

Charge: Carrying out and engaging in an unlawful understanding, agreement, combination and conspiracy to unduly suppress, stifle, and restrict competition between and among respondents and to restrain trade and create a monopoly in the interstate sale and distribution of traffic signals and traffic signal equipment, through acts and practices including standardization of product, sale thereof at identical delivered prices concertedly established, submission of uniform bids, and inducing specifications designed to exclude competitive products.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations hereinafter named and described and referred to as respondents have violated the provisions of section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Crouse-Hinds Co. is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Seventh, North and Wolf Streets, Syracuse, N. Y.

The respondent General Electric Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Schenectady, N. Y.

The respondent Eagle Signal Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Moline, Ill.

The respondent Signal Service Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at Elizabeth, N. J.

The respondent Automatic Signal Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at East Norwalk, Conn.

The respondent Horni Signal Manufacturing Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 515 Greenwich Street, New York, N. Y.

PAR. 2. All of the respondents herein named have been for the past several years engaged in manufacturing traffic signals, traffic signal equipment and fittings, and all of said respondents, both in their corporate capacity and through various agencies, have been for more

than 5 years last past engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of traffic signals, traffic signal equipment and fittings, and caused said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

PAR. 3. The said respondents now constitute, and have during all the times herein mentioned constituted, substantially all of the manufacturers of traffic signals and traffic signal equipment and fittings. The said respondents do now and have for the past several years manufactured and sold approximately 90 percent of all the traffic signals and traffic signal equipment and fittings sold in the United States. Prior to the adoption of the practices herein alleged said respondents were in active and substantial competition with each other and with other members of the industry, and but for the acts herein alleged said respondents would now be in active and substantial competition with each other and with other members of the industry.

Traffic signals and traffic signal equipment and fittings are used extensively throughout the United States and are bought by private firms, Federal Government agencies, State agencies, and municipalities, and because of the substantial quantity and because of existing laws and regulations, the different governmental agencies purchase said products by the method of invitation for bids from the different manufacturers and from the bids submitted select the member of the industry from whom the purchase will be made.

PAR. 4. Said respondents, for more than 3 years last past, have carried out and are now engaged in, an unlawful understanding, agreement, combination, and conspiracy to unduly suppress, stifle, and restrict competition between and among said respondents and to restrain trade and create a monopoly, in the interstate sale and distribution of traffic signals and traffic signal equipment in the States and territories of the United States and in the District of Columbia.

Pursuant to said understanding, agreement, combination, and conspiracy, said respondents have cooperatively adopted, performed, and carried out the following, among other collusive competitive methods, practices and acts:

(a) Agreed on identical delivered prices to be charged for said products, said prices to be the same to all purchasers throughout the United States irrespective of the cost of transportation and the place of shipment or delivery, and have consistently sold and delivered said products at said prices.

(b) Arbitrarily computed or averaged the delivery costs throughout the United States in order to provide a common freight factor in said identical delivered prices and to prevent differences in delivery

costs from various places of production to various places of delivery causing differences in respondents' delivered prices.

(c) Agreed on discounts to be allowed dealers in and purchasers of traffic signals and traffic signal equipment and fittings, and have consistently allowed said discounts.

(d) At meetings held and through correspondence and by personal contact, have collaborated and advised with one another in compiling and publishing price lists and catalogs in which identical delivered prices of said products and discounts to be allowed were quoted, and have through the cooperative methods above described, compiled, published, and circulated to the purchasing public price lists and catalogs containing said identical delivered prices and discounts, with the understanding or agreement that said prices and discounts would be adhered to and where price and discount changes were contemplated respondents would give to each other advance notice of the contemplated changes.

(e) Respondents have required their respective distributors to bid and adhere to the published delivered prices which were agreed upon among respondents as herein alleged.

(f) Said respondents have, during the years 1938, 1939, 1940, and 1941, submitted numerous bids to Federal agencies, State agencies, and municipalities to furnish traffic signals and traffic signal equipment and fittings in which bids they and each of them have quoted prices and discounts identical in every particular. Typical examples of the numerous bids of that character submitted are the following:

The bids submitted to the State of Massachusetts, December 27, 1938, in which respondents Crouse-Hinds, General Electric, and Eagle Signal bid on one-way three-color signal, \$34.93; one-way four-color signal, \$44.29; one-way slip fitter, \$5.52, and four-way slip fitter, \$6.50.

The bid submitted to the city of Pittsburgh dated June 3, 1939, in which the bids of Crouse-Hinds and General Electric were identical on one article and the bids of Crouse-Hinds, General Electric, Eagle Signal, and Signal Service were identical on two items.

The bid submitted to the State of Massachusetts dated June 27, 1939, in which Crouse-Hinds, General Electric, and Eagle Signal submitted identical bids on one article and Crouse-Hinds and General Electric submitted identical bids on one other article.

The bids to the city of Detroit, dated July 7, 1939, the bids to the city of Cleveland, Ohio, dated August 10, 1939, the bids to the city of Detroit, dated August 22, 1939, the bids to the city of Pittsburgh, dated September 29, 1939, the bids to the city of Philadelphia dated October 31, 1939, the bids to the city of Philadelphia dated December 5, 1939, the bids to the city of Philadelphia dated December 12, 1939, the bids

to the State of Massachusetts dated December 18, 1939, the bids to the city of Grand Rapids dated January 30, 1940, the bids to the city of Omaha dated August 13, 1940, the bids to the city of Cleveland dated October 10, 1940, the bids to the State of Massachusetts dated December 19, 1940, the bids to the city of Cleveland dated March 6, 1941.

(g) In cases where bids were submitted and one of the respondents should through error quote a price on an article less than the price quoted by the other respondents in their bids, such respondent would advise the prospective purchaser that he had made an error in his bid and ask to be permitted to correct it so as to make his bid uniform with the other respondents' bids or to be permitted to withdraw his bid.

(h) In localities where respondents anticipated lower bid prices from competing manufacturers which were not parties to respondents' alleged combination, they at times quoted prices lower than their regular published prices on the items where such outside competition was expected.

(i) Respondents acted in concert and cooperation to establish uniform standards and specifications of quality, design, and performance for their products and have used such standards and specifications to prevent differences therein from interfering with their objective of establishing and maintaining identical noncompetitive prices.

(j) In localities where respondents have encountered competition from concerns not parties to the combination herein alleged, in the sale of their products they have, through cooperative action, advised prospective purchasers against buying the products of such competitors by representing to the prospective purchasers, among other things, that the said competitor's products were not standardized products and the cost of upkeep would be far in excess of that of the upkeep of respondent's products.

(k) In cases where bids have been submitted by respondents and respondents' competitors wherein the competitors' prices were lower than those of the respondents, the respondents have, cooperatively attempted to persuade, and in many instances have induced the prospective purchasers to refuse to buy the competitor's product by representing to the prospective purchasers that the competitor's product was an inferior product and the upkeep would be greater than that of the upkeep of respondents' products.

(l) In localities where respondents anticipated lower competitive bids from other members of the industry, not parties to the combination herein alleged, said respondents have cooperatively induced the prospective purchaser to make specifications which would, in effect, exclude such competitors.

PAR. 5. As an incidental but necessary result of respondents' combination to fix delivered prices identical throughout the United States

without regard to differences in delivery costs from their respective plants to various destinations, as above alleged, the respective respondents have imposed upon nearby customers more and upon distant customers less than the actual cost of delivery and have thereby demanded, accepted, and received from their respective customers, different sums of money per unit of product and larger sums per unit from their nearby customers than from their more distant customers, after allowing for differences in actual cost of delivery. Such inequitable treatment of their customers was for the purpose and with the effect of adhering to respondents' delivered prices and maintaining the identity thereof throughout the United States.

PAR. 6. The capacity, tendency, and effect of such combination, understandings, and agreements and the acts, competitive methods, and practices of the respondents set out herein, and many others not specifically named, are and have been to monopolize in said respondents the said business of manufacturing and selling traffic signals, traffic signal equipment, and fittings and to unreasonably lessen, eliminate, restrain and suppress competition in the manufacture and sale of said products in interstate commerce and have materially enhanced the price to the purchaser of said products and have the tendency and effect of depriving the purchasing public of the advantages of price service and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of traffic signals and traffic signal equipment and fittings in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act, have placed in respondents the power to control and enhance prices, have unreasonably restrained such commerce in the manufacture and sale of traffic signals and traffic signal equipment and fittings, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint, the respondents' answers thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, briefs of counsel, and oral argument; and

The Commission, for the reasons set forth in the accompanying opinion, being of the view that the allegations of the complaint have not been sustained by the greater weight of the evidence; and

The Commission being of the further view that, having determined that the complaint is not sustained by the greater weight of the evidence, it is not necessary to rule more specifically on objections raised by counsel to the recommended decision of the trial examiner:

*It is ordered*, That the complaint in this proceeding be, and it hereby is, dismissed.

OPINION BY COMMISSIONER MEAD CONCURRED IN BY COMMISSIONERS  
MASON, AYRES, AND CARSON

The respondents in this case are engaged in the manufacture and interstate sale of traffic signals and related equipment. On October 9, 1941, the Federal Trade Commission issued a complaint charging that these respondents have engaged in an unlawful agreement and conspiracy to unduly suppress competition among themselves and to restrain trade and create a monopoly in the interstate sale of these commodities. It is alleged that pursuant to such agreement, they have concertedly adopted and cooperatively engaged in 12 specified acts and practices, including, among other things, the standardization of their products, the sale thereof at identical delivered prices compiled through meetings and correspondence, the submission of uniform bids, and the inducing of purchasers to formulate specifications in such a manner as to exclude manufacturers other than themselves.

The annual sales volume in this industry is between 1 and 1½ million dollars, of which respondents account for a substantial portion. Three of these respondents have individual productive capacity sufficient to furnish all the traffic signal requirements of the United States. Substantially all the sales of these commodities are to Government agencies, Federal, State, and city, and are made pursuant to specifications prepared for them by these purchasers. The respondent Horni Signal Manufacturing Corp. has gone into bankruptcy. The respondent Signal Service Corp. discontinued manufacture of traffic signal equipment in 1941.

While the products of the industry are highly standardized, the greater weight of the evidence shows that this is due to the efforts of the Institute of Traffic Engineers, a professional society whose chief officers and most of its members are employed in the electric light divisions of municipalities.

For many years prior to the beginning of this proceeding these respondents sold on a f. o. b. factory basis, including a delivery cost factor which is the same for all destinations. Since these respondents in formulating their individual prices are unable to anticipate the

quantity or method of delivery necessitated when bids are awarded, they include this delivery factor in their f. o. b. price. This factor varies as to each of them but represents about  $1\frac{1}{4}$  percent of the sales price in the case of one manufacturer and ranges from there to as high as 2.7 percent for another. This system of pricing in this industry was adopted in response to the demand and wishes of the purchasers.

From 1936 to 1938 prices varied widely. However, since early in 1939 the price lists of respondents have been substantially identical; and during this period several revisions of catalogue prices by certain respondents, mostly upward, were followed within 2 months or less by similar changes on the part of other respondents. During the intervals between announcements of price revisions by one manufacturer and similar announced changes, by the others, the latter would continue to sell as their original prices.

The respondents contend that such uniformity in bidding resulted from their individual determination to quote their respective catalogue prices and not from any agreement. Some tabulations of bids in 1939 and later on show uniformity, but in others there were found to be variations. The trial examiner found that instances of uniform bidding were of short duration.

