard in regular course upon motion, filed December 13, 1948, by counsel supporting the complaint, to close this case without prejudice as to the individual respondent Marshall Maltz, to which no answer has been filed by said respondent.

"The complaint herein, issued May 24, 1948, charges respondents, Joe Katz and Marshall Maltz, as individuals and partners, doing business as J. & M. Sales Co., with violation of Section 5 of the Federal Trade Commission Act through the use of lottery methods in the sale and distribution of watches and other merchandise. From the answers to said complaint filed by both respondents and from said motion to dismiss, it appears that said partnership was dissolved on March 1, 1948, that respondent Marshall Maltz has not since been connected therewith, and that Joe Katz is now carrying on the business formerly conducted by the partnership.

"Having duly considered the matter and being now fully advised in the premises:

"*It is ordered,* That the motion to close this case as to the respondent Marshall Maltz be, and it hereby is, granted without prejudice to the right of the Commission to reopen this proceeding or to take such further action at any time in the future as may be warranted by the then existing circumstances."

With the result that many persons were attracted by said sales plans or methods involving a game of chance, and were thereby induced to buy and sell his said merchandise; and

Where said individual, in soliciting the sale and distribution of his said sales plans—

(*b*) Represented through such statements in periodicals of general circulation as "Make $250 to $500 a week—Be your own operator of push cards—A once-in-a-lifetime opportunity to make $250 to $500 a week with little investment," that his customers earned or would earn $250 to $500 a week through the use of his said sales plans; notwithstanding the fact that none of them had thereby earned such sums or any other substantial amount;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby induce their purchase of a substantial number of his said sales plans, watches, push cards, and other merchandise:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

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

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 Joe Katz and Marshall Maltz, individuals and partners trading as J. & M. Sales Co., 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. Respondents, Joe Katz and Marshall Maltz, are individuals and partners trading and doing business as J. & M. Sales Co., with their office and principal place of business located at 708 South State Street in the city of Chicago, Ill. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of watches and other articles of merchandise and have caused said watches and merchandise when sold to be transported from their place of business in the city of Chicago, Ill., to purchasers thereof at their respective points of location in the various States of the United States other than Illinois and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondents in such merchandise, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents in soliciting the sale of and in sell-

ing and distributing their watches and other merchandise, furnish, and have furnished, various plans of merchandising which involve the operation of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing and consuming public. One method or sales plan adopted and used by the respondents is substantially as follows:

Respondents advertise in periodicals having a general circulation throughout the United States for operators of push cards, and in answer to inquiries send them a letter describing the operation of their plan for selling their push-card deals. The push-card deals sold by respondents consist of a push card and 2 wrist watches. Each of respondents' push cards bears 72 feminine names with ruled columns on the back of said push card for writing in the name of the customer opposite the name selected. Said push card has 72 partially perforated disks. Each of said disks bears 1 of the feminine names corresponding to those on the list. Concealed within each disk is a number which is disclosed only when the customer pushes or separates a disk from the card. The push card also has a larger master seal, and concealed within the master seal is one of the feminine names appearing on the disks and list. The person selecting the feminine name corresponding to the one under the master seal receives a wrist watch. The push card bears the following legend or instructions:

WIN THIS
BEAUTIFUL
NEW WATCH

Precision Made
Swiss Movement

Person holding name to
correspond with Seal wins
a watch.

Numbers 1 to 10 are Free
All Other Numbers Pay 35¢ each

Respondents sell their push-card deal as above described to persons located in the various States of the United States and these customers of respondents make sales of respondents' merchandise by means of said push card in accordance with the above-described legend or instructions, and said watches are allotted to the customer or purchasers from said card in accordance with the above-described legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid for the merchandise or the chance to receive said merchandise are thus determined wholly by lot or chance. The watches have a retail value greater than the price paid for any of the chances.

Respondents sell and distribute various other push cards and merchandise plans, all of which involve the sale of said merchandise by means of said other push cards, and vary only in detail, all of said merchandise plans embodying the distribution of merchandise by game of chance, gift, enterprise, or lottery scheme.

PAR. 3. Retail dealers, operators, and others who purchase respondents' push card and watch assortments or deals directly or indirectly, use the said push cards for distribution of the watches to the purchasing public in accordance with the sales plan above described. Respondents thus supply to and place in the hands of others the means of conducting lotteries or games of chance in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans and methods in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondents and the element of chance involved therein and thereby are induced to buy and sell respondents' merchandise.

The use by respondents of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business and in soliciting the sale of their sales plan as above described, respondents have caused to be published in periodicals having a general circulation throughout the United States the following advertising:

Make $250 to $500 a week

Be Your Own Operator of Push Cards

A once-in-a-lifetime opportunity to make $250 to $500 a week with little investment.

Through the use of the above-quoted statements, respondents represent and have represented that their customers will earn $250 to $500 a week through the use of respondents' sales plan. In truth and in fact, none of respondents' customers have earned $250 nor $500 a week or any substantial amount weekly through the use of respondents' sales plans.

PAR. 6. The use of the aforesaid misleading and deceptive statements and representations by respondents in connection with the offering for sale and the sale of its said merchandising plan has had and now has the tendency and capacity to mislead the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and to induce them to purchase respondents' watches and push cards.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 24, 1948, issued, and subsequently served, its complaint in this proceeding upon respondents, Joe Katz and Marshall Maltz, as individuals and partners, doing business as J. & M. Sales Co., charging them with the use of unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted motion of respondent Joe Katz for permission to withdraw his said answer and to substitute therefor an answer, as to him, admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer (the Commission, by order entered herein, having duly granted motion to close the case without prejudice as to respondent Marshall Maltz); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest

of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joe Katz, is an individual trading and doing business as J. & M. Sales Co., with his principal office and place of business located at 708 South State Street, Chicago, Ill. He is now, and for more than 1 year last past has been, engaged in the offering for sale, sale, and distribution of watches and other articles of merchandise to dealers, operators, and other purchasers.

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said watches and other merchandise, when sold, to be shipped or transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia, and at all times mentioned herein has maintained a course of trade in said watches and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. (*a*) In carrying on his business, as aforesaid, respondent advertises in periodicals having a general circulation throughout the United States for operators of push cards and, in answer to inquiries, sends such operators a letter describing his plan for selling said push-card deals. In the offering for sale, sale, and distribution of his aforesaid watches and other merchandise, respondent furnishes and supplies, and has furnished and supplied, his customers with plans of merchandising which involve the operation of a game of chance, gift enterprise, or lottery scheme, whereby said products are by said customers sold and distributed to the purchasing and consuming public.

(*b*) Typical of the plans and sales methods adopted and used by respondent is one substantially as follows: A push-card deal consists of a push card and 2 wrist watches. The push card bears 72 feminine names, with an equal number of ruled columns on the back for writing in the name of the customer or purchaser opposite the feminine name selected by him. Said push card also contains 72 partially perforated disks, each of which bears one of the feminine names corresponding to those on the list. Concealed within each disk is a number, which is disclosed only when a customer or purchaser pushes or separates a disk from the card. On said push card is a master seal, within which is concealed one of the feminine names appearing on the partially perforated disks. The purchaser selecting the feminine name

on the perforated disk which corresponds to the name within the master seal receives a wrist watch. The push card bears the following legend or instructions:

WIN THIS
BEAUTIFUL
NEW WATCH

Precision Made
Swiss Movement

Person holding name to
correspond with Seal wins
a watch.

Numbers 1 to 10 are Free
All Other Numbers Pay 35¢ Each

(*c*) Respondent sells the above described push-card deal to dealers, operators, and other purchasers located in the various States of the United States, who, in turn, make sales of respondent's watches and other merchandise by means of said push card, and said watches and other merchandise are allotted to customers or purchasers from said card according to the aforesaid legend or instruction. Whether said customer or purchaser receives a watch, other article of merchandise, or nothing for the amount of money paid or to be paid for the possibility of receiving it, depends wholly upon lot or chance. The watches have a retail value greater than the price paid for the privilege of punching out one of the perforated disks.

(*d*) Respondent sells and distributes various other push-card and merchandising plans, through the use of which watches and other merchandise are sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and all of which vary only in detail from the one hereinabove described.

PAR. 4. Retail dealers, operators, and others who, directly or indirectly, purchase respondent's push card and watch assortments or deals expose and sell the same to the purchasing public in accordance with the sales plan heretofore described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with such sales plans. The use by respondent of such plans or methods in the sale and distribution of his watches and other merchandise, and the sale and distribution of same by and through, or with the aid of, such sales plans or methods, is a practice contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of watches and other merchandise to the purchasing public by the methods or sales plans hereinbefore found involves a

game of chance or the sale of a chance to procure said watches or merchandise at a price much less than the normal retail price, and many persons are attracted by said sales plans or methods and the element of chance involved therein and are thereby induced to buy and sell respondent's watches and other merchandise. The use by respondent of sales plans or methods involving distribution of watches and other merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest.

PAR. 6. (*a*) In soliciting the sale and distribution of his sales plans and methods heretofore described, respondent has caused to be published in periodicals having a general circulation throughout the United States the following advertisement:

Make $250 to $500 a week
Be Your Own Operator of Push Cards
A once-in-a-lifetime opportunity to make
$250 to $500 a week with little investment.

Through the use of the aforesaid statement, respondent represents, and has represented, that his customers earn, or will earn $250 to $500 a week through the use and handling of his said sales plans or methods.

(*b*) The aforesaid representations and statements are misleading and deceptive. In truth and in fact, none of respondent's customers have earned $250 to $500 per week or any other substantial amount through the use or handling of said sales plans or methods.

PAR. 7. The use by respondent of the foregoing misleading and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them to purchase a substantial number of respondent's sales plans, watches, push cards, and other merchandise.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, Joe Katz, in which answer said respondent admits all the material allegations of fact set forth in the complaint

and waives all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Joe Katz, an individual, trading as J. & M. Sales Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of watches, push cards, and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Supplying to, or placing in the hands of, others, watches or other merchandise, together with push cards or any other lottery devices, which said push cards or other devices are to be used, or may be used, in selling or distributing such watches or other merchandise to the public.

2. Supplying to, or placing in the hands of, others push cards or other lottery devices, either with watches or other merchandise or separately, which push cards or other lottery devices are to be used, or may be used, in selling or distributing watches or other merchandise to the public.

3. Selling, or otherwise disposing of, watches or any other merchandise by the use of push cards or any other lottery device.

4. Representing as possible earnings or profits of retailers, operators, or salesmen of said watches, push cards, and other merchandise, for any stated period of time, any specified sum of money which is not a true representation of the net earnings or profits which have been made by a substantial number of respondent's active retailers, operators, or salesmen in the ordinary course of business under normal conditions and circumstances.

It is further ordered, That the respondent shall, within 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 it.

IN THE MATTER OF

ALFRED J. HARRIS DOING BUSINESS AS A. J. HARRIS & CO. AND AS SMITH STORAGE CO., INC., AND AS PRESIDENT OF A. J. HARRIS & CO., INC.; AND A. J. HARRIS & CO., INC., DOING BUSINESS IN ITS OWN NAME AND AS SMITH STORAGE CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION C OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5628. Complaint, Dec. 20, 1948—Decision, July 1, 1949

Where a corporation and an individual who owned substantially all of its stock and had been its president since incorporation and continuance by it of the business theretofore individually carried on by him; engaged in the distribution of food products (1) as brokers, with no financial interest in the products other than the commission or brokerage fees which they received from their seller-principals for making the sale; and (2) as buyers of food products for their own account;

In carrying on purchase of products for their own account, in which connection they transmitted orders directly to sellers by whom products concerned were invoiced and shipped directly to them or in the corporate name of their otherwise inactive hauling and drayage concern (used to make such purchases for resale and to conceal from the sellers that such purchases were made for their own accounts); and with which products they dealt as traders for profit, taking title, and warehousing and selling the same at their own prices and terms, etc., and assuming all the risks incident to ownership—

Received and accepted, directly or indirectly, from the respective sellers from whom they purchased products for their own account, brokerage fees, commissions or other compensation or allowances or discounts in lieu thereof:

Held, That such receipt and acceptance of brokerage fees, or commissions or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchasers of food products, as above set forth, constituted a violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and *Mr. Edward S. Ragsdale* for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13), as amended by the

Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Alfred J. Harris, an individual doing business as A. J. Harris & Co., established this business in Baltimore, Md., in 1932, which business is presently located at 232 North Franklintown Road, Baltimore, Md., under the name of A. J. Harris & Co., Inc., and has engaged and is now engaged in the purchase, sale, and distribution of canned fruit, canned vegetables, and canned fish, hereinafter refered to as food products.

Alfred J. Harris was the sole owner of A. J. Harris & Co. and exercised complete authority and control over the business conducted by the company, including the direction of its purchasing, distribution, and sales policies from the time said business was established until June 1946 when the succeeding business was incorporated as A. J. Harris & Co., Inc.

PAR. 2. Alfred J. Harris, is an individual, with his office and principal place of business located at 232 North Franklintown Road, Baltimore, Md., is the principal stockholder in A. J. Harris & Co., Inc., owning all or substantially all of the capital stock of said corporation, and from the time it was incorporated in June 1946, has been president of said corporation. He has exercised complete authority and control over the business conducted by said corporation, including the direction of its purchasing, distribution, and sales policies from the date the business was incorporated to the present time.

PAR. 3. Respondent, A. J. Harris & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business located at 232 North Franklintown Road, Baltimore, Md., and is engaged in the purchase, sale and distribution of food products. Respondent corporation is a continuation of A. J. Harris & Co., which was established in 1932 and was incorporated in June 1946, with Alfred J. Harris as president. Alfred J. Harris owns all or substantially all of the capital stock of said corporation and exercises complete authority and control over the business conducted by said corporation, including the direction of its purchasing, distribution, and sales polices.

PAR. 4. Smith Storage Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business presently located at 232 North Franklintown Road, Baltimore, Md., which is the same address shown for re-

spondents. At the present time, this concern is shown to be active in name only. However, at the time it was organized, it was for the purpose of engaging in hauling and drayage for respondents.

For a substantial period of time, since June 19, 1936, the corporate name Smith Storage Co., Inc., has been used by respondents to make purchases of food products for the account of A. J. Harris & Co. and A. J. Harris & Co., Inc., for resale and to cover up the fact from the sellers that such purchases were made for these accounts.

PAR. 5. The respondents named in the caption hereof and each of them hereinafter referred to as respondents, for a substantial period since June 19, 1936, have been engaged in the business of distributing food products by two separate and distinct methods; namely, (1) as brokers, which is not challenged by the complaint herein, and (2) as buyers, which is challenged by the complaint herein.

