

Complaint

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## IN THE MATTER OF

## ADOLPH GOTTSCHO, INC., ADOLPH GOTTSCHO, RAY GOTTSCHO, IRA S. GOTTSCHO, AND ADOLPH GOTTSCHO

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 5517. Complaint, Nov. 21, 1947—Decision, Aug. 16, 1949*

Where a corporation and its three officers and principal stockholders engaged in the processing and manufacture and competitive interstate sale and distribution of industrial marking devices, rubber stamps, metal stencils and accessories to dealers, usually retail stationers, and to consumers, principally manufacturing pharmaceutical firms, chain grocery stores, wholesale grocers, banks and industrial firms—

Discriminated in price between different consumer purchasers of their products of like grade and quality by selling to some at higher prices than to others; Effect of which discriminations in price had been and might be substantially to lessen, injure, destroy and prevent competition between them and their competitors in the sale and distribution of said products in commerce, and had been and might be to tend to create a monopoly in them in said line of commerce:

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

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. Daniel Eisenberg*, of New York City, for Adolph Gottscho, Inc., and Adolph Gottscho.

## 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 Adolph Gottscho, 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 190 Duane Street, New York, N. Y. Respondent corporation also maintains a branch

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sales office at No. 1 Hudson Street, New York, N. Y. The respondent corporation is engaged in the business of processing, manufacturing, offering for sale, selling, and distributing industrial marking devices, rubber stamps, metal stencils, and accessories. The products distributed by respondent are sold to dealers who are usually retail stationers, and also directly to consumers. Respondent's sales of its rubber stamps directly to consumers are made principally to manufacturing pharmaceutical firms, chain grocery stores, wholesale grocery firms, banks and industrial firms. The complaint herein is directed solely to respondent's sales of rubber stamps and other products to consumers.

PAR. 2. Respondent Adolph Gottscho 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 Adolph Gottscho, 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 Adolph Gottscho, together with Ray Gottscho and Ira S. Gottscho, 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. The respondent corporation is owned and controlled by the three individual respondents named above.

PAR. 3. Respondent Ray Gottscho is an individual residing in New York, N. Y., and is one of the principal stockholders in respondent corporation Adolph Gottscho, Inc. He is now vice president of Adolph Gottscho, 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 Ray Gottscho, together with respondent Adolph Gottscho and respondent Ira S. Gottscho, 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 Ira S. Gottscho is an individual residing in New York, N. Y., and is one the principal stockholders in respondent corporation, Adolph Gottscho, Inc. He is now secretary and treasurer of Adolph Gottscho, 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 Ira S. Gottscho, together with respondent Adolph Gottscho and respondent Ray Gottscho, has exercised and still exercises a substantial degree of authority and control over the business conducted

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by said corporation, including direction of its distribution and sales policies.

PAR. 5. Respondents Adolph Gottscho, as president, Ray Gottscho, as vice president, and Ira S. Gottscho, as secretary and treasurer, of said respondent corporation Adolph Gottscho, Inc., and respondent Adolph Gottscho, Inc., are now engaged and for several years prior hereto have engaged in the business of processing, manufacturing, offering for sale, selling and distributing industrial marking devices, rubber stamps, metal stencils, and other products, for their own account. The individual respondents have and are now conducting said business through Adolph Gottscho, 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 the corporate respondent Adolph Gottscho, Inc., manufacture, process, and distribute rubber stamps and other products which are sold and distributed by the respondents to dealers and also directly to consumers. Some customers of respondents purchasing such products are located in States other than the State in which respondent's business is located, and some of respondent's customers, although located within the State in which respondent's business is located, direct that the shipments of their purchases of rubber stamps and other products be made by the respondent to its branch offices, some of which branch offices are located in States other than the State in which respondent's business is located, and in such cases, respondent causes such products to be shipped and transported across State lines from respondent's 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 respondent's factory and warehouse and the purchasers of said products, some of which are located in States other than the State in which respondent's 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 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 and other products.

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 their products to some of their customers at higher prices than respondents sell similar products of like grade and quality to other of their customers. Such discriminations in price relate only to the respondents' sale of rubber stamps and other products to consumers. Respondents' sales made to dealers are not involved herein.

PAR. 9. The effect of each of the respondents' 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 and other products in interstate commerce, and has been and may be to tend to create a monopoly in respondents in said line of commerce.

PAR. 10. The foregoing acts and practices of the respondents, namely, Adolph Gottscho, Inc., a corporation, Adolph Gottscho, as president, Ray Gottscho, as vice president, and Ira S. Gottscho, as secretary and treasurer, of Adolph Gottscho, 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 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission, on November 21, 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 issuance of said complainant, the respondents, in due course, filed their answer, in which they admit all material allegations of fact set forth in said complaint and waive all intervening procedure and further hearing as to said facts but deny that said alleged facts constitute a violation of said statute. Thereafter, this 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, makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Adolph Gottscho, 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 190 Duane Street, New York, N. Y. Respondents Adolph Gottscho, Ray Gottscho, and Ira S. Gottscho, are, respectively, president, vice president, and secretary-treasurer of respondent corporation. Each of these individuals is one of the principal stockholders of the corporation, and each exercises, and has exercised, a substantial degree of authority and control over the corporation, including direction of its distribution and sales policies.

PAR. 2. Respondents are, and for several years last past have been, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing industrial marking devices, rubber stamps, metal stencils, and accessories. Said products are sold and distributed to dealer and consumer purchasers. The dealer purchasers are usually retail stationers, while the consumer purchasers are principally manufacturing pharmaceutical firms, chain grocery stores, wholesale grocers, banks, and industrial firms. The present proceeding involves only sales made to consumer purchasers.

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

PAR. 4. In the offering for sale, sale, and distribution of their aforesaid products, respondents are, and at all times mentioned herein have been, in substantial competition with other corporations, partnerships, individuals, and firms also engaged in manufacturing, offering for sale, selling, and distributing such products in commerce among and between the various States of the United States.

PAR. 5. In the course and conduct of their aforesaid business, 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 purchasers at higher prices than the prices at which they sell similar products of like grade

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and quality to other of such purchasers. Such products are sold and distributed for use within the various States of the United States.

PAR. 6. The effect of respondents' discriminations in price has been, and may be, substantially to lessen, injure, destroy, and prevent competition between respondents and their competitors in the sale and distribution of rubber stamps and other products in commerce as aforesaid, and has been, and may be, to tend to create a monopoly in respondents in said line of commerce.

## CONCLUSION

The acts and practices of respondents as herein found violate 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 and the answer of respondents, in which answer said respondents admit all the material allegations of fact set forth in the complaint and waive 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 respondents have violated subsection (a) 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 the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

*It is ordered,* That respondent Adolph Gottscho, Inc., a corporation, its officers, respondents Adolph Gottscho, Ray Gottscho, and Ira S. Gottscho, as officers of said corporation, said respondents' representatives, agents and employees, directly or indirectly, through any corporate or other device, in the sale of rubber stamps and other products in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

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

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like grade and quality in any manner prohibited by section 2 (a) of said Clayton Act as amended.

*It is further ordered*, That 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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## IN THE MATTER OF

## JOSEPH WINKLER &amp; COMPANY ET AL.

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

*Docket 5645. Complaint, Mar. 11, 1949—Decision, Sept. 7, 1949*

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of general merchandise, especially hardware and household electrical appliances, fixtures, chinaware and related products, and in the conduct of a mail-order business in said commodities; in advertising their said products in circulars, catalogs, pamphlets, price lists, and newspapers and other periodicals, directly and by implication—

- (a) Represented falsely that said wares were immediately available in unlimited quantities, and that goods ordered would be shipped immediately; The facts being that in many instances there were long intervals between the receipt of the order and the shipment of the goods;
- (b) Represented falsely that said wares were of good quality and were usable for the purposes for which they were intended, and that (in the absence of a statement to the contrary), they were new;
- (c) Represented that prices quoted by them were wholesale prices when in fact they were identical with those which they quoted as retail; and
- (d) Represented that they would ship the commodities as described by them according to the orders received;

The facts being that in many instances they substituted inferior, or used articles, and articles not in usable condition;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and thereby into the purchase of substantial quantities of their 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 and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.

*Mr. Charles S. Cox* 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 Joseph Winkler &

Co., a corporation, Jack Winkler and Jules Winkler, individually and as officers of Joseph Winkler & Co., hereinafter referred to as the 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. Joseph Winkler & Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 671 North Clark Street, Chicago, Ill. Respondents, Jack Winkler and Jules Winkler, are individuals and officers of the respondent Joseph Winkler & Co., a corporation, and formulate, dictate, direct, and control the policies, acts, and practices of said Joseph Winkler & Co., a corporation, particularly in respect to the acts and practices herein alleged; they also have their offices at 671 North Clark Street, Chicago, Ill.

PAR. 2. Respondents are now and for more than 5 years last past have been engaged in the sale and distribution of general merchandise and especially hardware and household electrical appliances, fixtures, chinaware, and related products, and conduct a mail-order business in said commodities at said location.

In the course and conduct of their business, the respondents have caused their said products, when sold, to be transported from their 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. Respondents maintain, and have 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. Respondents' volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business respondents have made false and deceptive statements and claims concerning their wares by means of circulars, catalogs, pamphlets, price lists, and advertisements in newspapers and other periodicals, including, but not limited to, an advertisement in Screenland magazine, issue of May 1946, a circular entitled "Winkler's Special Edition" and described as "Catalog 246," a circular entitled "Winkler's Special Edition" and described as "Catalog 147."

Among and typical of the statements and claims so made by respondents are the following:

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## AVAILABLE FOR IMMEDIATE DELIVERY

(Drawing of a Radio) Radios—5 Tube  
A. C. and D. C.  
28.95 and 38.95

Automatic Electric  
IRONS (Drawing of Electric Hand IRON)  
6.95 and 8.95

PLAIN Electric Irons  
4.95 and 5.90

(Drawing of Electric Curling Iron) Electric Curling Irons  
2.49 and 2.95

Electric Toasters  
4.45 and 7.95

Electric Cookers—2 burner (Picture of an Electric Toaster)  
6.95 and 8.95

Enclose deposit with order—balance C. O. D.

Send 3¢ stamp for illustrated catalog listing over 600 hard-to-get items—Electric appliances. Cooking utensils, Hardware, etc.

Joseph Winkler & Co.  
671 N. Clark St., Dept. C-4,  
Chicago 10, Ill.

## WINKLER'S SPECIAL EDITION

—Many Everyday Needs Now Available—

Catalog 246  
Joseph Winkler  
Retail only  
671 North Clark Street, Chicago, Illinois.

## WINKLER'S SPECIAL EDITION

Electrical Goods  
Plumbing supplies  
Hardware  
Silverware  
Chinaware  
Cooking Utensils

And many other everyday needs at reduced prices.

Catalog 147  
Joseph Winkler  
Wholesale Distributors of General Merchandise  
671 North Clark Street, Chicago, Illinois.

In the said circulars, catalogs, pamphlets, price lists and advertisements respondents have described the wares offered for sale, their kind and quality, and the terms and conditions upon which they can be obtained.

PAR. 4. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set forth herein, respondents have represented, directly and by implication that the said wares are immediately available in unlimited quantities; that goods ordered will be shipped immediately; that respondents' wares are of good quality and are usable for the purposes for which they are intended; that the goods are new in the absence of a statement to the contrary; that the prices quoted by respondents are wholesale prices, and that respondents will ship the commodities as described by respondents according to the orders received.

PAR. 5. In truth and in fact the said representations were false and deceptive. Respondents did not have the said goods available in unlimited quantities, or for immediate delivery. In many instances there were long intervals between the receipt of the order and the shipment of the goods ordered. Many of the articles described by respondents were not of good quality, many were not usable for the intended purposes, and some were not new, although this was not disclosed. In many instances respondents have not shipped the goods as described by them, and as ordered, but have substituted other, inferior, or used articles and articles not in usable condition. The prices quoted by respondents as wholesale prices were not wholesale prices but identical with prices which they quoted as retail prices.

PAR. 6. The aforesaid false and deceptive representations and claims of respondents in connection with the sale and offering for sale of their products in commerce have had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true and into the purchase of substantial quantities of respondents' products in commerce because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices 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 March 11, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Joseph Winkler & Co., a corporation, and Jack Winkler and Jules Winkler, individually and as officers of Joseph Winkler & Co., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On June 13, 1949, 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 hearings 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. Respondent Joseph Winkler & Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 671 North Clark Street, Chicago, Ill. Respondents Jack Winkler and Jules Winkler are individuals and officers of the respondent Joseph Winkler & Co., a corporation, and formulate, dictate, direct, and control the policies, acts, and practices of said Joseph Winkler & Co., a corporation, particularly in respect to the acts and practices herein found; they also have their offices at 671 North Clark Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of general merchandise and especially hardware and household electrical appliances, fixtures, chinaware, and related products, and conduct a mail-order business in said commodities at said location.

In the course and conduct of their business the respondents have caused their said products, when sold, to be transported from their 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. Respondents maintain and have maintained, a course of

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trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business respondents have made false and deceptive statements and claims concerning their wares by means of circulars, catalogs, pamphlets, price lists, and advertisements in newspapers and other periodicals, including but not limited to, an advertisement in "Screenland" magazine, issue of May 1946, a circular entitled "Winkler's Special Edition" and described as "Catalog 246," a circular entitled "Winkler's Special Edition" and described as "Catalog 147."

Among and typical of the statements and claims so made by respondents are the following:

AVAILABLE for IMMEDIATE DELIVERY

(Drawing of a Radio)	Radios—5 Tube A.C. and D.C. 28.95 and 38.95
Automatic Electric IRONS 6.95 and 8.95	(Drawing of Electric Hand IRON)
PLAIN Electric Irons 4.95 and 5.90	
(Drawing of Electric Curling Iron)	Electric Curling Irons 2.49 and 2.95
Electric Toasters 4.45 and 7.95	
Electric Cookers—2 burner 6.95 and 8.95	(Picture of an Electric Toaster)

Enclose deposit with order—balance C. O. D.

Send 3c stamp for illustrated catalog listing over 600 hard-to-get items—Electric appliances. Cooking utensils, Hardware, etc.

Joseph Winkler & Co.  
671 N. Clark St., Dept. C-4,  
Chicago 10, Ill.

WINKLER'S SPECIAL EDITION

—Many Everyday Needs Now Available—  
Catalog 246  
Joseph Winkler  
Retail only  
671 North Clark Street, Chicago, Illinois

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## WINKLER'S SPECIAL EDITION

Electrical Goods  
Plumbing Supplies  
Hardware  
Silverware  
Chinaware  
Cooking Utensils

And many other everyday needs at reduced prices.

Catalog 147

Joseph Winkler

Wholesale Distributors of General Merchandise

671 North Clark Street, Chicago, Illinois.

In the said circulars, catalogs, pamphlets, price lists, and advertisements respondents have described the wares offered for sale, their kind and quality, and the terms and conditions upon which they can be obtained.

PAR. 4. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set forth herein, respondents represented, directly and by implication, that the said wares were immediately available in unlimited quantities; that goods ordered would be shipped immediately; that respondents' wares were of good quality and were usable for the purposes for which they were intended; that the goods were new in the absence of a statement to the contrary; that the prices quoted by respondents were wholesale prices, and that respondents would ship the commodities as described by respondent according to the orders received.

PAR. 5. In truth and in fact the said representations were false and deceptive. Respondents did not have the said goods available in unlimited quantities, or for immediate delivery. In many instances there were long intervals between the receipt of the order and the shipment of the goods ordered. Many of the articles described by respondents were not of good quality, many were not usable for the intended purposes, and some were not new, although this was not disclosed. In many instances respondents did not ship the goods as described by them, and as ordered, but substituted other, inferior, or used articles and articles not in usable condition. The prices quoted by respondents as wholesale prices were not wholesale prices but identical with prices which they quoted as retail prices.

PAR. 6. The use by respondents of the aforesaid false and deceptive representations and claims in connection with the sale and offering for sale of their products in commerce had the tendency and capacity

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to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true and into the purchase of substantial quantities of respondents' products in commerce because of said erroneous and mistaken belief.

## 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.

Commissioner Davis absent.

## 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 thereto, in which answer said respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings 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 respondent Joseph Winkler & Co., a corporation, and its officers, and the respondents Jack Winkler and Jules Winkler, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hardware and household electrical appliances, fixtures, chinaware, or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That wares not available are in fact available for immediate delivery;

(2) That wares are of good quality, or that they are usable for the purposes for which such wares are customarily used, when such is not a fact;

(3) That used or second-hand articles are new by failing to disclose that they are used or second-hand;

(4) That the established or regular retail prices at which wares are sold or offered for sale are wholesale prices.

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

Commissioner Davis absent.

to respondents who thereafter invoice and ship the food products to the customers. The respondents pay such intermediaries or brokers for their services in negotiating and making such sales for respondents' account, commissions or brokerage fees which are customarily based on a percentage of the invoice sales price of the food products sold.

Such intermediaries or brokers are not traders for profit and do not take title to nor have any financial interest in the product sold and neither make a profit, nor suffer a loss, on the transaction. This phase of respondents' business is not challenged by the complaint herein.

(b) The second method, which is challenged, is respondents' sales of food products in commerce direct to buyers who are paid, directly or indirectly, commissions, brokerage fees, or other compensation or allowances, or discounts in lieu thereof, on purchases made for their own account. All such buyers referred to herein are "direct buyers." In transactions between respondents and such buyers, the respondents do not use brokers. Such direct buyers purchase respondents' food products in commerce for their own account, and for resale to their customers located in the several States of the United States.

Such direct buyers generally transmit their own purchase orders for food products directly to the respondents. The respondents thereafter invoice and ship such products directly to such buyers or to the customers of said buyers. Respondents collect the purchase price of the food products from the buyers and not from the buyers' customers. The respondents pay said buyers commissions or brokerage fees on such purchases, usually by deducting from the invoice price of the food products purchased, an amount which is equal or approximately equal to the commissions or brokerage fees paid by the respondents to their brokers, as described in the first method above.

Contrary to the manner in which brokers operate (as described in the first method above) such buyers (as described here in the second method) are traders for profit, purchasing and reselling such food products in their own names and for their own account for resale, taking title thereto, and assuming all risks incident to ownership. Such resales are not made at prices or on terms directed by respondents, but at prices and on terms determined by the buyers, who make a profit or suffer a loss thereon, as the case may be. This phase of respondents' business is challenged by the complaint herein.

PAR. 5. The respondents named in the caption hereof, and each of them, since June 19, 1936, in the course and conduct of their business, have sold and distributed and are now selling and distributing a sub-

stantial portion of their food products in commerce directly to buyers located in States other than the State in which the respondents are located and, as a result of said sales and the respondents' instructions, such food products have been and are shipped and transported across State lines by respondents to said buyers, or to said buyers' customers.

PAR. 6. The acts and practices of the respondents named in the caption hereof, and each of them, in promoting the interstate sale of their food products since June 19, 1936, by granting and allowing buyers commissions, brokerage fees, or other compensation or allowances, or discounts in lieu thereof, by the second method set forth in paragraph 4 (*b*) herein, are in violation of subsection (*c*) of section 2 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) (15 U. S. C. Sec. 13), the Federal Trade Commission on March 16, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Pacific Grape Products Co., a corporation, Stanley F. Triplett, individually and as president of Pacific Grape Products Co., and Aleck Rasmussen, individually and as director of Pacific Grape Products Co., charging said respondents with violation of subsection (*c*) of section 2 of the Clayton Act as amended. After the issuance of the complaint the respondents filed their answer, in which answer they, in substance, admitted the material allegations of fact set forth in said complaint but alleged that the practices complained of had been discontinued and waived all intervening procedure, including further hearings as to the facts. Thereafter this 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, makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pacific Grape Products Co. is a corporation organized and existing under the laws of the State of California with its principal office and place of business located at 302-320 Grand

Street, Modesto, Calif. The respondent company is engaged in the canning, selling, and distribution of fruits and vegetables, such as fruit cocktail, grapes, peaches, pears, apricots, tomatoes, tomato paste, tomato puree, spinach, Irish potatoes, and beans, all of which are hereinafter referred to as "food products."

PAR. 2. Respondents Stanley F. Triplett and Aleck Rasmussen are individuals with principal offices and places of business located at 302-320 Grand Street, Modesto, Calif. Respondent Triplett is now president of Pacific Grape Products Co. and has been a substantial stockholder and an officer in said company since some time after June 19, 1936. Respondent Aleck Rasmussen is now a director of Pacific Grape Products Co. and has been a stockholder and director therein since some time after June 19, 1936. Each of said respondents has exercised, and still exercises, a substantial degree of authority and control over the business conducted by the corporate respondent, including the direction of its distribution and sales policies.