Many letters and other communications passing between representatives of the respondents and their home offices are in the record. Counsel supporting complaint contends that these letters and other communications support the allegations. Although these documents indicate considerable reluctance to antagonize competitors by quoting lower prices, and although they expressed the hope that absence of price cutting would continue, we are of the opinion that there is insufficient basis in the record to support an inference that the alleged agreement ever existed. For example, one of the communications passing between two employees of respondent General Electric, stated substantially that there was an agreement to the effect that all manufacturers in this industry would thereafter bid on ornamental pole clamps only. However, the record shows that thereafter General Electric continued to list and bid on plain clamps, an action which is entirely inconsistent with the statements made in the communication. Because of this and other facts brought out in the record, we believe that the communication is merely an expression of an erroneous impression of one employee of the company, and we do not believe that the exhibit is entitled to the weight contended for it by counsel supporting complaint.

We have also noted the absence in the record of several elements which are often found in cases of this nature. While we recognize that they are not indispensable, we realize the difficulties in supporting the allegations of the complaint herein without them. There is no trade association in this industry. The record further shows no

exchange in statistics between members of the industry. We find no evidence of common price filings, simultaneous price changes or differentials in the record. Finally we find no freight rate books or uniform contracts.

Only one meeting of members of the industry is shown in the record. This was held in November of 1938 at the request of the Institute of Traffic Engineers for the purpose of supplying certain lighting data. Immediately after this meeting a representative of the Crouse-Hinds Co. sent copies of their revised catalogue sheet to a representative of a competitor, the Horni Signal Manufacturing Co. However, a week prior to this meeting the Crouse-Hinds Co. had mailed these same sheets to its distributors and customers.

After considering the record in this matter, we are of the opinion that the greater weight of the evidence does not sustain the allegations of the complaint.

Before *Mr. Charles B. Bayly*, trial examiner.

*Mr. Floyd O. Collins* for the Commission.

*Hiscock, Cowie, Bruce, Lee & Mawhinney*, of Syracuse, N. Y., for Crouse-Hinds Co.

*Cahill, Gordon, Zachry & Reindel*, of New York City, for General Electric Co.

*Whitman, Ransom, Coulson & Goetz*, of New York City, for Eagle Signal Corp.

*Mr. Isidore H. Lutzker*, of New York City, for Automatic Signal Corp.

*Pennie, Edmonds, Morton & Barrows*, of New York City, for Signal Service Corp.

*Mr. Harold Gilbert*, of New York City, and *Mr. Francis W. Hayden*, of Newark, N. J., for Andrew B. Crummy, trustee for Horni Signal Manufacturing Corp.

F. W. FITCH CO. AND F. W. FITCH MANUFACTURING CO. Complaint, May 21, 1946. Order, February 1, 1950. (Docket 5439.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts, qualities, properties or results, comparative merits, safety and refund or money back guarantee; in connection with the manufacture and sale of toilet preparations, including a preparation designated as Fitch's Dandruff Remover Shampoo.

COMPLAINT: <sup>1</sup> 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 F. W. Fitch Co., a corporation, and F. W. Fitch Manufacturing Co., a corpo-

<sup>1</sup> For interlocutory order (and accompanying opinion) denying motion to recall complaint or for the adoption of certain alternative procedure, see p. 1128, *infra*.

ration, 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. F. W. Fitch Co. and F. W. Fitch Manufacturing Co. are corporations organized, existing, and doing business under the laws of the State of Iowa, with their principal office and place of business located in the city of Des Moines, State of Iowa.

PAR. 2. Respondent F. W. Fitch Manufacturing Co. is now, and for a number of years last past has been, engaged in the manufacture of toilet preparations, including a preparation designated as Fitch's Dandruff Remover Shampoo; and respondent F. W. Fitch Co. is now, and has been for a number of years, engaged in the sale and distribution of said product in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause said preparation when sold to be transported from their place of business in the State of Iowa to purchasers located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation 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 said business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation 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 their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, radio continuities and other advertising literature, are the following:

The beauty problem confronting many women today is HOW TO RECONDITION THEIR HAIR \* \* \* the miracle of Fitch Shampoo is that this clear amber liquid seeps down into each hair opening in your scalp clearing it of all dandruff and other foreign matter.

Dandruff is not a disgrace \* \* \* but, if neglected, it frustrates hair beauty, and can have serious ill-effects on the scalp. Some dandruff manifests itself in unsightly particles, that flake off embarrassingly. Another type forms close to the scalp, and clings tightly. You may not even know you have it,

though you might wonder why your scalp is occasionally irritated and your hair ALWAYS less attractive than you'd like it to be. Because of the amazing efficiency of Fitch's Dandruff Remover Shampoo, both types of dandruff are totally unnecessary. Fitch Shampoo is guaranteed to remove every tiny, stubborn speck of dandruff with the first application, or your money will be refunded. This guarantee is upheld by one of the world's largest insurance firms. By penetrating deep into each little hair opening, instantly dissolving the clogging dandruff and other types of accumulated waste matter, Fitch Shampoo gives the scalp a basic, corrective cleansing. It is a normalizer for both dry and oily hair and a healthy stimulant for every scalp. After the first Fitch Shampoo, the scalp has renewed tone and the hair new luster and vitality. Fitch Shampoo is applied differently; its action is different, and the results are different. For scalp health and hair beauty, insist on Fitch's Dandruff Remover Shampoo, the shampoo that reconditions as it cleanses.

Used regularly each week, Fitch Shampoo prevents the dangerous accumulation of dandruff which will take its toll from the health and beauty of your hair.

\* \* \* Scientific tests have proven that Fitch Shampoo does exactly this! First, it dissolves and washes away all dandruff with the first application \* \* \*. Second, Fitch Shampoo kills all germs with which it comes in contact. This germ-killing action of Fitch Shampoo has been tested and verified by scientists in some of the country's leading laboratories. After a Fitch Shampoo, your scalp is antiseptically clean and free from germs—even down in the tiny hair openings, for Fitch Shampoo contains special ingredients that penetrate these openings on the scalp. Because Fitch Shampoo is made of only the purest ingredients, the Good Housekeeping Bureau endorses it as a pure, safe shampoo \* \* \* safe to use on even the tiniest baby's scalp.

\* \* \* Your scalp is deeply cleansed, exhilaratingly stimulated. Your hair has a crisp, "live" quality, a renewed luster and a flattering softness. Best of all, your dandruff has disappeared!

"*Goodbye Dandruff*"—You'll whistle too when you see how quickly the rich abundant Fitch lather carrier off the dandruff, dust and dirt. Besides \* \* \* you'll be amazed at the way Fitch Shampoo brings out the natural sparkle and luster of your hair.

\* \* \* Folks who have tried so-called dandruff cures know that any product which will not remove dandruff today will not remove it tomorrow or any other day.

\* \* \* when she used Fitch, she could be sure that she was helping to give her children, no matter what their age, fine hair care, and the assurance of attractive hair in the future.

Many baby clinics recommend Fitch for tiny babies' fine hair and tender scalps \* \* \*.

Don't despair, use your head, save your hair, use Fitch Shampoo.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, the respondents, directly and by implication, represent that dandruff is a skin disease which, if neglected, will have serious pathological consequences; that there are two types of dandruff, one manifesting itself in unsightly particles which flake off to the embarrassment of the person so afflicted, the other type forming closely to the scalp and clinging to it tightly; that both conditions are unnecessary because of the efficiency with which every particle of dandruff is

instantly dissolved and removed with the first application of respondents' preparation; that the accumulation of dandruff is destructive to the health and beauty of the hair; that said preparation penetrates into each hair opening, dissolves all clogging dandruff and other waste material, gives the scalp a basic corrective cleansing, stimulates the scalp, brings about a healthy scalp, and acts as a normalizer in both dry and oily conditions of the hair; that its action and results are different than other shampoos; that said preparation kills all germs which are normally present on the scalp, leaving the scalp antiseptically clean and free from germs; that after the first application of said preparation, the scalp is given a new tone and the hair new vitality; that its use reconditions the hair; that it is a safe preparation for use on the scalps of the tiniest babies and that its continued use on the scalps of children, regardless of age, assures possession of attractive hair in the future; that the removal of dandruff on the first application with respondents' product is guaranteed; that the purchaser's money will be refunded if said preparation fails to remove dandruff as stated and that such guarantee is backed by one of the largest insurance companies in the world.

Through the use of the trade name "Fitch Dandruff Remover Shampoo," the phrase "Goodbye Dandruff" and the repeated emphasis of the statement and guarantee that respondents' product will remove dandruff instantly on first application, respondents represent and imply that their product will remove dandruff permanently on first application and constitutes a cure for dandruff, which implication is strengthened by respondents' reference to "so-called dandruff cures" in connection with respondents' representation that if such "cures" will not remove dandruff today, it will not remove it tomorrow or any other day.

Through the use of the slogan "Don't despair, use your head, save your hair, use Fitch Shampoo," respondents represent that the use of their product will preserve hair and prevent its loss.

PAR. 5. In truth and in fact, the aforesaid statements and representations used and disseminated by the respondents in the manner hereinabove described are exaggerated, misleading and untrue. Dandruff is a physiologically normal condition, consisting of dried dead cells cast off from the skin of the scalp which will readily flake off or be held in place by the natural oils of the scalp, and in that event adhere to the scalp more closely. The accumulation of dandruff does not necessarily damage the health or beauty of the hair. Respondents' product will not penetrate into the hair openings and will not give the scalp a basic or corrective cleansing; nor will said product be effective in correcting either dry or oily hair conditions. Its action and results are not materially different than many other shampoos.

Respondents' product does not dissolve dandruff. Such material is taken up by the soap emulsion and rinsed from the scalp. It is not a healthy stimulant to the scalp, does not recondition the hair, nor does it give a new tone to the scalp or vitality to the hair. In truth and in fact, said product constitutes no more than an effective cleansing agent for washing and cleaning the scalp and hair. Although the alcohol and soap contained in said product will act as a mild antiseptic on the surface of the scalp, it will not kill all germs normally present on the scalp and will not make the scalp antiseptically clean and free from germs.

The use of said preparation on the scalp of babies may be dangerous in that it may cause serious irritation of the delicate scalp and skin due to the large percentage of alcohol contained therein. Its use on children will not assure them of having attractive hair in the future.

The use of said product will not save the user's hair.

The trade name "Fitch Dandruff Remover Shampoo," the representation "your dandruff has disappeared," the phrases "Goodbye Dandruff" and "so-called dandruff cures" employed by respondents, together with the statement that one of the world's largest insurance companies guarantees that the purchase money will be refunded if Fitch Shampoo does not remove every trace of dandruff on first application, all combine to mislead purchasers of respondents' product into the belief that dandruff is an abnormal condition; that the first application of said product results in permanently removing all dandruff and thereby curing said abnormal condition. In truth and in fact, the recurrence of dead skin cells on the scalp in the form of dandruff constitutes a normal physiological action, and for that reason, dandruff cannot be removed permanently through the use of any cleansing agent, including respondents' product. The policy of insurance, assuring the performance or fulfillment of the guarantee, is in fact limited to the amount of the purchase price paid by the purchaser of respondents' product.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said preparation has had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and has caused a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of said preparation.