First: Respondents' business as "brokers" of food products may be described as follows:

Respondents, in such capacity, act as sales agents negotiating the sale of food products for and on account of seller-principals, and respondents' only compensation for such services is a commission or brokerage fee paid by such seller-principals. The respondents solicit and obtain orders for such food products at the respective seller-principal's prices and on such seller-principal's terms of sale. Respondents, as brokers, transmit purchase orders to their several seller-principals who thereafter generally invoice and ship such food products directly to their customers and collect the purchase price from such customers.

Respondents, as brokers of food products, have no financial interest in the food products they sell. Their only financial interest is the commission or brokerage fee they receive and accept from their seller-principals for making the sale. Such commission or brokerage fees are customarily based on a percentage of invoice sales price of food products sold. The respondents, in this capacity, are brokers and not traders for profit. Respondents do not take title to, or have any financial interest in, the food products sold, and neither make a profit nor suffer a loss on the transaction. This phase of respondents' business is not challenged by the complaint.

Second: Respondents' business as buyers of food products, which is challenged by the complaint herein, is described as follows: Respondents transmit their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoice and ship such food products directly to respondents, or to Smith Storage Co., Inc., for respondents' account, who receive and accept, directly or

indirectly, from their respective sellers from whom they purchase such food products for their own account, brokerage fees, commissions, or other compensation or allowances or discounts in lieu thereof.

The respondents, in connection with such purchasers, are direct buyers and, as such, are traders for profit, purchasing and reselling such food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehouses such products in their own warehouse and insure said food products at their own expense and in their own name and for their own account against contingent loss or damage.

When the respondents sell such food products, they invoice the products to their customers in respondents' own name and for their own account and at prices and on terms they determine, assuming full and complete credit risk on such transactions and either receiving a profit or accepting a loss thereon, as the case may be.

PAR. 6. Respondents and each of them for a substantial period since June 19, 1936, made and are now making numerous and large purchases of food products from sellers located in States other than the State of Maryland where respondents are located, pursuant to which purchases, such food products were shipped and transported in commerce by the sellers thereof from the respective States in which they are located across State lines, either to respondents, or pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents. Respondents also sold, distributed, and transported, and continue to sell, distribute, and transport, a substantial quantity of such food products in commerce to customers outside the State in which respondents are located.

PAR. 7. The respondents, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting directly or indirectly, commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from the various sellers from whom they purchase food products in commerce for their own account and for resale, in the manner and under the circumstances set out in the second or last part of paragraph 5 above.

PAR. 8. The foregoing acts and practices of the respondents, and each of them, in receiving and accepting commissions, brokerage, or

other compensation or allowances, or discounts in lieu thereof, from each of the various sellers in connection with their purchase of food products in commerce are in violation of subsection (c) of the Clayton Act, as amended.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on December 20, 1948, issued and subsequently served its complaint in this proceeding upon the respondents, A. J. Harris & Co., Inc., a corporation doing business in its own name and in the name of Smith Storage Co., Inc., and Alfred J. Harris, an individual doing business as A. J. Harris & Co. and as Smith Storage Co., Inc., and as an officer of A. J. Harris & Co., Inc., charging them with violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint the respondents filed an answer admitting all of the allegations contained in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and answer filed by the respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

Findings as to the Facts

Paragraph 1. Respondent, A. J. Harris & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Maryland, with its office and principal place of business located at 232 North Franklintown Road, Baltimore, Md., and is engaged in the purchase, sales, and distribution of canned fruit, canned vegetables, and canned fish, hereinafter referred to as food products. Respondent corporation was organized in June 1946 and is a continuation of the business conducted since 1932 by the individual respondent Alfred J. Harris trading as A. J. Harris & Co.

Par. 2. Alfred J. Harris is an individual with his office and principal place of business located at 232 North Franklintown Road, Baltimore, Md. He is the principal stockholder in A. J. Harris & Co., Inc., owning all or substantially all of the capital stock of said corporation, and

from the time it was incorporated in June 1946 has been president of said corporation. He has exercised complete authority and control over the business conducted by said corporation, including the direction of its purchase, distribution, and sales policies from the date the business was incorporated to the present time.

PAR. 3. Smith Storage Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with is principal office and place of business presently located at 232 North Franklintown Road, Baltimore, Md. At the present time this concern is shown to be active in name only. However, at the time it was organized it was for the purpose of engaging in hauling and drayage for respondents. For a substantial period of time since June 19, 1936, the corporate name of Smith Storage Co., Inc., has been used by respondents to make purchases of food products for the account of A. J. Harris & Co. and A. J. Harris Co., Inc., for resale and to cover up the fact from the sellers that such purchases were made for these accounts.

PAR. 4. The respondents for a substantial period since June 19, 1936, have been engaged in the business of distributing food products by two separate and distinct methods; namely, (1) as brokers of food products, with no financial interest in the food products they sell other than the commission or brokerage fee they receive and accept from their seller-principals for making the sale; and (2) as buyers of food products for their own account.

PAR. 5. In connection with their business of buying food products, the respondents transmitted their own purchase orders for food products directly to the various sellers from whom they buy. Such sellers invoiced and shipped such food products directly to respondents, or to Smith Storage Co., Inc., for respondents' account. Respondents received and accepted directly or indirectly, from the respective sellers from whom they purchased such food products for their own account, brokerage fees, commissions, or other compensation or allowances or discounts in lieu thereof.

The respondents, in connection with such purchases, are direct buyers and, as such, are traders for profit, purchasing and reselling such food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehoused such products in their own warehouse and insured said food products at their own expense and in their own name and for their own account against contingent loss or damage.

When the respondents sold such food products, they invoiced the products to their customers in respondents' own name and for their own account and at prices and on terms they determined, assuming full and complete credit risk on such transactions and either receiving a profit or accepting a loss thereon, as the case may be.

PAR. 6. Respondents, and each of them, for a substantial period since June 19, 1936, made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of Maryland, where respondents are located, pursuant to which purchases such food products were shipped and transported in commerce by the sellers thereof from the respective States in which they are located across State lines, either to respondents, or pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents. Respondents also sold, distributed, and transported, and continue to sell, distribute, and transport, a substantial quantity of such food products in commerce to customers outside the State in which respondents are located.

PAR. 7. The respondents, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove described, have received and accepted, and are now receiving and accepting, directly or indirectly, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, from the various sellers from whom they purchase food products in commerce for their own account and for resale.

CONCLUSION

In receiving and accepting brokerage fees or commissions, or allowances and discounts in lieu thereof, from manufacturers and sellers upon purchases of food products in the manner and under the circumstances as hereinabove found, the respondents have violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, which answer admits all of the allegations contained in

the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondents, A. J. Harris & Co., Inc., a corporation doing business under its own name and under the name of Smith Storage Co., Inc., or doing business under any other name, and Alfred J. Harris, an individual doing business as A. J. Harris & Co. and as Smith Storage Co., Inc., or doing business under any other name, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of canned fruit, canned vegetables, canned fish, or other products, in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as brokerage or commission, or any compensation, allowance, or discount in lieu thereof, upon purchases made for respondents' own account.

It is further ordered, That the respondents shall, within 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 this order.

IN THE MATTER OF

ALEX LEWIS AND HERMAN OFFENHENDEN TRADING AS LOC PRODUCTS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5542. Complaint, May 18, 1948—Decision, July 7, 1949

Where two individuals engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale of various specified articles, as explained by instructions thereon, whereunder those who by chance punched lucky or winning numbers received articles of merchandise without additional cost at much less than normal retail prices, and others received nothing for their money other than the privilege of a push or punch; and (2) other devices upon which the purchasers placed in the blank spaces provided instructions of similar import, and which were made use of only in combination with other merchandise so as to enable them to sell and distribute the same by lot or chance—

Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other articles in commerce, by whom assortments of such articles, as packed and assembled together with said cards and boards were sold for sale to the public through sales of chances to procure articles at much less than the normal retail price thereof, contrary to an established public policy of the United States and in violation of criminal laws;

With the result that many retailers were thereby induced to deal or trade with manufacturers, wholesalers and jobbers who sold and distributed merchandise together with said push card or punchboard devices; and they thereby supplied to and placed in the hands of such retailers the means of conducting lotteries, games of chance or gift enterprises in the sale and distribution of merchandise, and the means and instrumentalities for engaging in unfair acts and practices:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

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

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 Alex Lewis and Herman Offenhenden, individuals and as copartners trading as Loc Products, 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. Respondents, Alex Lewis and Herman Offenhenden, are individuals and partners trading and doing business as Loc Prod-

ucts, with their office and principal place of business located at 524 Broadway, in the city of Seattle, Wash.

Respondents are now, and for more than 1 year last past, have been engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution of said devices to dealers in various other articles of merchandise in commerce, between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located within the various States of the United States, its territories and in the District of Columbia.

Respondents cause and have caused said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the territories of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade in such devices by said respondents in commerce between and among the various States of the United States, the territories of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchan-

dise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof, is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push cards and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the maner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public,

all to the injury of the public. The use of said sales plan or methods in the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondents as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove alleged, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 18, 1948, issued and thereafter served its complaint in this proceeding upon the respondents, Alex Lewis and Herman Offenhenden, individually and as copartners trading as Loc Products, charging said respondents with the use of unfair acts and practices in commerce in violation of the provisions of that act. On September 7, 1948, the respondents filed their answer, in which answer they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Alex Lewis and Herman Offenhenden, are individuals and partners trading and doing business as Loc Products, with their office and principal place of business located at 524 Broadway, in the city of Seattle, Wash.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of devices commonly known as push cards and punchboards and in the sale and distribution and in the District of Columbia, and to dealers in various articles of merchandise located within the various States o fthe United States, and in the District of Columbia, and to dealers in various articles of merchandise located within the various States of the United States, its territories, and in the District of Columbia. Respondents cause, and have caused, said devices when sold to be transported from their place of business in the State of Washington to purchasers thereof at their respective points of location in the various States of the United States other than Washington, in the territories of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a course of trade in such devices by said respondents in commerce between and among the various States of the United States, the territories of the Unied States, and in the District of Columbia.

PAR. 3. In the course and conduct of their said business as aforesaid, respondents sell and distribute, and have sold and distributed, to many dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by such dealers in making sales of merchandise to the consuming public. Respondents sell and distribute, and have sold and distributed, many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one push or punch from the push card or punchboard, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky winning numbers receive articles of merchandise without additional cost at prices which are much

less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning numbers receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on the push card and punchboard devices first hereinabove described. The only use to be made of such push card and punchboard devices, and the only manner in which they are used, by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove described.

PAR. 4. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondents' said push card and punchboard devices. Such purchasers pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise, together with said push cards and punchboard devices, and sell and have sold their merchandise so packed to retail dealers for resale to the public.

PAR. 5. Because of the element of chance involved in the purchase of merchandise by means of push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing their merchandise by means thereof. As a result, many retail dealers have been induced to deal or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute their merchandise together with said push card or punchboard devices.

PAR. 6. The sale of merchandise to the purchasing public through the use of, or by means of, push cards or punchboards in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof, and teaches and encourages gambling, all to the injury of the public. The use of said sales plan or method in the

sale of merchandise, and the sale of merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States, is in violation of criminal laws, and constitutes unfair acts and practices in commerce.

The sale or distribution of said push cards and punchboard devices by respondents as herein found supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondents thus supply to, and place in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer said respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Alex Lewis and Herman Offenhenden, individually and trading as Loc Products, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, push cards, punchboards, or other lottery devices, which are to be used, or may be used, in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondents shall, within 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 this order.

Syllabus

IN THE MATTER OF

HYMAN GREENGLASS TRADING AS GREENGLASS SALES CO., PROFIT MANUFACTURING CO. AND ZENO GAME CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5556. Complaint, May 24, 1948—Decision, July 7, 1949

There is a marked preference on the part of purchasers for resale, and a substantial portion of the purchasing public, for dealing directly with and buying products from the manufacturer thereof.

Where an individual engaged in the interstate sale and distribution of push cards and punchboards, including (1) many designed for the sale of various specified articles which were awarded at much less than normal retail prices to punchers of lucky numbers while others received nothing for their money other than the push or punch; and (2) other devices with blank spaces upon which the purchasers placed their own instructions of similar import, and used to sell merchandise by lot or chance—

(*a*) Sold and distributed such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles in commerce, who sold assortments thereof packed with said cards and boards, for sale to the public in accordance with the aforesaid chance sales plan, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the public were induced to deal with retailers who thus sold such merchandise; many retailers were induced to deal with manufacturers, wholesalers, and jobbers, who followed said practice; gambling was taught and encouraged among members of the public; and he thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise; and

Where said individual, engaged also in the interstate sale and distribution of games, cigarette lighters, clocks, and other articles, including, as typical of lottery assortments thus sold and dealt in, a number of cigarette lighters and packages of cigarettes with a punchboard for use in their sale and distribution to purchasers punching lucky numbers, while others received nothing for the 5 cents paid—

(*b*) Sold and distributed such assortments to dealers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid chance sales plans, contrary to established public policy;

With the result that he thereby supplied to and placed in the hands of others the means of conducting games of chance in the sale of his product; and many persons were attracted by said sales plans and were thereby induced to buy and sell his merchandise; and

(*c*) Conveyer the erroneous impression, through use of the abbreviation "Mfg." as part of his trade name on letterheads, invoices and other statements,

that he made the articles sold by him or that they were made on premises which he owned or operated or directly controlled; when in fact such merchandise was purchased from others;

With tendency and capacity to mislead and deceive purchasers into the erroneous belief that such representation was true, and thereby cause a substantial portion thereof to purchase quantities of his said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. W. W. Sheppard*, trial examiner.
Mr. J. W. Brookfield, Jr., for the Commission.

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 Hyman Greenglass, an individual trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., 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:

Count I

PARAGRAPH 1. Respondent, Hyman Greenglass, is an individual trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., with his office and principal place of business located at 39 West Twenty-third Street, in the city of New York, N. Y.

Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various articles of merchandise, in commerce, between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold to be transported from his place of business in the State of New York to purchasers thereof at their respective points of location in the various States of the United States other than New York and in the District of Columbia. There is now and has been for more than 3 years last past a course of trade in such devices by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning number receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondents on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors,

cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sales plan as described in paragraph 2 hereof. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondent as hereinabove alleged supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise. The respondent thus supplies to, and places in the hands of, said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforesaid acts and practices of respondent as hereinabove alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Count II

PARAGRAPH 1. Respondent, Hyman Greenglass, is an individual trading and doing business as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., with his office and principal place of business located at 39 West Twenty-third Street in the city of New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of games, cigarette lighters, clocks, and other articles of merchandise, and has caused said merchandise when sold to be transported from his place of business in the city of New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than New York and in the District of Columbia. There is now and for more than 1 year last past has been a course of trade by respondent in such merchandise, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consists of a number of cigarette lighters together with a punchboard. The punchboard bears the following legend:

5¢ Sale — THE FAMOUS "EVANS" — 5¢ Sale

KNOWN FROM COAST TO COAST AS AMERICA'S BEST PRE-WAR LIGHTER

No. 100 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 200 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 300 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	Automatic One Hand Operation SNAP-O	No. 400 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 500 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	Last Sale Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.