PAR. 3. Respondents, and each of them, through said respondent Pacific Grape Products Co., have sold and distributed, and now sell and distribute, their food products in commerce, as "commerce" is defined in the Clayton Act as amended, to buyers through intermediaries or brokers who act as agents for respondents in finding buyers and in negotiating the sale of respondents' food products at prices and on terms established by respondents. Such intermediaries are paid commissions or brokerage fees for their services in negotiating and making such sales for respondents' account.

PAR. 4. In addition, respondents, during the period of 1938 into 1943 and in instances thereafter, have sold their food products in commerce, as "commerce" is defined in the Clayton Act as amended, to direct buyers who purchased from respondents in their own names and for their own accounts for resale to their customers located in the several States of the United States. In transactions between respondents and such direct buyers the respondents do not use brokers. Such buyers in purchasing for their own accounts for resale take title to the merchandise and assume all risks incident to ownership. During the times mentioned, respondents have paid or allowed to said direct buyers commissions or brokerage fees on such purchases. Respondents have paid commissions or brokerage fees thereon to such purchasers usually by deducting from the invoice price of the food products purchased an amount which is equal to the commissions or brokerage fees paid by the respondents to their brokers.

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## CONCLUSION

The paying and granting by the respondents herein, under the circumstances and in the manner described in paragraph 4, of brokerage fees, commissions, or other compensation or allowances in lieu thereof, to buyers of their food products who purchase such food products in their own names and for their own accounts for resale as hereinabove found, are in violation of subsection (c) of section 2 of the Clayton Act as amended.

Respondents contend that no useful purpose will be served by issuance of an order requiring cessation of the practices for the reason that the payment of brokerage commissions or discounts in lieu thereof to the other parties to the transactions was abandoned in 1943. A few instances of such payments thereafter, respondents aver, have occurred through misunderstanding, ignorance, or oversight, and measures looking to the prevention of reoccurrence have been taken. The Commission is of the opinion, however, that in the circumstances here an order to cease and desist should be entered pursuant to the provisions of the statute.

Commissioner Davis absent.

## 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, in substance, admits the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearings 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 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 approved June 19, 1936 (the Robinson-Patman Act):

*It is ordered,* That the respondent Pacific Grape Products Co., a corporation, its officers, agents, representatives, and employees, and the respondents Stanley F. Triplett and Aleck Rasmussen, individually and as president and director, respectively, of said corporate respondent, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

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Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, to any purchaser upon purchases for his own account or to any agent, representative, or other intermediary acting in fact for, or on behalf of, or subject to the direct or indirect control of, the purchaser to whom sale is made.

*It is further ordered,* That said 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.

Commissioner Davis absent.

## Syllabus

## IN THE MATTER OF

## C. LEE COOK MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

*Docket 5649. Complaint, Apr. 15, 1949—Decision, Sept. 30, 1949*

Where a corporation which (1) was engaged in the manufacture and competitive interstate sale and distribution of metallic packings and metallic packing replacement and repair parts, for use on compression machinery of all types, made by others; (2) sold its said packings to compression engine manufacturers for use as original equipment, and its said product and parts to them and their purchaser customers for replacement and repair; (3) had long maintained, throughout the United States, and particularly throughout the oil and gas fields of the Southwest, an extensive sales and service organization, which sold said replacement and repair packings and replacement and repair parts both for metallic packings of its own make and for replacement and repair of such packings and packing parts made by others; and, (4) with the exception of several who specialized in metallic packings for railway locomotives, was the largest manufacturer of such packings in the United States, and occupied a dominant position in the industry and particularly so as respects such packings and parts for gas compressors and booster pumps used by the oil and gas industry—

- (a) Made sales and contracts for sale for such packings and packing replacement and repair parts, and fixed prices for such products or discounts from or rebates upon said prices on the condition, agreement or understanding that the purchaser should not use or deal in the metallic packings or parts or other goods or products of a competitor;
- (b) Allowed discounts from and rebates upon prices, in such sales and contracts for sale, to purchasers in consideration of their agreement to purchase its metallic packings as standard, factory, or original "full line" equipment for all engines of certain types made by said purchasers, to the exclusion of other sellers;
- (c) Allowed discounts from and rebates upon prices, in such sales and contracts for sale, to purchasers in consideration of their agreement to purchase from it their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those made by it and which had been installed on the manufacturing purchasers' engines, to the exclusion of other sellers, including the original manufacturers of said packings needing repair or replacement parts;

Effect of which sales and contracts for sale of said corporation's metallic packings and metallic packing replacement and repair parts, and of the fixing of prices or discounts from or rebates upon the prices for such products, on the aforesaid condition, agreement or understanding, might tend to substantially lessen competition in the line of commerce in which said

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corporation and its customers were engaged; and might tend to create a monopoly in it in the sale and distribution in commerce of such packings and packing replacement and repair parts:

*Held*, That such acts and practices, under the circumstances set forth, constituted a violation of the provisions of section 3 of the aforesaid Clayton Act.

*Mr. William C. Kern* for the Commission.

*Mr. J. Bond Smith*, of Washington, D. C., for respondent.

## COMPLAINT

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," commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that C. Lee Cook Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of section 3 of said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respects as follows:

PARAGRAPH 1. Respondent, C. Lee Cook Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, having its principal office, factory, and place of business at 916 South Eighth Street, Louisville, Ky., and branch offices and places of business located at Baltimore, State of Maryland; Boston, State of Massachusetts; Chicago, State of Illinois; Cleveland, State of Ohio; Houston, State of Texas; Los Angeles and San Francisco, State of California; Mobile, State of Alabama; New Orleans, State of Louisiana; New York, State of New York; Portland, State of Oregon; Seattle, State of Washington; Tulsa, State of Oklahoma; and Montreal, Province of Quebec, Canada.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, distribution and sale of metallic packings and metallic packing replacement and repair parts for use on compression machinery of all types manufactured by companies other than respondent. A large portion of respondent's said business is concentrated in the manufacture, distribution and sale of metallic packings and metallic packing replacement and repair parts suitable for packing and use on reciprocating rods of machinery units in which gaseous substances are being either compressed or expanded, typical of which is the machinery known as gas-driven compression machinery and used in the oil and gas industry, in booster pump equipment of transmission pipe lines, and in refineries.

Respondent is now, and for many years last past has been, engaged in the sale of such metallic packings and replacement and repair parts thereof to manufacturers of such compression machinery and to purchasers of such machinery from such manufacturers located throughout the several States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent transports the said products, or causes the same to be transported, from the State and place of their manufacture to its customers and purchasers thereof located in States other than the place of manufacture thereof, and there is now, and has been for many years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. Commerce in the sale and distribution of metallic packings has two main divisions; first, the sale of metallic packings to compression-engine manufacturers for use as original equipment; second, the sale of metallic packings and metallic packing replacement and repair parts for replacement and repair of original equipment, such sales being made to compression-engine manufacturers, which service their engines and which enjoy a considerable replacement and repair business from the purchasers and users of their said engines, and to the purchasers of the engines from the engine-manufacturing companies. Respondent maintains, and for many years last past has maintained, an extensive sales and service organization throughout the United States and particularly throughout the oil and gas fields of the southwestern part of the United States which organization not only performs service and repair functions but in connection therewith is active in selling replacement and repair metallic packings and metallic packing replacement and repair parts not only for metallic packings of respondent's make and manufacture, but for the replacement and repair of metallic packings and metallic packing parts manufactured by persons, firms, and corporations other than respondent. Respondent, exclusive of several manufacturers specializing in metallic packings for the railway locomotive industry, is the largest manufacturer of metallic packings in the United States, and occupies a dominant position in the industry and particularly in the manufacture of metallic packings and metallic packing replacement and repair parts for use on gas compressors and booster pumps used by the oil and gas industry. There are now, and have been for many years last past, only four engine manufacturing companies in the country engaged in the manufacture of gas-driven compressors; and

respondent for more than ten years last past has had contracts in force with each of said companies containing the restrictive covenants and agreements hereinafter described.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships, and individuals who have been and are engaged in the sale of metallic packings and metallic packing replacement and repair parts suitable for use in compression machinery, including gas-driven compressors and booster pumps used by the oil and gas industry and steam engines used by other industries, with which but for the restrictive covenants and agreements of respondent's contracts of sale and the discounts and rebates from respondent's list prices made upon restrictive conditions contained in said contracts of sale, as hereinafter set forth, respondent would have been, and would now be, in substantial competition in the sale of metallic packings and metallic packing replacement and repair parts.

PAR. 4. In the course and conduct of its business described in paragraphs 1, 2, and 3, respondent in the course of such commerce has made sales and contracts for the sale, and is still making sales and contracts for the sale, of metallic packings and metallic packing replacement and repair parts, and has fixed and still is fixing prices charged therefor, or discount from or rebate upon said prices upon the conditions, agreements, and understandings that the purchasers thereof shall not use or deal in the metallic packings, or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by said purchasers to purchase as standard, factory, or original "full line" equipment on all engines of certain types manufactured by said purchasers, the metallic packings used thereon from the respondent to the exclusion of other sellers and of other prospective and potential sellers. Included likewise in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by such purchasers to purchase of respondent their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those manufactured by respondent and installed on said manufacturer purchaser's engines, to the exclusion of other sellers

and of other prospective and potential sellers, including the original manufacturer of said compressor packings needing repair or replacement parts.

PAR. 5. The effect of said sales and contracts for sale, or the fixing of said prices or discounts from or rebates upon said prices as aforesaid, on such conditions, agreements, and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged; or tend to create a monopoly in respondent in the commerce aforesaid, of metallic packings and metallic packing replacement and repair parts.

PAR. 6. The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914 (Clayton Act).

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain 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), the Federal Trade Commission on April 15, 1949, issued and subsequently served upon the respondent, C. Lee Cook Manufacturing Co., a corporation, its complaint in this proceeding, charging said respondent with having made sales and contracts for the sale of metallic packings and metallic packing replacement and repair parts, and with having fixed prices charged for such products, or discounts from or rebates upon said prices, on the condition, agreement, and understanding that the purchasers thereof should not use or deal in the metallic packings or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent, C. Lee Cook Manufacturing Co., in violation of the provisions of section 3 of said Act.

After the issuance of the complaint, and on June 10, 1949, the respondent filed its answer, in which answer it 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, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Com-

mission, 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. The respondent, C. Lee Cook Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office, factory, and place of business located at 916 South Eighth Street, Louisville, Ky., and branch offices and places of business located in Baltimore, Md.; Boston, Mass.; Chicago, Ill.; Cleveland, Ohio; Houston, Tex.; Los Angeles and San Francisco, Calif.; Mobile, Ala.; New Orleans, La.; New York, N. Y.; Portland, Oreg.; Seattle, Wash.; Tulsa, Okla.; and Montreal, Province of Quebec, Canada.

PAR. 2. The respondent is now, and for many years last past has been, engaged in the manufacture and in the distribution and sale of metallic packings and metallic packing replacement and repair parts, for use on compression machinery of all types, manufactured by companies other than the respondent. A large portion of the respondent's business is concentrated in the manufacture, and in the distribution and sale, of metallic packings and metallic packing replacement and repair parts suitable for packing and use on reciprocating rods of machinery units in which gaseous substances are being either compressed or expanded, typical of which is the machinery known as gas-driven compression machinery used in the oil and gas industry, the machinery in booster pump equipment of transmission pipe lines, and the machinery in refineries.

The respondent is now, and for many years last past has been, engaged in the sale of such metallic packings and replacement and repair parts thereof to manufacturers of such compression machinery, and to purchasers of such machinery from such manufacturers, located throughout the several States of the United States and in the District of Columbia. In the course and conduct of its business as aforesaid, the respondent transports its products, or causes the same to be transported, from the State and place of their manufacture to its customers and purchasers of such products located in States other than the place of manufacture thereof, and there is now, and for many years last past there has been, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. Commerce in the sale and distribution of metallic packings has two main divisions; first, the sale of metallic packings to compression engine manufacturers for use as original equipment; and second, the sale of metallic packings and metallic packing replacement and repair parts for replacement and repair of original equipment, such sales being made to compression engine manufacturers, which service their engines and which enjoy a considerable replacement and repair business from the purchasers and users of their said engines, and to the purchasers of the engines from the engine manufacturing companies. The respondent maintains, and for many years last past has maintained, an extensive sales and service organization throughout the United States, and particularly throughout the oil and gas fields of the southwestern part of the United States, which organization not only performs service and repair functions but in connection therewith is active in selling replacement and repair metallic packings and metallic packing replacement and repair parts both for metallic packings of the respondent's make and manufacture and for the replacement and repair of metallic packings and metallic packing parts manufactured by persons, firms, and corporations other than the respondent.

Except for several manufacturers specializing in metallic packings for the railway-locomotive industry, the respondent is the largest manufacturer of metallic packings in the United States, and it occupies a dominant position in the industry, particularly in the manufacture of metallic packings and metallic packing replacement and repair parts for use on gas compressors and booster pumps used by the oil and gas industry. There are now, and for many years last past there have been, only four engine manufacturing companies in the country engaged in the manufacture of gas-driven compressors; and for more than ten years last past the respondent has had contracts in force with each of said companies containing the restrictive covenants and agreements hereinafter described.

There are in the United States, and during the time the respondent has been in business there have been, other corporations and firms, partnerships and individuals also engaged in the sale of metallic packings and metallic packing replacement and repair parts suitable for use in compression machinery, including gas-driven compressors and booster pumps used by the oil and gas industry and steam engines used by other industries. At all times mentioned herein the respondent has competed with such other corporations and with such firms, partnerships and individuals in the sale and distribution of metallic

packings and metallic packing replacement and repair parts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as described in Paragraphs One, Two, and Three hereof, the respondent has made sales and contracts for the sale, and is still making sales and contracts for the sale in commerce, of metallic packings and metallic packing replacement and repair parts, and has fixed and still is fixing prices charged for such products, or discounts from or rebates upon said prices on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the metallic packings, or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon prices have been allowed and given to purchasers in consideration of the agreement by such purchasers to purchase as standard, factory, or original "full line" equipment for all engines of certain types manufactured by said purchasers, the respondent's metallic packings, to the exclusion of the metallic packings of other sellers and of other prospective and potential sellers. Included likewise in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon prices have been allowed and given to purchasers in consideration of the agreement by such purchasers to purchase from the respondent their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those manufactured by the respondent, which have been installed on said manufacturer purchasers' engines, to the exclusion of other sellers and of other prospective and potential sellers, including the original manufacturers of said packings needing repair or replacement parts.

PAR. 5. The effect of the respondent's sales and contracts for the sale of its metallic packings and metallic packing replacement and repair parts, and of the fixing of prices or discounts from or rebates upon the prices for such products, on the aforesaid condition, agreement or understanding may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of the respondent are engaged; and may tend to create a monopoly in the respondent in the sale and distribution in commerce of metallic packings and metallic packing replacement and repair parts.

## CONCLUSION

The acts and practices of the respondent, as hereinabove set out, constitute a violation of the provisions of section 3 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).

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's answer thereto, in which answer said respondent 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 respondent has violated the provisions of Section 3 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):

*It is ordered,* That the respondent, C. Lee Cook Manufacturing Co., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution in commerce, as "commerce" is defined in the aforesaid Clayton Act, of metallic packings or metallic packing replacement and repair parts, do forthwith cease and desist from:

(1) Selling or making any contract for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

(2) Fixing the price charged for any such products, or granting a discount from or rebate upon the price therefor, on the condition, agreement, or understanding that the purchaser of such products shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

(3) Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any existing sale or contract for the sale of any such products, which condition, agreement, or understanding is to the effect that the purchaser of such prod-

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ucts shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

*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.

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IN THE MATTER OF  
M. B. WATERMAN AND COMPANY ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5426. Complaint, Mar. 12, 1946—Decision, Oct. 7, 1949*

Where an individual engaged in the interstate sale and distribution of crucifixes crosses, religious medals, "glowlights", ladies' and men's jackets and various other articles; in advertising his said products through circulars and in newspapers, comic books, magazines and other periodicals of general circulation—

- (a) Represented directly and by implication that his crucifixes were hand carved of wood and that the images on certain of them would glow all during the night; when in fact they were machine made of paper pulp, sawdust and glue; and the images advertised to glow by night were coated with some undisclosed material, which, if exposed to strong light, would glow faintly for possibly thirty minutes but would not glow again until again exposed to light;
- (b) Represented that his "glowlights" could be used to spot objects and give signals in the dark, that they would make excellent night lights, and that they were made of metal or leather frames, with leather or composition handles; the facts being that the section of the article which corresponded to a bulb and lens of a flashlight was coated with a phosphorus material and, if exposed to a bright light, would give off a faint glow for a few minutes, but would not throw a beam of light or give a light enabling one to spot objects or give signals in the dark; and it was not made, as represented by the advertising depictions, of metal, leather or composition, but entirely of cardboard;
- (c) Represented that his crosses, which he referred to as "Replica Virginia Lucky Stones" were curios formed by nature and found in the mountains of Virginia; when in fact they were not even very good imitations of the original Virginia Fairy Stones, but were merely plastic crosses formed in the same general shape as said stones;
- (d) Falsely represented that his St. Christopher's medals, which were merely gold washed, were 10 K. gold filled; and that his jackets were tailored and styled in California or by a California manufacturer or designer; and, through use of the trade name "Bernard's of California," that he was operating in and had a place of business in said State; and
- (e) Represented that certain articles of merchandise were given free as a gift or gratuity and without cost to the recipient; when in fact in some cases the cost was included in the price of other articles, the purchase of which he required before one could receive the so-called gift, in other cases he gave the "free" articles only to those who had rendered certain services in connection

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with the sale of products, and in either case he made a profit on the entire transaction;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause it to purchase substantial 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 and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

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

*Mr. Charles L. Schwartz*, of Chicago, Ill., 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 M. B. Waterman & Co., a corporation, Max B. Waterman, Dorothea Waterman, and Julius W. Kohn, individually and as officers of M. B. Waterman & Co., a corporation and trading as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Co., Pardon Cross Co., Bernard's of California, Nature's Wonder, Glo-Sheen Flowers and Glo-Sheen's Flowers 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 M. B. Waterman & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 333 South Market Street, Chicago, Ill.; respondents Max B. Waterman, Dorothea Waterman, and Julius W. Kohn are officers and directors of respondent corporation M. B. Waterman & Co. Said individual respondents dominate and control the advertising policies and business activities of the corporate respondents. All of respondents cooperate and have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged.

Respondents Max B. Waterman, Dorothea Waterman, and Julius W. Kohn, through said corporate respondent and as individuals, are also trading and doing business as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Co., Pardon Cross Co., Bernard's of California, Nature's Wonder, Glo-Sheen Flowers and Glo-Sheen's Flowers Co., with their principal office and place of business located at 333 South Market Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than 1 year last past have been engaged in the distribution and sale of various articles of merchandise, including crucifixes, statues, artificial flowers, and novelties. Respondents cause and have caused their said products when sold to be transported from their said place of business located in the State of Illinois 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. Respondents maintain, and at all times mentioned herein, have maintained a course of trade in their 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 merchandise respondents have circulated and are now circulating among prospective purchasers throughout the United States through circulars distributed among prospective purchasers, and through advertisement in newspapers, magazines, and other periodicals having a general circulation, false, misleading, and deceptive statements and representations concerning their merchandise and the nature of their business. Among and typical of such false, deceptive and misleading statements and misrepresentations disseminated as aforesaid are the following:

Your  
 LAST CHANCE  
 Before  
 Christmas  
 to receive  
 our newest creation  
 HAND CARVED  
 CRUCIFIX

(Picture of Crucifix)

This reproduction is the most Beautiful and most imposing crucifix ever designed. Originally carved, by Hand, in wood, this Burrco Wood Crucifix carries all the true atmosphere and religious appeal of the ideal of the master artist who created it.

This crucifix is 11 inches in height, beautifully detailed in its carvings.

Two Big Surprise Gifts Free for Acting Promptly—Ideal Gift—Offer Limited.

ACT AT ONCE

FREE at no cost to you—  
 Reproduction of our Hand Carved Crucifix 11" HIGH

(Picture of Crucifix)

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This magnificent reproduction is made of Burrco wood 11" high. BEAUTIFULLY detailed in CARVED STYLE. The cross is of rich walnut finish. The image, as well as the halo, are in antique ivory by day—by night, the image GLEAMS A LAVENDER GLOW. This is Your Registry Number—No. 12002. THE IMAGE GLEAMS A LAVENDAR GLOW BY NIGHT.

## HOW TO RECEIVE THIS BEAUTIFUL GLOWING CRUCIFIX

All you need to do to receive this BEAUTIFUL REPRODUCTION of our HAND CARVED GLOWING CRUCIFIX is to pass out the attached coupons to your friends. If only THREE reach us, you will immediately be eligible to receive YOUR GLOWING CRUCIFIX—ABSOLUTELY FREE which will be sent to you AT ONCE.