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

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion to dismiss the complaint in this proceeding, filed August 11, 1949, by counsel for the F. W. Fitch Investment Corp., and the answer thereto, filed September 16, 1949, by counsel supporting the complaint, by which said motion is not opposed.

The complaint in this proceeding charges the respondents named in the caption hereof with unfair and deceptive acts and practices in commerce. It alleges that said respondents have disseminated and have caused to be disseminated in commerce, by United States mails and by other means, advertisements containing certain false, misleading, and deceptive statements and representations with respect to a toilet preparation which they offered for sale, sold, and distributed in commerce under the trade name "Fitch's Dandruff Remover Shampoo" for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said preparation in commerce.

From the motion to dismiss and the answer thereto, it appears that on or about November 30, 1948, the two corporate respondents whose names appear in the caption hereof were merged and consolidated into a single corporation, which adopted the name "The F. W. Fitch Co.," and that on or about June 15, 1949, the latter corporation sold, assigned, and transferred its principal operating assets, including its trade-marks, trade names, formulas, etc., to the Grove Laboratories, Inc., a Delaware corporation, whose office and principal place of business are located at 2652 Pine Street, St. Louis, Mo., and that from and after June 15, 1949, the F. W. Fitch Co. ceased to manufacture, sell, or distribute any product bearing the name "Fitch," including the preparation "Fitch's Dandruff Remover Shampoo." It further appears that the F. W. Fitch Co., in making the sale to the Grove Laboratories, Inc., agreed with the latter that it would not manufacture or sell products bearing the name "Fitch" which products were similar to those it produced and sold prior to June 15, 1949, and that on June 17, 1949, by amendment to its articles of incorporation, the name of The F. W. Fitch Co. was changed to the F. W. Fitch Investment Corp., which now proposes to become solely an investment corporation and which will not in the future manufacture, sell, distribute, advertise, or promote the preparation "Fitch's Dandruff Remover Shampoo."

The Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that the public interest does not require further corrective action in this matter at this time and that the motion to dismiss the complaint in this proceeding should be granted:

*It is ordered,* That the complaint herein be, and it is, hereby dismissed without prejudice to the right of the Commission to take such

further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. John P. Bramhall*, trial examiner.

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

*Schaetzle, Williams & Stewart and Comfort, Comfort & Irish*, of Des Moines, Iowa, for respondents.

ORDER DENYING MOTION TO RECALL COMPLAINT, OR FOR THE ADOPTION OF CERTAIN ALTERNATIVE PROCEDURE

This matter coming on to be heard upon respondents' motion that the complaint herein be recalled and that in lieu thereof the advertising claims referred to in the complaint (which are alleged by respondents to be common throughout the scalp-preparation and shampoo industry) be dealt with on an industry-wide basis, or in the alternative that complaints be issued by the Commission against all other members of the Industry using advertising similar to respondents' and that all such proceedings be consolidated, and upon respondents' request for oral argument on said motion, and upon the answer filed by the attorney supporting the complaint to said motion, the reply of respondent to said answer, and the record herein;

And the Commission having first considered respondents' request for oral argument on the motion, and it appearing that the matter is fully presented by the papers referred to above and that oral argument on the matter would serve no useful purpose:

*It is ordered*, That said request for oral argument be, and it hereby is, denied.

And the Commission having duly considered said motion, and being of the opinion that the matters set forth therein are insufficient to warrant the recalling of the complaint or the adoption of the alternative procedure proposed by respondents:

*It is ordered*, That said motion be, and it hereby is, denied.

OPINION OF THE COMMISSION

EWIN L. DAVIS, *Commissioner*.

The respondents, F. W. Fitch Manufacturing Co. and the F. W. Fitch Co. have their principal place of business in Des Moines, Iowa. The respondent, F. W. Fitch Manufacturing Co., is engaged in the manufacture and the respondent F. W. Fitch Co. is engaged in the sale and distribution of a preparation designated "Fitch's Dandruff Remover Shampoo." On May 21, 1946, the Commission issued a complaint alleging that respondents were disseminating various false representations relative to the effectiveness of said shampoo. These alleged misrepresentations cover a number of subjects, particularly the efficacy of said shampoo in removing and preventing dandruff. Respondents filed an answer in which they denied that the representa-

tions placed in issue in the complaint are false. No testimony has been taken in the case.

The respondents filed a motion in which they requested the Commission to recall the complaint and to order a general study of the scalp preparation and shampoo industry in the United States with the view of determining on an industry-wide basis the extent to which the practices alleged in the complaint are common to the industry and whether or not such practices constitute violations of the Federal Trade Commission Act. The respondents request in said motion that if it is found that such practices are in violation of said Act the Commission take such actions and procedures on an industry-wide basis as may be proper in the premises.

As an alternative to the above, the respondents request the Commission to issue complaints against other members of the industry who are committing acts of the kind charged against the respondents in the complaint and to consolidate all of such proceedings for hearings and determination with a view to determining in the one proceeding, on an industry-wide basis, whether or not the practices alleged against the respondents are violations of the Federal Trade Commission Act; and if they are violations, respondents request the Commission to take such action on an industry-wide basis as may be proper. Respondents request the Commission to fix a time for oral hearing on the motion before the full Commission, and pending such hearing and the determination of the motion to stay all further action in the proceeding.

As stated above, respondents request the Commission to make a general study of the industry and to take corrective action on an industry-wide basis against those practices which may be in violation of the Federal Trade Commission Act. There are now in preparation and consideration Trade Practice Conference Rules for the Cosmetics and Toilet Preparations Industry. The rules proposed and considered at said conference included a rule covering in general terms the misrepresentation of cosmetics and toilet preparations. Subsequent to the filing by the respondents of the aforesaid motion in this case, the respondents, under date of June 9, 1947, submitted a proposed revision of the said general rule relative to misrepresentations of cosmetics and toilet preparations. This proposed revision submitted by respondents specifies in thirteen separate categories types of representations considered as falling within or without the general prohibitions of the rule. Certain portions of this proposed rule revision would, in effect, approve advertising representations of respondents which the complaint alleges are misleading. The motion of respondents is without prejudice to their position that the advertising used by them is "true and correct in all respects" and it is their stated intention to establish this by proof if and when the issues are tried on their merits.

In view of the statements made in respondents' motion and the nature of the proposed rule revision, it appears that a trial of the issues on their merits is the only appropriate way to dispose of this proceeding.

One of the alternatives suggested in said motion by respondents was that the Commission issue complaints against all members of the scalp preparation and shampoo industry who may be disseminating false advertisements and that these proceedings be consolidated for the purposes of hearings and determinations. If complaints were issued against other concerns which allegedly may be disseminating false advertisements, it would be impractical and confusing to consolidate such matters into one series of hearings. The preparations would undoubtedly have different formulae and the advertisements would be worded differently and would have different approaches to what are perhaps common advertising objectives. In other words, it would be necessary to try each case on its merits and it would be impractical to consolidate all the cases and have one series of hearings.

One of the grounds stated by the respondents in their motion as a basis for the relief requested was that the Commission has not proceeded against distributors of other preparations in competition with respondents. This statement is not in accord with the facts for the reason that within the past fifteen years the Commission has acted in approximately 185 cases, formal and informal, involving shampoo and scalp preparations and preparations for the removal of dandruff. During such period the Commission has issued approximately 50 orders to cease and desist and has accepted from respondents approximately 70 stipulations to cease and desist in such cases. The total number of cases involving all types of shampoos, hair tonics, and other scalp preparations and treatments, including pending cases, amounts to approximately 360.

Respondents attached to their motion as exhibits photostats of alleged advertisements disseminated by a number of competitors of respondents. It may be that a number of these competitors and others engaged in selling preparations for the scalp and the treatment of dandruff are disseminating false advertisements in violation of the Federal Trade Commission Act. The Commission has directed the Radio and Periodical Division of the Office of Legal Investigations to make a survey of advertising used by manufacturers and distributors of shampoo and scalp preparations and to report to the Commission the results of such survey. If it appears from such survey that any of such concerns are apparently disseminating false advertisements, the Commission will take such action in the public interest as appears advisable.

The respondents requested in the aforesaid motion that the Commission fix a time for oral hearing on the motion before the full Commission. The Commission is of the opinion that all of the facts in

the matter necessary for the disposition of the motion of respondents are before the Commission and it is therefore not necessary to hear oral arguments on said motion.

For the reasons stated above, the motion of respondents has been denied and the Commission has directed that the trial of the issues on the merits proceed in due course.

BERNHARDT PETERSON, TRADING AS BERLOU MANUFACTURING CO.  
Complaint, December 15, 1942. Order, February 15, 1950. (Docket 4876.)

Charge: Advertising falsely or misleadingly as to source or origin, history, qualities, properties, or results and safety of product, and neglecting, unfairly or deceptively, to make material disclosure as to safety of product; in connection with the compounding and sale of an aqueous arsenic preparation designated "Berlou Guaranteed Mothproof."

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 Bernhardt Peterson, individually and trading as Berlou Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bernhardt Peterson is an individual trading under the style and firm name of Berlou Manufacturing Co., with his principal place of business located at Marion, Ohio.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Berlou Manufacturing Co., respondent is now, and for more than 2 years last past has been, engaged in the business of compounding, selling and distributing an aqueous arsenic preparation designated "Berlou Guaranteed Mothproof."

Respondent causes said preparation designated as aforesaid when sold to be transported from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation 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 his aforesaid business the respondent has disseminated and is now disseminating and has caused, and is now causing the dissemination of, false advertisements concerning his said preparation by the United States mails and by various other means in commerce as commerce is defined by 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 preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined by the Federal Trade Commission Act. Among and typical, but not exclusive, of the false, misleading, and deceptive statements and representations contained in the aforesaid advertisements disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers, magazines, and other periodicals and by service manuals, circulars, leaflets, pamphlets, stickers, and other advertising literature, are the following:

An Old Arabian formula is the Oriental background for Berlou Mothproofing \* \* \*. It was developed from an Arabian formula.

Many years ago an old-time Arab rug weaver cannily told buyers that his rugs would never be destroyed by moths.

Finally in 1900 scientists discovered the old Arab secret. They suspected that the ancient Oriental's rugs were immune to moths because of a certain combination of ingredients used in his dyes. Chemical analysis soon confirmed this theory.

Further tests and research resulted in a colorless, odorless, harmless mothproofing formula that goes into and remains in fabrics like a dye. Thus Berlou was developed.

BERLOU, as such, became a new commercial achievement in 1930—and since then it rose quickly to national fame. This sky rocketing advancement was due to economic and scientific discoveries, even more sensational than the original formula. For years Berlou research engineers were at work to refine and improve the basic formula. They found that all the ingredients once so expensive, could now be produced from domestic supplies. If purchased in large quantities for mass production, they could be reduced in cost for the broadest possible public use.

Berlou is positive protection against moths.

\* \* \* It will protect against damage by carpet beetles, two bugs, tobacco bugs, silverfish, buffalo moth—in fact, it will kill any insect that attempts to eat any material treated with BERLOU.

Berlou Guaranteed Mothproof ends moth damage for 5 years or Berlou pays the bills.

Note these features of Berlou Guaranteed Mothproof. Only one application is required which is guaranteed for 5 years.

The Berlou 5 year guarantee is moth insurance to you. When Berlou mothproofing is figured in terms of its long, satisfactory, carefree benefits it becomes the most reasonable mothproof to use.

Berlou Guaranteed Mothproof ends moth damage for 10 years or we pay the bill.