Nos. 125—150—175—225
250—275—325—350
375—425—450—475
525—550—575—625
650—675—725—750

EACH REC. 20 CIGS.

Said cigarette lighters are distributed to the purchasing public in accordance with the above legend in the following manner. Sales are

5 cents each. When a punch is made, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the cigarette lighters and that other specified numbers entitle the purchaser to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receive nothing for his purchase money. The cigarette lighters and the packs of cigarettes are worth more than 5 cents each, and the purchaser who obtains a number calling for one of the cigarette lighters or a pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The cigarette lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and has sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described, and these punchboards vary only in detail as to the individual items of merchandise to be sold by said boards, the plans of all said boards and assortments being similar to the one hereinabove described.

PAR. 3. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's merchandise.

The use of respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery, or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business as aforesaid, respondent by use of the abbreviation "Mfg." as part of his trade name which appears on his letterheads, invoices, and other stationery, has conveyed the impression or belief that said respondent makes and manufactures the articles sold by him or that said articles are made or manufactured on premises which the said respondent actually owns or operates or directly and absolutely controls.

PAR. 6. The aforesaid representation is false, misleading, and deceptive. In truth and in fact respondent does not own, operate, or control any plant or factory for the manufacture of the products offered for sale and sold by him as aforesaid, but is engaged in the sale and distribution of merchandise made and manufactured by and purchased from others.

PAR. 7. There is a marked preference on the part of purchasers for resale and a substantial portion of the purchasing public for dealing directly with and buying products from the manufacturer thereof, and the use by respondent of the false, misleading, and deceptive representation with respect to the manufacture of his products as alleged in paragraph 5 hereof has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such representation is true, and has the tendency to cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase quantities of respondent's merchandise.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 24, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Hyman Greenglass, an individual, trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., charging him with the

use of unfair acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, respondent, upon motion, withdrew said answer and filed a substitute answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer filed by the respondent, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

I

PARAGRAPH 1. Respondent, Hyman Greenglass, is an individual trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., with his office and principal place of business located at 50–11 Fortieth Street, Long Island City, N. Y.

Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in various articles of merchandise, in commerce, between and among the various States of the United States and in the District of Columbia, and to dealers in various articles of merchandise located in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said devices when sold, to be transported from his place of business in the State of New York, to purchasers thereof at their respective points of location in the various States of the United States other than New York and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained a course of trade in such devices in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business respondent sells and distributes, and has sold and distributed, to said dealers in merchandise, push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used in making sales of merchandise to the consuming public. Respondent sells and distributes, and has sold and distributed many kinds of push cards and punchboards, but all of said devices involve

the same chance or lottery features when used in connection with the sale or distribution of merchandise and vary only in detail.

Many of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the push card or punchboard, and when a push or punch is made a disk or printed slip is separated from the push card or punchboard and a number is disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to designated articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise without additional cost at prices which are much less than the normal retail price of said articles of merchandise. Persons who do not secure such lucky or winning number receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Others of said push card and punchboard devices have no instructions or legends thereon but have blank spaces provided therefor. On those push cards and punchboards the purchasers thereof place instructions or legends which have the same import and meaning as the instructions or legends placed by the respondent on said push card and punchboard devices first hereinabove described. The only use to be made of said push card and punchboard devices, and the only manner in which they are used by the ultimate purchasers thereof is in combination with other merchandise so as to enable said ultimate purchasers to sell or distribute said other merchandise by means of lot or chance as hereinabove alleged.

PAR. 3. Many persons, firms, and corporations who sell and distribute, and have sold and distributed, candy, cigarettes, clocks, razors, cosmetics, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia, purchase and have purchased respondent's said push card and punchboard devices, and pack and assemble, and have packed and assembled, assortments comprised of various articles of merchandise together with said push card and punchboard devices. Retail dealers who have purchased said assortments either directly or indirectly have exposed the same to the purchasing public and have

sold or distributed said articles of merchandise by means of said push cards and punchboards in accordance with the sale plan hereinabove described. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said push cards and punchboards, many members of the purchasing public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many retail dealers have been induced to deal with or trade with manufacturers, wholesale dealers, and jobbers who sell and distribute said merchandise together with said devices.

PAR. 4. The sale of merchandise to the purchasing public through the use of, or by means of, such devices in the manner above alleged, involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The use of said sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of said sales plan or method, is a practice which is contrary to an established public policy of the Government of the United States and in violation of criminal laws, and constitutes unfair acts and practices in said commerce.

The sale or distribution of said push cards and punchboard devices by respondent as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise.

II

PAR. 5. In addition to the acts and practices hereinabove described, respondent, Hyman Greenglass, trading and doing business as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., is now and for more than 1 year last past has been engaged in the sale and distribution of games, cigarette lighters, clocks, and other articles of merchandise, and has caused said merchandise, when sold, to be transported from his place of business in the city of New York, N. Y., to purchasers thereof at their respective points of location in the various States of the United States other than New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such merchandise, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of his business, respondent sells and has sold to dealers certain assortments of merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the purchasing public. One of said assortments, typical of the various assortments sold by the said respondent, consists of a number of cigarette lighters together with a punchboard. The punchboard bears the following legend:

5¢ Sale — THE FAMOUS "EVANS" — 5¢ Sale

KNOWN FROM COAST TO COAST AS AMERICA'S BEST PRE-WAR LIGHTER

No. 100 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 200 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 300 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	Automatic One Hand Operation SNAP-O	No. 400 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	No. 500 Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.	Last Sale Rec. EVANS Lighter Plus 1 to 10 Pks. Cigs.

Nos. 125–150–175–225–250
275–325–350–375–425
450–475–525–550–575
625–650–675–725–750

EACH REC. 20 CIGS.

Said cigarette lighters are distributed to the purchasing public in accordance with the above legend in the following manner. Sales are 5 cents each. When a punch is made, a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears the legend above described, informing purchasers and prospective purchasers that a certain specified number entitles the purchaser thereof to receive one of the cigarette lighters and that other specified numbers entitle the purchaser to receive a package of cigarettes. A customer who does not qualify by punching one of the specified numbers receives nothing for his purchase money. The cigarette lighters and the packs of cigarettes are worth more than 5 cents each, and the purchaser who obtains a number calling for one of the cigarette lighters or a pack of cigarettes receives the same for 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The cigarette lighters and cigarettes are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondent sells and has sold various punchboards and assortments to be distributed by the use of said punchboards in the manner above described, and these punchboards vary only in detail as the individual items of merchandise to be sold by said boards, the plans of all said boards and assortments being similar to the one hereinabove described.

PAR. 7. Retail dealers who purchase respondent's punchboards and merchandise assortments directly or indirectly expose and sell merchandise to the purchasing public in accordance with the sales plans above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries or games of chance in the sale of his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 8. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein, and thereby are induced to buy and sell respondent's merchandise.

PAR. 9. In the course and conduct of its business as aforesaid, respondent by use of the abbreviation "Mfg." as part of his trade name which appears on his letterheads, invoices, and other stationery, has conveyed the impression or belief that said respondent makes and manufactures the articles sold by him or that said articles are made or manufactured on premises which the said respondent actually owns or operates or directly and absolutely controls.

PAR. 10. The aforesaid representation is false, misleading, and deceptive. In truth and in fact respondent does not own, operate, or control any plant or factory for the manufacture of the products offered for sale and sold by him as aforesaid, but is engaged in the sale and distribution of merchandise made and manufactured by and purchased from others.

PAR. 11. There is a marked preference on the part of purchasers for resale and a substantial portion of the purchasing public for dealing directly with and buying products from the manufacturer

thereof, and the use by respondent of the false, misleading, and deceptive representation with respect to the manufacture of his products has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such representation is true, and has the tendency to cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase quantities of respondent's merchandise.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Hyman Greenglass, an individual, trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., or under any other trade name, and his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards, push cards, or other lottery devices which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent, Hyman Greenglass, an individual, trading as Greenglass Sales Co., Profit Manufacturing Co., and Zeno Game Co., or under any other trade name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of games, cigarette lighters, clocks, or other articles of

merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing assortments of merchandise so packed or assembled that sales of said merchandise to the public are to be made or, due to the manner in which such merchandise is packed or assembled at the time it is sold by respondent, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the term "Manufacturing" or the abbreviation "Mfg.," or any other word or abbreviation of similar import or meaning, in respondent's trade name or in any other manner to designate or describe respondent's business.

It is further ordered, That the respondent shall, within 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.

Complaint

IN THE MATTER OF

GULF & WEST INDIES CO., INC., AND MILTON COHN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5093. Complaint, May 11, 1945 [1]*—Decision, July 11, 1949*

There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, and there is a preference for the more costly French products, or the product processed by the French method—made use of by no American tanners—on account of its superior softness, absorbent qualities and durability.

Where a corporation and its president, its principal stockholder, engaged in the interstate sale and distribution of chamois skin, in matter stamped or printed on their said product and containers thereof, and on price lists and printed matter supplied to dealers for distribution among prospective purchasers—

Represented that their chamois skins were tanned or processed by the French process and imported from France, or that they had been processed in the United States in accordance with French methods;

When in fact all of the skins in question were imported from Iceland, South America, New Zealand, or Australia and had been tanned by a Philadelphia company, by the domestic process;

With tendency and capacity to deceive a substantial portion of the purchasing public with respect to the origin, method of preparation, character, and qualities of their said product and thereby cause it to purchase substantial quantities thereof; and with result of placing in the hands of dealers means whereby they might mislead and deceive prospective purchasers of such products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard* and *Mr. Andrew B. Duvall*, trial examiners.

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

Mr. Louis H. Solomon, of New York City, for respondents.

AMENDED 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 Gulf & West Indies Co., Inc., a corporation, and Milton Cohn, individually and as president of Gulf & West Indies, Inc., a corporation, hereinafter referred to

[1] Amended.

as respondents, have violated the provisions of the Federal Trade Commission Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charged in that respect as follows:

PARAGRAPH 1. Respondent, Gulf & West Indies Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Milton Cohn, is president and principal stockholder of the corporate respondent. Said individual respondent, Milton Cohn, formulates, directs, and controls the policies, acts, and practices of the corporate respondent. The office and principal place of business of both the corporate and the individual respondent is at 141 Water Street in the city of New York, N. Y.

PAR. 2. Respondent, Gulf & West Indies Co., Inc., acting under the direction and control of respondent, Milton Cohn, as aforesaid, is now and for several years last past has been engaged in the business of selling and distributing chamois skins designated "Brownie Brand" and "Napoleon Brand" chamois skins. Respondents cause said products when sold by them to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their various points of location in other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products in commerce, respondents have made and are now making various false, deceptive, and misleading statements and representations regarding the origin, method of preparation, character, and quality of said products. Said false and misleading statements and representations have been and are being stamped or branded on their said products, printed on boxes and containers in which they are packaged, and on price lists and invoices, circulated and distributed among the purchasing public. Respondents further are supplying and have supplied printed matter containing such statements to dealers for distribution by them to members of the purchasing public throughout the United States and in the District of Columbia.

Among and typical of the respondents' said false, deceptive, and misleading statements and representations, but not all inclusive, are the following:

Brownie Brand
Reg. U. S. Pat. Office
CHAMOIS
FRENCH PROCESS
Tanned in U. S. A.
Imported Skins.

Napoleon Brand French
Chamois (Made in France).

NAPOLEON BRAND
Improved French Process
CHAMOIS
Imported Skins
Tanned and Packed in U. S. A.

PAR. 4. Through the use of said statements and representations and others of similar import not set-out herein, respondents represent directly or by implication that their said chamois skins designated "Brownie Brand" and "Napoleon Brand," respectively, have been and are tanned or produced by the French process and are imported from France, or have been processed in the United States in accordance with French methods.

PAR. 5. There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, the genuine French product being superior in many aspects and bringing higher prices on the market. No American tanners produce chamois processed by the French method and there is a preference on the part of the users of chamois for the French product or a product represented as processed by the French method, by reason of its superior softness, absorbent qualities, and durability.

PAR. 6. The foregoing statements and representations used and disseminated by respondents in the manner hereinabove described are false, deceptive, and misleading. Respondents' said products are not now and for many years have not been tanned and processed by the French methods, but by the domestic process. The true facts are that all of the chamois skins sold and distributed by respondents are made of skins imported from Iceland, South America, New Zealand, or Australia and are tanned or processed as finished chamois skins by Drueding Bros. Co. of Philadelphia, Pa., which tans or processes all

of its chamois skins by the domestic process. Respondents purchase said chamois skins after they have been tanned as above indicated and stamp or brand and advertise and represent said skins with the words or expressions stated in paragraph 3 as above.

PAR. 7. The use by the respondents of the words and expressions "Chamois French Process" and "Napoleon Branch French Chamois (Made in France)," as aforesaid, deceives and misleads members of the public into the erroneous and mistaken belief that respondents' said "Brownie Brand" and "Napoleon Brand" chamois skins are tanned and processed in France or are tanned or processed by French process and are, therefore, of superior quality when such are not the facts. While respondents formerly imported genuine French chamois into the United States, such product has not been obtainable for several years and has not been handled and sold by respondents for several years.

PAR. 8. The use by the respondents of the aforesaid statements and representations has had and now has the capacity and tendency to and does deceive and mislead members of the purchasing public into the mistaken and erroneous belief that said statements and representations are true. Respondents further have thereby placed in the hands of dealers and others a means and instrumentality whereby purchasers of said products may be misled and deceived. As a result of the erroneous and mistaken beliefs engendered by respondents' said acts and practices as herein alleged, substantial numbers of the public have purchased substantial quantities of respondents' said products.

PAR. 9. The aforesaid acts, practices and methods of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 7, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint and after certain evidence had been introduced in support of the complaint before trial examiners of the Commission theretofore

duly designated by it, the Commission on May 11, 1945, issued its amended complaint in the proceeding. Thereafter, further evidence in support of the amended complaint was introduced before the trial examiners (no evidence being offered by respondents) and such evidence was duly recorded and filed in the office of the Commission. After the issuance of the amended complaint it was stipulated between counsel supporting the complaint and counsel for respondent that the evidence theretofore introduced under the original complaint should become a part of the record in connection with the amended complaint. Subsequently, the proceeding regularly came on for final consideration by the Commission upon the amended complaint, the answer thereto, evidence, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gulf & West Indies Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Milton Cohn, is president and principal stockholder of the respondent corporation and formulates, directs, and controls the policies, acts, and practices of the corporation. The office and principal place of business of both of the respondents is at 141 Water Street, in the city of New York, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of selling and distributing chamois skins, causing their products, when sold, to be transported from their 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. Respondents maintain and at all times mentioned herein have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products in commerce, respond-

ents have made certain statements and representations regarding the origin, method of preparation, and character of such products, these statements and representations being stamped or branded on such products and also printed on the boxes and containers in which such products are packaged and on price lists circulated among prospective purchasers. Respondents have also supplied printed matter containing such statements to dealers for distribution among prospective purchasers.