Enclose \$1.69 for one; or \$3.10 for two, in money order or check with this coupon and you will receive our FREE GIFTS and REPRODUCTION of our HAND CARVED GLOWING CRUCIFIX, ALL PREPAID.

For Every Real American Boy and Girl

Mothers And Dads  
The American Ranger  
Glowlight Makes A  
Fine Emergency Night Light

Educational And Easy To Please

No Batteries  
No Bulbs  
Works by Mystery Glow  
Free Morse Code

And Semaphore Alphabet Chart  
With Each Glowlight "Spot"

## American Ranger GLOWLIGHT

Here it is boys and girls. A PATENTED AMERICAN RANGER GLOWLIGHT that works without BULBS or BATTERIES. IT GLOWS IN THE DARK and you can SPOT DIFFERENT OBJECTS. You can give SEMAPHORE and MORSE CODE SIGNALS in the dark and have lots of fun. It takes but a few minutes to assemble and it also makes an excellent emergency night light. Complete instructions with each GLOWLIGHT.

(Said advertisement has a picture of the said Glowlight which resembles a very high grade flashlight container and has the appearance of metal and composition covering found on certain flashlights, and along with some of the claims it shows a picture of a small boy casting a strong light on a good-sized dog some feet away from him; a picture which illustrates that signals can be made in the dark with the said Glowlight; a picture of a small boy utilizing the Glowlight to outline a young girl some feet away from him; and another picture of three young boys in uniform of the various armed forces with Glowlight in their hands, which appear to be emitting a very strong beam of light).

NEW! GENUINE PLASTIC PARDON CRUCIFIX THAT GLOWS in the DARK.

FREE PARDON CROSS \* \* \* complete with \* \* \* indulgence leaflet

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Complaint

Complete—a Pocket Crucifix with Indulgence Leaflet.

(The Indulgence Leaflet contains the following statement:)

You have received free five genuine 10 Karet gold plated medals with your St. Christopher Shrine

New!

ST. CHRISTOPHER MEDAL FOR POCKET OR CHAIN

Genuine 10 Kt. Gold Plated

QUANTITY LIMITED—ORDER NOW

ROSARIES Only \$1.49

LAST CHANCE TO OBTAIN BEAUTIFUL CRYSTAL CUT OVAL, ODD SHAPE

\* \* \*

FAMOUS REPLICA

VIRGINIA LUCKYSTONE

Now a Genuine Plastic Replica of THE VIRGINIA LUCKYSTONE is available to YOU

It is a reproduction of a real curio fashioned by nature in a rare moment.

\* \* \*

ITS THAT NEW CASUAL CALIFORNIAN Saddle Stitched

ALL PURPOSE JACKET

QUANTITIES LIMITED

STYLED BY

BERNARD

OF CALIFORNIA

\* \* \*

An all interwoven spun enchanting soft-as-down to feel, tailored Jacket for you to allure Romance, Select yours from the season's newest shades. Camel Tans or Stop Red. Size 12 to 20 QUANTITIES LIMITED.

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar thereto not specifically set out herein, respondents have represented directly and by implication that their said crucifixes are hand carved from wood; that their crucifixes are reproductions of an original hand-carved crucifix; that respondents' crucifixes will glow all during the night; that certain articles are given free as a gift or gratuity and without cost; that respondents' offer of articles as being free is limited as to time; that respondents' Glowlight will spot objects in the dark, makes an excellent night light and that it is possible to use said Glowlight for the giving of signals in the dark; that respondents' Glowlight is made of a leather

Findings

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Concerning his religious medals:

New!

ST. CHRISTOPHER MEDAL FOR POCKET OR CHAIN  
Genuine 10 Kt. Gold Plated

(Admitted in answer)

Concerning his "glowlights":

FOR EVERY REAL AMERICAN BOY AND GIRL!  
MOTHERS AND DADS  
The American Ranger  
Glowlight Makes A  
Fine Emergency  
Night Light

Educational and easy to Build

No Batteries  
No Bulbs  
Works by  
MYSTERY GLOW  
FREE Morse Code  
and Semaphore Alphabet Chart  
With Each Glowlight

American Ranger GLOWLIGHT

Here it is Boys and Girls. A PATENTED AMERICAN RANGER GLOWLIGHT that works without BULBS OR BATTERIES. It GLOWS IN THE DARK and you can SPOT different objects. \* \* \* You can give SEMAPHORE and MORSE CODE SIGNALS in the dark and have lots of fun. It takes but a few minutes to assemble and it also makes an excellent emergency night light. Complete instructions with each glowlight.

(Said advertisement has a picture of the said Glowlight which resembles a very high grade flashlight container and has the appearance of metal and composition covering found on certain flashlights, and along with some of the claims it shows a picture of a small boy casting a strong light on a good sized dog some feet away from him; a picture which illustrates that signals can be made in the dark with the said Glowlight; a picture of a small boy utilizing the Glowlight to outline a young girl some feet away from him; and another picture of three young boys in uniform of the various armed forces with Glowlights in their hands, which appear to be emitting a very strong beam of light.)

(Comm. Ex. 19)

Concerning his jackets:

ITS THAT NEW CASUAL CALIFORNIAN Saddle Stitched ALL PURPOSE  
JACKET

\* \* \* \* \*  
QUANTITIES LIMITED

STYLED BY BERNARD OF CALIFORNIA \* \* \*

(Comm. Ex. 26)

PAR. 4. Through the use of such statements and representations, said respondent has represented, directly and by implication, that his crucifixes are hand-carved of wood, and that the images on certain of said crucifixes will glow all during the night; that his "glowlights" can be used to spot objects and give signals in the dark, that they will make excellent night lights, and that said glowlights are made of metal or leather frames and with leather or composition handles; that his crosses referred to as "Replica Virginia Lucky Stones" are curios, formed by nature and found in the mountains of Virginia; that his St. Christopher's medals are 10-kt. gold-plated; that his jackets were tailored and styled in California or by a California manufacturer or designer; and that certain articles of merchandise are given free as a gift or gratuity and without cost to the recipients.

Through the use of the trade name "Bernard's of California," the respondent has represented that he was operating in and had a place of business in the State of California.

PAR. 5. Contrary to the aforesaid representations, the respondent's crucifixes are not hand carved and are not made of wood, but are machine manufactured through the use of metal dies or forms and are made of paper pulp, sawdust, and glue. The images on the crucifixes advertised to gleam a lavender glow by night are coated with some kind of material, the nature of which was not disclosed, and if exposed to strong natural or artificial light will glow faintly, for possibly 30 minutes thereafter, but they will not glow again until and unless they are reactivated by again being exposed to light.

The section of the respondent's "glowlight" corresponding to the bulb and lens of a flashlight is coated with a phosphorous material which, if exposed to a bright light, will give off a faint glow for a few minutes, and said "glowlight," even after being exposed to light, will not throw a beam of light or give a light enabling one to spot objects or give signals in the dark. Said "glowlight" is not made of metal, leather, or composition, as represented by the picturizations appearing in the respondent's advertising, but is made entirely of cardboard.

The respondent's "Replica Virginia Lucky Stones" are not the original Virginia Fairy Stones, and are not even very good imitations thereof, but are merely plastic crosses formed in the same general shape as said Virginia Fairy Stones.

The respondent's St. Christopher medals are not 10-kt. gold-filled, as the respondent represented but are merely gold washed.

The jackets sold by the respondent are not made or styled in California, or by a California manufacturer or designer; and the re-

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respondent himself has never operated in or had a place of business in the State of California.

The articles represented by the respondent as being "free" or as gifts are not in fact given free or as a gratuity or without consideration. In some cases the cost of said articles is included in the price of other articles the purchase of which the respondent requires before one can receive the so-called gifts, and in other cases the articles designated as "free" are given only after those who would receive them have rendered to the respondent certain services in connection with the sale of his products. In either case the respondent makes a profit on the entire transaction after taking into consideration the cost of the article or articles delivered to the purchaser or the person performing the services.

For the foregoing reasons, and in the particulars stated, the respondent's advertising representations set forth in paragraph 3 were false, misleading and deceptive.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and the tendency and capacity to cause such portion of the public an purchase substantial quantities of the respondent's products because of the erroneous and mistaken belief so engendered.

#### CONCLUSION

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

Commissioner Davis absent.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, an answer thereto filed by the respondent, Max B. Waterman, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclu-

sion that the respondent, Max B. Waterman, has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondent, Max B. Waterman, individually, and trading as M. B. Waterman & Co., Not Inc., The Religious House, Glowlight Company, Pardon Cross Co., Bernard's of California, and Nature's Wonder, or trading under any other name or through any corporate or other device, and said respondent's agents, representatives and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of crucifixes, crosses, religious medals, "glowlights," jackets, and other articles of merchandise, do forthwith cease and desist from:

(1) Representing, directly or by implication, that crucifixes or other articles not carved by hand are hand-carved, or that any articles made of substance other than wood is made of wood.

(2) Representing, directly or by implication, that any crucifix, or any part thereof, or any other article, which will glow for only a short period of time after exposure to light will gleam or glow all during the night or for any extended period of time.

(3) Representing, by picturization or otherwise, that cardboard "glowlights" or other cardboard articles are made of metal, leather, imitation leather, composition, or any material other than cardboard, or representing, directly or by implication that the respondent's "glowlights," by whatever name designated, will throw a beam of light or give any light, except a faint glow for a limited time after exposure to a bright light.

(4) Representing, directly or by implication, that crosses manufactured of plastic, or of any other material, are "Famous Replica Virginia Lucky Stones" or that they are real curios fashioned by nature, or using any language concerning said crosses which would imply that they are Virginia Fairy Stones.

(5) Representing, directly or by implication, that religious medals or other articles which have been merely gold washed are gold plated.

(6) Representing, contrary to the facts, that the respondent's jackets or other wearing apparel has been made or styled in California.

(7) Using the name "Bernard's of California," or any other trade name, to indicate that the respondent or his business is located in California, when such is not the fact.

(8) Using the term "free," or any other term of similar import, in advertising, to designate, describe or refer to merchandise which is not in truth and in fact a gift or gratuity, or which is not given without requiring the purchase of other merchandise or the performance of

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some service inuring directly or indirectly to the benefit of the respondent.

*It is further ordered*, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents M. B. Waterman & Co., a corporation, Dorothea Waterman, and Julius W. Kohn.

*It is further ordered*, That the respondent, Max B. Waterman, 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.

Commissioner Davis absent.

## Order

## IN THE MATTER OF

## G. S. BLAKESLEE &amp; CO.

## MODIFIED CEASE AND DESIST ORDER

*Docket 4678. Order, November 1, 1949*

Modified order in proceeding in question, in which original order issued on December 30, 1948, 45 F. T. C. 418, requiring respondent, its officers, etc., in connection with the offer, etc., in commerce, of its synthetic degreasing solvents, to cease and desist from misrepresenting in any manner the constituents, properties, etc., of "Kolene T," or of any other degreasing solvent sold in competition with respondent's product, etc., as in said order below set out.

· *Mr. John R. Phillips, Jr.*, for the Commission.  
*D'Ancona, Pflaum, Wyatt & Riskind*, of Chicago, Ill., for respondent.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, and a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure except the filing of briefs and the presentation of oral argument (the filing of briefs and the presentation of oral argument having been subsequently waived), the Commission may issue and serve upon the respondent its findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on December 30, 1948, issued and on January 13, 1949, served upon the respondent its order to cease and desist. Thereafter, this matter again came on for hearing before the Commission upon a motion, filed by the respondent, requesting that the aforesaid order to cease and desist be modified, the answer to such motion, filed by counsel opposing the same, and the respondent's reply thereto; and the Commission having considered said motion, answer, and reply, and the record herein, and being of the opinion that its order to cease and desist issued December 30, 1948, should be modified:

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*It is ordered,* That the respondent, G. S. Blakeslee & Co., 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its synthetic degreasing solvents, do forthwith cease and desist from:

(1) Misrepresenting in any manner the constituents, properties, or characteristics of "Kolene T," or any other degreasing solvent sold in competition with the respondent's products;

(2) Representing, directly or by implication, that "Kolene T" has no merit or value or that it is not suitable or satisfactory as a degreasing agent;

(3) Representing, directly or by implication, that "Kolene T," when used in synthetic solvent degreasing machines will separate, break down, or form acid, or that it will react unfavorably against or corrode the metals being degreased or the machines in which such solvent is used;

(4) Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene T" are greater than the toxicity of or dangers from the fumes of the respondent's degreasing solvents; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene T" or any other competing degreasing solvent;

(5) Representing, directly or by implication, that the hazards of fire or explosion from the use of "Kolene T" are greater than the hazards of fire or explosion from the use of the respondent's degreasing solvents; or representing, directly or by implication, that "Kolene T" is inflammable or explosive when used for degreasing purposes under standard or usual conditions for such work;

(6) Making or publishing any false or disparaging representations concerning the degreasing solvent of any competitor; or supplying to or placing in the hands of distributors or others any misleading statement, claim, report or data which may be used by such distributors or others as a means of or basis for any false or disparaging representation concerning the degreasing solvent of any competitor.

*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.

## Order

## IN THE MATTER OF

## E. I. DU PONT DE NEMOURS &amp; CO., INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 4685. Order, November 1, 1949*

Modified order in proceeding in question, in which original order issued on December 30, 1948, 45 F. T. C. 437, requiring respondent, its officers, etc., in connection with the offer, etc., in commerce, of respondent's synthetic dry cleaning and degreasing solvents, to cease and desist from misrepresenting in any manner the constituents, properties, or characteristics of "Kolene C" or "Kolene T," or of any other dry cleaning or degreasing solvent sold in competition with respondent's products, etc., as below set out.

*Mr. John R. Phillips, Jr.*, for the Commission.

*Covington, Burling, Rublee & Shorb*, of Washington, D. C., and *Mr. Oscar A. Provost* and *Mr. John W. Eckelberry*, of Wilmington, Del., for respondent.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, and briefs in support of and in opposition to the allegations of the complaint, and said stipulation providing, among other things, that without further evidence or other intervening procedure except the presentation of briefs and oral argument (oral argument having been subsequently waived), the Commission may issue and serve upon the respondent its findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on December 30, 1948, issued, and on January 12, 1949, served upon the respondent its order to cease and desist. Thereafter, this matter again came on for hearing before the Commission upon a motion, filed by the respondent, requesting that the aforesaid order to cease and desist be modified, the answer to such motion, filed by counsel opposing the same, and the respondent's reply thereto; and the Commission, having considered said motion, answer, and reply, and the record herein, and being of the

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opinion that its order to cease and desist issued December 30, 1948, should be modified:

*It is ordered*, That the respondent E. I. du Pont de Nemours & Co., Inc., 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its synthetic dry cleaning and degreasing solvents, do forthwith cease and desist from:

(1) Misrepresenting in any manner the constituents, properties, or characteristics of "Kolene C" or "Kolene T," or of any other dry cleaning or degreasing solvent sold in competition with the respondent's products;

(2) Representing, directly or by implication, that "Kolene C" has no merit or value or that it is not suitable or satisfactory as a dry cleaning agent, or that "Kolene T" has no merit or value or that it is not suitable or satisfactory as a degreasing agent;

(3) Representing, directly or by implication; that either "Kolene C" or "Kolene T," when used in synthetic solvent dry cleaning or degreasing machines will separate, break down or form acid, or that either of said solvents will react unfavorably against or corrode the materials or metals being dry cleaned or degreased or the machines in which said solvent is used;

(4) Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene C" or "Kolene T" are greater than the toxicity of or dangers from the fumes of the respondent's dry cleaning or degreasing solvents; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene C" or "Kolene T" or any other competing dry cleaning or degreasing solvent;

(5) Representing, directly or by implication, that the hazards of fire or explosion from the use of "Kolene C" or "Kolene T" are greater than the hazards of fire or explosion from the use of respondent's solvents; or representing, directly or by implication, that "Kolene C" or "Kolene T" is inflammable or explosive when used for dry cleaning or degreasing purposes under standard or usual conditions for such work;

(6) Making or publishing any false or disparaging representations concerning the dry cleaning or degreasing solvent of any competitor; or supplying to or placing in the hands of distributors or others any misleading statement, claim, report or data which may be used by such distributors or others as a means of or basis for any false or dis-

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paraging representation concerning the dry cleaning or degreasing solvent of any competitor.

*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  
CONCRETE MATERIALS CORPORATION

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

*Docket 5474. Complaint, Dec. 10, 1946—Decision, Nov. 9, 1949*

Where a corporation, engaged in the manufacture and interstate sale and distribution, under the trade name "Comco," of various products for treating stone, brick, and cement structures to make them more resistant to water; through statements in folders, pamphlets, circular letters and labels, directly or by implication—

- (a) Falsely represented that its product "Comco 2 Iron Waterproofing" or "Comco 2" or "Comco No. 2," containing 90 percent metallic iron, would permanently stop all leaks and seepage in concrete, brick, stone, and tiles; would waterproof basements below water level and pits under pressure; and would, when mixed with water and brushed into the cracks of walls and floors needing repairs, permanently waterproof and stop leaks in such surfaces under all conditions of water contact; and that use thereof would permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside and create a positive waterproof condition for all classes of construction under all conditions, no matter how severe;

The facts being that no iron waterproofing has been developed which is capable of coping with all forms of seepage above and below grade;

- (b) Falsely represented that its "Comco Transparent Waterproofing" or "Comco 6" effectively sealed and waterproofed concrete, brick, stone, stucco, plaster and masonry surfaces, and made said surfaces upon which it was applied permanently nonabsorbent to water;

The facts being that said product, composed primarily of aluminum salts in a mixture of fatty acids, was of little value when applied to highly permeable masonry walls; while it would tend to seal the pores in masonry surfaces as against capillary penetration, its efficacy in such connection was less than the life of the structure and might last for but 5 or 6 years; and it would not seal openings larger than pore spaces which permit water to come through in quantity;

- (c) Represented that its "Comco Waterproofing Paste" or "Comco 4" permanently waterproofed concrete on all forms of new construction work; the facts being that while, when properly integrated with concrete, it would improve impermeability by effecting small inductions in absorption through capillarity and lessening the incidence of honeycomb, and similar structural defects, it would not effectively waterproof structures below grade which are subjected to water under pressure; and

- (d) Falsely represented through the use of the word "Waterproof" or words of similar import, that its said products, when applied as directed, would render masonry units or structures impervious to and proof against the pas-

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## Complaint

sage of water and moisture throughout the life of such masonry under all conditions of water or moisture contact or exposure;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect to the nature and properties of its products, and thereby cause it to purchase substantial quantities thereof:

*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.

In said proceeding, in which it appeared that respondent's advertising formerly contained pictures of Chicago's Merchandise Mart, a large office building, tendency and capacity of which was to cause purchasers to believe erroneously that such building was respondent's factory and place of business; but that said practice had been voluntarily discontinued by respondent under circumstances which indicated that it would not be resumed:

The Commission was of the opinion that no further corrective action was required in the public interest and the charges of the complaint in said respect were dismissed.

Before *Mr. Henry P. Alden*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Mr. John J. Toohey*, of Chicago, Ill., 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 Concrete Materials Corp., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 318-320 West Hubbard Street, Chicago, Ill. The respondent is now and for more than 1 year last past has been engaged in the manufacture and distribution of various compounds or materials represented as waterproofing agents for treating stone, brick, and cement structures so as to make them more resistant to water. Said products are sold under the trade name "Comco."

PAR. 2. The respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United

States and the District of Columbia. Respondent maintains, and at all times herein mentioned 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. In the course and conduct of its said business and for the purpose of inducing the purchase of its products, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States by United States mails, by means of advertising folders, pamphlets, circular letters, labels and other advertising material, all of general circulation, many false statements and representations concerning its said products. Among and typical of such false statements and representations are the following:

You can now permanently stop all leaks and seepage in concrete, brick, stone and tile; also waterproof below water level basements and pits under pressure. Comco No. 2, our own waterproofing will do the job. This is a special chemical mixture of iron and other chemicals that, when mixed with water only, and brushed into the cracks of walls and floors needing repair will permanently waterproof and stop leaks under all conditions no matter how severe.

For after-construction waterproofing problems in foundations. Permanently waterproofs concrete, brick, stone and tile walls and floors from either inside or outside. For all classes of construction where a prospective waterproof condition is necessary. Successful under all conditions no matter how severe.

Comco 6, Comco Transparent Waterproofing. A transparent water repellent liquid that effectively seals and waterproofs concrete, brick, stone, stucco, plaster or masonry surfaces. Makes surface permanently non-absorbent.

Comco 4, Comco waterproofing paste for new construction work. Produces a close-meshed concrete that increases strength and permanently waterproofs. Makes concrete flow easily around reinforcing.