Since only one application is required there is no need for repeated spraying. With many temporary moth preventives it is necessary to spray household articles every few months. For this reason Berlou is far more economical.

Mothproof with Berlou and you have mothproofed for life.

BERLOU ACTS LIKE A DYE. It penetrates the fabric. It is guaranteed protection. It is not removed even by dry cleaning. Washing fabric mothproofed with Berlou is like washing any dyed material.

Berlou is made like a dye. Instead of coloring matter it contains the moth

killing ingredients. Once applied it becomes a part of the material treated  
\* \* \*

Berlou is permanent protection against moth damage because it actually becomes a part of the material treated.

Time, use or exposure cannot remove or weaken the effects of Berlou.

The amount of Berlou needed is so small that articles treated with it are not poisonous or injurious to humans.

PAR. 4. By and through the use of the foregoing statements and representations and others similar thereto not specifically set out herein, respondent represents that the formula of his preparation is of secret Arabic origin; that said secret formula was discovered in 1900, and was developed and improved by his research engineers through economic and scientific discoveries; that spraying one application of said preparation upon wearing apparel and household furnishings renders them absolutely and permanently immune from damage or destruction by all kinds and varieties of insects and their larvae and that absolute protection of from 5 to 10 years, or for the life of the material, from such damage or destruction is guaranteed; that said preparation acts like a dye and becomes a part of the fabric treated by it; that time, use, or exposure cannot remove or weaken the moth-killing effects of said preparation; that said preparation is entirely safe and harmless in use and articles treated with it are not poisonous or injurious to humans.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the formula for said preparation is not of secret Arabic origin, and was not discovered in 1900 or at any other time. On the contrary, the properties of the active ingredient in said preparation, to wit, sodium arsenite, have been known for centuries and the formula, or one of similar nature, has been known and in general use for a long period of time. Respondent's research engineers at no time have contributed any significant developments or improvements in the formula for said preparation. Application of said preparation to fabrics, either wearing apparel or household furnishings, will not render them permanently immune from damage or destruction by insects or their larvae; and protection of from 5 to 10 years, or the life of the material, cannot be assured. When applied, said preparation does not act like a dye and does not become a part of the fabric. On the contrary, solutions of sodium arsenite have not affinity for woolen fabrics and the arsenic content of the preparation is only physically suspended in and upon the fabric treated when the aqueous solution has evaporated. Such solids are displaced and lost through wear, use and lapse of time and such protection as might otherwise exist is thereby lessened or entirely dissipated. Said preparation is not harmless to humans when used on garments or other materials with which humans come into contact. Frequent contact of the body with materials treated with said

preparation may result in systemic absorption of arsenic, with resultant chronic or acute arsenic poisoning.

The use by the respondent of the trade name "Berlou Guaranteed Mothproof" for his preparation and the use of the words "mothproof" and "mothproofing" to describe such preparation constitute, in themselves, false advertisements in that they serve as representations that said preparation provides permanent and absolute protection against damage or destruction by moths, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations made therein and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Respondent's said preparation contains sodium arsenite in such quantities that garments or other materials treated therewith and coming into contact with the human skin may produce skin irritation followed by increased pigmentation. Frequent contact with such materials may result in systemic absorption of arsenic and acute or chronic arsenic poisoning. Said advertisements also fail to reveal that careless and inexpert application of said preparation, resulting in an excessive deposit of arsenic on all or parts of the fabric treated, will tend to increase the potential danger of arsenic poisoning. Furthermore, said advertisements fail to reveal that in the application of said preparation by means of a spray, the inhalation of the spray or permitting the same to come into contact with the skin should be avoided.

PAR. 7. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations disseminated as aforesaid, 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 all such statements and representations are true and that said preparation is harmless to humans and entirely safe in use, and induces a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

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

Complaint dismissed without prejudice by the following order:

This matter came on to be heard upon the motion to close this proceeding without prejudice filed February 8, 1949, by counsel supporting the complaint, to which no answer has been filed.

The complaint herein, issued December 15, 1942, charges that respondent has engaged in unfair and deceptive acts and practices in commerce in connection with the sale and distribution of "Berlou Guaranteed Mothproof," a preparation offered for use as a mothproofing agent, through the dissemination of advertisements which are alleged to be false because they misrepresent product efficacy and for the further reason that they fail to reveal that such preparation containing the ingredient sodium arsenite is potentially injurious to the health of persons using it as directed or under such conditions as are customary or usual.

On June 25, 1947, subsequent to the institution of this proceeding, the Federal Insecticide, Fungicide, and Rodenticide Act was approved. It appears to the Commission that the instant preparation is an "economic poison" within the meaning of such act, and that in accordance with the provisions thereof the Secretary of Agriculture is vested with primary jurisdiction over those statements and representations challenged in the complaint as misleading which relate to the effectiveness of respondent's product. In view of the Commission's policy of cooperation with other Federal agencies in connection with practices and commodities concerning which other Federal agencies also have jurisdiction, the Commission is of the opinion that no further corrective action should be taken in this matter at this time with respect to these statements and representations.

It further appears from the motion that the use of sodium arsenite in respondent's product has been discontinued. The Commission therefore is of the opinion that further proceedings looking to a determination of the issue relating to safety in general use of the product formerly sold by respondent are not required in the public interest at this time.

The Commission having duly considered the matter and being now fully advised in the premises:

*It is ordered,* That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against the respondent or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Lewis C. Russell* and *Mr. John W. Addison*, trial examiners.

*Mr. Carrel F. Rhodes* for the Commission.

*Guthery & Guthery*, of Marion, Ohio, and *Frost & Towers*, of Washington, D. C., for respondent.

HENRY MODELL, ROSE MODELL, AND WILLIAM MODELL, TRADING AS HENRY MODELL AND Co. Complaint, December 1, 1944. Order, March 3, 1950. (Docket 5254.)

Charge: Misbranding or mislabeling and neglecting, unfairly or deceptively, to make material disclosure as to composition of product

in violation of the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act; in connection with the introduction into commerce and in the sale of clothing and blankets.

**COMPLAINT:** Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Henry Modell, Rose Modell, and William Modell, individually and as copartners trading and doing business as Henry Modell and Company, hereinafter referred to as respondents, have violated the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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.** The respondents, Henry Modell, Rose Modell, and William Modell, are copartners trading and doing business as Henry Modell & Co., and have their office and principal place of business at 280 Broadway, New York, N. Y.

**PAR. 2.** The respondents are engaged in the introduction into commerce, and in the sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act, and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

**PAR. 3.** Among the wool products introduced into commerce and sold, transported, and distributed in said commerce as aforesaid were clothing and blankets. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing: (a) The percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b)

the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

PAR. 4. The aforesaid acts, practices, and methods of the respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair or deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Complaint dismissed without prejudice by the following order:

This proceeding came on to be heard by the Federal Trade Commission upon the complaint, joint answer of respondents, testimony, and other evidence consisting of certain stipulated facts taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and briefs in support of the complaint and in opposition thereto (oral argument not having been requested).

The complaint alleges that respondents have introduced and sold into commerce, blankets, clothing, and other products composed in whole or in part of wool, reprocessed wool, or reused wool to which articles respondents have failed to affix a label or tag affording the information in respect to fiber content and other matters required by the Wool Products Labeling Act of 1939, and the rules promulgated thereunder. It is further charged that such misbranding constitutes unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Respondents engage in the jobbing and retailing of sporting goods, clothing, and sundry dry goods in interstate commerce. During the period referred to in the complaint, the bulk of the wool products offered for sale by respondents consisted of surplus goods manufactured under contracts with the Government and was acquired by respondents from the Government or from the manufacturers thereof. Some of such wool products bore no labels as to fiber content when sold by respondents in commerce, and it is stipulated in such connection that respondents made no alterations or changes with respect to product labeling but resold such merchandise in the same condition in which it had been received by them.

Wool products which are manufactured pursuant to Government contracts and which subsequently become available for civilian use should be labeled with information in the form required under the

act and rules by the civilian business concern which proposes to transmit such products into commercial channels leading to the consumer. In this case, however, the diversion to civilian use of the products here involved occurred prior to December 1944 under the abnormal and unsettled conditions inherent in a wartime economy. Under the conditions then prevailing, the securing of correct information in respect to the fiber content and other matters and the affixing to each of such products of appropriate labels or other means of identification would have delayed substantially their availability to consumers when the demand for such products was urgent. Respondents, during the hearings, have expressed an intention to cooperate in the future with the Commission in its administration of the act. The Commission, therefore, is of the opinion that in the circumstances no further action should be taken herein at this time.

The Commission having duly considered the matter and being fully advised in the premises:

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further or other action in the future as may be warranted by the then existing circumstances.

Commissioner Mead not participating.

Before *Mr. Arthur F. Thomas* and *Mr. William L. Pack*, trial examiners.

*Mr. J. W. Brookfield, Jr.*, and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. Milton Solomon*, of New York City, for respondents.

ARTRA COSMETICS, INC., OSCAR C. OLIN AND EUGENE A. KOVENKO. Complaint, March 17, 1943. Original findings and order, May 26, 1948. 44 F. T. C. 883. (Docket 4930.) Opinion and order vacating and setting aside order to cease and desist, November 8, 1949. 46 F. T. C. 1077. Order vacating and setting aside findings as to the facts and conclusion and dismissing complaint without prejudice, March 9, 1950.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results and safety of products; in connection with the sale of two preparations, namely, "Irma" and "Sutra," respectively, recommended for use as a depilatory, and as a protection against sunburn.

Order vacating and setting aside findings as to the facts and conclusion and dismissing complaint without prejudice, follows:

This matter came on to be heard in regular course upon motion, filed December 12, 1949, jointly by counsel for respondent and counsel supporting the complaint, to set aside the findings as to the facts and conclusion in this proceeding as they relate to the product Irma and for an order dismissing the complaint without prejudice as it relates to said product.

The order to cease and desist herein, issued on May 26, 1948, was vacated and set aside by order of November 8, 1949, for the reasons stated in the opinion accompanying said order. By its order of May 26, 1948, the Commission dismissed the complaint as to the respondent Oscar C. Olin for the reason that he severed his connection with the respondent corporation on August 11, 1943, and as to the respondent Eugene A. Kovenko for the reason that his duties in connection with the operation of the corporate respondent were largely clerical and he had taken no prominent part in the conduct of its business. By said order, this proceeding was also closed without prejudice as it related to the product Sutra, primarily on the basis that the use of all advertising of the type alleged in the complaint with respect to this product had been discontinued some 6 years prior to the issuance of the complaint and there was good reason to assume that the use of such advertising material would not be resumed in the future.

The Commission having duly considered the matter and being now fully advised in the premises, and being now of the opinion that in view of the foregoing circumstances and that for the reasons set forth in the opinion accompanying the order of November 8, 1949, the findings as to the facts and conclusion in this proceeding should be vacated and set aside as to all respondents and products named in the complaint, and that the complaint should be dismissed without prejudice as to said respondents and products, and being of the opinion that said joint motion should be granted:

*It is ordered*, That the findings as to the facts and conclusion entered herein be, and the same are, hereby vacated and set aside in their entirety and that the entire complaint be, and it is, hereby dismissed without prejudice to the right of the Commission to take such further action at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. John L. Hornor* and *Mr. Randolph Preston*, trial examiners.

*Mr. Clark Nichols* for the Commission.

*Klein, Alexander & Cooper*, of New York City, for respondents.