Among and typical of such statements and representations are the following:

Brownie Brand
Reg. U. S. Pat. Office
CHAMOIS
FRENCH PROCESS
Tanned in U. S. A.
Imported Skins

Napoleon Brand French
Chamois (Made in France).

NAPOLEON BRAND
Improved French Process
CHAMOIS
Imported Skins
Tanned and Packed in U. S. A.

PAR. 4. Through the use of these statements and representations and others of similar import, respondents have represented, directly or by implication, (1) that their chamois skins are tanned or produced by the French process and are imported from France, or (2) have been processed in the United States in accordance with French methods.

PAR. 5. There are basic and fundamental differences between the French and American methods of processing or preparing chamois skins, the genuine French product being superior in many respects and bring higher prices in the market. No American tanners produce chamois skins processed by the French method. There is a preference on the part of the users of chamois skins for the French product or the product processed by the French method, such preference being due to the superior softness, absorbent qualities, and durability of the French product.

PAR. 6. The statements and representations used by respondents were erroneous, deceptive, and misleading. The products so desig-

nated were not tanned and processed by the French method but by the domestic process. All of the chamois skins in question were made of skins imported from Iceland, South America, New Zealand, or Australia and were tanned or processed as finished chamois skins by a company in Philadelphia, Pa., which tans or processes all of its chamois skins by the domestic process.

PAR. 7. The use by respondents of the erroneous and misleading statements and representations referred to above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the origin, method of preparation, character and qualities of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products because of the erroneous and mistaken belief so engendered. Respondents' practices serve also to place in the hands of dealers a means and instrumentality whereby such dealers may be enabled to mislead and deceive prospective purchasers of such products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents, evidence introduced before trial examiners of the Commission theretofore duly designated by it, recommended decision of the trial examiner and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Gulf & West Indies Co., Inc., a corporation, and its officers, and Milton Cohn, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device,

in connection with the offering for sale, sale, and distribution of chamois skins in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "French process" or any other words of similar import to designate, describe, or refer to chamois skins not actually tanned or produced by the French process.

2. Representing as having been imported from France any chamois skins which have not in fact been so imported.

It is further ordered, That the respondents shall, within 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 this order.

Order

IN THE MATTER OF

BANNER MANUFACTURING CO.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JAN. 31, 1938[1]

Docket 3067. Order, July 13, 1949

Order modifying prior cease and desist order in proceeding in question, 26 F. T. C. 614, so as to eliminate from paragraph 1 of said order, for the reasons below set forth, proviso permitting, subject to the conditions therein stated, the representation by respondent, otherwise prohibited, that its anitfreeze preparations are safe and harmless for general use in automobile radiators.

Before *Mr. Webster Ballinger*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Mr. Jacob E. Hurwitz, of New York City, for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JANUARY 31, 1938

This cause coming on to be heard by the Commission upon motion of Richard P. Whiteley, assistant chief counsel, to amend order to cease and desist issued in this proceeding on January 31, 1938; respondent's statement in opposition to said motion; testimony and other evidence on the question of public interest taken before Webster Ballinger, a trial examiner of the Commission; recommended decision

[1] Said cease and desist order reads as follows:

"This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto filed herein on December 28, 1937, by respondent admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes';

"It is ordered, That the respondent, Banner Manufacturing Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of antifreeze preparations for use in automobile radiators in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

"(1) Representing that said preparations are safe and harmless solutions for general use in automobile radiators: *Provided, however,* Respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions.

"(2) Representing, through the use of the word 'manufacturing' or any other word or term of similar import and meaning in its corporate name, or in any other manner, or through any means or device, that it is the manufacturer of said antifreeze preparations or that said preparations are made in its laboratories under its strict supervision unless and until it actually owns and operates or directly and absolutely controls a factory or manufacturing plant wherein such preparations are made by it under such supervision.

"It is further ordered. That the respondent shall, within 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."

of said trial examiner filed March 2, 1948; exceptions to said recommended decision filed by the respondent, and brief of counsel in support of motion to amend order to cease and desist; and

It appearing to the Commission that it is the public understanding that an effective antifreeze is a preparation which prevents freezing in the radiators and motors of automobiles and is such a substance which will not cause damage to radiators, engines, motors, or other parts of automobiles when used; and

It further appearing that the representation that respondent's products, when used under the suggested directions of the respondent as to proper quantities thereof for designated temperatures, are "effective as antifreeze solutions" conveys the meaning to the public that said products are safe and harmless solutions for general use in automobile radiators; and

It further appearing that the respondent, by its answer in this proceeding, admitted that its preparations are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used which will in many instances lessen the effectiveness of the cooling system and cause the engine to overheat and cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which such products come in contact, in many instances causing shorts in the ignition system; and

The Commission being of the opinion that the proviso contained in paragraph 1 of the order is contrary to fact and contrary to the admissions in the pleadings, and the Commission being further of the opinion that the public interest requires that the order to cease and desist be modified to conform with the facts and the record herein:

It is ordered, That the order to cease and desist heretofore issued on January 31, 1938, be, and the same hereby is, modified by striking from paragraph 1 thereof the following proviso: "*Provided, however*, Respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions."

Syllabus

IN THE MATTER OF

BANNER MANUFACTURING CO., INC., TRADING AS GOLD SEAL MANUFACTURING CO. AND NATIONAL LABORATORIES CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5123. Complaint, Jan. 31, 1944—Decision, July 13, 1949

Solutions known as antifreezes have long been sold to the general public throughout the United States to prevent injury to engines from the freezing of the water used in the cooling systems, and have proven dependable for such purpose and from the standpoint of not damaging the engine or vehicle concerned; and when a product is advertised as an antifreeze the public believes that it possesses the attributes found in such long used dependable products, may be used with safety in such cooling systems, will not cause rust, corrosion, clogging, or other deterioration or injury, and will protect the cooling system and other parts of the engine.

Calcium chloride when used in amounts sufficient to give protection against freezing in solutions intended for use in the cooling systems of automotive and other combustion engines will cause damage to the aluminum parts of the engine; will gradually cause damage to certain iron parts, such as pump and propeller shafts; will cause leakage in the radiator and tend to fill it with corrosion deposits to the extent that the engine will not longer cool; and tends to form deposits on ignition wires, with the result, under certain conditions, of causing short circuits. And while sodium chromate and oil are sometimes used to suppress or eliminate corrosion by the basic constituents of the antifreeze, under conditions of ordinary use of an automobile, sodium chromate, whether used alone or with oil in engines will not serve to eliminate or retard corrosion caused by calcium chloride as a basic ingredient.

Where a corporation engaged in the manufacture of various so-called antifreeze solutions containing calcium chloride, including its Gold Seal and Zero Flo preparations, recommended for use in the cooling systems of automotive and other combustion engines, and in the interstate sale and distribution of such products to automotive supply houses and garages for resale to the consuming public—

Falsely represented through use of the term "antifreeze" upon the labels attached to the containers of its products, that such preparations would protect the cooling system of automobiles and other internal combustion engines against damage from low temperatures without injury;

With effect, through such use of the term "antifreeze" and without informing the general public of the damaging effects which might result from the calcium chloride content of such products, of misleading a substantial portion of the purchasing public into the erroneous belief that the products were safe and dependable for use in guarding against damage from low temperatures without injury to the engines; and of thereby inducing such purchase

of substantial quantities thereof; and with capacity and tendency of so doing:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox* and *Mr. Andrew B. Duvall*, trial examiners.
Mr. Jesse D. Kash for the Commission.
Mr. Jacob E. Hurwitz, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Banner Manufacturing Co., Inc., a corporation, trading as Gold Seal Manufacturing Co. and National Laboratories Co., 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. Banner Manufacturing Co., Inc., trading as Gold Seal Manufacturing Co. and National Laboratories Co., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 37 Preston Court, Brooklyn, N. Y. The respondent for several years last past has been engaged in the manufacture, sale, and distribution of various so-called antifreeze solutions, two of which were designated "Gold Seal" and "Zero Flo," recommended for use in the cooling systems of automobiles and other combustion engines. Such products were sold by respondent to automotive supply houses and garages for resale to the consuming public. Respondent caused its products 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. Said products are made from a calcium chloride base.

PAR. 2. The respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For many years there has been on the market and sold to the general public throughout the United States solutions for use in the water in the cooling systems of automobiles and other types of internal-combustion engines to prevent injury to such engines from the

freezing of the water used in the cooling systems. These solutions are known as antifreezes and have proven dependable, both from the standpoint of protecting the cooling system and other parts of the engine and in not damaging any part of the engine or vehicle in which the engine is installed, by corrosion, clogged passages, or any other form of deterioration or injury.

When a product is advertised as an antifreeze, the public believes that it possesses the attributes found in these long-used dependable products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury, and that it will protect the cooling system and other parts of the engine from cold.

PAR. 4. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its products, Gold Seal and Zero Flo, the respondent has circulated among prospective purchasers throughout the United States by means of labels and lithographing on the containers within which said antifreeze solution is shipped, false statements and representations concerning said products. Among and typical of such false statements and representations circulated as aforesaid are the following:

Gold Seal Anti-Freeze Concentrated.
One filling lasts all winter.

Certificate of Quality Our Guarantee.

Gold Seal Manufacturing Company,
Brooklyn, New York.

One Gallon
National
Radiator
Alcohol and Glycerine
Base
Concentrated
Anti-Freeze.

Zero Flo Concentrated Anti-Freeze

The respondent has placed its Gold Seal and Zero Flo calcium chloride based antifreeze solutions in containers labeled or lithographed National Radiator Alcohol and Glycerine Base Concentrated Anti-Freeze.

Through the use of the statements and representations hereinabove set forth, the respondent has represented directly or by implication that said product, Gold Seal, is a high quality antifreeze solution which furnishes protection to the cooling systems of automobiles and other internal-combustion engines against freezing, water seepage,

and corrosion and prevents other damaging effects; that it is safe and dependable for use as recommended; that it will protect the entire cooling systems of automobiles against freezing; that it prevents rust and corrosion; that it will not boil away; that its use will not cause rust or other damage to the hose connections, gaskets, and other metal parts of an automobile or other internal-combustion engine; that it will not evaporate or clog passages in a cooling system and will not damage body finishes on automobiles and that its antifreeze solution placed in containers marked "alcohol and glycerine base concentrated anti-freeze" is composed of alcohol and glycerine.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's products, "Gold Seal and Zero Flo, are not high quality antifreeze solutions as they are composed of a calcium chloride base and are inferior to antifreeze solutions made from glycerine or alcoholic bases. Said products do boil away. They are not safe and dependable for use as recommended and are not superior types of antifreeze solutions. They do not protect the cooling systems of engines against corrosion, rust, or other deterioration. The use of said products causes and has caused corrosion, clogged passages, and other serious damages to engines, radiators, ignition wires, spark plugs, hose connections, gaskets, water pumps, and to the exterior finishes of automobiles. Said products evaporate and will clog passages in the cooling systems. Respondent's antifreeze solution placed in cans labeled "National Radiator Alcohol and Glycerine Base Concentrated Anti-Freeze," is not composed of alcohol and glycerine but is a calcium chloride based solution.

The respondent's representations that its products are antifreezes leads the public to believe that said products are safe and dependable for use in the cooling systems of internal-combustion engines in guarding against damage from low temperatures and without injury to such engines from rust, corrosion, clogging, or other deleterious or damaging effect, and leads the public to believe that its antifreeze solution designated "National Radiator Alcohol and Glycerine Base Concentrated Anti-Freeze" is composed of alcohol and glycerine.

Respondent's failure to inform the general public of the deleterious and damaging effects which result from the use of its products as antifreezes is misleading and deceptive.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such false and misleading statements and advertisements are true and to induce and does induce the public to purchase substantial quantities of respondent's products as a result of such belief.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 31, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Banner Manufacturing Co., Inc., a corporation, trading as Gold Seal Manufacturing Co., and National Laboratories Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondent thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before J. Earl Cox, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly received and filed in the office of the Commission. Thereafter said trial examiner filed his report upon the evidence and the matter came on for hearing before the Commission upon said report and exceptions filed thereto, testimony and other evidence, and briefs of counsel in support of the complaint and in opposition thereto, oral argument of counsel, and motion filed by the respondent December 22, 1944, to reopen the hearings herein, and the Commission, having duly considered the matter, on August 22, 1945, issued its order reopening said case for the taking of such further testimony and other evidence as might be offered.

Thereafter, supplemental evidence in support of and in opposition to the allegations of said complaint were taken before Andrew B. Duvall, a trial examiner of the Commission duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission upon the complaint, answer thereto, testimony, and other evidence, report upon the evidence of trial examiner J. Earl Cox, and exceptions filed thereto, report upon supplemental evidence of trial examiner Andrew B. Duvall, brief and supplemental brief filed by counsel in support of the complaint,

and brief and reply brief to supplemental brief of counsel supporting the complaint, filed by the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Banner Manufacturing Co., Inc., trading as Gold Seal Manufacturing Co. and National Laboratories Co., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 37 Preston Court, Brooklyn, N. Y. The respondent for several years last past has been engaged in the manufacture, sale and distribution of various so-called antifreeze solutions, two of which were designated "Gold Seal" and "Zero Flo," recommended for use in the cooling systems of automobiles and other combustion engines. Such products were sold by respondent to automotive supply houses and garages for resale to the consuming public. Respondent caused its products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. For many years there have been on the market and sold to the general public throughout the United States solutions for use in the water in the cooling system of automobiles and other types of internal-combustion engines to prevent injury to such engines from the freezing of the water used in the cooling systems. These solutions are known as antifreezes and have proven dependable, both from the standpoint of protecting the cooling system and other parts of the engine and in not damaging any part of the engine or vehicle in which the engine is installed by corrosion, clogged passages, or any other form of deterioration or injury.

When a product is advertised as an antifreeze, the public believes that it possesses the attributes found in these long used dependable products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury, and that it will protect the cooling system and other parts of the engine from cold.

PAR. 3. In the course and conduct of its business, in connection with the offering for sale, sale, and distribution of its products, Gold Seal

and Zero Flo, the respondent has designated and described said products as antifreeze solutions by means of statements and representations upon the labels attached to the containers of such products. Typical of such representations on labels are the following:

GOLD SEAL
ANTI-
FREEZE
Concentrated
One Filling
Lasts All Winter

Zero Flo

Concentrated

ANTI-FREEZE

PAR. 4. Through the use of the term antifreeze to designate and describe its products the respondent has represented that the preparations so designated will protect the cooling systems of automobiles and other internal-combustion engines against damage from low temperatures without injury to such engines.