PAR. 4. Through the foregoing statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, the respondent represents directly or by implication that its product "Comco 2" will permanently stop all leaks and seepage in concrete, brick, stone, and tile; that it will waterproof basements below water level and pits under pressure; that said product is a special chemical mixture of iron and other chemicals which, when mixed with water and brushed into the cracks of walls and floors needing repairs, will permanently waterproof and stop leaks in same under all conditions no matter how severe; that its use will permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside; that its use creates a positive waterproof condition for all classes of construction, and successfully waterproofs under all conditions no matter how severe; that its product "Comco 6," transparent waterproofing, effectively seals and waterproofs concrete, brick, stone, stucco, plaster, and masonry surfaces, and makes said surfaces

upon which it is applied permanently nonabsorbent to water; that its product, "Comco 4," waterproofing paste, produces a close meshed concrete on any construction work, and increases the strength and permanently waterproofs same; and that its use makes concrete flow easily around reinforcing.

Respondent thereby represents, directly and by implication that its said products will permanently waterproof concrete, brick, stone, or tile walls or floors, permanently stop all leaks or seepage therein, or make the surface thereof permanently nonabsorbent, and that said products afford permanent or everlasting protection to walls, surfaces, and structures to which they are applied.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondent's product Comco 2 iron waterproofing, cannot be considered a satisfactory waterproofing for permeable brick masonry walls when applied to the inside exposed face of said walls. Its use does not create a positive waterproof condition for all classes of construction such as concrete, brick, stone, and tile walls and floors under all conditions, regardless of how severe. Said product will not permanently stop all leaks and seepage in concrete, brick, stone, and tile, and will not waterproof basements below water level and pits under pressure. Respondent's said product is not a special chemical mixture of iron and other chemicals which, when mixed with water and brushed into the cracks of walls and floors, will permanently waterproof and stop leaks and cracks under all conditions. Respondent's product Comco transparent waterproofing is ineffective and of little or no value as a waterproofing for permeable brick, masonry and does not effectively seal and waterproof concrete, brick, stone, stucco, plaster, or masonry surfaces, and does not make the surfaces on which it is applied nonabsorbent to water. Respondent's product Comco 4 waterproofing paste is a fatty-acid type of water repellent agent. While said product may effect small reductions in absorption by capillarity and improve the impermeability, it is not satisfactory or effective for below-grade structure where a waterproofing agent is needed. The lasting or durable quality of the aforesaid products is limited at most by the life expectancy of the base to which they are applied. The aforesaid products will not permanently waterproof concrete, brick, stone, and tile, nor make the surfaces of same permanently nonabsorbent to water. While respondent's waterproofing preparations, when expertly applied under certain limited conditions of use, may effectively waterproof such structures for varying periods of time, the effectiveness is not permanent under any condition of use. Said preparations will not effectively waterproof con-

crete, brick, stone, and tile walls and floors or other masonry structures when such surfaces are subjected to water under pressure. There are other products and materials on the market like or similar to those of respondent, which, when expertly applied under certain limited conditions of use, are as effective as respondent's said products. However, no products or materials have yet been developed which are capable of coping with all forms of seepage above and below grade.

PAR. 6. In advertising circulars having general interstate circulation among customers and prospective customers of respondent corporation, above the words printed in heavy black type:

CONCRETE MATERIALS  
CORPORATION

appears a picture of a large office building, depicting Chicago's Merchandise Mart, said pictorial representation being intended to convey, and conveying, the impression that the said building shown therein was and is the factory and place of business owned and operated by the respondent herein, and from which products manufactured by the respondent were, and are, shipped direct to the consumer.

In truth and in fact, the respondent's business is neither located in, nor operated from, the building so depicted in its advertising, nor from any building remotely approaching in size or appearance the said building so pictorially displayed in respondent's said circular. While respondent's premises on West Hubbard Street are in close proximity to Chicago's Merchandise Mart building, there is no connection, physical or otherwise, between them.

PAR. 7. The use by respondent of the foregoing statements and representations disseminated as aforesaid has had, and now 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 statements and advertisements are true and did and does induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's said products as a result of such belief, so induced.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the 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 February 10, 1946, issued and sub-

sequently served its complaint in this proceeding upon the respondent, Concrete Materials Corp., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Respondent having elected to file no answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint subsequently 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, the proceeding regularly came on for final hearing before the Commission on the complaint, the testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto filed by respondent, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission, having considered the matter and being 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 and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 318-320 West Hubbard Street, Chicago, Ill. The respondent is now, and for 8 years last past has been, engaged in the manufacture and distribution of various products for treating stone, brick, and cement structures to make them more resistant to water which are sold under the trade name "Comco."

PAR. 2. The respondent causes its products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade therein 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 its business, and for the purpose of inducing the purchase of its products, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States, advertising matter by means of folders, pamphlets, circular letters, and labels containing many statements and representations concerning its products. Among and typical of such statements and representations are the following:

You can now permanently stop all leaks and seepage in concrete, brick, stone and tile; also waterproof below water level basements and pits under pressure.

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Comco No. 2, our own waterproofing will do the job. This is a special chemical mixture of iron and other chemicals that, when mixed with water only, and brushed into the cracks of walls and floors needing repair will permanently waterproof and stop leaks under all conditions no matter how severe.

For after-construction waterproofing problems in foundations. Permanently waterproofs concrete, brick, stone and tile walls and floors from either inside or outside. For all classes of construction where a positive waterproof condition is necessary. Successful under all conditions no matter how severe.

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Comco 6, Comco Transparent Waterproofing. A transparent water repellent liquid that effectively seals and waterproofs concrete, brick, stone, stucco, plaster or masonry surfaces. Makes surface permanently non-absorbent.

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Comco 4, Comco Waterproofing Paste for new construction work. Produces a close-meshed concrete \* \* \* and permanently waterproofs. \* \* \*.

PAR. 4. Through the foregoing statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, the respondent represents directly or by implication that its product "Comco 2" (also designated as "Comco 2 Iron Waterproofing" and as "Comco No. 2") will permanently stop all leaks and seepage in concrete, brick, stone, and tile; that it will waterproof basements below water level and pits under pressure; that said product, when mixed with water and brushed into the cracks of walls and floors needing repairs, will permanently waterproof and stop leaks in such surfaces under all conditions of water contact; and that its use will permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside and will create a positive waterproof condition for all classes of construction under all conditions no matter how severe. Respondent further represents that its product "Comco 6" (also designated as "Comco Transparent Water-proofing") effectively seals and waterproofs concrete, brick, stone, stucco, plaster, and masonry surfaces, and makes said surfaces upon which it is applied permanently nonabsorbent to water; and that the product "Comco 4" (also designated as "Comco Waterproofing Paste") permanently waterproofs concrete on all forms of new construction work.

PAR. 5. Such representations are false and misleading. The product "Comco 2 Iron Waterproofing" is a powder composed of 90 percent metallic iron, 8 percent sand, and 2 percent ammonium chloride. To masonry surfaces which have been cleaned with a wire brush and subsequently flushed with water and then permitted to dry for 8 to 24 hours, respondent directs that "Comco 2 Iron Waterproofing" be applied with a paint brush in a water mix of heavy consistency.

The application of two coatings of the product is represented to be sufficient but respondent suggests the addition of a third coat to any damp spots which later may appear.

In experiments conducted by the National Bureau of Standards, Comco 2 Iron Waterproofing, applied as directed by respondent, did not prevent the penetration of water through a brick wall under conditions simulating wind-driven rain. Applied as directed to the inside of permeable brick masonry surfaces, such product is not a satisfactory waterproofing and its use will not create a positive waterproof condition for all classes of construction, such as concrete, brick, stone, and tile walls and floors under all conditions of water or moisture contact, particularly as against water under pressure, including some conditions of wind-driven rain. It will not waterproof basements below water level and pits when subjected to water under pressure. No iron waterproofing has been developed which is capable of coping with all forms of seepage above and below grade.

"Comco 6," also designated as "Comco Transparent Waterproofing," recommended for application by either brush or spray, is composed primarily of aluminum salts in a mixture of fatty acids. It is of little value when applied to highly permeable masonry walls. While it will tend to seal the pores in masonry surfaces as against capillary penetration, its efficacy in such connection is less than the life of the structure and may last for but 5 or 6 years. Comco 6 will not seal openings larger than pore spaces which permit water to come through in quantity. The product will not effectively seal or waterproof concrete, brick, stone, stucco, plaster, or masonry surfaces under all conditions of use or make surfaces to which it is applied nonabsorbent to water.

"Comco 4," also designated as "Comco Waterproofing Paste," is a fatty-acid type of water repelling agent. When properly integrated with concrete it will improve impermeability by effecting small inductions in absorption through capillarity and lessening the incidence of honey-comb and similar structural defects. It will not effectively waterproof structures below grade which are subjected to water under pressure.

Through the use of the word "waterproof" or words of similar import, respondent has falsely represented that its products, when applied as directed to masonry units or structures, will render such units or structures impervious to and proof against the passage of water and moisture through the life of such masonry under all conditions of water or moisture contact or exposure.

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PAR. 6. The use by the respondent of the representations referred to above has had, and now has, the tendency and capacity to mislead a substantial portion of the purchasing public with respect to the nature and properties of respondent's products, and a tendency and capacity to cause such portion of the public to purchase substantial quantities thereof as a result of the erroneous and mistaken beliefs so engendered.

## CONCLUSION

The 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.

In close proximity to the corporate name respondent's advertising formerly contained pictures of Chicago's Merchandise Mart, a large office building, which depiction had the tendency and capacity to cause purchasers to erroneously believe that such building was the factory and place of business from which respondent's products were manufactured and shipped to the consumer. In view of respondent's voluntary discontinuance of such practice under circumstances indicative that it will not be resumed, the Commission is of the opinion that no further corrective action is required in the public interest and the charges of the complaint in respect thereto are being dismissed.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner, and the exceptions filed by respondent, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that Concrete Materials Corporation, a corporation, has violated the Federal Trade Commission Act:

*It is ordered,* That the respondent, Concrete Materials 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's products now designated as "Comco 2 Iron Waterproofing," "Comco 6," and "Comco 4," or any products of substantially similar composition or possessing substantially similar properties, under whatever names sold, do forthwith cease and desist from:

1. Representing in any manner that when used as directed "Comco 2 Iron Waterproofing," under all conditions of water or moisture contact, will waterproof concrete, brick, stone, or tile walls, or floors, or stop leaks or seepage in or through masonry structures or surfaces, or that such product will waterproof basements below water level or pits under pressure.

2. Using the words "waterproof" or "waterproofing" or words of similar import, to describe or refer to "Comco 2 Iron Waterproofing" without disclosing that such product will not render masonry structures or surfaces impermeable to water under all conditions of contact, particularly water under pressure.

3. Representing in any manner that "Comco 6," also designated as "Comco Transparent Waterproofing," effectively seals or waterproofs permeable concrete, brick, stone, stucco, plaster, or masonry surfaces or makes such surfaces nonabsorbent under all conditions of water or moisture contact.

4. Using the words "waterproofing" or "waterproof," or words of similar import, to designate, describe, or refer to "Comco 6," also designated as "Comco Transparent Waterproofing," without disclosing that such product will not seal such large openings in masonry units as permit water to penetrate in quantity and that such value as may be afforded by use of the product stems from the tendency thereof to temporarily seal pores in treated masonry units against capillary penetration of moisture.

5. Representing in any manner that "Comco 4," also designated as "Comco Waterproofing Paste" waterproofs concrete under all conditions of water contact; or using the words "waterproofing" or "waterproof," or words of similar import, to describe or refer to such product without disclosing that its use will not render surfaces below grade impermeable to water under pressure.

*It is further ordered,* That the charges of the complaint directed to respondent's former use in close proximity with its corporate name of pictures of a large office building in which respondent did not have a place of business be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further action in the future as may be warranted by the then-existing circumstances.

*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

## BRISTOL-MYERS CO. ET AL.

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

*Docket 4861. Complaint, Oct. 28, 1942—Decision, Nov. 15, 1949*

The word "survey" as used in advertising representing that, according to a national survey conducted among thousands of dentists, twice as many personally used the advertiser-vendor's tooth paste as any other dentifrice, etc., fairly implied, if not the questioning of all dentists, at least the questioning of a representative, unbiased and fair samplings from the profession as a whole.

The preponderant weight of qualified dental opinion, based on clinical experience of many years with thousands of patients, is that soft, well-cooked non-fibrous foods are not conducive to gum trouble; that it is immaterial to gum health whether the diet of a person is soft or coarse; and that the modern American diet provides sufficient gum stimulation.

The word "massage" as used by dentists means a careful downward stroke or squeezing applied to only a quarter inch of the gum margin and teeth, and its proper use by laymen requires professional instruction over a considerable length of time. As used, however, in tooth-paste advertisements stating that massage with the product concerned will provide needed exercise for the gums and stimulation, make them firm and healthy, guard against "pink tooth brush" and prevent gum trouble generally, the word means to the great majority of the general public a horizontal, vertical, or rotary scrubbing of the teeth and all of the gums with the tooth brush, or a similar rubbing with the finger, and regardless of the need for and benefits to be expected from gum massage as employed by the dentist, it appears that such uninstructed "massage" as that contemplated by such advertisements, either with or without any dentifrice, does not and will not accomplish such results.

The preponderant weight of qualified dental opinion, as based on clinical experience, is that even massage, performed as instructed by the dentist is not necessary in an undiseased mouth; that a layman is unable to ascertain whether or not he is in need of massage; and that no dentifrice adds any benefit to gum massage, either through mechanical or chemical action of appreciable duration or significance, or therapeutically.

As respects the representation in the advertisements of a certain toothpaste that it would beautify the smile and brighten and whiten the teeth, the Commission was of the opinion that the reference to beautification of the smile was mere puffery, unlikely, because of its generality and wide variety of meaning, to deceive any one factually.

Where a corporation engaged in the interstate sale and distribution of "Ipana" toothpaste from its principal place of business in New York or from its plants or warehouses in other States; along with two advertising agencies employed by it to handle, respectively, newspaper and periodical advertising, and radio advertising for said product, who, after having been instructed by it

as to the general nature of the advertising desired and the media in which to be used, composed and submitted to it for review, approval or change advertisements or radio commercials which they then published or broadcast in the proper media on preagreed-upon schedules; in advertising said product through advertisements in newspapers and periodicals, and by radio commercials and various other means—

- (a) Represented that, according to a national survey conducted in 1940 among thousands of dentists, twice as many dentists personally used Ipana Tooth Paste as any other dentifrice, and that more dentists recommended it for their patients' daily use than the next two dentifrices combined; and thereby fairly implied that the questioning of all dentists, or at least a representative sampling from the profession as a whole with its some 66,000 practicing dentists, showed that of all the dentists in the country twice as many used said product as any other, and that said product was their exclusive choice; and obviously implied that the reason for the dentists personal choice of said product was its quality and overall effectiveness;

The facts being that the actual sampling conducted by them was from a restricted list, not representative of the profession as a whole; only 621 of the 1,983 dentists who answered listed said product as their preference for personal use; the replies indicated only the dentifrice used and recommended "most often" and not that used and recommended exclusively; and reasons for choice included taste or flavor, receipt of free samples, the product's soap content, and the fact that it foamed, that it was "harmless" or easy to use, or habit; and out of a total of 880 reasons given for preferring the product, 372 had no connection with its quality or over-all effectiveness as a dentifrice;

- (b) Falsely represented that the modern American diet consisted of such soft, well cooked, nonfibrous foods that the gums did not get needed exercise and stimulation; that massage with Ipana would provide such exercise and make the gums firm and healthy, guard against "Pink Tooth Brush," and prevent gum trouble generally;

The facts being that said product, according to the preponderant weight of qualified dental opinion, was a cleaning agent only, without therapeutic value, and with prophylactic value only insofar as it cleansed;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby into the purchase of substantial quantities of said product:

**Held,** That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices under the Federal Trade Commission Act.

As respects the charge in the complaint in said proceeding that respondents falsely and misleadingly advertised that in many schools children were drilled in rubbing their gums with Ipana and that use of said paste with or without massage would beautify the smile and brighten and whiten the teeth: it appeared that gum massage was included in the hygienic courses of a number of schools, and that no proof was offered that such drilling in massage was not with Ipana toothpaste as an adjunct.

The expression "brighten and whiten the teeth," as used in respondent's advertising above referred to, according to opinion evidence, meant simply cleaning the teeth, and it appeared that while the use of said product would not alter the shape, size, contour, permanent color, injuries, malposition, or original

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luster of the teeth, it would, through the removal of film, debris, food, dirt, and surface stains, assist in their cleaning, and the Commission accordingly found not sustained the allegation of the complaint that said representation was deceptive.

As respects the charge that respondents falsely represented that the use of Ipana toothpaste would prevent tooth decay, there was no evidence in the record showing that such representation was made.

While two advertising agencies, as noted, participated in the dissemination of the advertising found to be false or misleading in the instant matter, the Commission was of the opinion in the exercise of its sound discretion, and concluded, that the complaint should be dismissed as to them since they had at all times acted under the direction and control of respondent vendor-advertiser, their employer, with whom rested the final authority and responsibility for such advertising, and also for the reason that the practices found to be against the public interest would be stopped by the order to cease and desist issued against said employer.

Before *Mr. Frank Hier*, trial examiner.

*Mr. William L. Pencke* for the Commission.

*Mr. Gilbert H. Weil*, of New York City, for Bristol-Myers Co.

*Mr. Isaac W. Digges*, of New York City, for Pedlar & Ryan, Inc., and Young & Rubicam, Inc.

## 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 Bristol-Myers Co., a corporation, Pedlar & Ryan, Inc., a corporation, and Young & Rubicam, Inc., a corporation, 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondent Bristol-Myers Co. is a corporation organized under the laws of the State of Delaware, and has an office and principal place of business in the International Building, Rockefeller Center, New York City. Respondents Pedlar & Ryan, Inc., and Young & Rubicam, Inc., are corporations organized under the laws of the State of Delaware, and have their respective offices and principal places of business at 250 Park Avenue, and 285 Madison Avenue, city and State of New York.

PAR. 2. Respondent Bristol-Myers Co. is now, and has been for several years last past, engaged in the sale of Ipana tooth paste, a cosmetic preparation as defined in the Federal Trade Commission Act.

Respondents Pedlar & Ryan, Inc., and Young & Rubicam, Inc., have been advertising agents for respondent Bristol-Myers Co. and have participated in the preparation and dissemination of the advertising matter to which reference is made herein.

Respondent, Bristol-Myers Co., causes its said product when sold, to be shipped and transported from its principal place of business in the State of New York, or from its plants or warehouses in other States, to the purchasers thereof who are located in States other than that of the points of origin of such shipments. Said respondent maintains, and at all times mentioned herein, has maintained, a course of trade in its said cosmetic preparation, in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their businesses, have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning said Ipana tooth paste 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 said Ipana tooth paste, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Said false, misleading, and deceptive statements and representations were disseminated and caused to be disseminated by respondents, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities and other advertising literature, typical examples of which are hereinafter set forth.

PAR. 4. By and through the use of the statements and representations contained in the following advertisements, to wit,

Ipana for the Smile of Beauty.

Compliments and popularity—a solitaire for your finger—phone calls, dances and dates. Even without great beauty they're yours to win and possess. Just bring your smile to its sparkling best and eyes and hearts will open to you.

If you want the kind of smile you can really be proud of, decide today to switch to Ipana Tooth Paste and gum massage.

—keep your teeth clean and white by using Ipana—the yellowish tint on your teeth will disappear.

respondents have represented, and now represent, directly and by implication, with respect to Ipana tooth paste, that its use will result in

the user possessing a beautiful smile and increased popularity and the assurance of white teeth free from yellowish tint.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact, the smile is a change in facial expression, the most notable components of which are a brightening of the eyes and an upward curving of the corners of the mouth. It does not necessarily involve a display of teeth or gums. A smile not otherwise pleasing will not be rendered so by the possession of good teeth. Beautiful teeth will not insure a beautiful smile or social popularity. The beauty of human teeth depends primarily upon their conformation, color, arrangement in the mouth and other natural physical features, and teeth which do not possess these natural qualities will not be rendered beautiful by the use of Ipana tooth paste either as a dentifrice, a rubbing medium, or both. Such use of Ipana will neither whiten teeth not naturally white nor remove the yellow tint natural to the teeth of many persons or which results from tobacco or other stains.

PAR. 6. By and through the use of the statements and representations contained in the following advertisements, to wit,

Guard against "Pink Tooth Brush" with the help of Ipana and Massage—It may not mean serious trouble, but find out. More than likely it is a warning of neglected gums, soft, flabby underworked. And like thousands of dentists your dentist may suggest "the healthful stimulation of Ipana massage."

That is why the daily use of Ipana and Massage—to help guard against "Pink Tooth Brush."

respondents have represented, and now represent, directly and by implication, with respect to Ipana tooth paste, that its use will avert "Pink Tooth Brush" and is of value in the treatment of the causes thereof.