N. ERLANGER, BLUMGART & Co., INC. Complaint, October 31, 1944. Order, March 13, 1950. (Docket 5243.)

Charge: Discriminating in favor of certain of respondent's customers, including its "prestige" customers, as against others by furnishing or paying for services or facilities furnished by such customers in connection with the processing, handling, sale, or offering for sale to garment manufacturers and their retailer customers, of respondent's "Earl-Glo" and "Duchess" acetate-rayon lining materials in violation of subsections (d) and (e) of section 2 of the Clayton Act, as amended.

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption herein and hereafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsections (d) and (e) 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:

#### COUNT I

PARAGRAPH 1. Respondent N. Erlanger, Blumgart & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 354 Fourth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged in the business of converting acetate rayon greige fabrics into dyed, finished materials and distributing such dyed, finished materials to garment manufacturers. The respondent is one of the largest converters and distributors of acetate rayon fabrics in the United States. The acetate rayon fabrics converted by the respondent into dyed, finished materials are sold and distributed by the respondent for wearing apparel linings. The dyed, finished materials processed from the acetate rayon greige fabrics are sold and distributed by the respondent under various registered trade names, such as "Earl-Glo," a rayon taffeta, and "Duchess," a rayon satin. The respondent supplies all garment manufacturers purchasing and using its branded linings in their garments with labels or tags bearing the particular brand name of the lining used and identifying it as the product of respondent. These labels or tags are attached to each of the finished garments by the garment manufacturer. In some instances, the respondent furnishes a special tag on which is noted a legend that the garment is lined with Earl-Glo acetate rayon taffeta or with Duchess acetate rayon satin, as the case may be.

The linings processed by the respondent from the acetate rayon greige fabrics are sold directly to manufacturers of coats and suits. The lining materials processed by the respondent are then used by such manufacturers in the manufacture of men's, women's, and children's coats and suits. Such coats and suits are sold by such garment manufacturers to single retail dress shops, multiple retail dress shop, department stores, women's specialty stores, single retail men's stores, multiple retail men's stores, and men's haberdashery stores. Such garments are then resold by such retailers to the consuming public.

PAR. 3. Respondent sells and distributes its finished acetate rayon lining materials in commerce between and among the various States of the United States and in the District of Columbia, and as a result

of such sales causes said products, when sold, to be shipped and transported from its place of business to purchasers thereof who are located in various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for use and resale within the various States of the United States and in the District of Columbia.

The respondent's enterprise is one which is operated with the ultimate objective of marketing all its products to the consuming public in all parts of the United States through manufacturers of coats and suits and through retail stores dealing in such products.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during all the time mentioned herein has been in competition with other corporations and with individuals, partnerships, and firms engaged in the business of converting acetate rayon greige materials and fabrics into dyed, finished materials and distributing such converted rayon fabrics to garment manufacturers.

Many of the respondent's garment-manufacturing customers and their retailer customers are competitively engaged with each other and with customers of the respondent's competitors in the resale of garments lined with acetate rayon fabrics within the trading areas where the respondent's said customers, respectively, offer for sale and sell the said products purchased from the respondent or where the retailer customers of respondent's customers offer for sale and sell said products.

The respondent's entire plan of distribution, beginning with its sale of acetate rayon fabrics, after being dyed and finished by the respondent, to garment manufacturers for use in the manufacture of men's, women's, and children's coats and suits, the sale of such products by such garment manufacturers to retailers, and ending with the resale of such products by such retailers to the consuming public, is an integrated whole, and respondent's channels of distribution cannot be separated without effacing and destroying the final objective of the respondent, which is to market its processed acetate rayon fabrics to the consuming public in the form of linings for men's, women's, and children's coats and suits under the registered trademarks "Earl-Glo" and "Duchess." Respondent's customers are, therefore, not only manufacturers of men's, women's, and children's coats and suits but retailers, and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions between the respondent and both classes of customers.

PAR. 5. In the course and conduct of its business in commerce respondent, since June 19, 1936, has secretly paid and agreed to pay

to certain manufacturers of men's, women's and children's coats and suits, and to some of their retail customers certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and the offering for sale of acetate rayon greige fabrics converted by respondent into dyed and finished materials and resold by respondent for use in the manufacture of men's, women's, and children's coats and suits under the registered trade-marks "Earl-Glo" and "Duchess." The making of such payments has been concealed by the respondent from the competitors of such favored coat and suit manufacturers and their retailer customers. Respondent has not made such payments available on proportionally equal terms or on any terms to other and competing manufacturers of men's, women's, and children's coats and suits, or to other and competing retailer customers.

For the purpose of determining the customers who shall be thus favored or discriminated against, the respondent arbitrarily classifies them on the basis of "prestige," and on its judgment as to the nature and degree of "prestige" such customers enjoy in the men's, women's, and children's coat and suit industries and in the retail distribution of such products. The respondent has paid to some of such favored manufacturers and to their retailer customers varying amounts of money, ranging from \$125 to \$4,550 and over, during a single-year period for the advertising of garments lined with acetate rayon fabrics under the registered trade-marks "Earl-Glo" and "Duchess."

PAR. 6. It has been the policy of respondent to conceal from all of its men's, women's, and children's coat and suit manufacturing customers and all of their retailer customers, except those favored by respondent, the details of its agreements relating to compensation of coat and suit manufacturing customers and their retailer customers for services in connection with advertising and promotional facilities. Customers of the respondent and their retailer customers are denied knowledge of such allowances and compensation, and the respondent does not and has not made known to any customers except its favored ones and to their retailer customers that it pays compensation for advertising and promotional services in connection with the sale of coats and suits, lined with acetate rayon fabrics manufactured by the respondent, to the consuming public. Respondent has resisted the extension of such allowances to some purchasers of acetate rayon lining materials and their retailer customers, even though such purchasers and customers were willing to furnish advertising and promotional services to the respondent in connection with the sale of garments lined with acetate rayon fabrics under the registered trade-marks "Earl-Glo" and "Duchess" to the consuming public, for the reason that such nonfavored customers did not come within respondent's classification of "prestige" customers.

PAR. 7. The above-described acts and practices of the respondent are in violation of subsection (d) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, sec. 13).

#### COUNT II

PARAGRAPH 1. For its charges under paragraph 1 of count II of this complaint, the Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs were here set out in full. Said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraphs 1 to 4, inclusive, of count I hereof, respondent has discriminated and is discriminating in favor of certain purchasers of acetate rayon fabrics for use as linings in the manufacture of men's, women's, and children's coats and suits under the registered trade-marks "Earl-Glo" and "Duchess" against other purchasers of such linings by agreeing to furnish, by furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such coats and suits and by not according such services and facilities to all purchasers of acetate rayon fabrics for the lining of such coats and suits on proportionally equal terms.

PAR. 3. The respondent has entered into advertising and promotional arrangements with certain of its retailer customers among which are R. H. Macy & Co., of New York, N. Y.; Saks, Inc., 34th St., New York, N. Y.; Bests Apparel, Inc., Seattle, Wash.; Kresge Department Stores of New York, N. Y.; Gimbel Brothers, Inc., New York, N. Y.; Maurice L. Rothschild, Chicago, Ill.; Peck & Peck, New York, N. Y.; B. Altman & Company, New York, N. Y.; Lord & Taylor, New York, N. Y.; Bloomingdale Bros., Inc., New York, N. Y.; Chas. A. Stevens & Co., Chicago, Ill.; Abraham & Straus, Brooklyn, N. Y., and others. As a part of such arrangements, large sums of money have been expended by the respondent since June 19, 1936, in sharing with such purchasers the cost of advertising men's, women's and children's coats and suits containing acetate rayon linings manufactured by respondent under its registered trade-marks "Earl-Glo" and "Duchess," and the respondent has not accorded such services or facilities to other purchasers competitively engaged with the afore-mentioned retailers on proportionally equal terms or on any terms.

PAR. 4. The aforesaid acts of respondent constitute a violation of the provisions of subsection (e) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed March 11, 1948, on behalf of the respondent, requesting that the complaint herein be dismissed, which motion was not answered by counsel in support of the complaint; and

It appearing from said motion and affidavit attached thereto and from the record (1) that the complaint charges the respondent with having discriminated in favor of certain of its customers as against others by furnishing or paying for services or facilities furnished by such customers in connection with the processing, handling, sale, or offering for sale, of its acetate rayon lining materials in violation of subsections (d) and (e) of section 2 of the Clayton Act, as amended; (2) that all of the practices complained of were discontinued by the respondent in 1944 with no intention of ever resuming the same; and (3) that, in any event, the economic conditions in the industry prior to 1944, under which producers of rayon materials felt it necessary to create in the consuming public a demand for products fabricated from rayon yarns no longer exist; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding or to take such further action against the respondent at any time in the future as may be warranted by the then existing circumstances.

*Mr. Eldon P. Schrup* for the Commission.

*Hays, Wolf, Schwabacher, Sklar, and Epstein*, of New York City, for respondent.

ERWIN F. LECHLER TRADING AS HOUSE OF LECHLER. Complaint, October 1, 1948. Order, March 13, 1950. (Docket 5589.)

Charge: Advertising falsely or misleadingly and neglecting, unfairly or deceptively, to make material disclosure as to qualities, properties or results and safety of product; in connection with the sale of respondent's "Beautiderm" device for use in the electrolytic removal of superfluous hair from the body by individual self-application in the home.

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 Erwin F. Lechler, an individual, trading as House of Lechler, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Erwin F. Lechler is an individual, trading as House of Lechler, with his office and principal place of business located at 560 Broadway, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device as "device" is defined in the Federal Trade Commission Act, designated "Beautiderm," and recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of his business the respondent caused said device or apparatus when sold to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in said commerce is substantial.

PAR. 2. In the course and conduct of his business, the respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices, including but not limited to, circulars designated "Unwanted Hair," booklets designated "The Secret of Permanent Hair Removal," a circular designated "Permanent Hair Removal," sent through the United States mails; and respondent has disseminated and caused the dissemination of advertisements concerning his said product by various means including, but not limited to, the circulars and booklets referred to above for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

PERMANENT HAIR REMOVAL

(Yes gone forever)

NEVER TO GROW BACK AGAIN

A precision built electrolysis set for home use, created and designed by the dean of the electrolysis institute.

Electrolysis is the only permanent method of removing unwanted hair forever.

With this instrument you can actually destroy each hair one at a time, and it takes about 30 seconds to destroy each hair. Hundreds of these sets are in use the world over, however we admit that to operate it takes a certain amount of skill and dexterity.

For example there are women who have a natural inclination to dress their own hair and know how to skillfully apply make-up to perfection. Yet others must depend upon the beauty shop to do this work for them.

The same applies to operating their own electrolysis set.

For this reason we find that the average person finds it more practical and more economical to use the other Ethical Lechler Hair Removing methods. Each have their individual own merits, therefore we are offering this instrument merely to the chosen few who feel they have the skill and who can afford it.

If you feel you are adept and can afford to pay \$75.00 we invite you to write for our special booklet on this electrolysis instrument for home use.

#### HOUSE OF LECHLER

#### SPECIALISTS IN HAIR REMOVING

560 BROADWAY, NEW YORK 12, N. Y.

Skin smooth and flawless.

Painless. Left no scars.

As easy as filing my nails.

Electrolysis—the one successful, harmless method.