PAR. 5. The product designated "Gold Seal," sold and distributed by the respondent, is composed principally of the following ingredients:

	Percent		*Percent*
Calcium chloride	35.1	Calcium sulphate less than	0.1
Magnesium chloride	.1	Sodium chromate	.05
Sodium chloride	.7	Oil	.2
Calcium hydroxide less than	.1		

The freezing point of said preparation, when diluted with an equal volume of water, was minus 19° C.

The preparation sold and distributed by the respondent designated "Zero Flo" contains the same constituent parts as respondent's product "Gold Seal."

PAR. 6. The presence of calcium chloride in respondent's products Gold Seal and Zero Flo is likely to give rise to electrolytic corrosion. Calcium chloride, when used in amounts sufficient to give protection against freezing, will cause damage to the aluminum parts of the engine and will gradually cause damage to certain iron parts, such as pump and propeller shafts. It will also cause leakage in the radiator and tend to fill the radiator with corrosion deposits to the extent that the engine will no longer cool. Calcium chloride, when used as an antifreeze solution in an automobile engine, tends to form deposits on ignition wires which deposits are very hydroscopic, and, by assimi-

lating water from the air when humidity is high, forms a solution which is an excellent conductor of electricity causing short circuits.

PAR. 7. The products, Gold Seal and Zero Flo, sold and distributed by the respondent, contain two ingredients, sodium chromate 0.05 percent and oil 0.2 percent, which are sometimes used for the intended purpose of suppressing or eliminating corrosion by the basic constituent of the antifreeze. The Commission finds, however, that under conditions of ordinary use of an automobile, sodium chromate, used either alone or in combination with oil, will not serve to eliminate or retard corrosion caused by the basic ingredient calcium chloride.

PAR. 8. The use by the respondent of the term "antifreeze" to designate, refer to, or describe its products which contain calcium chloride, or otherwise representing that such products are antifreeze solutions, without informing the general public of the deleterious and damaging effects which may result from the use of such products as antifreeze solutions, has the tendency and capacity to and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that products so designated, described and referred to as antifreeze solutions are safe and dependable for use in the cooling systems of internal-combustion engines in guarding against damage from low temperatures without injury to such engines from rust, corrosion, clogging, or other deleterious or damaging effects. Because of such erroneous and mistaken belief members of the purchasing public have been induced to purchase substantial quantities of respondent's products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence introduced before J. Earl Cox and Andrew B. Duvall, trial examiners of the Commission theretofore duly designated by it, report upon the evidence of trial examiner J. Earl Cox and exceptions filed thereto, report upon supplemental evidence of trial examiner Andrew B. Duvall, briefs and supplemental briefs filed in support of the complaint and in opposition thereto, and

oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Banner Manufacturing Co., Inc., a corporation, trading as Gold Seal Manufacturing Co. and National Laboratories Co., or trading under any other trade name, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of its products now designated "Gold Seal" and "Zero Flo," or any other product of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing that its products Gold Seal and Zero Flo, or any other product of substantially similar composition, are antifreeze preparations for use in the cooling systems of internal-combustion engines, without affirmatively disclosing in a clear and conspicuous manner, in immediate conjunction with such representation, that said preparations will rust and corrode the cooling system of such an engine, may clog the passages in such cooling system, and otherwise damage such engine.

2. Using the term "antifreeze," or any other term of similar import or meaning, to designate, describe, or refer to any preparation for use in the cooling systems of automobiles or other internal-combustion engines which has a calcium chloride base, without affirmatively disclosing in a clear and conspicuous manner, in immediate connection or conjunction with such term, that said preparation will rust and corrode the cooling system of such an engine, may clog the passages in such cooling system, and otherwise damage such engine.

It is further ordered, That the respondent shall, within 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

ASSOCIATED TRADE PRESS, INC., AND JOHN W. COMPTON, JAMES R. COMPTON, AND HAZEL C. COMPTON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5566. Complaint, June 8, 1948—Decision, July 13, 1949

Where a corporation and three officers thereof, engaged in the sale of magazine subscriptions to subscribers in various States, principally through large numbers of house-to-house salesmen, who, as a rule, collected the entire subscription price—

(*a*) Carried on their said business in such a way that, in many instances, whether through deliberate intention, negligence, indifference, or otherwise, subscribers failed to receive the magazines subscribed for, or received others than those ordered, and in many instances received no publication until many months after it was due and then only after expending much effort; and

(*b*) Failed, in many instances, to acknowledge receipt of complaints both by those who had received no magazines whatever and by those who had received other magazines than those for which they subscribed, and to forward the magazines subscribed for until pressure was brought to bear on them by some individual or organization:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

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 Associated Trade Press, Inc., a corporation, and John W. Compton, James R. Compton, and Hazel C. Compton, individually and as officers of the aforesaid corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Associated Trade Press, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and has its principal office and place of business at 9 South Kedzie Avenue, Chicago, Ill.

Respondents, John W. Compton, James R. Compton, and Hazel C. Compton, are officers of the aforesaid corporation and have their principal office at the above-stated address.

Said respondents are now and for more than 1 year last past have been engaged in selling subscriptions to magazines.

The respondents caused and now cause said magazines, after the subscriptions therefore have been secured and forwarded to the publishers or distributors thereof, to be sent by said publishers or distributors, through the United States mails and otherwise, to the subscribers of said magazines, located in various States of the United States other than the State of origin of said shipments.

The respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said magazines in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondents secure over 2 million subscriptions annually to approximately 100 different magazines, principally through house-to-house salesmen. Respondents employ a field force of approximately 1,000 persons, about 400 of whom specialize in trade and technical publications and the balance specialize in general interest or popular magazines.

PAR. 3. Upon securing a subscription to a magazine, respondents' salesmen furnish the subscriber a receipt therefor showing the name and address of the subscriber, the magazine subscribed for, the period of time covered by the subscription, and the amount of money collected. It is respondents' general practice to collect the entire subscription price. The stub of this receipt, giving the same information as that furnished the subscriber, is furnished to respondents together with the amount collected less the salesmen's commission.

PAR. 4. Upon receipt of the aforesaid stubs or tickets, respondents sort them according to the magazines subscribed for. Duplicate typewritten lists are then made of the data contained in said tickets under the name of each publication involved. This information is then forwarded to the publisher or distributor of the publications involved, together with the purchase price to respondents, and the publications are mailed to the subscribers by said publisher or distributor.

PAR. 5. Through deliberate intention, negligence, indifference, or otherwise, on the part of respondents, many subscribers do not receive the magazine or magazines subscribed for, but receive other publications. Also, in many instances, subscribers do not receive any publication whatever until many months after its due date, and then only

after considerable effort has been expended on the part of the subscriber to require fulfillment of the contract by the respondents.

PAR. 6. Notwithstanding the fact that complaints are registered with respondents by subscribers who do not receive any magazines whatever and also by subscribers who receive magazines other than what they subscribe for, respondents, in many instances, fail to acknowledge receipt of such complaints and fail to forward the magazines subscribed for until pressure is brought to bear on them by some individual or organization.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on June 8, 1948, issued and subsequently served its complaint in this proceeding upon the respondents, Associated Trade Press, Inc., a corporation, and John W. Compton, James R. Compton, and Hazel C. Compton, individually, and as officers of Associated Trade Press, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint the respondents filed their answer, by which answer they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, a stipulation as to certain facts was entered into between Daniel J. Murphy, chief of the Trial Division, and respondents. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, the answer thereto, and stipulation as to certain facts; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Associated Trade Press, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Illinois, and has its principal office and place of business at 9 South Kedzie Avenue, Chicago, Ill.

Respondents, John W. Compton, James R. Compton, and Hazel C. Compton, are officers of said corporate respondent and have their principal office at the same address as that of the corporate respondent.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale of subscriptions to magazines. When said subscriptions for magazines have been secured respondents cause said magazines to be sent by the publishers or distributors thereof, through the United States mails and otherwise, to the subscribers of said magazines located in various States of the United States other than the State of origin of said shipments.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said magazines in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondents secure over 2 million subscriptions annually to approximately 100 different magazines, principally through house-to-house salesmen. Respondents employ a sales force of approximately 1,000 persons, about 400 of whom specialize in trade and technical publications and the balance specialize in general interest or popular magazines.

PAR. 4. Upon securing a subscription to a magazine, salesmen of the respondents furnish the subscriber a receipt therefor showing the name and address of the subscriber, the magazine subscribed for, the period of time covered by the subscription, and the amount of money collected. It is the general practice of the respondents to collect the entire subscription price. The stub of this receipt, giving the same information as that furnished the subscriber, is furnished to respondents, together with the amount collected less the salesman's commission.

Upon receipt of such stubs or tickets, it is the general practice of the respondents to sort the stubs or tickets according to the magazines subscribed for and to make duplicate typewritten lists of the data contained in said stubs or tickets under the name of each publication involved. This information is then forwarded to the publishers or distributors of the publication or publications involved, together with the purchase price to the respondents for said publication or publications, and the publication or publications are mailed to the subscribers by said publishers or distributors.

PAR. 5. In many instances, through deliberate intention, negligence, indifference, or otherwise, of the respondents, subscribers have not received the magazines subscribed for or have received publications

other than those ordered, and in many instances subscribers received no publication until many months after it was due, and then only after much effort had been expended on the part of the subscriber to require fulfillment of the contract by the respondents.

PAR. 6. Notwithstanding the fact that complaints are registered with respondents by subscribers who do not receive any magazines whatever and also by subscribers who receive magazines other than what they subscribed for, respondents in many instances fail to acknowledge receipt of such complaints and fail to forward the magazines subscribed for until pressure is brought to bear on them by some individual or organization.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, in which answer the respondents admit all of the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearings as to said facts, and a stipulation as to certain facts entered into between Daniel J. Murphy, chief of the Trial Division of the Commission, and the respondent; and the Commission, having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Associated Trade Press, Inc., a corporation, and its officers, and the respondents, John W. Compton, James R. Compton, and Hazel C. Compton, individually and as officers of said Associated Trade Press, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of magazines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

1. Taking or receiving subscriptions to magazines or other periodicals unless the publication or publications purchased by the subscriber are in fact delivered to such subscriber within a reasonable length of

time after the receipt of such subscription or reasonable adjustment for such failure promptly made.

2. Substituting or permitting the substitution of magazines or periodicals for those actually purchased by the subscriber.

It is further ordered, That the respondents shall, within 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 this order.

IN THE MATTER OF

CARTER PRODUCTS, INC. AND SMALL & SEIFFER, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4960. Complaint, May 8, 1943—Decision, July 14, 1949

Where a corporation engaged in the interstate sale and distribution of a deodorant cosmetic designated as "Arrid," and an advertising agency which for a time prepared, edited, tested, and placed all advertising material used by it to procure the sale of its said Arrid; in advertisements in newspapers and periodicals and through leaflets, pamphlets, radio continuity and spots, and other advertising mediums, directly and by implication—

Falsely represented that the application of Arrid to the area of skin under the arm would terminate and bring to an end the flow of perspiration in that area for 1 to 3 days; that Arrid absorbed perspiration, would keep the armpits dry, and would keep them free from the odor of perspiration for 1 to 3 days; and that it was harmless and would not irritate the skin;

The facts being that while its use would reduce the flow of sweat in some persons and under some conditions its application would only temporarily close the sweat glands and reduce the accumulation of perspiration on the surface of the skin; and it would not prevent the flow of sweat, and could not be relied upon to prevent the appearance of perspiration on the surface of the skin; use thereof would cause skin irritation and dermatitis in some people, and, used after shaving, it was not safe and harmless but was capable of irritating the skin and of aggravating irritation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby induce many members of said public to purchase substantial quantities of such preparation:

Held, That such acts and practices under the circumstances set forth were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Everett F. Haycraft*, trial examiner.
Mr. R. P. Bellinger for the Commission.
Breed, Abbott & Morgan, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Carter Products, Inc., is a corporation existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 53 Park Place, New York, N. Y.

PAR. 2. This respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a deodorant cosmetic preparation designated "Arrid" in commerce among and between the various States of the United States and in the District of Columbia. This preparation is distributed by respondent, Carter Products, Inc., through wholesale drug jobbers, chain stores, and department stores.

This respondent causes the aforesaid preparation Arrid, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its aforesaid preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondent, Small & Seiffer, Inc., is a corporation existing under the laws of the State of New York with its principal place of business located at 24 West Fortieth Street, New York, N. Y. This respondent is an advertising agency and, as such, is engaged in formulating, editing, testing, selling, and advising its clients on advertising matters.

This respondent is the advertising representative of respondent, Carter Products, Inc., and prepares, edits, tests, and places all advertising material used by respondent, Carter Products, Inc., to promote the sale of the aforesaid deodorant and cosmetic preparation.

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

PAR. 5. In furtherance of the sale and distribution of the aforesaid deodorant and cosmetic preparation Arrid, the said respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid deodorant and cosmetic preparation Arrid by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and these respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning the said preparation, designated as aforesaid, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly,

the purchase of the aforesaid preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations disseminated and caused to be disseminated by the United States mails, by insertion in newspapers and periodicals, by means of leaflets, pamphlets, radio continuity and spots, and other advertising media, are the following:

New . . . a cream deordorant which safely stops under-arm perspiration. (Picture of a woman's face and a woman's hand.) If you want *complete* under-arm protection, you must keep the armpits *dry* as well as *odorless*. Arrid cream will do both for you, and do it safely. Arrid has five important advantages:

1. Does not irritate skin. Can be used right after shaving.

2. Does not rot dresses. Arrid has the Approval Seal of the American Institute of Laundering, for being HARMLESS TO FABRICS.

3. No waiting to dry. Use Arrid either before or after you dress.

4. Instantly stops perspiration for 1 to 3 days. Removes odor from perspiration, keeps armpits dry.

5. Arrid is a pure, white, greaseless, stainless vanishing cream.

Arrid is pleasant to use—is odorless except for a very faint, pleasing scent. It takes but a half minute to use—then you are *sure* your armpits are odorless and your dresses free from perspiration stains. Arrid does BOTH.

Now 39¢ a jar at all
drug and dept. stores
more than 10 million jars of
Arrid have already been bought.
You too will probably like it. Insist
on Arrid. Get a
jar today.

ANNR: Right! If you want to stop perspiration safely . . . use Arrid . . . spelled A-R-R-I-D. This remarkable cream is safe in *more ways than one* for it has been approved by Good Housekeeping and the American Institute of Laundering as *ALSO* being harmless to skin and to fabrics. Remember, it stops perspiration . . . and keeps it stopped safely . . . for 1 to 3 days. You can buy Arrid at all drug and department stores . . . Over 25 million jars of Arrid have been sold. Don't forget the name; spelled A-R-R-I-D and pronounced ARRID . . . The safe way to stop under-arm perspiration!