PAR. 7. The foregoing representations are false and misleading. In truth and in fact, so-called "Pink Tooth Brush" refers to a variety of oral conditions of systemic or local origin, in which, after brushing the teeth, there is a sufficient flow of blood to color the brush pink. Ipana has no significant therapeutic properties of value in the prevention, treatment, or cure of such conditions, nor is it of any value in the treatment of "neglected gums—soft, flabby, underworked," or of any unfavorable condition of the gums. Any beneficial consequences to the gums, including "stimulation," which may result from rubbing them with Ipana, are attributable solely to the rubbing.

PAR. 8. By and through the use of the statements and representations contained in the following advertisements, to wit,

Do you know that the 1940 National survey recently conducted among thousands of dentists revealed the following remarkable fact—Twice as many

dentists personally use Ipana Tooth Paste as any other dentifrice preparation.

Dentists choose Ipana for Personal Use 2 to 1 over any other dentifrice.

—In a recent nationwide survey, more dentists say they recommended Ipana for their patients' daily use than the next two dentifrices combined. Which should help convince you—that for healthier gums, brighter teeth and a more attractive smile, you should begin now to massage with Ipana Tooth Paste.

That is why so many dentists recomemnd massage with Ipana.

So many dentists suggest the helpful stimulation of Ipana and massage.

respondents have represented, and now represent, directly and by implication, that by actual choice twice as many dentists personally use Ipana in preference to any other dentifrice preparation; that more dentists recommend Ipana for their patients' personal use than the next two dentifrices combined, and that such recommendation constitutes convincing proof that the use of Ipana is productive of healthier gums, brighter teeth, a more attractive smile and will result in helpful stimulation to the gums.

PAR. 9. The aforesaid representations are deceptive and misleading. The truth and in fact, the results of the so-called survey furnish no sufficient basis for the claims made by respondents. Furthermore, the respondent, Bristol-Myers Co., has for many years distributed Ipana lavishly and gratuitously among the members of the dental profession and in consequence its use by any number or proportion of dentists cannot be attributed to the superiority of Ipana to other dentifrices or to choice. There are several characteristics which are common to all satisfactory dentifrices, including a certain degree of cleansing properties, a not unpleasant taste and nonabrasive qualities. The personal use by dentists, or their recommendation, of Ipana does not furnish any adequate factual basis for respondent's claim that such use or recommendation constitutes a recommendation by such dentists that Ipana possesses properties that will contribute to or produce healthier gums, brighter teeth or a more winning smile, or is superior to other dentifrices. Neither does such recommendation or use furnish any sufficient ground for respondent's representation that many dentists recommend "massage with Ipana" or suggest "the helpful stimulation of Ipana and massage."

PAR. 10. By and through the use of the statements and representations contained in the following advertisements, to wit,

—foods we eat nowadays do not give our gums the work they need to keep them firm and healthy—so they often become soft and susceptible to trouble. That's why so many dentists suggest massage with Ipana Toothpaste.

That's why so many dentists say—Give your gums the healthful stimulation of Ipana Toothpaste—and massage. —it gives your gums the kind of stimulation they need to help guard against gum trouble.

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—but when used with massage Ipana helps to give our gums the exercise and stimulation they fail to get from the soft, creamy foods we eat—a stimulation they need to help guard against gum trouble.

Safeguard the health of your gums—

Twice each day brush your teeth and massage your gums with this famous tooth paste. Don't let neglect mark you down for serious gum trouble, but help yourself to healthier gums, brighter teeth and a winning smile with Ipana.

Because Ipana is especially designed not only to clean and brighten teeth, but, when used with massage, to help give gums the stimulation they do not get from the soft, well cooked foods we eat—the exercise they need to keep them from becoming susceptible to gum trouble.

For when you massage with Ipana you can actually feel its stimulating effect upon your gum tissues as lazy gums start to waken and circulation speeds up. And that helps bring greater health to your gums and consequently more radiance to your smile.

You'll notice an invigorating "tang"—exclusive with Ipana and massage. That tells you circulation is speeding up within the gums—helping gums to gain new firmness and new strength.

—a new firmness to your gums—a brighter luster to your teeth and naturally more charm and attractiveness to your smile.

Teeth are seldom bright and sparkling when our gums are soft and tender—help yourself to healthier gums, brighter teeth and a more attractive smile.

For Ipana not only cleans the teeth thoroughly, brilliantly—

—unless gums are firm and healthy teeth are seldom at their sparkling best. That's why so many dentists recommend the faithful use of Ipana Tooth Paste and gum massage.

Protect your teeth from decay by using Ipana.

Children are drilled in Gum Massage in many schools (Depiction of school-boys using tooth brushes).

Ipana, with massage—help your gums to a healthier more resistant firmness.

respondents have represented and now represent, directly and by implication, that the current American diet consists of "soft," "creamy," "well-cooked" foods; that this diet does not give the gums sufficient work, exercise, and stimulation, in consequence of which they tend to become soft, tender, and susceptible to gum trouble; that the use of Ipana will be beneficial to the gums by stimulating them and arousing circulation therein, and imparting strength, firmness and health thereto, and will render the user less susceptible to, and protect against, gum trouble; that this increased firmness, strength and health will result in brighter and more lustrous teeth and a more engaging smile; that the use of Ipana will prevent decay of the teeth, and that in many schools children are drilled in rubbing their gums with Ipana.

PAR. 11. The aforesaid advertisements are deceptive and misleading in material respects. Respondents' claim of benefit to the gums and teeth is predicated on the false assumption that the present

American diet consists of "soft," "creamy," "well-cooked" foods; that this diet does not "exercise" the gums and that in consequence they tend to develop unfavorable conditions. In truth and in fact, the human diet now consists and always has consisted, of animal and vegetable products. The methods of cookery used in this country today are essentially those which have been used for hundreds of years, and whether food should be thoroughly cooked or the contrary depends now, as always, upon the individual taste. Only in inconsequential respects, so far as teeth and gums are directly, or systematically, concerned, does the diet of today differ from that of centuries ago. No diet of any character serves to exercise the gums. The gums are those tissues which invest the necks of teeth and cover the alveolar parts of the jaws. They are nonmuscular, as immobile as the toenails and are wholly incapable of "exercise" in any unusual sense of the word. The gum tissues themselves are capable of a degree of expansion and contraction based on biologic changes induced by heat, cold, or friction, but the different amount or duration of expansion or contraction caused by the friction of various diets in the process of eating is inconsequential. The firmness and health of gums is primarily dependent upon the general condition of the system and supporting mechanism of teeth and will not be enhanced or improved or affected by the use of Ipana either as a dentifrice, as a rubbing medium, or both, nor will the use be protected against gum troubles or rendered less susceptible thereto. Any benefit that may result from rubbing Ipana on the gums is due solely to the rubbing and not to the Ipana. Respondents' claim that a stimulating effect on the gums can be felt when Ipana is rubbed on them, and that this shows that lazy gums are awakening and circulation is speeding up is untrue. The so-called "tang" is nothing more than a sensory reaction of the nerve ends in the mouth and gums due to a short exposure to the small quantity of volatile aromatic oils in Ipana. Said oils have no stimulating effect upon the circulation in the tissues because of their brief contact therewith, the smallness of the amounts and their further dilution with saliva. Ipana will not help to bring health to the gums nor radiance to the smile. There are many conditions of the gums to which massage is detrimental rather than beneficial. The "brilliance," "brightness," "luster," and "sparkle" of teeth is due to the natural qualities of the tooth enamel. The teeth of some people possess these qualities; those of others do not and will not acquire them or any of them through the use of Ipana, whether it is rubbed on the gums or used as a dentifrice or both. The user of

Ipana will not be protected against tooth decay nor will his resistance to gum ailments be increased. The use of Ipana as a rubbing medium for the gums is not taught in schools. The only value of Ipana Tooth Paste is as a not unpleasant adjunct to the use of the toothpaste in cleansing the teeth.

PAR. 12. The aforesaid quoted statements and representations, made and disseminated by respondents, are not inclusive, but are set forth as typical examples. Many other statements and representations of similar import and meaning have been, and are, disseminated by respondents but are not specifically set out herein.

PAR. 13. The use by respondent of the foregoing false, deceptive, misleading and exaggerated statements, representations and depictions with respect to Ipana tooth paste 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 were true and into the purchase of substantial quantities of Ipana tooth paste because of said erroneous and mistaken belief.

PAR. 14. 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 October 28, 1942, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the respondents had filed their joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of said complaint were introduced before Frank Hier, a trial examiner of the Commission theretofore 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, the respondents' answer thereto, testimony and other evidence, the trial examiner's recommended decision, written briefs, and oral arguments of counsel; 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 respondent, Bristol-Myers Co., is a corporation organized under the laws of the State of Delaware, with an office and its principal place of business located in the International Building, Rockefeller Center, New York, N. Y. The respondents, Pedlar & Ryan, Inc., and Young & Rubicam, Inc., are corporations organized under the laws of the State of New York, and these respondents have their respective offices and places of business at 250 Park Avenue and 285 Madison Avenue, in New York, N. Y.

PAR. 2. Respondent Bristol-Myers Co. is now, and for many years last past it has been, engaged in the sale of Ipana tooth paste, a cosmetic preparation as defined in the Federal Trade Commission Act. Said respondent causes this product, when sold, to be shipped and transported from its principal place of business in the State of New York, or from its plants or warehouses in other States of the United States, to purchasers thereof who are located in States other than those of the points of origin of such shipments and in the District of Columbia. Respondent, Bristol-Myers Co., maintains, and at all times mentioned herein it has maintained, a regular course of trade in its said cosmetic preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, Pedlar & Ryan, Inc., and Young & Rubicam, Inc., are both engaged in business as advertising agencies, acting as professional counsel in advertising matters, and in this capacity each of said companies has been employed by respondent Bristol-Myers Co., the former from 1925 to 1944, handling newspaper and periodical advertising in the promotion of Ipana tooth-paste, and the latter from 1937 to the date of the hearings in this proceeding, handling radio advertising for said product. Pursuant to such employment, the appropriate one of these agencies, after having been instructed by respondent Bristol-Myers Co. as to the general nature of the advertising desired and the media in which it was to be used, would compose the advertisements or radio commercials, submit them to respondent Bristol-Myers Co. for examination, review, approval, or change, and then have said advertisements published or broadcast in the proper media on a prearranged and preagreed upon schedule. Respondents Pedlar & Ryan, Inc., and Young & Rubicam, Inc., thus participated in the preparation and in the dissemination of the advertising material to which reference is hereinafter made, but in connection with which the primary and final authority rested with respondent Bristol-Myers Co.

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PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the purchase of Ipana tooth paste, the respondents have disseminated, and are now disseminating, and have caused and are now causing, the dissemination, by the United States mails, through advertisements inserted in newspapers and periodicals, by radio commercials, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertising statements and representations concerning said product.

PAR. 5. In the manner and for the purpose aforesaid, the respondents have represented (1) that, according to a national survey conducted in 1940 among thousands of dentists, twice as many dentists personally use Ipana tooth paste as any other dentifrice, and (2) that more dentists recommend Ipana for their patients' daily use than the next two dentifrices combined.

PAR. 6. The survey referred to in said representations consisted of sending to each of 10,000 dentists, whose names were taken from the subscription lists of the two publications Oral Hygiene and Dental Survey, a questionnaire containing, among other queries, the questions, "What dentifrice do you personally use most often?" and "Is dentifrice named above also the one you recommend most often to patients?" 1,983 of these questionnaires were returned, containing 2,467 replies to the question "What dentifrice do you personally use most often?" and these replies indicated that 621 of the dentists answering this question chose Ipana tooth paste, with its 4 nearest competitors being chosen by 258, 189, 144, and 128 dentists, respectively; 706 other replies to this question were divided among 19 other named brands, 189 returns were classified without explanation as "Miscellaneous," 225 indicated that the answering dentists preferred no particular brand or type of dentifrice, and 9 of the dentists stated that they use the tooth brush only. The original returns had been destroyed and only the tabulation therefrom made up by the respondents was available. The excess of 484 replies over the 1,983 returns was not explained in the tabulation, and if this excess was due to multiple choices of dentifrices, the distribution of such multiple choices was neither explained nor accounted for. The same relative situation was revealed in answers to the question "Is dentifrice named above also the one you recommend most often to patients?", there being 1,405 returns, containing 1,674 answers to the effect that the answering dentists recommend to patients the same dentifrices which they personally use most often (413 of whom personally use Ipana), and 578 returns, containing 793 answers to the effect that the answering dentists do not recommend to their

patients the same dentifrice which they personally use (208 of these personally using Ipana). Other surveys conducted in 1941 and 1944 revealed substantially similar situations.

PAR. 7. (a) There are in the United States approximately 66,000 practicing dentists. The representations above referred to fairly imply, and a reader might reasonably infer therefrom, that the preference for personal use and the recommendation to patients to use Ipana was by the Nation's 66,000 dentists as a profession. The phrase "survey" used in the respondents' advertising fairly implies, if not the questioning of all dentists, at least a representative, unbiased and fair sampling from the profession as a whole. The representations reasonably imply that of all the dentists in the country twice as many use Ipana tooth paste as any other dentifrice and that more of them recommend Ipana for their patients' daily use than recommend the next two dentifrices combined. They also reasonably imply that the survey disclosed that Ipana tooth paste is the exclusive choice of such dentists.

(b) These implications are false and misleading in that the actual sampling conducted by the respondents was from a restricted list of dentists, not representative of the dental profession as a whole, comprising replies from less than 2,000 of the Nation's 66,000 dentists, and even then containing a sufficient number of apparent multiple choices unaccounted for to make the results wholly unreliable. They are misleading for the further reason that out of the 1,983 dentists answering the questionnaire only 621 listed Ipana tooth paste as their preference for personal use, the survey thus failing completely to justify the respondents' claim of overwhelming popularity of Ipana among the Nation's dentists; and the implications are clearly false in that the answering dentists indicated only the dentifrices they use and recommend "most often" and not the dentifrices which they use and recommend exclusively.

(c) The respondents' representations also carry the unmistakable inference and obviously convey the impression that the underlying reason for the personal choice of Ipana tooth paste by the Nation's dentists is the quality and over-all effectiveness of such product. The respondents' own tabulation of the replies received from the questionnaires shows on its face that this is not the case. Of the 621 dentists selecting Ipana as their choice for personal use providing 880 answers to the question "What is the most important single reason why you use the above dentifrice most often?" 158 gave as the reason the taste or flavor of the dentifrice, 83 said the choice was due to the

fact that they receive free samples, 26 liked Ipana best because of its soap content and the fact that it foams, 15 because it is "harmless," 13 because it is easy to use, 12 preferred it from habit, and 65 answers were classified as "Miscellaneous." Thus, the tabulation shows that out of a total of 880 reasons given for preferring Ipana tooth paste, 372 of them had no connection whatever with the quality or over-all effectiveness of the product as a dentifrice.

(*d*) The Commission is of the opinion, therefore, and finds, that the representations referred to in paragraph 5, and the reasonable implications thereof and ultimate impressions to be drawn therefrom, were and are false and deceptive in some respects and misleading as a whole, and that the advertisements in which said representations were made have been and are false advertisements.

PAR. 8. By means of newspaper and periodical advertising and radio continuities, the respondents have further represented to the public (1) that the modern American diet consists of such soft, well-cooked, nonfibrous foods that the gums do not get the exercise and stimulation they need, and (2) that massage with Ipana will provide such exercise and stimulation, will make the gums firm and healthy, guard against "Pink Tooth Brush," and prevent gum trouble generally.

PAR. 9. (*a*) The preponderant weight of qualified dental opinion, based on actual clinical experience of many years with thousands of patients, is that soft, well-cooked, nonfibrous foods are not conducive to gum trouble; that it is immaterial to gum health whether the diet of a person is soft or coarse; and that, contrary to the respondents' representations, the modern American diet provides sufficient gum stimulation.

(*b*) The term "massage," as used by dentists, means a careful, downward stroking or squeezing pressure applied to only a quarter inch of the gum margin and teeth, and its proper use by laymen requires professional instruction over a considerable length of time. The record in this proceeding contains a great deal of discussion pro and con on the question whether this properly instructed massage will or will not stimulate circulation in the gums, whether or not Ipana or any other dentifrice used in connection therewith is useful or beneficial as a cleansing or therapeutic agent, whether histamine is a hormone or something else, and the vascular effects of epinephrine, benzedrine, and ultraviolet rays. As used in the respondents' advertisements, however, the unqualified term "massage" means to the great majority of the general public a horizontal, vertical, or rotary

scrubbing of the teeth and all of the gums with the tooth brush, or a similar rubbing with the finger, and regardless of the need for and benefits to be expected from gum massage as employed by the dentist, the record is clear that such uninstructed "massage" as that contemplated by the respondents' representations, either with or without Ipana tooth paste or any other dentifrice, does not and will not stimulate circulation in the gums, impart firmness and health structure thereto, or prevent gum trouble in general, or "Pink Tooth Brush" in particular. Moreover, the preponderant weight of qualified dental opinion, based on clinical experience, is that even massage as carefully instructed by the dentist and properly performed is not necessary in an undiseased mouth, that a layman is unable to ascertain whether or not he is in need of massage, and that neither Ipana nor any other dentifrice adds any benefit to gum massage, either through mechanical or chemical action of appreciable duration or significance, or therapeutically. The preponderant weight of the same opinion is that Ipana tooth paste is a cleansing agent only, without therapeutic value, and with such prophylactic value only insofar as it cleanses.

(c) For the reasons stated, the representations referred to in paragraph 8 were and are false and deceptive, and the advertisements wherein said representations were made have been and are false advertisements.

PAR. 10. The respondents have also represented in their advertising (1) that in many schools children are drilled in rubbing their gums with Ipana, and (2) that the use of Ipana tooth paste, with or without massage, will beautify the smile and brighten and whiten the teeth; and the complaint charged that both of these representations were misleading and deceptive. As it relates to the representation that school children are drilled in rubbing their teeth with Ipana, the evidence is that gum massage is included in the hygienic courses of a number of schools, and no proof was offered that such drilling in massage was not with Ipana tooth paste as an adjunct. Accordingly, the record does not show and the Commission does not find that this representation was untrue. Concerning the representation that Ipana tooth paste will beautify the smile and brighten and whiten the teeth, the Commission is of the opinion that the reference to beautification of the smile was mere puffery, unlikely, because of its generality and widely variant meanings, to deceive anyone factually. As used in the advertising, the expression "brighten and whiten the teeth," according to the opinion evidence, means simply cleaning the teeth, and the record shows that while the use of Ipana will not alter the shape,

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size, contour, permanent coloration, injuries, malposition, or original luster of the teeth, it will, through the removal of film, debris, food, dirt, and surface stains, assist in the cleaning of them. The Commission therefore finds that the allegation of the complaint that this representation was deceptive has not been sustained.

The complaint further charged that the respondents have falsely represented that the use of Ipana tooth paste will prevent tooth decay. There is no evidence in the record showing that this representation was ever made.

PAR. 11. The use by the respondents of the false, deceptive and misleading representations, disseminated as aforesaid, with respect to the product, Ipana tooth paste, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and, because of such erroneous and mistaken belief, into the purchase of substantial quantities of said product.

#### CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 10) 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.

The Commission is of the opinion, however, and in the exercise of its sound discretion concludes, that the complaint in this proceeding should be dismissed as to the respondents Pedlar & Ryan, Inc., and Young & Rubicam, Inc. This is for the reason that, although these respondents participated in the dissemination of the advertising found to be false or misleading, they at all times acted under the direction and control of respondent Bristol-Myers Co., their employer, with whom rested the final authority and responsibility for such advertising, and for the further reason that the practices found to be against the public interest will be stopped by the order to cease and desist issued against Bristol-Myers Co.

Commissioner Carson not participating.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence taken before a trial examiner

of the Commission theretofore duly designated by it, the trial examiner's recommended decision, written briefs, and oral arguments of counsel; and the Commission, having made its findings as to the facts and its conclusions that the respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent, Bristol-Myers Co., 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 the cosmetic preparation, Ipana tooth paste, or any other preparation 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 other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication—

(a) That twice as many dentists in the United States personally use Ipana tooth paste as any other dentifrice, or that any greater proportion or number of dentists use said product than is the fact;

(b) That more dentists in the United States recommend Ipana tooth paste for use by their patients than any other two dentifrices combined, or that more dentists recommend said product than is the fact;

(c) That the use of of Ipana tooth paste with massage will prevent "Pink Tooth Brush" or aid in the treatment of its causes;

(d) That Ipana tooth paste has any significant therapeutic value in the treatment of mouth, tooth, or gum diseases;

(e) That modern or current diets, or soft, well-cooked foods, do not give the gums the exercise and stimulation they need, or that such diets or foods make the gums susceptible to trouble;

(f) That massage with Ipana tooth paste stimulates circulation in the gums, imparts firmness or health to the gums, or prevents gum trouble.