PAR. 4. By the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented directly and by implication that his device is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that its use is painless and harmless and will have no ill effects upon the human body; that it leaves the skin smooth and flawless and will leave no scars and the skill and dexterity required for its self use is comparable to that required in the dressing of one's hair, the self-application of makeup and the filing of one's nails.

PAR. 5. The said advertisements are misleading in material respects and are false advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact the device or apparatus sold and distributed by the respondent as aforesaid, designated as "Beautiderm," is composed primarily of an electric battery to which is attached two cords, one cord terminating in an electrode, and the other terminating in a needle. The said needle is inserted into the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious or irreparable injury to health. The said device is not an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device

is not safe and harmless when used by the unskilled lay public and its use causes pain.

Its use may result in a roughening, scarring, or pitting of the skin. The skill and dexterity required for its use on one's self is far more than is required in dressing one's hair, applying one's makeup or filing one's nails.

PAR. 6. The said advertisements are further misleading in material respects and constitute false advertisements as such term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made concerning said device and material with respect to the consequences which may result from its use under the conditions prescribed in said advertisements or under such conditions as are customary or usual, namely, that the use of the said device by persons not conversant with the technique of removing hair from the human body by electrolysis may result in infections, permanent disfigurement or irreparable injury to health.

PAR. 7. The use by the respondent of the foregoing false advertisements in respect to his device or apparatus disseminated as aforesaid has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations contained in said advertisements are true and because of such erroneous and mistaken belief into the purchase of substantial numbers of respondent's said devices.

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

Complaint dismissed without prejudice by the following order:

This matter came on for final hearing upon the complaint of the Commission, answer, testimony and other evidence in support of the allegations of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore designated by it, recommended decision of the trial examiner and exceptions thereto and briefs filed by counsel (oral argument not having been requested).

Respondent engages in the sale of "Beautiderm," a device recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home. The complaint charges that certain of the advertising of the above device disseminated by respondent to induce sales thereof in interstate commerce falsely represents, among other things, that the device, under conditions of self-application, is an effective, efficient, safe, and scientific apparatus for hair removal, and that its use is painless and harmless and will have no ill effects on the human body.

The evidence shows that respondent's device in principle is similar to machines used by persons professionally engaged in the electrolytic removal of hair, the object of which is destruction of the hair bulb by an electric battery current together with a fine but relatively blunt needle designed to be inserted into the hair follicle without piercing the skin.

There is evidence to the effect that the skill required to properly insert the needle in the hair opening is achieved after a reasonable period of use. The Commission concludes that the charges pertaining to the lack of efficacy of respondent's device are not sustained by the greater weight of the evidence.

Only when used skillfully and carefully and under the precautions appearing in respondent's directions for use, which precautions, however, formerly were omitted from certain of the advertisements, does it appear that the device is relatively painless and free from harm. Under other conditions its operation may be accompanied by pain and by puncturing of the skin or scarring, and use by a member of that group of persons extremely sensitive to electric current also would involve pain. The Commission is of the opinion that the charges that the use of Beautiderm is not painless and free from harm under general conditions of self use are sustained by the record. In this connection, it appears, however, that approximately one year prior to the institution of this proceeding respondent discontinued those advertising statements which implied that the device is painless and harmless. The Commission is therefore of the view that in the circumstances here no further proceedings are warranted in the public interest at this time.

The complaint in this proceeding further charges that respondent's advertisements constitute false advertisements, as such term is defined in the Federal Trade Commission Act, for the additional reason that they fail to reveal certain material facts, namely, that use of the device under the conditions prescribed in the advertisements or under such conditions as are customary and usual by those not conversant with the technique of removing hair by electrolysis may result in infections, permanent disfigurement or irreparable injury to health. Nothing in the advertisements expressly recommends use for prolonged periods of time or use on moles or skin areas where lesions are present but use in such circumstances, the evidence shows, may cause injury. The evidence adduced in this proceeding does not show, however, whether those conditions of use under which injury may ensue are in fact customary or usual conditions of home use as the complaint alleges. It is concluded, therefore, that the record does not constitute an adequate basis for a determination of the issues relating to this charge of the complaint.

The Commission having duly considered the matter and being now fully advised in the premises:

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to reopen this proceeding or to take such further or other action in the future as may be warranted by the then existing circumstances.

Before *Mr. Everett F. Haycraft*, trial examiner.

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

*Mr. Willis B. Rice*, of New York City, for respondent.

STANLEY HUSLIN DOING BUSINESS AS ACTANE CHEMICAL CO. Complaint, October 14, 1949. Order, March 13, 1950. (Docket 5704.)

CHARGE: Advertising falsely or misleadingly, misbranding or mislabeling and using misleading product name or title as to qualities, properties or results; in connection with the manufacture and sale of Actane and Actane Compound solution for mixing or blending with gasoline for use as a motor fuel.

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 Stanley Huslin, an individual 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 Stanley Huslin is an individual doing business as the Actane Chemical Company with his manufacturing plant located at 1100 32d St., Camden, N. J., and his main office for business purposes located at 401 N. Broad St., Philadelphia, Pa.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a solution for mixing or blending with gasoline when gasoline is to be used as a motor fuel, which solution is called Actane and Actane Compound. The product as originally sold prior to 1946 was composed of 80 percent petroleum distillate and 20 percent creeping or penetrating agents. The product as now sold is composed of 75 percent petroleum distillate and 25 percent creeping or penetrating agents. The directions for use of said product are as follows:

Into each gallon of gasoline, one-half ounce of Compound. No stirring necessary. Regulate your carburetor to suit the fuel. Advance spark. No changes thereafter required.

The respondent causes, and has caused, his said product, when sold, to be shipped from his manufacturing plant in the State of New Jersey and from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said product in commerce among and between the various States of the United States. Respondent's volume of business in said product in said commerce is substantial.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product in commerce, respondent has made many statements and representations relating to the value and effectiveness of his said product by means of advertisements in the form of pamphlets, leaflets, copies of testimonial letters and labels on the product. Among and typical of such statements and representations contained in said advertisements concerning Actane or Actane Compound are the following:

- Removes carbon
- Won't let hard carbon form
- Cumulative carbon, if any, will be gradually softened and dispersed. Hard carbon formation prevented when this compound is used
- Cleans motor and keeps it clean
- More complete combustion of fuel vapor entering your motor will permit you to use less gasoline
- Quicker start, better acceleration
- Quicker starts in cold weather
- Power, pep, pick-up
- More engine power
- Keeps engine temperatures normal
- Actane is a proven scientific liquid compound that by actual test, smoothes out motors and increases mileage
- It minimizes knocks
- Stops knocks

PAR. 4. Through the use of the above statements and others similar thereto, but not specifically set out herein respondent has represented and now represents that his said product, when used as directed, removes carbon deposits from a gasoline motor and will prevent the formation of carbon; cleans a gasoline motor and keeps it clean; causes a more complete combustion of fuel in a motor than is obtained without the addition of his product; causes quicker starting of the motor, even in cold weather, faster acceleration, faster pickup and more power than is obtained from gasoline without the addition of his product and keeps the engine or motor temperatures normal. Respondent has further represented that his said product when used as directed, makes a motor run more smoothly, minimizes and stops motor knock and also increases the mileage that can be obtained from gasoline by automobiles and trucks.

PAR. 5. The above representations are false, misleading, and deceptive in the following respects: Respondent's said product, when used as directed, or otherwise, does not remove carbon deposits from a gasoline motor or prevent the formation of carbon. It does not clean

a gasoline engine of deposits of gum or carbon on the pistons, rings, or valves or of deposits of carbon the cylinder head or keep these parts of a motor free from such deposits. It does not cause any more complete combustion of fuel in a motor than can be obtained without the addition of respondent's product. It does not cause quicker starting of a gasoline motor, in any kind of weather, faster acceleration, faster pickup, or more power than can be obtained from gasoline without the addition of respondent's said product. It does not keep the engine or motor temperatures normal or make a motor run more smoothly. It does not minimize or stop motor knock or increase the mileage that can be obtained from gasoline by automobiles or trucks.

PAR. 6. The octane rating of gasoline is the measure of its resistance to combustion knock, gasoline having a low resistance being given a low octane number and gasoline having a high resistance being given a high octane number on a scale from 1 to 100. The word "octane," when applied to a motor fuel is, by a substantial portion of the purchasing public, associated with the quality, the power, and efficiency of the fuel. Through the use of the name "Actane," because of its similarity to the word "octane," respondent has represented, contrary to the facts, that his product will increase the quality, the power, and efficiency of the gasoline to which it is added.

PAR. 7. The aforesaid false, misleading, and deceptive statements and representations so made by respondent have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true, and to induce a substantial portion of the purchasing public to purchase respondent's product, because of such erroneous belief.

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

Complaint dismissed without prejudice by the following order:

This matter coming on to be heard by the Commission upon a motion, filed by counsel in support of the complaint, requesting that this case be closed without prejudice, no answer to such motion having been filed; and

It appearing from the motion and from the record herein that the complaint charges the respondent with having falsely represented the value and effectiveness of his petroleum distillate product Actane as a solution for mixing or blending with gasoline when gasoline is used as a motor fuel; and

It further appearing: (1) That the respondent has now discontinued the use of all the advertising representations attacked in the complaint,

and (2) that the product Actane is no longer being advertised at all or sold as a solution to be added to gasoline, but solely as a preparation for use in tuning up motors; and

The Commission having reason to believe that the use of the challenged representations will not be resumed, and being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed, without prejudice, however, to the right of the Commission to institute a new proceeding or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

*Mr. Joseph Callaway* for the Commission.

JOSEPH LEVY CLOTHING MANUFACTURING Co., INC., CRAWFORD CLOTHES, INC., JOSEPH LEVY, DAVID LEVY, AND FRANK SEIDENWURM. Complaint, January 6, 1944. Opinion and order, April 5, 1950. (Docket 5112.)

**CHARGE:** Advertising falsely or misleadingly as to business status, prices, composition, direct dealing, quality, source or origin and manufacture or preparation of product; in connection with the sale of men's suits and clothing.

**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 Levy Clothing Manufacturing Co., Inc., a corporation, Crawford Clothes, Inc., a corporation, Joseph Levy, David Levy, and Frank Seidenwurm, individually and as officers and directors of said corporations, herein-after referred to as respondents, having 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 Joseph Levy Clothing Manufacturing Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 34-02 Queens Boulevard, Long Island City, N. Y. Said corporation owns all of the stock in respondent corporation Crawford Clothes, Inc.

**PAR. 2.** Respondent Crawford Clothes, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34-02 Queens Boulevard, Long Island City, N. Y. Said respondent is a wholly owned subsidiary of respondent corporation Joseph Levy Clothing Manufacturing Co., Inc. Said respondent operates stores in the several States of the

United States and sells men's suits and wearing apparel to the general public.

PAR. 3. Respondents Joseph Levy, David Levy, and Frank Seidenwurm are respectively president, treasurer, and secretary and manage, direct, and control the business and affairs of respondent corporations, Joseph Levy Clothing Manufacturing Co., Inc., and Crawford Clothes, Inc., with respect to the acts and practices hereinafter set forth. Said individuals have their principal place of business at 34-02 Queens Boulevard, Long Island City, N. Y. Respondent Joseph Levy owns all of the stock in respondent corporation Joseph Levy Clothing Manufacturing Co., Inc.