ANNR: Women use more Arrid than any other deodorant because Arrid stops perspiration odor the safe way, the clean way. Arrid actually keeps the armpits dry—like an invisible blotter—so that perspiration odor cannot even start. Arrid—A-R-R-I-D is the largest selling deodorant because it saves dresses from stains, and saves YOU from embarrassment. Did you use Arrid today? Arm with Arrid, the dainty white deodorant cream! Awarded the Good Housekeeping Seal because Arrid is safe. 39¢ a jar at cosmetic counters.

Plain deodorants may overcome the offensive odor of under-arm perspiration but a deodorant that also safely stops under-arm perspiration renders a much more important service.

By stopping the flow of under-arm perspiration altogether, the collection of odor-creating body secretions in the armpits is prevented. In addition, clothing is protected against damage from perspiration.

PAR. 6. Through the use of the words, phrases, statements, and representations, hereinabove set forth, and others of similar import not specifically set out herein, respondents represent, directly and by implication, that the application of Arrid, to the area of the skin under the arm, will terminate and bring to an end the flow of perspiration in that area for 1 to 3 days; that said preparation absorbs perspiration and keeps the armpits dry; that it will keep the armpits free from the ordor of perspiration for 1 to 3 days; and that it is harmless and will not irritate the skin.

PAR. 7. The foregoing statements and representations are grossly exaggerated, false, deceptive, and misleading.

The use of Arrid will not terminate or bring to an end the flow of under-arm perspiration. Said preparation will not absorb perspiration and will not keep the armpits dry. It will not keep the armpits free from the odor of perspiration for 1 to 3 days. Arrid is not harmless. It will irritate the skin of some individuals upon repeated application.

PAR. 8. The use by the respondents of the foreging false, deceptive, and misleading words, phrases, statements, and representations, and others of similar import not specifically set-out herein, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the said preparation.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 8, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondents thereto, testimony, and other evidence in support

of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions filed to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carter Products, Inc., is a Maryland corporation, having its office and principal place of business at 53 Park Place, New York, N. Y.

PAR. 2. Said respondent, Carter Products, Inc., is now, and for more than 1 year last past has been engaged in the sale and distribution of a deodorant cosmetic preparation designated as "Arrid" in commerce among and between the various States of the United States and in the District of Columbia. This preparation is distributed by respondent, Carter Products, Inc., through wholesale drug jobbers, chain stores, and department stores. This respondent causes the aforesaid preparation Arrid, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in its aforesaid preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Feminine Products Co. was the original distributor of the said preparation Arrid, at which time Feminine Products Co. was a New York corporation located at 53 Park Place, New York, N. Y., and was a subsidiary of respondent Carter Products, Inc., which took over the assets of said Feminine Products Co. upon its dissolution in 1937.

PAR. 4. Respondent, Small & Seiffer, Inc., is a New York corporation, with its principal office and place of business at 24 West Fortieth Street, New York, N. Y. Said respondent is an advertising

agency, and as such, is engaged in formulating, editing, testing, and selling advertising material and advising its clients on advertising matters. This respondent was the advertising representative of respondent, Carter Products, Inc., prior to October 1, 1946, and in such capacity prepared, edited, tested, and placed all advertising material used by respondent Carter Products, Inc., to promote the sale of the aforesaid preparation Arrid.

PAR. 5. The said respondents, Carter Products, Inc., and Small & Seiffer, Inc., acted in conjunction and cooperation with one another in the performance of the acts and practices hereinafter set forth and described.

PAR. 6. In furtherance of the sale and distribution of the aforesaid deodorant cosmetic preparation Arrid, the said respondents disseminated and prior to October 1, 1946, were disseminating, and caused and prior to October 1, 1946, were causing the dissemination of false advertisements concerning the aforesaid deodorant and cosmetic preparation, Arrid, by United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. The respondent, Carter Products, Inc., is now disseminating and causing the dissemination of false advertisements concerning the aforesaid preparation, Arrid, by United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act. The said respondents have also disseminated and prior to October 1, 1946, were disseminating, and have caused, and prior to October 1, 1946, were causing, the dissemination of false advertisements concerning the said preparation designated as aforesaid by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparation, Arrid, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The respondent, Carter Products, Inc., is now disseminating and now causing dissemination of false advertisements concerning the said preparation designated as aforesaid, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparation, Arrid, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations disseminated and caused to be disseminated by United States mails, by insertions in newspapers and periodicals, by means of leaflets, pamphlets, radio continuity and spots, and other advertising mediums, are the following:

A. Now—a cream deodorant which safely stops under-arm perspiration. (Picture of a woman's face and a woman's hand.) If you want complete under-

arm protection, you must keep the armpits dry as well as odorless. Arrid cream will do both for you, and do it safely. Arrid has five important advantages:

1. Does not irritate skin. Can be used right after shaving.
2. Does not rot dresses. Arrid has the approval seal of the American Institute of Laundering, for being harmless to fabrics.
3. No waiting to dry. Use Arrid either before or after you dress.
4. Instantly stops perspiration for 1 to 3 days. Removes odor from perspiration, keeps armpits dry.
5. Arrid is a pure, white, greaseless, stainless vanishing cream.

B. Arrid is pleasant to use—is odorless except for a very faint, pleasing scent. It takes just a half minute to use—then you are sure your armpits are odorless and your dresses free from perspiration stains. Arrid does BOTH.

Now 39¢ a jar at all drug and dept. stores. More than 10 million jars of Arrid have already been bought.

You too will probably like it. Insist on Arrid. Get a jar today.

C. ANNR: Right! If you want to stop perspiration safely . . . use Arrid . . . spelled A–R–R–I–D. This remarkable cream is safe in more ways than one for it has been approved by Good Housekeeping and the American Institute of Laundering as ALSO being harmless to skin and to fabrics. Remember, it stops perspiration . . . and keeps it stopped safely . . . for 1 to 3 days. You can buy Arrid at all drug and department stores . . . Over 25 million jars of Arrid have been sold. Don't forget the name; spelled A–R–R–I–D and pronounced Arrid . . . The safe way to stop under-arm perspiration!

D. ANNR: Women use more Arrid than any other deodorant because Arrid stops perspiration odor the safe way, the clean way. Arrid actually keeps the armpits dry—like an invisible blotter—so that perspiration odor cannot even start. Arrid—A–R–R–I–D is the largest selling deodorant because it saves dresses from stains and save YOU from embarrassment. Did you use Arrid today? Arm with Arrid, the dainty white deodorant cream! Awarded the Good Housekeeping seal because Arrid is safe. 39¢ a jar at cosmetic counters.

E. Plain deodorants may overcome the offensive odor of under-arm perspiration but a deodorant that also safely stops under-arm perspiration renders a much more important service.

F. By stopping the flow of under-arm perspiration altogether, the collection of odor-creating body secretions in the armpits is prevented. In addition, clothing is protected against damage from perspiration.

PAR. 7. In addition to the foregoing statements and representations, respondents have at times indicated used the following qualifying statements in smaller type on cartons in giving directions for use of the said preparation Arrid:

A. Cover arm pit. Rub gently until cream vanishes. Wipe off excess. Use daily if necessary. (Since 1939)

B. Use as frequently as you find necessary. (Since 1939)

C. Important. Use daily for constant protection. (Since 1946)

D. Some people perspire more than others. They should use more cream. Apply Arrid at any time. Best when applied before going to bed. (Since 1942)

PAR. 8. Through the use of the statements and representations hereinabove quoted, and others of similar import not specifically set-out herein, respondents represent, and have represented, directly and by implication, that the application of Arrid, to the area of the skin under the arm, will terminate and bring to an end the flow of perspiration in that area for 1 to 3 days; that said preparation absorbs perspiration and keeps the armpits dry; that it will keep the armpits free from the odor of perspiration for 1 to 3 days; and that it is harmless and will not irritate the skin.

PAR. 9. The Commission finds that the foregoing statements and representations are grossly exaggerated, false, deceptive, and misleading. The use of Arrid will not terminate or bring to an end the flow of underarm perspiration. Its use will not absorb perspiration to the extent of keeping the armpits dry. It will not keep the armpits dry or free from the odor of perspiration for 1 to 3 days. This preparation is not harmless, and its use will cause skin irritations, and dermatitis in some people. If used after shaving Arrid is not safe and harmless, but is capable of irritating the skin, and of aggravating irritation.

PAR. 10. The following constitute the formulae for the said preparation Arrid at the respective times mentioned:

	Percent
In 1936:	
Aluminum sulphate	10.6
Water	47.7
Emulsifying agents	8.2
Waxes and inert	30.8
Titanium dioxide	2.5
Perfume	.2
In 1940:	
Aluminum sulphate	13.7
Emulsifying agents	9.2
Waxes and inert	31.8
Water	42.6
Titanium dioxide	2.6
Perfume	.1
Present:	
Aluminum sulphate	12.2
Water	51.8
Emulsifying agents	9.0
Waxes and inert	25.4
Titanium dioxide	1.5
Perfume	.1

PAR. 11. Sweat is the substance which is formed in the sweat glands before it appears on the surface of the skin. In the general sense,

perspiration means any secretion that passes through the surface of the body, which would include sweat and water that come through the surface of the skin where there are no sweat glands. In a more limited sense, it refers to the secretion of the sweat glands after it appears on the surface of the skin plus accumulated debris and dirt that collects there from various sources, and which, if left on the surface of the skin, will give off the characteristic odor of sweat. There are two kinds of perspiration, sensible and insensible. Sensible perspiration is that which can be seen and felt; insensible can neither be seen nor felt. It includes water that passes through the surface of the skin regardless of the sweat glands if it evaporates rapidly enough so that it cannot be seen or felt. Insensible perspiration is sometimes referred to as "transpiration," which is the passage of water through the surface of the skin regardless of the presence of sweat glands.

PAR. 12. There are two types of sweat glands in the under-arm area of human beings, the exocrine and the apocrine. The exocrine glands are the ordinary garden variety of sweat glands, whereas the apocrine glands are larger and may produce a strong odor, which usually is peculiar to the individual and is given off by the perspiration. The sweat glands are below the surface of the skin and each has an opening or a duct which leads to the surface, and is referred to as the mouth of the sweat gland. It is assumed by the medical profession that the apocrine glands are analogous to the glands which, in the lower animals, secrete a distinctive odor at mating time to attract the opposite sex, and that these glands at one time functioned in humans for the same purpose.

PAR. 13. The principal active ingredient of "Arrid is aluminum sulphate, an astringent, which, upon application to the surface of the skin tends to cause a swelling which contracts or closes the mouths of the sweat glands, both exocrine and apocrine, and thus reduces the flow of the sweat. The swelling gradually goes down after a short period of time, and the sweat again flows freely from the glands. The extent of the reduction of the flow of sweat depends upon the temperature, the humidity, the physical activity of the individual, and the degree of tendency to perspire peculiar to the particular individual.

PAR. 14. The application of Arrid to the skin will not prevent the flow of sweat from the sweat glands nor the formation of perspiration, and cannot be relied upon to prevent the appearance of perspiration on the surface of the skin. It will reduce the flow of sweat in those users who lead a somewhat inactive life or who are only mildly susceptible to formation of perspiration when conditions of humidity and

temperature are not very conducive thereto. The application of Arrid will only temporarily close the mouths of the sweat glands and reduce the accumulation of perspiration on the surface of the skin. Although it will not prevent the appearance of perspiration on the skin, its use will substantially reduce the flow of sweat in persons who are inclined to perspire freely.

PAR. 15. The use by respondents of the aforesaid false, deceptive, and misleading statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce many members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents, testimony, and other evidence in support of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, and their respective agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of a cosmetic preparation designed "Arrid," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is

defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(*a*) That the application of said preparation stops under-arm perspiration, or that it will be more than temporarily effective in reducing the flow of perspiration.

(*b*) That said preparation will be more than temporarily effective in keeping the armpits dry or odorless.

(*c*) That the use of said preparation immediately after shaving will not irritate the skin.

(*d*) That the said preparation will be more than temporarily effective in preventing the accumulation of odor-creating body secretions or excretions in the armpits.

(*e*) That said preparation is safe or harmless to use, without disclosing that it may cause irritation of sensitive skin.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of sad preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents shall within 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 this order.

Complaint

IN THE MATTER OF

KRENGEL MANUFACTURING CO., INC., ABRAHAM L. GERSHON, GEORGE FELDMAN, AND SADYE GERSHON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5516. Complaint, Nov. 20, 1947—Decision, July 15, 1949

Where a corporation, and its three principal stockholders who were respectively its president, vice president, and secretary-treasurer, engaged in the competitive interstate sale and distribution of rubber stamps to dealers—generally retail stationers—and directly to consumers, including principally large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies—

Discriminated in price between different consumer purchasers of their products of like grade and quality by selling such products to some at higher prices than to others, not, it appeared, in good faith to meet an equally low price of a competitor nor on account of differences in cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products were sold or delivered;

With the result that a competitor lost one very substantial account to them due to his inability to meet their low, discriminatory price, which did not permit the manufacture and sale of said products profitably; and that the effect of such discriminations had been and might be substantially to lessen, destroy, and prevent competition between them and their competitors in the sale and distribution in commerce of the products concerned:

Held, That such acts and practices, under the circumstances set forth, violated section 2 (a) of the Clayton Act as amended.

Before *Mr. Everett F. Haycraft*, trial examiner.
Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.
Mr. A. Aaron Raphael, of New York City, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have been and are now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Krengel Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 227 Fulton Street, New York, N. Y. Respondent corporation is engaged in

the business of selling and distributing rubber stamps. The products distributed by respondents are sold, principally to dealers, generally retail stationers, and also directly to consumers. Respondent's sales of its rubber stamps directly to consumers are made principally to large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies. The complaint herein is directed solely to respondent's sales of rubber stamps to consumers.

PAR. 2. Respondent, Abraham L. Gershon, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. He is now president of the Krengel Manufacturing Co., Inc., and has been an officer of said corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as president, respondent, Abraham L. Gershon, together with his wife, respondent, Sadye Gershon, and his son-in-law, respondent, George Feldman, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 3. Respondent, George Feldman, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. He is now vice president of Krengel Manufacturing Co., Inc., and has been an officer of that corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as vice president, respondent George Feldman, together with respondent Abraham L. Gershon and respondent Sadye Gershon, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 4. Respondent, Sadye Gershon, is an individual residing in New York, N. Y., and is one of the principal stockholders in said respondent corporation. She is now secretary and treasurer of Krengel Manufacturing Co., Inc., and has been an officer of that corporation since some time after June 19, 1936. After becoming an officer and at the present time and for some time past as secretary and treasurer, respondent, Sadye Gershon, together with respondent, Abraham L. Gershon, and respondent, George Feldman, has exercised and still exercises a substantial degree of authority and control over the business conducted by said corporation, including the direction of its distribution and sales policies.