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

*It is further ordered*, For the reasons set forth in the Commission's findings as to the facts in this proceeding, that the complaint herein

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be, and it hereby is, dismissed as to the respondents, Pedlar & Ryan, Inc., and Young & Rubicam, Inc.

*It is further ordered,* That the respondent, Bristol-Myers Co., 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.

Commissioner Carson not participating.

## Syllabus

IN THE MATTER OF  
EDWARD BAUM TRADING UNDER HIS OWN NAME AND  
AS THE MEGA-EAR-PHONE

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

*Docket 5408. Complaint, Nov. 30, 1945—Decision, Nov. 15, 1949*

Where an individual engaged in the interstate sale and distribution of a device designated as the "Mega-Ear-Phone," which was recommended for the correction of deafness and other ear conditions, and which was composed of processed silk with a disk or drum at one end and side walls which extended from the disk in the form of four small flexible cones called "accumulators," intended, when inserted into and along the outer channel of the ear to bring the disk in contact with the ear drum, to expand with the ear and effectively convey sound impulses; in advertising his said product through the mails, newspapers and by booklets, letters and other advertising literature—

- (a) Represented that said device relieved deafness, eliminated head noises, and enabled a deaf person to hear irrespective of the cause and degree of deafness; and that use thereof would restore and improve hearing; and would restore the natural flow of wax in the ear and promote the ear's health in general; The facts being that the placing of said device in the auditory canal and against the ear drum would have no effect on the perceptive or nerve type of deafness, and no favorable influence in the conductive type of cases where there is impairment of the ossicles or bone mechanism of the middle ear; and it would not in other respects accomplish the results above claimed therefor;
- (b) Falsely represented that it would cause thickened membranes of the ear drum to become thinner and would restore elasticity and the proper degree of moisture to the ear drum; that a distended ear drum and dislocated ossicle of the middle ear would be corrected by the use of the device and thereafter held in proper position; and that said device served as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums;
- (c) Falsely represented that it would not injure the most sensitive and delicate ear and was the latest and most effective device for impaired hearing and deafness and fulfilled every requirement for relief thereof, and that it was beneficial in cases of nervous deafness; the facts being that injury to the ear might result through the manner in which said device was inserted or removed, and use thereof coincident with suppuration of the middle ear might interfere with ear drainage; and other claims therefor were likewise false;
- (d) Represented that the shape of the ear was necessarily as indicated in certain drawings set forth in his advertisements, and that the exact position and placement of his device in the user's ear was the same as that portrayed in the drawings; and that the result to be obtained by use of said device would be the same as indicated by the designated placements as drawn;

The facts being that the auditory canal and membrane varies among individuals in respect to shape and pattern and frequently depart from the contours

described in his advertising; and there was no assurance that the device would assume the exact position and placement in the ear canal as portrayed;

- (e) Falsely represented that the inflation treatment for deafness for catarrh was harmful, and that his device was a proper substitute therefor in the treatment of such cases;
- (f) Falsely represented that he could determine the proper size of device for any particular customer solely by the answers to questions listed on the "Information Blank"; the facts being it is not possible to determine the size of the auditory canal and the proper size of the device to be furnished solely on the basis of answers to the questions listed; and
- (g) Failed to reveal in his said advertising facts material with respect to the consequences which might result from the insertion, removal, or use of said device under customary conditions, in that unsupervised use by persons suffering from ear disorders of the applicator, syringe, inserter tube, and metal tweezers included with the outfit, was attended with the danger of causing serious traumatic injury to the ear, particularly the membrane or drum and certain of the ossicles;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that use of said device and the manner of insertion and withdrawal thereof were free from danger, and thereby to induce its purchase 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 and deceptive acts and practices in commerce.

As respects the fact that the testimony in said proceeding included (1) that of a scientific witness, who testified on behalf of respondent, on the basis of his experience with the device, that it was effective in treating hearing losses due to perforation of the ear drum and in his opinion as an artificial drum when placed in contact with the perforated area, thereby inducing backfire from the Eustachian tube, which might be interfering with sound impulses being conveyed through the middle ear; (2) testimony of eight users of the device, members of the public, who expressed the opinion that they had experienced improvement in their hearing coincident with such use; and (3) testimony of three scientific witnesses—including two who based their opinions in part on the clinical experience of army hospitals which used the device for test purposes on a selected cross-section of patients—that it had no therapeutic value:

The Commission was of the opinion, in view of the pertinent facts concerning deafness, the functioning of the ear, and the nature of said device, that the views of the scientific witnesses that the device had no beneficial effect in the treatment of or as a mechanical aid in cases of deafness or partial deafness, outweighed the evidence submitted to the contrary.

Before *Mr. Henry P. Alden*, trial examiner.

*Mr. Charles S. Cox* for the Commission.

*Buckley & Danzansky*, of Washington, D. C., and *Mr. Nathan Griffith*, of Philadelphia, Pa., for respondent.

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## 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 Edward Baum, an individual, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward Baum is an individual, and has his office and principal place of business at 6114 Carpenter Street, Philadelphia, Pa. He trades and does business under his own name and also the name "The Mega-Ear-Phone."

PAR. 2. Respondent is now, and has been for more than 4 years last past, engaged in the business of advertising, selling, and distributing a device designated "The Mega-Ear-Phone." Said device is made of an oiled silk material and consists of four truncated hollow cones with diaphragm and is designed for insertion in the external auditory canal.

PAR. 3. Respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia and at all times mentioned herein has maintained a course of trade 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 his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device 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 false advertisements, disseminated and caused to be disseminated, as herein above set forth, by the United States mails, by advertisements inserted in newspapers, and by booklets, letter-heads, and other advertising literature, are the following:

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## DEAFNESS, THE MEGA-EAR-PHONE

A comfortable, invisible (non-rubber) ear device, relieves CATARRAH, DEAFNESS. Stops Head Noises. Makes Words More Plainly Understood. A perfect substitute for ruptured or destroyed ear drums. Easily inserted. Immediate results.

A prompt reply will bring "quick relief".

After considering every word in the booklet (we urge you to do this) you'll understand *why* and *how* the MEGA-EAR-PHONE relieves Deafness. To restore Hearing, some artificial means must correct disordered Ear Parts, or replace those Partially or Wholly Destroyed.—

THE MEGA-EAR-PHONE COMES NEARER CORRECTING OR REPLACING THE NATURAL EAR DRUM AND TINY EAR BONES than any known device. Sometimes the drum distended and thickened (Fig. 2, p. 8)—Perforated, Punctured or ruptured (illustrated on pp. 10 and 11)—Sometimes entirely gone (pp. 12 and 13). In these varied conditions the distention is corrected, cavity sealed—the Gap is bridged, Irritation barred, membrane thinned—natural waxy secretion (Ear-Wax) restored and the Ear's Health—in general—Promoted by the MEGA-EAR-PHONE.

Relief—perhaps a new world—is within your reach for a nominal sum of \$10—.

To correct the many causes of Deafness or impaired hearing, the MEGA-EAR-PHONE is in reality the embodiment of practical and scientific principles, fulfilling in every detail every requirement of a perfect device, proving a substitute when the natural drums are partially or entirely destroyed, perforated, ruptured, or punctured, and acting precisely the same as the natural Drum; especially when the drum has become thickened, deadened, relaxed and weakened, or in bone separation, the MEGA-EAR-PHONE supplies the deficiency.

Directions for inserting and the use of the Mega-Ear-Phone—. Make sure that the canal is free from wax or accumulation of any kind—mop gently until dry, using cotton twisted around wooden applicator—Hold the inserter with phone engaged—push gently inward—until contact is felt with the natural drum, which is about one inch from the external meatus or opening.

If there is any doubt that the phones are not in the proper position—the reverse end of the tube should be used—. The four sound accumulators act not unlike a bushing, adheres to the channel walls and retains the device in position—. The only necessity for the removal of the phones will be the accumulation of ceramen (Ear Wax)—and removal—is easily accomplished with a small pair of tweezers.

The next illustration shows the appearance of the Internal Ear when the condition is corrected by the proper application of the Mega-Ear-Phone.

CATARRHAL DEAFNESS RESULTING IN DISTENDED DRUM AND DIS-LOCATED OSSICLES CORRECTED BY THE MEGA-EAR-PHONE \* \* \*

(Drawing of cross-section of an ear showing Mega-Ear-Phone in position). It exerts gentle pressure on the Drum, restoring and pushing it back into its natural position, where it is retained. At the same time it gradually and gently brings the little bones to the correct angle, restoring them to their proper alignment. It takes away the strain and pressure on the Inner Drum. The head noises and other annoying symptoms are suppressed and the hearing materially improved. This is the starting point towards recovery.

**TOTAL DESTRUCTION OF DRUM AND OSSICLES.**

(Drawing of cross-section of an ear with drum destroyed, leaving inner ear exposed. This drawing is followed by another similar thereto, but with a drawing of the Mega-Ear-Phone in position for such cases.)

This illustration shows the wonderful effectiveness of The Mega-Ear-Phone in this condition. It takes the place of both Ear Drum and Ossicles, which are entirely destroyed. It bridges the gap from the rim of the Drum to the stump of the stirrup bone attached to the Inner Drum; fulfilling every requirement of a mechanical substitute, hermetically sealing the cavity of the delicate Middle Ear, the accumulators of the appliance transmitting the concentrated sounds directly to the Inner Drum.

Nervous deafness—the Mega-Ear-Phone proves of great benefit in such cases, by increasing the sound vibration, sustaining the Drum and stimulating and training the weak and feeble nerve to more acutely perceive the sound impression and convey it more quickly.

The Mega-Ear-Phones are sent to you in a case containing six pairs and all the necessary accessories to enable one to take care of one's self. (The correct size is determined from your answers on the information blank.) (In this manner a perfect fit is assured.)

PAR. 5. By use of the representations hereinabove set forth in paragraph 4 and other representations similar thereto, not specifically set forth herein, respondent represents that his device "MEGA-EAR-PHONE" relieves deafness, eliminates head noises, and enables a deaf person to hear, irrespective of the cause and degree of deafness; that its use will restore hearing; that it will restore the natural flow of wax in the ear and the ear's health in general; that it causes thickened membranes of the ear to become thinner and restores the proper degree of moisture and elasticity to the ear drum; that a distended ear drum and dislocated ossicles will be corrected by the use of said device and thereafter held in proper position; that it serves as a perfect substitute for punctured, perforated, ruptured or destroyed ear drums; that it will not injure the most sensitive and delicate ear, and is the latest and most effective device for impaired hearing, hardness of hearing and deafness, and fulfills every requirement for the relief thereof; that the inflation treatment for deafness from catarrh is harmful and that respondent's device is the proper substitute therefor in the treatment of such cases; that the cross-sections of the human ear are as indicated in the drawings and said advertisements, and that the exact position and placement of respondent's device in the user's ear is the same as that indicated in the drawing; that the results to be obtained by the use of said device will be that as indicated by the designated corrected placements as drawn; that said device is beneficial in cases of nervous deafness and that respondent can determine the proper size of his

said device for any particular customer solely from the answers to questions listed on the "Information Blank."

PAR. 6. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the use of said device "Mega-Ear-Phone" will not relieve deafness, will not eliminate head noises, nor will it enable a deaf person to hear. The use of said device will not restore a deaf person's hearing, nor will it restore the proper flow of natural wax in the ear or the ear's health in general. Its use will not cause thick membranes of the ear to become thinner, restore moisture or elasticity to the ear drum, nor will it correct a distended ear drum or dislocated ossicles. It will not serve as a substitute for punctured, perforated, ruptured, or destroyed ear drums. Its use may irritate and injure the ear. Furthermore, injury may result through the manner in which the device is inserted or removed from the ear by following the directions for use. The inflation treatment for deafness from catarrh is not harmful when administered by a competent physician, and the use of respondent's device is not a proper and competent substitute for such treatment. The drawings of the cross-section of the human ear as portrayed in said advertisements are incorrect in that the human ear conforms to various shapes and patterns and respondent's device does not occupy the position in the ear nor accomplish the results as indicated in the drawings. Respondent's device is of no value in the treatment of nervous deafness. It is impossible to determine the size of the auditory canal and the proper size of the device to be furnished from the answers to questions listed in respondent's information blank. In truth and in fact, respondent's said device is of no value in the treatment of or as a mechanical aid in cases of deafness or partial deafness, regardless of cause.

PAR. 7. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of said device to which the advertisements relate, under the conditions prescribed in such advertisements, or under such conditions as are customary or usual. In truth and in fact, the directions and instructions for the use of respondent's said device require that the user clean his ears before inserting the device by using a wooden stick with a cotton swab on the end and that the device is to be inserted by using a slotted stick designated as an "inserter" and the use of a pair of metal tweezers when removing the Mega-Ear-Phones. The use of a wooden stick or metal object inside the auditory canal is potentially dangerous, and may result in serious injury to the ear and hearing.

PAR. 8. The use by the respondent of the foregoing false, misleading, and deceptive 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 that the use of said device and manner of insertion are free from danger and injury, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said devices.

PAR. 9. The aforesaid acts and practices of respondent, as hereinabove 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 November 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, Edward Baum, an individual trading under his own name and as The Mega-Ear-Phone, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into between counsel supporting the complaint and the respondent, which provided among other things for amending the complaint in respect to certain typographical errors appearing therein. Subsequently testimony and other evidence in support of and in opposition to the allegations of the complaint as amended 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 the proceeding regularly came on for final hearing before the Commission upon the complaint as amended, testimony and other evidence, recommended decision of the trial examiner, brief in support of the complaint as amended (no brief having been filed on behalf of respondent), and oral argument; 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 respondent, Edward Baum, is an individual trading and doing business under his own name and as The Mega-Ear-

Phone, with his principal office and place of business located at 6114 Carpenter Street, Philadelphia, Pa.

PAR. 2. Respondent is engaged in the sale and distribution to the purchasing public of a device designated as the Mega-Ear-Phone, which is recommended for the correction of deafness and other ear conditions. Respondent's product is sold as a set or outfit, comprising six pairs of Mega-Ear-Phones, together with a syringe for cleansing the ear, wooden applicators, cotton, injection tube, metal tweezers, and a container of oil. Made in four sizes, the Mega-Ear-Phone is composed of silk which has been processed and as folded into its finished form has a disk or drum at one end and side walls which extend from the disk in the form of four small flexible cones called "accumulators." When inserted into and along the outer channel of the ear for the distance necessary to bring the disk in contact with the ear drum, the accumulators are intended to expand with the ear and effectively convey sound impulses.

Respondent causes his products, the Mega-Ear-Phone and its accessories, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers located in various States of the United States other than the State of Pennsylvania, and maintains a course of commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business the respondent has disseminated, and has caused and is now causing the dissemination of, false advertisements concerning his Mega-Ear-Phone sets by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act. Such advertisements are disseminated for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of respondent's Mega-Ear-Phone in commerce as "commerce" is defined in such act. Among and typical of the false, misleading, and deceptive advertisements and representations contained in such false advertisements disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers, by booklets, letters, and other advertising literature, are the following:

DEAFNESS, THE MEGA-EAR-PHONE—A Comfortable, Invisible (not rubber) Ear Device, relieves CATARRH DEAFNESS. Stops HEAD NOISES. Makes Words More Plainly Understood. A perfect substitute for ruptured or destroyed ear drums. Easily inserted. Immediate results.

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A Prompt Response Will Bring "Quick Relief."

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After considering every word in the booklet (we urge you to do this) you'll understand *why* and *how* the MEG-EAR-PHONE relieves Deafness. To restore Hearing, some artificial means must correct disordered Ear Parts, or replace those Partially or Wholly Destroyed. \* \* \*

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THE MEGA-EAR-PHONE COMES NEARER CORRECTING OR REPLACING THE NATURAL EAR DRUM AND TINY EAR BONES than any known device. Sometimes the Drum is distended and thickened (Fig. 2 Page 8)—Perforated, Punctured or Ruptured (Illustrated on Pages 10 and 11)—Sometimes entirely gone (Pages 12 and 13). In these varied conditions the distention is corrected, cavity sealed—the Gap is bridged, Irritation barred, membrane thinned—Natural waxy secretion (Ear-Wax) restored and the Ear's Health—in general—Promoted by "THE MEGA-EAR-PHONE."

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\* \* \* provides a substitute for the destroyed part of the natural Drum.

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THE INVISIBLE MEGA-EAR-PHONE is the latest and most effective device for the relief of impaired hearing or deafness of any degree.

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NERVOUS DEAFNESS \* \* \* The Mega-Ear-Phone proves a great benefit in such cases, by increasing the sound vibration, sustaining the Drum and stimulating and training the weak and feeble nerve to more acutely perceive the sound impression and convey it more quickly.

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NON-IRRITATING—The Mega-Ear-Phone cannot possibly irritate or injure the most sensitive and delicate ear, yet it proves a powerful aid to hearing.

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A HARMFUL TREATMENT OF DEAFNESS \* \* \* the Inflation Treatment. \* \* \*

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The next illustration shows the appearance of the Internal Ear when the condition is corrected by the proper application of the Mega-Ear-Phone.

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CATARRHAL DEAFNESS RESULTING IN DISTENDED DRUM AND DIS-LOCATED OSSICLES CORRECTED BY THE MEGA-EAR-PHONE \* \* \* [Drawing of cross-section of an ear showing Mega-Ear-Phone in position.] It exerts gentle pressure on the Drum, restoring and pushing it back into its natural position, where it is retained. At the same time it gradually and gently brings the little bones to the correct angle, restoring them to their proper alignment. It takes away the strain and pressure from the Inner Drum. The head noises and other annoying symptoms are suppressed and the hearing materially improved. This is the starting point toward recovery. \* \* \*

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TOTAL DESTRUCTION OF DRUM AND OSSICLES \* \* \* [Drawing of cross-section of an ear with drum destroyed, leaving inner ear exposed. This

drawing is followed by another similar thereto, but with a drawing of the Mega-Ear-Phone in position for such cases.] This illustration shows the wonderful effectiveness of the Mega-Ear-Phone in this condition. It takes the place of both Ear Drum and Ossicles, which are entirely destroyed. It bridges the gap from the rim of the Drum to the stump of the Stirrup bone, attached to the Inner Drum; fulfilling every requirement of a mechanical substitute, hermetically sealing the cavity of the delicate Middle Ear, the accumulators of the appliance transmitting the concentrated sounds directly to the Inner Drum.

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The Mega-Ear-Phones are sent to you in a case containing six pairs and all the necessary accessories to enable one to take care of one's self. \* \* \* The correct size is determined from your answers on the Information Blank. In this manner a perfect fit is always assured.

PAR. 4. By use of the foregoing representations and other representations similar thereto, not specifically set forth herein, respondent represents that the Mega-Ear-Phone relieves deafness, eliminates head noises, and enables a deaf person to hear, irrespective of the cause and degree of deafness; that the use of respondent's device will restore and improve hearing; that it will restore the natural flow of wax in the ear and promote the ear's health in general; that it will cause thickened membranes of the ear drums to become thinner and will restore elasticity and the proper degree of moisture to the ear drum; that a distended ear drum and dislocated ossicles of the middle ear will be corrected by the use of respondent's device and thereafter held in proper position. Respondent further represents that the Mega-Ear-Phone serves as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums; that it will not injure the most sensitive and delicate ear and is the latest and most effective device for impaired hearing and deafness and fulfills every requirement for the relief thereof; that said device is beneficial in cases of nervous deafness; that the shape of the human ear is necessarily as indicated in certain drawings set forth in respondent's advertisements and that the exact position and placement of respondent's device in the user's ear is the same as that portrayed in the drawings; that the results to be obtained by the use of said device will be the same as indicated by the designated placements as drawn; that the inflation treatment for deafness from catarrh is harmful and that respondent's device is a proper substitute therefor in the treatment of such cases; and that respondent can determine the proper size of device for any particular customer solely by the answers to questions listed on the "Information Blank."

PAR. 5. The Commission finds that the foregoing representations are grossly exaggerated, falsely, and misleading. Loss of hearing is divided in two categories, conductive and perceptive. The first type

embraces conditions where there is interference with the conduction of sound through the outer and middle ears to the inner ear. The perceptive category, which is also designated as "nerve deafness," refers to any lesion affecting the inner ear, the auditory nerve, or the brain. The outer ear extends to the end of the auditory canal and terminates at the ear drum, a tissue-thin membrane. Sound impulses reaching this membrane are conveyed by the middle ear to the inner ear by means of small bones or ossicles.