PAR. 4. Respondents are now and for many years last past have been engaged in the sale and distribution of men's suits and clothing. Respondents now cause and have caused said products when sold to be transported from their principal place of business in Long Island City, N. Y., and their several stores in the State of New York and in the various States of the United States to purchasers thereof at their respective points of location in the various States of the United States other than the State of origin and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their business in connection with the offering for sale, sale, and distribution of their products in commerce and for the purpose of inducing the purchase thereof by the public, respondents have caused and now cause various false, misleading, and deceptive statements and representations descriptive of their merchandise and the prices thereof and of their business and business status to be broadcast by radio continuities and to be printed in newspapers, sales magazines, price lists, trade journals, advertising placards and on letterheads and other media which they distribute to prospective customers located in various States of the United States and in the District of Columbia. Among and typical of such false and misleading statements and representations so made and circulated are pictorial representations of buildings upon which are superimposed the words and name "Crawford Custom Made Clothes," and other statements and representations as follows:

There is no middleman—no extra profit to pay because you buy direct from the maker when you buy at Crawford.

Crawford's giant factory, for instance, is the most modern in the world and its outstanding efficiency means more savings for you.

At Crawford's you get more—much more—for your money. There's no middleman—no extra profit to pay because you buy direct from the maker when you buy at Crawford.

You can get luxurious gabardines, smart flannels, tweeds and shetlands at Crawford—for only \$19.95.

Crawford manufactures \* \* \* and sells direct to the consumer eliminating the middleman's profit.

Mollison's 100% pure silk \* \* \* Genuine all-wool Gera gabardines \* \* \*

The same genuine Gera white gabardine and botany white flannels, selling elsewhere at \$40 to \$50, here on sale at Crawford for only \$21.

100% Pure Worsted "Botany" flannels; "Botany" on flannels means the same as "Sterling" on silver.

Tweeds from Scotland.

Crawford Custom quality Clothes \* \* \* are made by master tailors.

Genuine Fleece \* \* \* Overcoat \* \* \*. Tailored \* \* \* light weight \* \* \* suits. \$12.50, \$18.75, \$19.95, \$22.50.

All Crawford fabrics are 100% all wool \* \* \* Smart flannels, tweeds and Shetlands at Crawford for only \$19.95.

Crawford clothes are sold exclusively at Crawford's own stores so you buy direct from the maker at Crawford.

Now you can buy custom quality clothing at Crawford's popular prices.

Crawford's giant new factory No. 4 \* \* \* has introduced complete manufacturing control.

We've hand-picked and set aside the cream of higher priced fabrics to better acquaint you with Crawford clothes.

King's Cliffe imported suitings. Color effects found only in British and Scotch fabrics.

Crawford clothes \* \* \* topcoats, spring suits, \$40.00 values for \$18.95.

PAR. 6. Through the use of the aforesaid statements and representations, and other statements and representations similar thereto not set out herein, made by respondents, all of which purport to be descriptive of respondent's business and business status and the prices of respondents' said merchandise, respondents represent directly and indirectly that respondent Crawford Clothes, Inc., is a manufacturer or tailor and handmakes or tailors all of the suits and clothing sold by respondents in factories or plants owned, controlled, and operated by respondent Crawford Clothes, Inc., that purchasers buying merchandise from respondent Crawford Stores, buy direct from the makers and save the profit of the middleman and get more for their money; that the respondents' suits and clothing are made of 100 percent pure silk or 100 percent all-wool fabrics imported from Scotland and England or the British Isles and that their garments are custom quality hand tailored and made by master tailors.

PAR. 7. In truth and in fact, the foregoing statements and representations are false, deceptive, and misleading. Respondent Crawford Clothes, Inc., does not manufacture, make, or tailor the suits and clothing sold by respondents and does not own and control or operate a factory or plant where said clothing is made. Said merchandise is not sold and shipped directly from the factory at prices that save the purchasers thereof the profit of the middleman, or in any wise eliminate the middleman. Said garments are not hand-made by master tailors and are not made of 100 percent pure silk or 100 percent all wool and are not made from fabrics imported from Scotland or Eng-

land and are not custom made or tailor made. Said suits and clothing offered for sale and sold, by respondents at prices ranging from \$15.50 to \$22.50 are factory made and are made from low-grade fabrics, and are not comparable to suits and clothing ordinarily and usually sold by the trade in the normal and usual course of business at prices ranging from \$40 up.

PAR. 8. The respondents' said statements and representations, made in the manner aforesaid, are false, deceptive, and misleading and have had and now have the capacity and tendency to and do deceive members of the purchasing public into the erroneous and mistaken belief that all of respondents' said statements and representations are true.

A great number of the purchasing public believe that suits and clothing can be purchased directly from manufacturers at lower prices than from retail dealers; that custom made means tailor made; that custom made or tailor made clothes are made by hand from higher grade fabrics than manufactured or factory made clothes; that fabrics imported from Scotland and England are made from stronger and more durable fiber and are of a better grade and quality and are more durable and wear better than domestic fabrics. As a result of the erroneous and mistaken belief induced by respondents' statements and representations as herein alleged, substantial numbers of the purchasing public have been induced to purchase and have purchased substantial quantities of respondents' said suits and clothing under the mistaken and erroneous belief that they were buying high-grade quality suits and clothing made from fabrics imported from Scotland or England directly from the manufacturer, tailor or maker at an effective saving.

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

OPINION OF COMMISSIONER MEAD—CONCURRED IN BY COMMISSIONERS,  
MASON, AYRES, AND CARSON

The respondents in this proceeding are engaged in the interstate sale and distribution of men's suits and other clothing. The complaint, issued January 6, 1944, charged said respondents with having falsely represented (1) that Crawford Clothes, Inc., is the manufacturer of such suits and other clothing; (2) that by selling direct to consumers the respondents save purchasers the profit of a middleman; (3) that the respondents' suits and other clothing are made of 100 percent wool fabrics imported from Scotland and England or the British

Isles; and (4) that their garments are tailored by hand for individual customers.

The case was fully tried and was presented to the Commission for disposition upon a complete record of testimony and other evidence, the trial examiner's recommended decision and exceptions thereto, written briefs and oral argument.

The charge that the respondents have falsely represented Crawford Clothes, Inc., to be the manufacturer of the garments it sells was predicated upon a state of facts which existed prior to 1940. The situation then was that respondent Joseph Levy Clothing Manufacturing Co., Inc., purchased from various mills fabrics for men's suits and other clothing. This respondent then shrank, allocated by styles, cut and trimmed such fabrics at its own place of business, and thereafter had the cloth finished into suits and other garments by outside "contractors," most of whom worked exclusively for Levy and were supervised and controlled to a greater or lesser extent by Levy. The finished suits and other garments were subsequently sold to ultimate purchasers through retail stores operated by respondent Crawford Clothes, Inc., all of the stock of which was owned by respondent Joseph Levy Clothing Manufacturing Co., Inc. The individual respondent, Joseph Levy, was in turn the owner of all of the stock of Joseph Levy Clothing Manufacturing Co., Inc., and he was president of that corporation.

In 1940, respondent Joseph Levy Clothing Manufacturing Co., Inc., built for its own use in Long Island City, N. Y., a large clothing factory, and there is no question but that after the above date this company did in fact manufacture the garments sold by the subsidiary corporation Crawford Clothes, Inc. Moreover, on June 1, 1946, the parent corporation and the subsidiary corporation were consolidated into a single successor corporation, Crawford Clothes, Inc., and the record is undisputed that since that time the suits and other garments sold by Crawford Clothes, Inc., have been manufactured by that corporation in its own factory.

As shown by the foregoing summary of facts, the situation on the basis of which the complaint alleged that the respondents falsely represented Crawford Clothes, Inc., to be the manufacturer of the clothes it sells has completely changed. The question whether or not before 1940 this respondent was entitled to refer to itself as a manufacturer is now moot. The purpose of the proceeding is to protect the public against future misrepresentations. The improbability of any future use of the challenged representations in the same setting as that heretofore existing renders further consideration of this question wholly unnecessary.

The second question raised by the pleadings is whether or not the respondents have falsely represented that they save purchasers of

their garments the profit of a middleman. As it relates to this question, the evidence indicates that the retail sale price of the respondents' garments includes only one profit, which covers both the manufacture and sale of the clothing. Counsel in support of the complaint argues, and correctly, that this is not necessarily conclusive, since a single profit may, in fact, result in a price to the ultimate purchaser which is as high or even higher than a price including separate profits for the manufacturer and the retailer. There is evidence in the record, however, that because of the large volume of fabrics purchased by the respondents at one time they were able to and did purchase direct from the mills at lower prices than many other clothing producers; and the record contains considerable testimony to the effect that during the period 1938-41 clothes of a grade and quality substantially similar to the grade and quality of the suits sold by the respondents retailed at prices higher than the retail prices charged by respondents. On the basis of this evidence, the Commission is of the opinion that the allegations of the complaint concerning the falsity of the respondents' representation that they save customers the middleman's profit have not been sustained by a greater weight of the evidence.

The charge that the respondents falsely represented their garments to have been made of 100 percent wool imported from Scotland and England or the British Isles has also not been established. The greater weight of the evidence is that suits or garments produced and sold by the respondents, and represented by them to have been 100 percent wool, were such in fact. The evidence further shows that in the years 1937 and 1938, when the respondents advertised and represented that certain of their suits were made of imported fabrics, this was actually the case.

Certain evidence was also received bearing on the questions whether the garments advertised as "Shetlands" were made of the wool of sheep grown on the Shetland Islands or on the nearby mainland of Scotland, and whether garments advertised as "100 percent fleece" were or were not 100 percent wool. Neither of these questions, however was properly put in issue by the complaint. The Commission has accordingly disregarded all of the evidence in the record with respect to these subjects.

The remaining question in the case is whether or not the respondents represented, contrary to the fact, that their suits were specially tailored by them for each individual purchaser. The evidence does disclose that to a substantial number of persons purchasing clothing the word "custom" in an advertisement is of some significance. The record does not show that the respondents at any time made use of the expressions "custom-made" or "custom tailored," but only the term "custom-quality." On the basis of this record the Commission is not in a position to conclude that these terms are all equivalent in meaning. It is noted

that respondents discontinued using the term "custom-quality" in 1943. The attorney for respondents stated on the record that respondents have no intention of resuming the use of the term in the future. Under such circumstances, the Commission is of the opinion that it is unnecessary in the public interest to consider further the use of said term at this time.

For the foregoing reasons, the complaint in this proceeding will be dismissed.

Order dismissing complaint and disposing of exceptions to trial examiner's recommended decision, follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and

The Commission, for the reasons set forth in the accompanying opinion, having reached the conclusion that the allegations of the complaint have not been sustained by the greater weight of the evidence:

*It is ordered,* That the complaint herein be, and it hereby is, dismissed.

*It is further ordered,* For the reasons set forth in the aforesaid opinion, that the respondents' exceptions to the trial examiner's recommended decision be, and they hereby are, sustained, and that the exceptions to said recommended decision filed by counsel in support of the complaint be, and they hereby are, denied.

Before *Mr. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

*Mr. Carrel F. Rhodes* and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. Hyman Fried* and *Mr. A. I. Goldstein*, of New York City for respondents.

WEB DISTRIBUTING CO., INC., WILLIAM E. BRADLEY AND M. EDWIN WAHL. Complaint, December 6, 1948. Order, June 5, 1950. (Docket 5625.)