PAR. 5. Respondents, Abraham L. Gershon, as president and George Feldman, as vice president and Sadye Gershon as secretary and treas-

urer of said respondent corporation, Krengel Manufacturing Co., Inc., are now engaged and for several years prior hereto have engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps for their own account. The individual respondents have and are now conducting said business through Krengel Manufacturing Co., Inc., said corporate respondent, which respondent has likewise engaged in said business for the past several years.

PAR. 6. Each of the individual respondents through said respondent corporation, and said respondent corporation, now sell and distribute, and since June 19, 1936, have sold and distributed rubber stamps to dealers and also direct to the consuming public. Some customers of respondents purchasing such products are located in States other than the State in which respondents' business is located, and some of respondents' customers, although located within the State in which respondents' business is located, direct that the shipments of their purchases of said rubber stamps be made by the respondents to their branch offices, some of which branch offices are located in States other than the State in which respondents' business is located, and in such cases, respondents cause such products to be shipped and transported across State lines from respondents' place of business to such customers, or to such branch offices of such customers. There is and has been at all times mentioned, a continuous course of trade and commerce in said products between respondents' factory and warehouse and the purchasers of said products, some of which are located in States other than the State in which respondents' business is located as aforesaid. Said products are sold and distributed for use within the various States of the United States.

PAR. 7. In the course and conduct of each of the respondents' business in commerce as aforesaid, respondents since June 19, 1936, have been and are now in substantial competition with other corporations, partnerships, individuals and firms engaged in the business of processing, manufacturing, offering for sale, selling, and distributing rubber stamps.

PAR. 8. In the course and conduct of the business of each respondent, as aforesaid, respondents since June 19, 1936, have been and are now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at higher prices than respondents sell similar products of like grade and quality to other of their customers. Such discrimi-

nations in price relate only to the respondents' sales of rubber stamps to consumers. Respondents' sales made to dealer are not involved herein.

PAR. 9. The effect of each of the responents' discriminations in price, hereinbefore set-out, has been and may be substantially to lessen competition and to injure, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps in interstate commerce, and has been and may be to tend to create a monopoly in respondent in said line of commerce.

PAR. 10. The foregoing acts and practices of the respondents; namely, Krengel Manufacturing Co., Inc., a corporation, Abraham L. Gershon, as president, and George Feldman, as vice president, and Sadye Gershon, as secretary and treasurer, of the Krengel Manufacturing Co., Inc., since June 19, 1936, are in violation of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act) as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on November 20, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of subsection (a) of section 2 of that act, as amended. After the filing by respondents of their answer to the complaint, testimony and other evidence in support of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered on behalf of respondents). Subsequently, the matter regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence and recommended decision of the trial examiner (no briefs having been submitted by counsel and oral argument not having been requested), and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Krengel Manufacturing Co., Inc., is a corporation organized and existing under the laws of the State of

New York, with its principal office and place of business located at 227 Fulton Street, New York, N. Y. Respondents, Abraham L. Gershon, George Feldman, and Sadye Gershon, are individuals residing in New York, N. Y., and are, respectively, president, vice president, and secretary-treasurer of the respondent corporation. Each of these individuals is one of the principal stockholders in the corporation and each has exercised and still exercises a substantial degree of authority and control over the corporation, including the direction of its distribution and sales policies.

PAR. 2. Respondents are and for several years last past have been engaged in the business of manufacturing and selling rubber stamps. These stamps are sold by respondents principally to dealers, generally retail stationers, and also directly to consumers, such consumers being principally large firms such as oil companies, industrial corporations, telephone companies, department stores, railroad companies, and insurance companies. The present proceeding involves only sales made by respondent to consumers.

PAR. 3. In the course and conduct of their business respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 4. Respondents are and at all times mentioned herein have been in substantial competition with other corporations and individuals and with firms and partnerships engaged in the manufacturing of rubber stamps and in the sale of such stamps in commerce among and between the various States of the United States.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, since June 19, 1936, have been and are now discriminating in price between different purchasers of their products of like grade and quality by selling such products to some of such purchasers at higher prices than the prices at which respondents sell similar products of like grade and quality to other of such purchasers. Such products were and are sold by respondents for use within the United States.

PAR. 6. There is no evidence that the lower prices so charged by respondents to some of their customers were made in good faith to meet an equally low price of a competitor. Nor is there any evidence that such differences in price were based upon differences in cost of

manufacture, sale, or delivery resulting from the differing methods or quantities in which such products were sold or delivered.

PAR. 7. With respect to the effect of respondents' discriminatory prices on competition, the record discloses that one very substantial account was practically lost to respondents by one of their competitors because of such competitor's inability to meet respondents' low, discriminatory prices. In addition to this specific instance, there is testimony from three other competitors of respondents to the effect that it was not possible to manufacture and sell rubber stamps profitably at the discriminatory prices granted by respondents to their favored customers. The evidence further shows that price is one of the principal factors governing purchases of rubber stamps. The Commission therefore concludes and finds that the effect of respondents' discriminations in price has been and may be substantially to lessen, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps in commerce as aforesaid.

CONCLUSION

The acts and practices of respondents as herein found are violative of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence having been offered on behalf of respondents) and the recommended decision of the trial examiner (no briefs having been filed by counsel and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondents have violated subsection (a) of section 2 of the act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

It is ordered, That respondent, Krengel Manufacturing Co., Inc., a corporation, and its officers, and respondents, Abraham L. Gershon, George Feldman, and Sadye Gershon, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in the sale

of rubber stamps in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in the price of rubber stamps of comparable size and of like grade and quality by selling such rubber stamps to any purchaser at a price or prices materially different from those at which sales of similar rubber stamps of comparable size and of like grade and quality are sold to any other purchaser.

2. Otherwise discriminating in price, either directly or indirectly, among different purchasers of rubber stamps of like grade and quality in any manner prohibited by section 2 (a) of the said Clayton Act as amended.

It is further ordered, That the respondents shall, within 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 this order.

IN THE MATTER OF

WALSH REFRACTORIES CORP.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5269. Complaint, June 7, 1945 [1]*—Decision, July 19, 1945* [2]

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of refractory products, including its "Walsh Ref. Corp. Mullitex" firebrick; in circulars disseminated throughout the United States—

Represented directly and by implication through use of the term "Super Refractory" that its said firebrick possessed the qualities of a product known in the refractory industry as "super-refractory"; when in fact its said product was not a super-refractory, as now understood in the industry, but was a "super-duty refractory";

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representation was true and to induce a substantial number thereof to purchase its said "Mullitex" fire brick:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Andrew B. Duvall* and *Mr. Randolph Preston*, trial examiners.

Mr. Clark Nichols for the Commission.

Mr. T. M. Pierce, Mr. A. M. Menzi and *Bruninga & Sutherland*, of St. Louis, Mo., for respondent.

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[1] Amended.

[2] The Commission on November 26, 1948, issued an order granting in part motion to dismiss complaint, as follows:

"This matter came on to be heard in regular course upon respondent's motion of February 19, 1948, for leave to file petition for reconsideration; said petition for reconsideration by the Commission of its order of January 15, 1948; the answer to said petition filed on March 3, 1948, by counsel supporting the complaint; brief in support of the petition for reconsideration filed July 22, 1948, pursuant to leave granted; and memorandum reply brief filed August 23, 1948, by counsel supporting the complaint.

"Respondent's major contention is that the Commission erred in sustaining the view of the trial examiner that a *prima facie* case had been made out in support of the charge of the complaint that the designation 'Mullitex' as applied to respondent's firebrick was false and misleading. This point has been briefed by respondent in detail. After consideration of all the testimony and other evidence taken in the proceeding, it appears that there is no established or generally recognized standard of mullite content for 'mullite' or 'mullite type' brick, and that the brick designated by respondent as 'Mullitex' contain substantial proportions of mullite (the record indicates a theoretical maximum of slightly more than 55 percent mullite and a practical probability of approximately 45 percent). There is no showing that 'Mullitex,' when not joined with the term 'super-refractory' or other word or term of similar meaning, is likely to mislead or deceive. In these circumstances, and upon reconsideration of respondent's motion to dismiss the complaint:

"It is ordered, That the charge in the complaint in this proceeding respecting the term 'Mullitex' as applied to respondent's firebrick be, and the same hereby is, dismissed."

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Walsh Refractories Corp., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business located at 4070 North First Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of refractory products, among which is a firebrick branded "Walsh Ref. Corp. Mullitex," and a high-temperature mortar labeled "Walsh Mullitex High Temperature Cement." Respondent causes said products, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various States other than the State of Missouri and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said firebrick products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of manufacturing and selling firebrick and other refractory products, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of promoting the sale of said refractory products, respondent has made false, misleading, and deceptive representations by means of pamphlets, circulars, and other advertising literature, disseminated through the United States mails. Among and typical of the representations made by the respondent as to the Walsh Ref. Corp. Mullitex Brick are the following:

MULLITEX—A Super Refractory, Non-Shrinking, Non-Spalling Fire Brick, manufactured by Dry Press Process. Highly resistant to certain slags and other

fluxing agents . . . Will not shrink or spall due to extreme heat or rapid temperature changes. Recommended for Electric Furnaces . . . Boiler Furnace Side Walls and Arches . . . Forge Furnaces . . . Oil Burning Locomotive Fire Boxes . . . Enameling Furnaces . . . Ceramic Kilns . . . Silicate of Soda Furnaces . . . Tunnel-Kilns . . . Glass Furnace Ports . . . Regenerator Checkers . . . and wherever extreme heat and sudden changes in temperature are encountered.

and as to Walsh Mullitex High Temperature Cement, as follows:

A super-duty quality mixture of perfectly blended refractory minerals noted for their resistance to extreme temperatures and other severe conditions. Recommended for services where ordinary cement and mortars do not assure a bond or joint that will withstand unusually high temperatures and where highly corrosive slags and destructive furnace gases are encountered.

Especially adapted for port arches and port side wall construction in glass furnaces, open hearths, electric metal melting furnaces, boiler furnace arches and setting and all other types of furnace where a slag resistant, non-spalling, non-shrinking mortar with tremendous bonding strength is essential for long and economical refractory life.

MULLITEX ingredients differ entirely from those used in ordinary cements—it is truly a superior, super-duty high temperature cement for unusual furnace conditions.

PAR. 5. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set forth herein, especially the words "Mullitex" and "super-refractory," all of which purport to be descriptive of the super-refractory qualities of said products, respondent represents, directly and by implication, that its said firebrick and mortar possess the super-heat resisting qualities of mullite, which is a combination of aluminum oxide and silicon oxide blended by extreme heat in a ratio of approximately 72 percent aluminum oxide and 28 percent silicon oxide.

PAR. 6. The aforesaid representations and the implications arising therefrom are false and misleading. In truth and in fact respondent's products, sold under the trade name "Mullitex," are what are known as fire-clay products, and are made from fire clay mined in the State of Missouri, which clay does not contain the minerals known as mullite, and alusite, kyanite, and sillimanite. In the heating process necessary in manufacturing said firebrick from the original clay materials, mullite crystals are developed by a combination of the alumina and silica in said clay, thereby giving such fire-clay brick a mullite content of from 30 to 40 percent. In the refractory products trade the use of the word "mullite" indicates a product having super-refractory qualities and a percentage content of mullite of at least 75, which will give a measure of refractory performance of pyrometric cone equivalent 38, indicating a fusion point of 3,335° F. or 1,835° C. The use of either

the word "super-refractory" or "mullite" as descriptive of firebrick products in the firebrick trade indicates a "cone" of 38. The maximum pyrometric cone equivalent attained by respondent's Mullitex firebrick and refractory products is 33–34, which means that the fusion point of such products is between 3,173° and 3,200° F. or 1,745° and 1,760° C. In other words, respondent's products, sold under the trade name "Mullitex," are what are known in the trade as firebricks while the products properly described as mullite are known in the trade as super-refractory.

Refractory products known in the trade as mullite or super-refractory are very expensive, selling from $400 to $1,000 per 1,000, while the fire-clay brick and fire clay brick products of respondents, sold under the trade name "Mullitex" and others of similar ingredients, are comparatively inexpensive, selling from $50 to $65 per 1,000.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that said firebrick and cement possess the refractory qualities usually attributed to products properly described as mullite, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said firebrick and cement.

PAR. 8. The acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 27, 1945, issued and subsequently served on respondent, Walsh Refractories Corp., its complaint charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On March 31, 1945, respondent filed its answer to said complaint denying in part and admitting in part the allegations thereof. On June 7, 1945, pursuant to stipulation of counsel supporting the complaint and counsel for respondent, the Commission issued its amended complaint and respondent's answer of record was permitted to stand as its

answer to the complaint as amended. Thereafter, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, and after certain charges of the amended complaint were disposed of by orders of the Commission duly entered herein, counsel in support of the complaint and counsel for respondent filed with the trial examiner their joint proposed findings and conclusion and proposed order to cease and desist, which were adopted by the trial examiner as his recommended decision herein. Thereafter, the proceeding came on for final consideration by the Commission upon the record, including the amended complaint, answer, testimony and other evidence, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Missouri, with its office and principal place of business located at 4070 North First Street, St. Louis, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of refractory products, among which is a firebrick branded "Walsh Ref. Corp. Mullitex." Respondent causes said product, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various States other than the State of Missouri, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said firebrick products, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of manufacturing and selling firebrick and other refractory products, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of promoting the sale of said refractory products, re-

spondent has made representations by means of a circular disseminated through the mails and otherwise throughout the United States, containing the following statement:

MULLITEX—A Super Refractory, Non-Shrinking, Non-Spalling Fire Brick, manufactured by Dry-Press Process. Highly resistant to certain slags and other fluxing agents . . . Will not shrink or spall due to extreme heat or rapid temperature changes. Recommended for Electric Furnaces . . . Boiler Furnace Side Walls and Arches . . . Forge Furnaces . . . Oil Burning Locomotive Fire Boxes . . . Enameling Furnaces . . . Ceramic Kilns . . . Silicate of Soda Furnaces . . . Tunnel-Kilns . . . Glass Furnace Ports . . . Regenerator Checkers . . . and wherever extreme heat and sudden changes in temperature are encountered.

PAR. 5. Through the use in the above statement of the term "Super Refractory" respondent represents directly and by implication that its said fire brick possesses the qualities of a product known in the refractory industry as "super-refractory."

PAR. 6. The American Society for Testing Materials in its tentative classification of fire clay refractories issued in 1940 shows the following minimum pyrometric cone equivalents for super duty, high-heat duty, intermediate heat duty, and low heat duty fire-clay brick:

Super Duty Fireclay Brick, not lower than cone No. 33.
High Heat Duty Fireclay Brick, not lower than cone No. 31–32.
Intermediate Heat Duty Fireclay Brick, not lower than cone No. 29.
Low Heat Duty Fireclay Brick, not lower than cone No. 19.