The placing of respondent's device into the auditory canal against the ear drum will have no effect on perceptive or nerve type of deafness and will have no favorable influence in conductive cases where there is impairment to the ossicles or bone mechanism of the middle ear. Respondent's device will not relieve deafness or enable a person to hear irrespective of the cause and degree, nor will it eliminate head noises; its use will not restore hearing or the natural flow of wax in the ear, or promote ear health in general. It will not cause the thickened membranes or ear drums to become thinner, or restore elasticity and a proper degree of moisture to the ear drum. The Mega-Ear-Phone will not correct a distended ear drum or dislocated ossicles and is of no value in the treatment of nervous deafness. It is not true that respondent's device serves as a perfect substitute for punctured, perforated, ruptured, or destroyed ear drums. Injury to the ear may result through the manner in which respondent's device is inserted or removed, and use of respondent's device coincident with suppuration of the middle ear may interfere with ear drainage.

A scientific witness testifying on behalf of respondent states, on the basis of his experience with the device, that the Mega-Ear-Phone is effective in treating hearing losses due to perforation of the ear drum. In his opinion it serves as an artificial drum when placed in contact with the perforated area, thereby reducing backfire from the Eustachian tube which may be interfering with sound impulses being conveyed through the middle ear. Submitted also on behalf of respondent, in addition to respondent's own testimony, is the testimony of eight users of respondent's device. These members of the public express the opinion that they have experienced improvement in their hearing coincident with use of the Mega-Ear-Phone. On the other hand, three scientific witnesses have testified in effect that the device has no therapeutic value. Two of such witnesses base their opinions in part on the clinical experience of an army hospital which used the device for test purposes on a selected cross-section of patients.

Rupture or perforation of the ear drum may be caused by trauma or by infections in the middle or inner ear. Perforations of the ear

drum of traumatic origin very frequently are accompanied by injury to the ossicles of the middle ear or impairment of the inner ear. In either case such conditions impair hearing and the insertion of a foreign body would not beneficially influence the basic cause of deafness. Perforations of the ear drum may vary from pin point in size to instances in which a large area is affected. Healing of the membrane with scar tissue will ensue in normal course unless the area affected is too large or infection prevents, and respondent's device would be of no benefit in such connection. Since the sound waves already are concentrated within the tube-like auditory canal, there is no possibility, it is concluded, that respondent's device intensifies sound waves reaching the middle ear. Moreover, when inserted without visual observation there is no assurance that the Mega-Ear-Phone will be placed in apposition to the drum or would so remain if placed in such apposition. The Commission is of the opinion, therefore, that the views of the scientific witnesses who have testified that the device has no beneficial effect in the treatment of or as a mechanical aid in cases of deafness or partial deafness outweigh the evidence submitted to the contrary.

Respondent's device is not an effective substitute for the inflation treatment of the catarrhal type of deafness and the inflation treatment is not harmful when administered by a competent physician.

When inserted without visual observation by the user the Mega-Ear-Phone will not accomplish the results indicated in respondent's illustrations, which refer to cross-sections of the human ear, nor is there any assurance that the device will assume the exact position and placement in the ear canal as portrayed. The auditory canal and membrane vary among individuals in respect to shape and pattern, and frequently depart from the contours described in respondent's advertising. It is not possible to determine the size of the auditory canal and the proper size of the device to be furnished solely on the basis of answers to the questions listed on respondent's information blank.

PAR. 6. The unsupervised use by persons suffering from ear disorders of respondent's applicator, syringe, inserter tube, and metal tweezers is attended with the danger of causing serious traumatic injury to the ear, particularly the membrane or drum and certain of the ossicles. The respondent's advertisements contain no statement in respect to such hazard. The Commission therefore finds that said advertisements constitute false advertisements as defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material with respect to the consequences which may result from

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insertion, removal, or use of respondent's device under such conditions as are customary or usual.

PAR. 7. The use by the respondent of the foregoing advertisements 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 that the use of respondent's device and the manner of insertion and withdrawal thereof are free from danger and injury, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products.

## CONCLUSION

The acts and practices of the 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, stipulation in respect to amendment of certain typographical errors therein, the testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner, brief in support of the allegations of the complaint (no brief having been filed on behalf of respondent), and oral argument, 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 Edward Baum, individually and trading as The Mega-Ear-Phone, or under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his device designated as "Mega-Ear-Phone," or any device of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

A. 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:

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(1) That said device will relieve deafness or enable a deaf person to hear or that it will be of any value in the treatment or as a mechanical aid for deafness or impaired hearing;

(2) That said device will eliminate head noises;

(3) That said device will restore a proper degree of moisture or elasticity to the ear drum or will restore the natural flow of wax in the ear or promote ear health;

(4) That said device will cause thickened membranes of the ear to become thinner, will correct or hold in proper position a distended ear drum or dislocated ossicles, or will serve as a substitute for punctured, perforated, ruptured, or destroyed ear drums;

(5) That said device will not injure the ear;

(6) That respondent's device is an effective substitute for the inflation treatment or that the inflation treatment for catarrhal deafness is harmful;

(7) That the position of respondent's device in the ear will be as indicated in respondent's drawings or that respondent's device affords the corrected placements of the ear drum and ossicles as portrayed in respondent's advertisements;

(8) That respondent will be enabled to determine the proper size of the device required for a prospective purchaser solely from the answers given by the purchaser to questions in the "Information Blank" sent to him by respondent.

B. 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 fails to reveal:

(1) That the insertion and removal of respondent's device by persons not trained in the anatomy of the human ear may cause injury to the ear and to hearing.

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

*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.

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## IN THE MATTER OF

HENRY J. TAYLOR, TRADING UNDER THE NAME AND  
STYLE OF THE PACKAGE ADVERTISING CO.

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

*Docket 5416. Complaint, Jan. 21, 1946—Decision, Nov. 15, 1949*

Where an individual who (1) was engaged in the manufacture of unpatented waxed-paper bands for advertising or informative use as printed inserts and outserts by bakers in connection with the wrapping of their bread and other bakery products; and in the interstate sale of said bands in competition with other manufacturers except as below set out, and under the trade-mark "Ad-Seal-It," which he had continuously owned or controlled since 1926 and which was registered in the United States Patent Office on January 23, 1945; and (2) formerly owned two patents, issued August 11, 1931, and March 15, 1932, which did not cover said unpatented bands, but respectively covered a method of applying an advertising medium to bakery products, and the resultant improved package "comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper incircling said loaf and said wrapper"—

- (a) Through threats of patent-infringement suits or the incentive of a higher, uniform, and maintained price structure on Ad-Seal-It bands, from time to time prior to January 1, 1939, coerced, persuaded or otherwise induced the principal manufacturers of waxed paper situated east of the Rocky Mountains to enter into agreements which, reciting that the corporation owned or controlled "certain inventions covering Ad-Seal-It and the method of its application and Letters Patent," purported to grant, on the part of his said predecessor corporation, to the particular manufacturer concerned, a nonexclusive license, for the life of the patents and all reissues thereof, etc., and for a specified portion of the United States, to make and sell Ad-Seal-It identification bands, the licensee obligating itself to sell said bands at prices and terms fixed by the corporation, to designate bands produced and sold by it by said trade-mark, and to pay a royalty ranging from 10 to 15 percent on its gross sales thereof, and the corporation having the right to inspect records and accounts relating to the sales of said bands;
- (b) Following the dissolution of his said predecessor corporation on or about December 29, 1938, entered into new agreements (to continue until March 15, 1949) with said manufacturers east of the Rockies, which—reciting that said individual's patents related to an improved bread package, that he was engaged in the business of making and selling to the baking trade certain legend-bearing bands to be used by the bakers in practicing his patents, and that he was then using the trade-mark Ad-Seal-It on the bands sold to bakers—purported also to grant nonexclusive licenses to such manufacturers to make and sell such outserts and inserts to the baking trade, together with the right to issue sublicenses to customers of the licensee, who undertook not to sell bands elsewhere than in the described territory; to cause

an individual, trading under the name and style of Package Advertising Co., hereinafter referred to as respondent, has violated the provisions of section 5 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. Bread as manufactured by most of the bakers in the United States is wrapped in printed waxed paper. However a

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- all the bands made and sold by it to bear said trade-mark; to pay said individual a royalty of 10 percent of the invoice price of all bands made and sold by it under the agreement; to sell bands thus made at prices not less than those established by said individual, to furnish him duplicates of all invoices, and to open its records and accounts for his inspection; to have printed on bands made use of by it a patent notice and said trade-mark; and to pay to said individual by way of liquidated damages a specified sum in the event of failure to sell the bands at the price established by him, or to supply him with duplicate invoices;
- (c) Entered, through his said predecessor corporation, into an agreement dated September 22, 1931, with W, a California corporation, which, reciting that

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bread in cellophane or clear waxed glassine wrappers without any printed design thereon. When bread is sold in such transparent wrappers it is necessary for the baker to wrap around the loaf either under (an insert) or over (an outsert) a printed waxed paper band varying in width from 2 to 4 inches of one or more colors to designate the kind of bread, the name of the baker, net weight, ingredients, and other advertising matter.

Respondent Henry J. Taylor, an individual, trading under the name and style of Package Advertising Co., with his office located at 230 Park Avenue, New York, N. Y., is now; and for more than 3 years last past, has been engaged in the manufacture and sale of waxed-paper bands known as "Ad-Seal-It," both inserts and outserts used as part of the wrapper or package for bread and cake. Said respondent is the owner of two patents, one of said patents covers the method of applying an advertising medium to bakers' products (Patent No. 1,818,923 issued August 11, 1931) which embodies a process of fusing a small strip or band of waxed paper to a larger sheet of wrapping material by means of heat "Simultaneously enveloping a bread loaf in the wrapping material." The other patent (Patent No. 1,849,774 issued March 15, 1932) is a combination patent covering the package resulting from the use of the said method patent. All of the claims for the said combination patent are for "an improved bread package herein described, comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper encircling said loaf."

Said respondent in the course and conduct of his said business for more than 3 years last past has advertised and sold his said bands to bakers for enveloping loaves of bread and cakes and the said bands were placed by said bakers around the loaves of bread or packages of cake either by hand or by automatic bread and cake wrapping machines, of which there are a number on the market equipped to make application of heat to bread and cake wrappers for sealing.

Said respondent is in competition with other manufacturers of printed bands used in wrapping bread and cake and selling the same in interstate commerce to bakers located throughout the several States of the United States.

PAR. 2. Said respondent in the course and conduct of his said business has entered into so-called license agreements with the principal manufacturers of waxed paper located throughout the several States of the United States as follows:

American Tissue Mills, Holyoke, Mass.  
 Badger Paper Mills, Inc., Peshtigo, Wis.  
 Central Waxed Paper Co., Chicago, Ill.  
 Cleveland Wax Paper Co., Cleveland, Ohio.  
 Detroit Wax Paper Co., River Rouge, Mich.  
 Dixie Wax Paper Co., Dallas, Tex.  
 Dixie Wax Paper Co., Memphis, Tenn.  
 Forbes Lithograph Manufacturing Co., Boston, Mass.  
 Henle Wax Paper Co., New York, N. Y.  
 Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich.  
 KVP Co. of Texas, Houston, Tex.  
 Menasha Products Co., Menasha, Wis.  
 Mid-West Wax Paper Co., Fort Madison, Iowa.  
 Milprint Products Corp., Milwaukee, Wisc.  
 Minerva Wax Paper Co., Minerva, Ohio.  
 Nashua Gummed & Coated Paper Co., Nashua, N. H.  
 Newark Paraffine & Parchment Paper Co., Newark, N. J.  
 Ohio Wax Paper Co., Columbus, Ohio.  
 Pittsburgh Wax Paper Co., Pittsburgh, Pa.  
 Pollock Paper & Box Co., Dallas, Tex.  
 Port Huron Sulphite & Paper Co., Port Huron, Mich.  
 Rapinwax Paper Co., Chicago, Ill.  
 Riegel Paper Corp., New York, N. Y.  
 Rudolph, L. A. Waxed Paper Corp., New York, N. Y.  
 Safetee Glassite Paper Co., Philadelphia, Pa.  
 Saniwax Paper Co., Kalamazoo, Mich.  
 Scuthern Wax Paper Co., Atlanta, Ga.  
 Specialty Papers Co., Dayton, Ohio.  
 Waterproof Paper & Board Co., Cincinnati, Ohio.  
 Wax Paper Products Co., Omaha, Nebr.  
 Waxed Paper Co., Long Island City, N. Y.  
 Waxide Paper Co., Kansas City, Mo.  
 Waxide Paper Co., St. Louis, Mo.  
 West Carrollton Parchment Co., West Carrollton, Ohio.  
 Zimmer Paper Products Co., Indianapolis, Ind.

Said license agreements purport to grant the foregoing named waxed-paper manufacturers a nonexclusive license, until March 15, 1949, to make and sell under the aforesaid patents inserts and outserts to the baking trade to be used by the bakers and the manufacturers of bread packages and similar packages embodying, employing, and con-

taining the inventions disclosed in said patents throughout that part of the United States of America situated east and not including Montana; Wyoming; Denver, Colo.; Santa Fe, N. Mex.; and El Paso, Tex.

Said license agreements also purport to grant to said licensees the right to issue sublicenses to bakers purchasing said inserts and outserts to use the same in their plants located in that part of the United States covered by the license, in practicing the methods of said patent No. 1,818,923 and to produce packages of bread and similar products embodying the invention of patent 1,849,714.

Said license agreements also purport to grant the said licensees the right to use the trade-mark "Ad-Seal-It" in connection with their manufacturing and selling operations under the said license agreement and in a manner approved by said respondent, including the right to grant permission to any of its customers, purchasing the inserts and outserts manufactured and sold by said licensees under the said license agreement, to sell or otherwise distribute the packages bearing the said trade-mark and to use such trade-mark in their sales promotion as pointing to the package made under the said patents.

Under the terms of said license agreements said licensees were prohibited from selling said inserts and outserts manufactured by them under said license and adopted to be used in practicing the method of said patent No. 1,818,923 to produce the products covered by patent No. 1,849,774 at prices less than those established by said respondent and as set forth in price lists attached to the said license agreements.

It was also provided in the said license agreements that the said licensees should pay to the respondent by way of a royalty a sum equal to 10 percent of the invoice price of all inserts and outserts manufactured and sold by said licensee under the said license agreements.

It was also provided in said license agreements that in the event the licensees should fail to sell any of the said inserts or outserts under the provisions thereof at the prices currently established by said respondent said licensee shall pay to said respondent by way of liquidated damages on all such inserts or outserts so sold a sum equal to 20 percent of the sum that should have been paid for such inserts or outserts had they been sold at said respondent's established prices.

It was also provided in said license agreements that said respondent, with a view to facilitating its operations and the operations of its licensees, would carry in stock ready for immediate shipment to the customer, various ready-to-use rolls of "Ad-Seal-It" inserts and outserts and agree to maintain a stock of such rolls sufficient to meet the reasonable demands of its said licensees for small or emergency lots and to fill any orders from the licensee for items from such stock at

respondent's prevailing price allowing said licensee a selling commission of 15 percent of the invoice price for all rolls so ordered.

PAR. 3. On or about September 22, 1931, the "Ad-Seal-It" Corp., a New York corporation owned by respondent, entered into a so-called license agreement followed by an addendum dated October 23, 1931, with the Western Waxed Paper Co., a California corporation now a division of Crown Zellerbach Corp., of San Francisco, Calif., engaged in the business of manufacturing bread wrappers at Los Angeles and Oakland, Calif., and Portland, Oreg., purporting to grant unto said licensee the exclusive right to make, use, and sell in that portion of the United States situated west of Montana, Wyoming, Denver, Colo., Santa Fe, N. Mex., and El Paso, Tex., its "Adsealit" advertisements consisting of waxed paper bands used by bakers as inserts and outserts for wrapping bread according to said patents owned by said respondent. Pursuant to said agreement said licensor granted to said licensee permission to use and identify its activities by the use of the name "Adsealit" and all emblems and slogans and trade-mark characters used by said licensor in connection with its manufacture and sales promotion of "Adsealit" advertisements to the baking industry and to use copyrighted designs now owned or acquired from time to time by said licensor. Said licensor further agreed in said license agreement to refrain from operations in the territory described therein with reference to "Adsealit" advertisements.

Said license agreement remains in full force and effect for a period of 25 years from the date thereof or until at any time when the said licensee shall have sold less than \$25,000 worth of "Adsealit" advertisements during any one year. Said license agreement further provides that said licensee should pay the licensor as a royalty 10 percent of the gross value of each invoice wherein the price per pound is 12 cents or over; a royalty of 7½ percent of a gross value of each invoice wherein the price per pound is 11 to 12 cents per pound; and a royalty of 5 percent of a gross value of each invoice wherein the price is 10 cents per pound or under; and that invoices are to be rendered by said licensees to said licensor currently and said licensor shall have the right and privilege to inspect the manufacturing operations of said licensee, its records and accounts of sale.

PAR. 4. On or about April 13, 1936, the Package Advertising Corp., owned by respondent, entered into a so-called license agreement with the said Western Waxed Paper Co., division of Crown Zellerbach Corp. purporting to grant to said licensee a nonexclusive license for that portion of the United States situated east of Montana, Wyoming, Denver, Colo., Santa Fe, N. Mex., and El Paso, Tex., but not for Cook

prices, and competitors of the respondent and of its said licensees have been prevented from selling printed bands or inserts and outserts employed in conjunction with transparent bread wrappers in substantial quantities to said bakers and said respondent is thereby obtaining a monopoly in the interstate sale and distribution of printed waxed paper bands or inserts and outserts employed by bakers in conjunction with transparent bread wrappers.

PAR. 8. The acts and practices of the said respondent, as herein

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County, Ill., to make and sell "Ad-Seal-It" and to license the purchasers to use said "Ad-Seal-It" bands. Under the terms of said license agreement said licensor proposed to grant to said licensee the right to use the name "Ad-Seal-It" upon advertising bands made and sold by said licensee expressly at the licensor's prices and terms. Said licensee agreed to compensate said licensor in the amount of 15 percent of each invoice up to and including 750 rolls of 3,000 feet, 12½ percent on each invoice up to and including 1,000 rolls of 3,000 feet, 10 percent on each invoice for more than 1,000 rolls of 3,000 feet.

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dangerous tendency to and have actually hindered or prevented competition in the sale of printed waxed-paper bands employed as inserts and outserts in conjunction with transparent bread wrappers in commerce, within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in said product; have a dangerous tendency to create in respondent a monopoly in the sale of said product; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 21, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, Henry J. Taylor, an individual trading under the name and style of The Package Advertising Co., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of the respondent's answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners 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, the respondent's answer, testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto, briefs in support of and in opposition to the allegations of the complaint, and oral argument of counsel; 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 respondent, Henry J. Taylor, is an individual, doing business under the name and style of The Package Advertising Co., with his office and principal place of business located at 230 Park Avenue, New York, N. Y., and is now, and for more than 3 years last past has been, engaged in the manufacture and sale of waxed-paper bands under the trade-mark "Ad-Seal-It" which are used as inserts

other bakery products. Respondent does not own, and has not owned, any patent rights to the bands manufactured and sold by him.

PAR. 2. Respondent, in the course and conduct of his aforesaid business, is in competition with other manufacturers of printed waxed-paper bands used as inserts and outserts by bakers in connection with the wrapping of bread and other bakery products, insofar as such competition has not been lessened or eliminated through respondent's agreements with various waxed paper manufacturers, and the acts and practices done and performed pursuant thereto, as hereinafter set out.

PAR. 3. Respondent has caused and now causes his products, when sold, to be shipped from the place of origin in New York to customers located in various States of the United States east of the Rocky Mountains, and has entered into agreements and understandings tending to fix, establish, and maintain the prices, terms, and conditions of sale at which, and to specify, designate, describe, and limit the territories in which, other manufacturers of printed waxed-paper bands have sold and now sell said products in interstate commerce, and is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent was the owner of two patents, one of which covered a method of applying an advertising medium to bakery products (Patent No. 1,818,923, issued August 11, 1931) and which embodied a process of fusing a small strip or band of waxed paper to a larger sheet of wrapping material by means of heat, "simultaneously enveloping a bread loaf in the wrapping material." The other patent (Patent No. 1,849,774, issued March 15, 1932) was a combination patent covering the package resulting from the use of the method patent for an improved bread package "comprising a wrapper of waxed paper enveloping a loaf of bread" and "a narrow band of legend-bearing waxed paper encircling said loaf and said wrapper."

PAR. 5. Respondent has continuously owned or controlled the trade-mark Ad-Seal-It since 1926, and said trade-mark was registered in the United States Patent Office as trade-mark No. 411,576, on January 23, 1945, "for adhesive and nonadhesive bands adapted to be used by the baker around bread and carrying identifying or advertising printed matter."