PAR. 7. Neither the American Society for Testing Materials in its aforesaid classification nor the Navy Department in Specification 32R1b issued January 2, 1942, states the maximum cone value of super-duty fireclay refractories. Nor do said publications classify or define a grade of refractories as super-refractories. Walsh Refractories Corp.'s test data fixes the pyrometric cone equivalent of "Mullitex" firebrick at No. 34, and the Mellon Institute of Industrial Research fixes the cone equivalent of "Mullitex" firebrick at Nos. 33–34. Respondent's "Mullitex" firebrick is made entirely from native Missouri fire clay.

PAR. 8. A witness familiar with the refractory industry testified that alumina diaspore firebrick having a pyrometric cone equivalent not lower than 34, 35, or 36, depending upon the alumina content, are generally called "super-refractories" and that "super-refractory" firebrick connoted "a highly refractory material which presumably could stand very special conditions of service," but which does not necessarily contain any mullite or any alumina or any great amount of silica. Another witness engaged in the refractory business testified that the

minimum pyrometric cone equivalent for super-refractories should not be below cone 36.

PAR. 9. Respondent's product "Mullitex" firebrick is a superduty refractory. Respondent admits that it is not a super-refractory product as the expression is now understood in the industry.

PAR. 10. The Commission finds, therefore, that the representation made by respondent through the use of the term "Super-Refractory" as descriptive of its product "Mullitex" firebrick as aforesaid is misleading and deceptive.

PAR. 11. The use by respondent of the aforesaid misleading and deceptive representation has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the representation is true and to induce a substantial number thereof to purchase respondent's "Mullitex" firebrick.

CONCLUSION

The acts and practices of the respondent, Walsh Refractories Corp., as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondent, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, and recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Walsh Refractories Corp., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of refractory fire-clay products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that its product "Mullitex" firebrick is a super-refractory product.

It is further ordered, That the respondent shall, within 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

OPPENHEIMER CASING CO., INC., NATURAL CASING INSTITUTE, INC., AND CHARLES SILVER, ALLEN S. BECKER, AND B. R. SOLOMON, TRADING AS CHARLES SILVER & CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5148. Complaint, Apr. 8, 1944—Decision, July 21, 1949

Where a corporation engaged in the manufacture or processing and in the competitive interstate sale and distribution of castings made from the intestines of animals for frankfurters, wieners, and sausages, as distinguished from artificial or cellulose casings; an incorporated trade association, the principal activity of which consisted in advertising and in otherwise promoting the sale of such "natural" castings and products thereof; and three partners, advertising agents, who advised said corporation and trade association as to their advertising and prepared and placed copy; through newspaper and periodical advertisements, circulars and other advertising media—

Falsely represented that meat products, such as wieners and frankfurters, encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, are richer in proteins and vitamin B_1, and have better keeping qualities than meat products produced by the use of cellulose casings;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect to the characteristics of meat products encased in animal casings and thereby to cause its purchase of such products; and with the result of placing in the hands of packers using natural casings, and dealers selling products thus encased, a means of so misleading the purchasing public:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.
Mr. William L. Taggart for the Commission.

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 Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, trading as Charles Silver & Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Oppenheimer Casing Co., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located at 1016 West Thirty-sixth Street, Chicago, Ill.

This respondent is now, and for several years last past has been, engaged in the manufacture or processing of casings made from the intestines of animals and used as containers for meat products, including frankfurters, weiners, and sausages, and known and described as natural casings. This respondent causes its said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The Natural Casing Institute, Inc., is a corporation organized under the laws of the State of New York, with its office at 4710 South Ada Street, Chicago, Ill. This respondent is a trade association and its principal activity consists in advertising and in other ways promoting the sale of natural casings and the products for which natural casings are used.

PAR. 3. Respondents, Charles Silver, Allan S. Becker, and B. R. Solomon, are individuals doing business as a partnership under the name of Charles Silver & Co., with their office located at 737 North Michigan Avenue, Chicago, Ill. These respondents operate an advertising agency and as such are engaged in formulating, editing, and placing advertising for their clients. These respondents are or have been the advertising agents for the respondents, Oppenheimer Casing Co., Inc., and Natural Casing Institute, Inc., and have advised said respondents and prepared and placed advertising matter used by said respondents in promoting the sale of natural casings and products for which natural casings are used, including the advertising matter hereinafter referred to.

PAR. 4. All of the respondents act and have acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter set out and alleged.

PAR. 5. The casings used in the production or manufacture of wieners and kindred products are of two kinds; that variety sold by

respondent, Oppenheimer Casing Co., Inc., known as natural casings, and those manufactured by certain competitors of this respondent made from cellulose. The natural casing remains on the meat products when sold to the consumer, while the cellulose variety is detached before sale.

PAR. 6. Respondent, Oppenheimer Casing Co., Inc., is now and for several years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of casings used in the packing of meat products and particularly those manufactured from cellulose; and various packers using the natural casings for their meat products, sold by this respondent, are in substantial competition, in commerce, with packers using the cellulose casing manufactured and sold by this respondent's competitors. Furthermore, dealers selling meat products encased in natural casings are in substantial competition, in commerce, with dealers selling meat products in which other types of casings are used.

PAR. 7. In the course and conduct of their aforesaid businesses, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements, concerning the products known as natural casings and sold by respondent, Oppenheimer Casing Co., Inc., and the value and desirability of meat products which make use of said product, by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said product, as aforesaid, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product and the meat products making use thereof, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and cause to be disseminated by respondents, as herein set forth by the United States mails, by advertisements inserted in newspapers and periodicals, by means of circulars and other advertising media, are the following:

A BASIC SUPERIORITY . . . CONFIRMED BY SCIENCE "22% Juicier"

The proof of the pudding may be in the eating, but the American public prefers to have its sense of taste backed up by scientific findings. It is, therefore, of highest importance to America's millions of weiner-lovers that scientific tests

by an independent, nationally recognized laboratory have definitely proved that Weiners in Natural Casings are 22% juicer!

This and other basic superiorities of Natural Sheep Casings, enhanced by strict adherence to the highest quality standards, have formed the foundation upon which our business has been built. Our many friends have come to know, over a period of more than a quarter of a century, that this company is a dependable source of supply of their casing needs, with a background rich in technical achievements and sound business practice.

WEINERS in
NATURAL CASINGS
The *Skin* Keeps the Flavor *in!*

NATURAL CASINGS FRANKFURTS
Richer in
Vitamins and Proteins!
Proved by Scientific Laboratory Tests!

Recent important tests by independent laboratories, conducted on both fresh and canned frankfurts, PROVE that frankfurts in Natural Sheep Casings have definitely greater protein content, and higher Vitamin B-1 content! In addition to these greater nutritional advantages, other tests show that Natural Casing Frankfurts show less loss of weight in cooking . . . and the protection of Natural casings means better keeping qualities!

WATCH "NATURAL CASINGS" GO PLACES

We salute the new advertising campaign driving home the PROVED FACTS that weiners in NATURAL CASINGS are 22% JUICIER.

Oppenheimer Casing Co.

PAR. 8. Through the use of the aforesaid statements and representation and others of similar import not specifically set-out herein, respondents represent and have represented, that meat products, such as weiners and frankfurters encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, and richer in proteins, particularly vitamin B_1, and have better keeping qualities than meat products encased in cellulose casings.

PAR. 9. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the casings used in the manufacture or production of wieners, frankfurters, and similar meat products have no significant effect upon the amount of juice, the flavor, the protein and vitamin content, or the keeping qualities of meat products. The amount of juice and the protein and vitamin content are entirely dependent upon the materials used by the packers and not upon the type of casing used. Meat products encased in

natural casings do not have better keeping qualities than those prepared by the use of cellulose casings.

PAR. 10. By disseminating the aforesaid advertisements containing said false, misleading, and deceptive statements, respondents furnish and place in the hands of packers using natural casings and dealers selling products, encased in natural casings, a means and instrumentality by and through which the purchasing public may be misled and deceived as to the merits and advantages claimed to be derived through the use of natural casings.

PAR. 11. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations with respect to the natural casings sold and distributed by the respondent, Oppenheimer Casing Co., Inc., and the quality and characteristics of the meat products resulting from their use, unfairly disparages and defames the products of its competitors and the finished products resulting from their use and has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a substantial number of packers to purchase the natural casings sold and distributed by respondent Oppenheimer Casing Co., Inc., and a substantial portion of the purchasing public to purchase meat products encased in natural casings in preference to such products encased in other casings, particularly cellulose casings. As a result, injury has been and is now being done to the competitors of the respondent, Oppenheimer Casing Co., Inc., and to competition between packers using natural casings and packers using other than natural casings, as well as between dealers selling meat products in which natural casings are used and dealers selling meat products where other than natural casings are used, all in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 8, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use

of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answer, testimony, and other evidence, the trial examiner's recommended decision, to which no exceptions were filed, and brief filed by counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now duly advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Oppenheimer Casing Co., Inc., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located at 1016 West Thirty-sixth Street, Chicago, Ill.

This respondent is now, and for several years last past has been, engaged in the manufacture or processing of casings made from the intestines of animals and used as containers for meat products, including frankfurters, wieners, and sausages, and known and described as natural casings. Respondent causes its said products, when sold, to be transported from its place of business in the State of Illinois 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, The Natural Casing Institute, Inc., is a corporation organized under the laws of the State of New York, with its office at 4710 South Ada Street, Chicago, Ill., and is a trade association whose principal activity consists in advertising and in other ways promoting the sale of natural casings and the products for which natural casings are used.

PAR. 3. Respondents, Charles Silver, Allan S. Becker, and B. R. Solomon, are individuals doing business as a partnership under the name of Charles Silver & Co., with their office located at 737 North

Michigan Avenue, Chicago, Ill., at which address they operate an advertising agency engaged in formulating, editing, and placing advertising for their clients, among whom are or have been respondents, Oppenheimer Casing Co., Inc. and Natural Casing Institute, Inc., for whom respondents Silver, Becker, and Solomon have acted as advertising agents, advising said respondents as to their advertising, and preparing and placing advertising copy used by said respondents in promoting the sale of natural casings and products for which natural casings are used, including the advertising matter hereinafter set forth.

PAR. 4. Respondents, Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, individual copartners trading as Charles Silver & Co., have at all times mentioned herein acted in conjunction and cooperation with each other in the performance of the acts and practices hereinafter set forth.

PAR. 5. The casings used as containers for meat products, including frankfurters, wieners, sausages, and kindred products, are of two kinds; that variety manufactured and sold by respondent, Oppenheimer Casing Co., Inc., and others, known and described as natural or animal casings, made from the intestines of animals; and that variety manufactured and sold by certain competitors of this respondent, known and described as artificial or cellulose casings, made from cellulose and other substances. The natural casing remains on the meat products when sold to the consumer, while the artifiical casing is detached before such sale.

PAR. 6. Respondent, Oppenheimer Casing Co., for several years last past has been in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of casings used in the packing of meat products, particularly those manufactured from cellulose; various packers using respondent's natural casings for their meat products are in substantial competition, in commerce, with packers using the cellulose casings manufactured and sold by respondent's competitors; and dealers selling meat products encased in natural casings are in substantial competition in commerce with dealers selling meat products produced by the use of artificial or cellulose casings.

PAR. 7. In the course and conduct of their aforesaid businesses, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, advertisements concerning the products known as natural casings, sold by respondent, Oppenheimer Casing Co., Inc., and the value and desirability of meat

products using said product, by the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which said advertisements are disseminated for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of said natural casings and the meat products making use thereof, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated by respondents, as herein set forth, by the United States mails, by insertion in newspapers and periodicals, by means of circulars and other advertising media, are the following:

A BASIC SUPERIORITY . . . CONFIRMED BY SCIENCE "22% Juicier."

The proof of the pudding may be in the eating, but the American public prefers to have its sense of taste backed up by scientific findings. It is, therefore, of highest importance to America's millions of wiener-lovers that scientific tests by an independent, nationally recognized laboratory have definitely proved that Wieners in Natural Casings are 22% juicier]

This and other basic superiorities of Natural Sheep Casings, enhanced by strict adherence to the highest quality standards, have formed the foundation upon which our business has been built. Our many friends have come to know, over a period of more than a quarter of a century, that this company is a dependable source of supply of their casing needs, with a background rich in technical achievements and sound business practice.

WIENERS in
NATURAL CASINGS

They're 22% Juicier–
The *Skin* Keeps the Flavor *in*!

NATURAL CASING FRANKFURTS
Richer in
Vitamins and Proteins!
Proved by Scientific Laboratory Tests!

Recent important tests by independent laboratories, conducted on both fresh and canned frankfurts, PROVE that frankfurts in Natural Sheep Casings have definitely greater protein content, and higher Vitamin B-1 content! In addition to these greater nutritional advantages, other tests show that Natural Casing Frankfurts show less loss of weight in cooking . . . and the protection of Natural casings means better "keeping qualities"!

WATCH "NATURAL CASINGS" GO PLACES

We salute the new advertising campaign driving home the PROVED FACTS that wieners in NATURAL CASINGS ARE 22% JUICIER.

Oppenheimer Casing Co.

PAR. 8. Through the use of the aforesaid statements and representations and others of similar import not specifically set-out herein, respondents represent and have represented that meat products, such as wieners and frankfurters, encased in natural casings are 22 percent juicier, retain their flavor to a greater extent, are richer in proteins and vitamin B_1, and have better keeping qualities than meat products produced by the use of cellulose casings.

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, meat products in natural casings are not substantially juicier, do not retain their flavor to a greater extent, are not richer in proteins and vitamin B_1 or nutritionally richer in any respect, and do not have better keeping qualities than the same meat products similarly processed in cellulose casings.

PAR. 10. The dissemination by respondents of these false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public with respect to the characteristics of meat products encased in animal casings, and the tendency and capacity to cause members of the public to purchase such products as a result of the mistaken beliefs so engendered. Such advertisements place in the hands of packers using natural casings, and dealers selling products so encased, a means and instrumentality of misleading and deceiving the purchasing public as to the merits and advantages of said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief by counsel supporting the complaint (respondents having filed no brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Oppenheimer Casing Co., Inc., a corporation, Natural Casing Institute, Inc., a corporation, and Charles Silver, Allan S. Becker, and B. R. Solomon, individually and trading as Charles Silver & Co. or under any other name or designation, their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of casings used as a cover for wieners and similar meat products, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that wieners or other meat products encased in natural casings contain or retain more juices, flavor, proteins, or vitamin B_1 than wieners or meat products produced by the use of cellulose casings, either when offered for sale at the packing house or when prepared for consumption, or that such products have superior keeping qualities or are superior nutritionally to meat products produced by the use of cellulose casings.

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 casings in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

It is further ordered, That the respondents shall, within 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 this order.

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