PAR. 6. There are more than 3,000 wholesale bakers in the United States using automatic bread wrapping machines and many smaller bakers using semiautomatic or hand-operated wrapping machines. Many bakers wrap their bread and other products in cellophane or transparent waxed-paper wrappers. In connection with these trans-

parent wrappers bakers sometimes use a printed waxed-paper band varying in width from 1½ to 4 inches, and occasionally wider, which is wrapped around the loaf of bread or other bakery product, either under the wrapper as an insert or over the wrapper as an outsert. This band is used as an advertising medium to designate the product wrapped, the name of the baker, or to furnish other informative or advertising matter to buyers and prospective buyers. Printed waxed-paper bands such as Ad-Seal-It bands are used in conjunction with the wrapping of bread by the automatic bread-wrapping machines by placing a roll of bands on a shaft or spindle in juxtaposition to a roll of wrapping paper. The band is fed into the machines along with the wrapping paper and simultaneously cut to the required length. The ends of the wrapper and the band are simultaneously heated and sealed by a heating device on the machine.

PAR. 7. Respondent acquired control of The Adsealit Corp., a New York corporation, in 1926. The name of The Adsealit Corp. was changed to The Package Advertising Corp. on or about August 8, 1933. From 1926 until its dissolution on or about December 29, 1938, respondent was president of, sole owner of, and dominating factor in the corporation. Upon dissolution of The Package Advertising Corp. respondent took over and assumed all of its rights and obligations, including the several agreements with waxed-paper manufacturers hereinafter described and all rights and interest in and to the trade-mark Ad-Seal-It and the good will of the business in which the trade-mark had been used.

PAR. 8. In the course and conduct of his business respondent from time to time entered into agreements with the following manufacturers of waxed paper, who constitute the principal manufacturers of such product located in that part of the United States situated east of the Rocky Mountains, purporting to grant to the waxed paper manufacturers the right to make and sell Ad-Seal-It bands:

- American Tissue Mills, Holyoke, Mass.
- Badger Paper Mills, Inc., Peshtigo, Wis.
- Central Waxed Paper Co., Chicago, Ill.
- Dixie Wax Paper Co., Dallas, Tex.
- Fabricon Products, Inc. (formerly Detroit Wax Paper Co.), River Rouge, Mich.
- Fabricon Products, Inc., of Ohio (formerly Cleveland Wax Paper Co.), Cleveland, Ohio.
- Fabricon Products, Inc., of Pennsylvania (formerly Pittsburgh Wax Paper Co.), Pittsburgh, Pa.

Fabricon Products, Inc., of Pennsylvania (formerly Safetee Glassite Paper Co.), Philadelphia, Pa.  
 Fabricon Products, Inc., of Connecticut (formerly Waxed Paper Co.), Bridgeport, Conn.  
 Forbes Lithograph Manufacturing Co., Boston, Mass.  
 Henle Wax Paper Co., New York, N. Y.  
 Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich.  
 K-V-P Co., of Texas, Houston, Tex.  
 Marathon Corp., Menasha, Wis.  
 Mid-West Wax Paper Co., Fort Madison, Iowa.  
 Milprint Products Corp., Milwaukee, Wis.  
 Minerva Wax Paper Co., Minerva, Ohio.  
 Nashua Gummed & Coated Paper Co., Nashua, N. H.  
 Newark Paraffin & Parchment Paper Co., Newark, N. J.  
 Pollock Paper & Box Co., Dallas, Tex.  
 Port Huron Sulphite & Paper Co., Port Huron, Mich.  
 Rapinwax Paper Co., Minneapolis, Minn.  
 Reigel Paper Corp., New York, N. Y.  
 Saniwax Paper Co., Kalamazoo, Mich.  
 Shellmar Products Co., Chicago, Ill.  
 Southern Wax Paper Co., Atlanta, Ga.  
 Specialty Papers Co., Dayton, Ohio.  
 Traver Manufacturing Co., Chicago, Ill.  
 Ohio Wax Paper Co., Columbus, Ohio.  
 Waterproof Paper & Board Co. of Ohio, Cincinnati, Ohio.  
 Wax Paper Products Co., Omaha, Nebr.  
 Waxide Paper Co., Kansas City, Mo.  
 West Carrollton Parchment Co., West Carrollton, Ohio.  
 Zimmer Paper Products Co., Indianapolis, Ind.

PAR. 9. Said agreements between respondent's predecessor corporation and the several waxed-paper manufacturers, made prior to January 1939, recited that The Adsealit Corp. owned or controlled "certain inventions covering Adsealit and the method of its application and Letters Patent of the United States Nos. 1,818,923 and 1,849,774 thereon," and also owned trade-marks and/or other rights in the word "Adsealit" as applied to and used in connection with the sale of its materials and services, and provided, in part:

(a) That the licensee would have the right and nonexclusive license, for a specified portion of the United States, to make and sell Adsealit identification bands;

(b) That the licensee would have the right to use the name "Adsealit" upon the Adsealit identification bands made and sold by it

under the agreement at Adsealit's prices and terms; and that the licensee would designate all such bands produced and sold by it by said trade-mark;

(c) That the licensee would pay a royalty ranging from 10 to 15 percent on its gross sales of Adsealit bands;

(d) That Adsealit would have the right to inspect records and accounts relating to the sales of Adsealit bands; and

(e) That the agreement would continue until the expiration of the last of the patents and of all re-issues, divisions, extensions, and continuations of either of the patents.

PAR. 10. Following the dissolution of respondent's predecessor corporation, respondent entered into new agreements with the principal waxed-paper manufacturers in that part of the United States situated east of the Rocky Mountains, which new agreements, while different from the earlier agreements in some respects, also purported to grant nonexclusive licenses to the waxed-paper manufacturers to make and sell outserts and inserts to the baking trade. Said new agreements recited that respondent's patents related to an improved bread package; that respondent was engaged in the business of manufacturing and selling to the baking trade certain legend-bearing bands to be used by the bakers in practicing respondent's patents; that respondent had previously adopted and used, and was then using, the trade-mark "Ad-Seal-It" on the bands sold by it to bakers; and provided, in part:

(a) That the agreement would continue in effect until March 15, 1949;

(b) That the licensee would have the nonexclusive right and license under respondent's patents to make and sell outserts and inserts to the baking trade in a specified portion of the United States, and that the licensee would not sell said bands elsewhere than in the described territory;

(c) That the licensee would have the right to issue sublicenses to its customers to use the bands in practicing the invention covered by respondent's patents;

(d) That the licensee would have the right to use the trade-mark "Ad-Seal-It" in connection with its manufacturing and selling operations under the agreement and that the licensee would cause all the bands manufactured and sold by it to bear said trade-mark;

(e) That the licensee would pay respondent a royalty of 10 percent of the invoice price of all bands manufactured and sold by it under the agreement;

- (f) That the licensee would not sell bands manufactured under the agreement at prices less than those established by respondent;
- (g) That the licensee would furnish respondent with duplicates of all invoices of its billings for bands and that respondent might cause an inspection of the licensee's records and accounts;
- (h) That all packages employing or embodying the invention of respondent's patents having incorporated therein bands manufactured by the licensee would have printed thereon a patent notice and bear the trade-mark "Ad-Seal-It"; and
- (i) That the licensee would pay to respondent by way of liquidated damages a specified sum in the event of failure to sell the bands at the prices established by respondent or of failure to supply respondent with duplicate invoices.

PAR. 11. Respondents' predecessor corporation, The Adsealit Corp., entered into an agreement with Western Waxed Paper Co., a California corporation which is now a division of Crown-Zellerbach Corp. of San Francisco, dated September 22, 1931. Said agreement recited that respondent "owns or controls certain inventions covering the said Adsealit advertising and the method of its application, and Letters Patent of the United States No. 1,818,923 issued August 11, 1931, thereon" and "owns trade-mark and/or other priority rights in the word 'Adsealit'"; and provided, in part:

- (a) That Western would have the exclusive right to make, use, and sell Adsealit advertisements in the States of California, Oregon, Washington, Idaho, Utah, Nevada, Arizona, and Montana;
- (b) That Western would have the right to use the name "Adsealit" upon the Adsealit advertisements manufactured and/or used and/or sold by Western pursuant to the agreement;
- (c) That Adsealit would refrain from operations in the above-named States with reference to Adsealit advertisements;
- (d) That Western would pay to Adsealit  $16\frac{3}{4}$  percent of its gross sales of Adsealit advertisements;
- (e) That Western would supply Adsealit with duplicate invoices of all sales of Adsealit advertisements and that Adsealit would have the right to inspect the manufacturing operations of Western concerning Adsealit advertising and its records and accounts relating to same; and

(f) That the agreement was to continue for a period of 25 years from the date thereof unless terminated as provided therein.

By an addendum dated October 23, 1931, to the aforesaid agreement, the territory in which Western was granted the exclusive right

to make, use, and sell Adsealit advertisements was expanded and the basis for calculating the royalty payments was changed.

PAR. 12. Respondent's predecessor corporation, The Package Advertising Corp., entered into an agreement with Western Waxed Paper Co., dated September 23, 1936, supplemental to the aforesaid agreement dated September 22, 1931, which provided among other things that The Package Advertising Corp. would protect Western Waxed Paper Co. from invasion of its exclusive territory by any other manufacturer of said "patented bands," whether made by another licensee of respondent or otherwise. It was agreed that in the event of discovery by Western of the presence of any of said "patented bands," other than those sold by Western, in its exclusive territory and if, after giving notice to respondent, the matter was not cleared up, Western could impound all royalties due respondent until respondent eliminated all "outlaw bands" from Western's exclusive territory.

PAR. 13. Respondent's predecessor corporation, The Package Advertising Corp., entered into an agreement with Western Waxed Paper Co. on April 13, 1936, purporting to grant to Western a non-exclusive license to make and sell Ad-Seal-It bands in that territory of the United States situated east of the Rocky Mountains and to sublicense the purchasers thereof to use said bands. The terms of this agreement were substantially the same as those of the other non-exclusive license agreements between respondent and the various waxed-paper manufacturers hereinbefore described.

PAR. 14. Under the provisions of the aforesaid license agreements, licensees of respondents were required to, and did generally, have printed on bands manufactured by them respondent's trade-mark "Ad-Seal-It," the numbers of respondent's patents, and the name of the manufacturer. For example, bands manufactured by Waxide Paper Co. bore the following:

"AD-SEAL-IT"—Patented (1,818,923 & 1,849,774) Mfd. by Waxide Paper Co., St. Louis, Mo."

PAR. 15. Respondent, in the course and conduct of his said business and in accordance with the provisions of the agreements hereinbefore described, established uniform delivered prices at which his nonexclusive licensees were required to sell, and did sell, printed waxed-paper bands to bakers. That part of the United States in which the so-called nonexclusive licensees were engaged in selling Ad-Seal-It bands was divided into three zones, which were referred to as zones 1, 2, and 2-A, respectively. These zones were the same in geographical scope as those used in the waxed-paper industry. Zone 1 comprised that ter-

ritory located within the Northeastern section of the United States extending west and including both banks of the Mississippi River and bounded on the south by the northern line of the State of Kentucky and the southern line of the State of Virginia. Zone 2 consisted of the States of North Carolina and Tennessee and included also that area located north of the States of Arkansas and Oklahoma and west of the Mississippi River to the western boundaries of the States of South Dakota and Nebraska and then on a direct line extending south through the State of Colorado to its southern boundaries. Zone 2-A comprised all those States east of the Rocky Mountains not included in zones 1 and 2.

The remainder of the United States was the exclusive territory of Western Waxed Paper Co. pursuant to the agreements between respondent and Western hereinbefore described. Respondent, however, did not fix or establish the prices at which the said Western sold Ad-Seal-It bands in its exclusive territory.

PAR. 16. The provisions of the nonexclusive license agreements which required that the licensees sell Ad-Seal-It bands at prices not lower than those established and fixed by respondent were enforced. Instances of variations between the prices quoted and charged by any licensee and the prices established by respondent were immediately brought to the attention of the licensee involved. Such instances were generally due to mistakes in billing which were subsequently corrected by the licensee involved, with appropriate adjustments thereafter being made. There were occasions when some licensees established additional quantity brackets for Ad-Seal-It bands, but the prices applicable thereto were higher than those established by respondent for the next largest quantity bracket.

PAR. 17. In accordance with the provisions of the agreements hereinbefore described, the licensees under the agreements were required to and did furnish respondent with duplicates of invoices covering sales of Ad-Seal-It bands. Also, said licensees were required to and did furnish to respondent a monthly statement of their sales of Ad-Seal-It bands, and remitted monthly payments to respondent to cover the amount of royalties due. Respondent employed auditors to check the records of the various licensees from time to time to determine whether the amounts of royalties reported and paid by the licensees were correct.

From the year 1931 through 1945 the licensees of respondent paid in the aggregate approximately \$1,300,000 in royalties pursuant to the provisions of the license agreements.

PAR. 18. In accordance with the provisions of the exclusive license agreement with Western Waxed Paper Co., respondent endeavored to prevent, and did prevent, invasion of Western's exclusive territory upon being advised of the shipments by others of bands into such territory. In 1936 respondent began litigation against the Ohio Wax Paper Co. for breach of its license agreement by having made shipments of bands into Western's exclusive territory. In 1937 a consent decree was entered by which Ohio Wax Paper Co. was enjoined from shipping bands outside the territory defined in the agreement. The Specialty Papers Co., in 1937, also discontinued the shipment of printed waxed-paper bands into the exclusive territory granted to Western at the insistence of respondent and made a payment to cover royalties due upon the sale of such bands which had been shipped to the Langendorf United Bakeries, Inc. The bands sold and shipped by Ohio Wax Paper Co. and Specialty Papers Co. to the Langendorf United Bakeries, Inc., were not referred to as Ad-Seal-It bands but were used for the same purposes as Ad-Seal-It bands and were identical with such bands with the exception that they did not bear the trade-mark "Ad-Seal-It."

Other instances of the sale and shipment of printed waxed-paper bands into the exclusive territory of Western were brought to respondent's attention for corrective action. For example, the Pacific Waxed Paper Co., Seattle, Wash., manufactured printed waxed paper bands for sale to bakers located in the exclusive territory granted to Western. Bakers who were customers of the Pacific Waxed Paper Co. were contacted by respondent and advised that they were infringing upon respondent's patent rights by using bands purchased from unlicensed sources. In March 1936, Pacific Waxed Paper Co., after being advised by bakers of respondent's warnings, entered into an agreement with Western Waxed Paper Co. which provided that Western would grant to Pacific the right to make, use, and sell Ad-Seal-It bands in Western's exclusive territory at prices established by Western.

PAR. 19. The prices fixed and established by respondent at which nonexclusive licensees were required to sell, and did sell, printed waxed-paper bands to bakers were substantially higher than the prices charged by waxed-paper manufacturers who were not licensees of respondent for bands sold to bakers and used for similar purposes as Ad-Seal-It bands.

The American Bread Wrapper Co. began producing and selling printed waxed-paper bands about 1921 and continued until about 1938, when its operations ceased. The bands manufactured and

sold by American Bread Wrapper Co. were used for similar purposes as the bands known as Ad-Seal-It bands. The American Bread Wrapper Co. never entered into a license agreement under respondent's patents although such a license was offered to the company. Among the customers of American Bread Wrapper Co. who bought printed waxed-paper bands was Ward Baking Co. The prices at which American Bread Wrapper Co. sold bands to Ward Baking Co. were lower than the prices established by respondent for Ad-Seal-It bands.

The General Waxed Papers, Inc., of Chicago, manufactured and sold narrow printed waxed bands which it referred to as "narrow bread wrappers" in competition with Ad-Seal-It bands. This company never entered into a license agreement with respondent, although such a license was offered to the company by respondent with the assurance that uniform prices would be maintained. General Wax priced and sold its narrow bread wrappers on a hundredweight basis in the same manner as wide bread wrappers. The prices at which General Wax sold its narrow bread wrappers were substantially less than the prices established by respondent for Ad-Seal-It bands.

PAR. 20. The Waxide Paper Co., St. Louis, Mo., a licensee of respondent, sold printed waxed paper bands to Petersen Baking Co., Omaha, Nebr., as early as 1929. Prior to about 1939 or 1940, the bands sold by Waxide to Petersen Baking Co. were sold on a hundred-weight basis. Such bands were not called Ad-Seal-It bands but were used for the same purpose as Ad-Seal-It bands. In 1939 or 1940, Waxide began selling bands to Petersen Baking Co. at the prices established by respondent, which prices were substantially higher than those previously charged by Waxide on a hundredweight basis.

PAR. 21. The Kalamazoo Vegetable Parchment Co., Kalamazoo, Mich., entered into a license agreement with respondent on May 17, 1933. The company had been manufacturing and selling printed waxed-paper bands prior to entering into the aforesaid agreement with respondent. Such bands were used by bakers for the same purposes as Ad-Seal-It bands, although they were not called Ad-Seal-It bands. After becoming a licensee of respondent, Kalamazoo began selling Ad-Seal-It bands at the prices established by respondent, which were from 5 to 24 cents per pound or from 33 to 131 percent more than those charged prior to becoming a licensee.

PAR. 22. Some manufacturers of printed waxed-paper bands entered into the aforesaid agreements with respondent as a result of threats of patent-infringement suits. Others of such manufacturers entered into the said agreements with respondent because of induce-

ments in the form of a higher and uniform price structure on Ad-Seal-It bands. The Ohio Wax Paper Co., for example, was informed by respondent that it could not make and sell printed waxed-paper bands without infringing upon respondent's patents and Ohio Wax Paper Co. was offered a license to make and sell such bands. Ohio Wax Paper Co. at first refused but later entered into a license agreement with respondent after some of its competitors had suggested that it do so because respondent was going to maintain a good price on the bands. Respondent's promise of price uniformity and price maintenance was the main reason why Ohio Wax Paper Co. entered into the agreement with respondent.

The Detroit Wax Paper Co. became a licensee of respondent on December 1, 1931, after having been informed by respondent of the existence of his patents and of the necessity of the company becoming a licensee so as to avoid liability for infringement. Subsequently, certain differences arose between Detroit Wax and respondent and Detroit refrained from paying royalties to respondent, contending that the patents on which the royalty payments were based were invalid. Detroit Wax Paper Co. continued manufacturing and selling printed waxed-paper bands during a period of about 2 years. On May 15, 1939, respondent and Detroit Wax Paper Co. entered into a new license agreement. In July 1939 a mutual release was executed between respondent and Detroit Wax in full satisfaction of all differences between the parties, but Detroit Wax refused to pay any royalties on the bands manufactured during the aforesaid 2-year period. Detroit Wax considered it more economical to enter into the license agreement and execute the release than to further challenge respondent's patents.

PAR. 23. None of the licensees under the aforesaid agreements have ever used the methods covered by respondent's patents, nor have any of such licensees ever granted an oral or written sublicense to anyone to use such methods in the packaging of bread and other bakery products. The licensees were generally aware of the existence of respondent's patents but were unfamiliar with the nature of the patents.

PAR. 24. As a result of the uniform minimum prices, terms, and conditions of sale established and maintained by respondent, as aforesaid, price competition among and between respondent and other manufacturers of printed waxed paper bands has been substantially eliminated, and as a result of the territorial restrictions imposed by respondent upon his licensees, as aforesaid, manufacturers of printed waxed-paper bands have been prevented from selling said product in

the exclusive territory of Western Waxed Paper Co., the consequence of all of which is to tend to create a monopoly in respondent in the interstate sale and distribution of unpatented printed waxed-paper bands.

PAR. 25. The Commission finds that the acts and practices of respondent of coercing, persuading, inducing, or otherwise causing other manufacturers of printed waxed-paper bands, an unpatented product, to enter into the aforesaid license agreements purporting to grant to said other manufacturers of printed waxed-paper bands a license to make and sell printed waxed-paper bands to be used in practicing respondent's invention and the right to use respondent's trade-mark "Ad-Seal-It," and the acts and practices of respondent done and performed in furtherance of and pursuant to said license agreements of fixing, establishing, and maintaining the prices, terms, and conditions of sale at which, and of designating, limiting, and controlling the territories in which, said other manufacturers of printed waxed-paper bands might sell same, all have a tendency and capacity to restrain, restrict, suppress, and eliminate competition in the interstate sale and distribution of said product.

#### CONCLUSION

The aforesaid acts and practices of respondent constitute unfair methods of competition 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, answer of the respondent, 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, recommended decision of the trial examiner and exceptions filed thereto, briefs, and oral argument of counsel, 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 the respondent, Henry J. Taylor, individually, and trading under the name and style of The Package Advertising Co., or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of printed waxed-paper bands, or any similar product, to be used as inserts or outserts in connection

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with the wrapping of bread or other bakery products, do forthwith cease and desist from coercing, persuading, inducing, or otherwise causing other manufacturers, or distributors of printed waxed-paper bands to enter into, continue, cooperate in, or carry out, any agreement or understanding with respondent, whether or not based upon respondent's patents and trade-mark, for the purpose, or with the effect, of fixing, establishing, or maintaining the price or terms or conditions of sale at which, or designating, limiting or controlling the territory the territory within which, sales of printed waxed-paper bands not manufactured or sold by respondent shall be made.

*It is further ordered,* That 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.