Charge: Advertising falsely or misleadingly as to qualities of product, and professional indorsement; in connection with the sale of a preparation, Pyrozide Tooth Powder, used as a dentifrice.

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 Web

Distributing Co., Inc., a corporation, and William E. Bradley and M. Edwin Wahl, individually and as officers of Web Distributing Co., Inc., 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, Web Distributing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in Convent, N. J. Its post office address is box 14. Respondents William E. Bradley and M. Edwin Wahl are president and treasurer, respectively, of corporate respondent. These individuals as officers of corporate respondent, formulate, direct, and control the acts, practices, and policies of said corporation. The address of the individual respondents is the same as that of corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of selling and distributing a cosmetic and drug preparation as "cosmetic" and "drug" are defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation and the formula thereof are as follows:

Designation. Pyrozide Tooth Powder.

Formula :	Percent
Precipitated Calcium Carbonate.....	84.3
Magnesium Carbonate, Powdered.....	2.0
Sodium Borate, Powdered.....	5.0
Rhatany, Powdered.....	3.0
Soap, Powdered.....	3.0
Dentinol.....	2.8
Oil of Sassafras.....	.5
Oil of Peppermint.....	.3
Oil of Birch.....	.5

The respondents cause their said preparation when sold to be transported from their aforesaid place of business in the State of New Jersey to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents maintain a course of trade in said preparation 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 business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning their said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act including but not limited to advertisements inserted in the Plain Dealer,

Cleveland, Ohio, issue of January 21, 1947; the Times, Los Angeles, Calif., issue of December 8, 1946, and the Post-Gazette, Pittsburgh, Pa., issue of January 21, 1947; and respondents have disseminated and caused the dissemination of advertisements concerning said product by various means, including, but not limited to, the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in the said advertisements disseminated as aforesaid are the following:

**DO YOUR GUMS BLEED?**

Pyorrhea or trench mouth may be indicated.

PYROZIDE TOOTH POWDER is scientifically prepared for home co-operation with your dentist. The effectiveness of PYROZIDE has been universally known to the dental profession for almost half a century. Use PYROZIDE TOOTH POWDER twice daily for its hygienic and cleansing effect. At all druggists. PYROZIDE TOOTH POWDER MEDICATED.

PYROZIDE TOOTH POWDER is not a mere tasty polish. It is a medicinal prophylaxis and free from all grit. Recommended by many dentists throughout the world for almost half a century for home cooperation.

**SENSITIVE SORE GUMS?**

Pyorrhea or trench mouth may be indicated. PYROZIDE TOOTH POWDER is scientifically prepared for home co-operation with your dentist. The effectiveness of PYROZIDE has been universally known to the dentist profession for almost half a century. Use PYROZIDE TOOTH POWDER twice daily for its hygienic and cleansing effect. At all druggists. PYROZIDE TOOTH POWDER MEDICATED.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents have represented, directly and by implication that their preparation, Pyrozide Tooth Powder, used as a dentifrice, is a medicinal prophylaxis and is a preventive of and constitutes a competent and effective treatment for and will cure diseases and unhealthy conditions of the oral tissues and particularly pyorrhea, trench mouth, and sore, sensitive, and bleeding gums and that said preparation is recommended by the dental profession.

PAR. 6. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, said preparation is not a medicinal prophylaxis and when used as a dentifrice, or in any other manner, will not act as a preventive of and does not constitute a competent and effective treatment or cure for diseases or unhealthy conditions of the oral tissues including pyorrhea, trench mouth, and sore, sensitive, or bleeding gums. While some dentists may have recommended this preparation, the number thereof, in comparison

to the total engaged in the dental profession, is not sufficient to justify the representation that the dental profession, as a whole, recommends the preparation.

PAR. 7. The use by the respondents of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein, and hereinabove enumerated, were true, and into the purchase of substantial quantities of said preparation by reason of such mistaken belief.

PAR. 8. 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.

Complaint dismissed without prejudice by the following order:

This matter having come on to be heard before the Commission upon the motion filed on November 30, 1949, by counsel supporting the complaint requesting that this proceeding be closed without prejudice to the right of the Commission to reopen the proceeding if and when warranted by the facts, in which request counsel for respondent has joined; and

The complaint herein, issued on December 6, 1948, having charged that respondents have engaged in unfair and deceptive acts and practices in connection with the sale and distribution of Pyrozide Tooth Powder through the dissemination of advertisements which are alleged to be false for the reason, among other things, that they misrepresent product efficacy; and it appearing from said motion and from an affidavit executed by respondent William E. Bradley that the contract under which the respondents engaged in the distribution of such dentifrice was terminated by the manufacturer on August 25, 1948, which date is prior to the institution of this proceeding, and that the business of the corporate respondent and the advertising to which the charges of the complaint relate have been discontinued by respondents; and

The circumstances being such that there is adequate reason to believe that the use of the practices which are alleged in the complaint to be unlawful will not be resumed and the Commission being of the opinion, therefore, that the public interest does not require further corrective action in this matter at this time:

*It is ordered,* That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

*Mr. DeWitt T. Puckett* for the Commission.  
*Osborne, Cornish & Scheck*, of Newark, N. J., for respondents.

ELI F. COLBY DOING BUSINESS AS ELI COLBY CO. Complaint, October 6, 1944. Order, June 13, 1950. (Docket 5232.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature of product; in connection with the mining and sale of commercial peat to wholesalers and retailers for resale, and directly to those engaged in agriculture, such as nurserymen, florists, farmers, and poultrymen.

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 Eli F. Colby, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eli F. Colby, is an individual doing business under the trade name, Eli Colby Co., with its principal office and place of business located at Hanlontown, Iowa.

PAR. 2. Said respondent is now and for more than 1 year last past, has been, engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen located at points in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said product, when sold, to be transported from his place of business at Hanlontown, Iowa, to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course or trade by respondent in said commercial peat 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 his business as described in paragraph 2 hereof, and for the purpose of inducing the purchase of his product, respondent has falsely represented by various means, such as advertisements in pamphlets, newspapers, and trade publications circulated among members of the public and by means of labels on boxes and bags in which his said product is shipped to the purchasing public that the commercial peat sold and distributed by him is "Peat Moss." The following are typical of the representations concerning said peat:

Minnesota Peat Moss.

From the high bog northwest of Bemidji, Minnesota \* \* \* comes this

perfect peat moss. With natural ideal climatic conditions the pure sphagnum mosses have grown year after year for the past thousand and more years to form this valuable vein. \* \* \* Northern Light Brand peat moss is a true peat moss with a true quality peat color \* \* \*.

PAR. 4. There are two general classes of peat: (1) moss peat and (2) reed, sedge, and hypnum peats. There is a pronounced difference in the characteristics, physical properties, and chemical composition of these two types of peat. Moss peat is formed predominantly by the small stems and the leaves of various species of sphagnum moss; and possesses a high capacity for absorbing water, a high degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and hypnum peats have a relatively low capacity for water absorption, a lower degree of acidity, and a high ash content. They are lacking in germicidal properties and in fact have a tendency under certain conditions to harbor insects and micro-organisms.

There is a marked difference also in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as litter for poultry. Due to its high degree of acidity and its germicidal properties, it is the only type which can be used for surgical dressings. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. Respondent's product, designated, described, and represented as "peat moss," is a peat derived from a species of hypnum. It has a relatively low water absorbing capacity, varies in reaction from acid to alkaline, and may contain injurious soluble salts. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "Peat Moss" in describing and identifying his product, falsely represents, directly and by implication, that said product is "Moss Peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. Use by the respondent of the false and deceptive and misleading designation and description of his product, designated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public in the erroneous and mistaken belief that respondent's product is "Moss Peat" and that said product possesses all of the qualities and characteristics of "Moss Peat" and causes and has caused a substantial portion

of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

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

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion filed March 14, 1950, by counsel supporting the complaint to close the case without prejudice, assented to by counsel for respondent and approved by Daniel J. Murphy, Chief of the Division of Deceptive Practice Trials.

It appears from said motion and from the record as a whole that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act were discontinued by respondent upon its acceptance of Trade Practice Rules for the Peat Industry, approved January 13, 1950, and that respondent has now furnished the Commission with evidence of its compliance with said rules and of its intention to continue to comply therewith.

The Commission being of the opinion that in the circumstances here the public interest does not require further proceedings in this matter at this time:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such other or further action as future facts may warrant.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. R. A. McOuat* and *Mr. Morton Nesmith* for the Commission.

*Blythe, Markley, Rule & Cerney*, of Mason City, Iowa, for respondent.

TEA BUREAU, INC., AND WILLIAM ESTY & Co. Complaint, October 29, 1943. Order, June 15, 1950. (Docket 5071.)

Charge: Advertising falsely or misleadingly as to qualities of product; in connection with the sale of tea.

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 Tea Bureau, Inc., a corporation, and William Esty & Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Tea Bureau, Inc., and William Esty & Co., Inc., are corporations organized under the laws of the State of New York, with offices and principal place of business located respec-

tively at 500 Fifth Avenue and 100 East Forty-second Street, city and State of New York.

Respondent Tea Bureau, Inc., is controlled by the International Tea Market Expansion Board, Ltd., a corporation organized under the laws of England and sponsored by the tea growers of British India, Ceylon, Sumatra, and Java. The business of said respondent is to increase the consumption in the United States of tea grown in India, Ceylon, Java, and Sumatra. William Esty & Co., Inc., is in the business of conducting an advertising agency, has been the advertising agent for Tea Bureau, Inc., and has participated in the preparation and dissemination of the advertising matter to which reference is made herein.

PAR. 2. Tea is an article used for drink by man.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents have disseminated and caused the dissemination of false advertisements concerning tea 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 caused the dissemination of false advertisements by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of tea 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 aforesaid by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

My husband is always so tired and nervous—snaps at us all. Is there anything I can do \* \* \* ? What is his usual beverage? Have him change to tea, it is so healthful \* \* \* You can have two cups or all you want, but stick to tea only and see if that tired, nervous feeling doesn't go away \* \* \* It's so nice to have Mark around now. He's so full of fun and pep! Tea sure made a big change in this home.

Tea helps you work better, think faster.

Enjoy tea freely—*Tea* lets you sleep.

Vitalizing.

It's a mighty good tonic.

Figure skating burns up energy, but tea peps me up. It's easy to digest—never makes me feel nervous or wakeful.

\* \* \* Tea \* \* \* it's grand for an athlete—peps you up. \* \* \* Tea makes me more alert during study period, yet I can sleep perfectly after drinking all the tea I want.

Harry's Hard Winter Over at Last. Mrs. H found a grand "spring toneup, \* \* \*" Harry is all run down, \* \* \* Why don't you start serving tea to Harry? Tea peps a person up—it's very good for you this time of year. Tea is always good for you \* \* \*.

Never leaves me feeling nervous or dopey.

Doctor, I'm always tired, there must be something wrong with me. Now, my dear, there's nothing wrong with you. But you need extra pep. My advice is to make tea your daily beverage. It is a scientific fact that tea is vitalizing.

Drink tea several times a day. It has a positive tonic effect, \* \* \* Everybody used to think Martha was listless. What makes you so peppy Martha, \* \* \* Tea.

Tea gives you vim. Tea helps "charge up" your batteries \* \* \* Tea \* \* \* is good for you \* \* \* It won't cause that feeling of nervousness \* \* \* the delicious protective winter drink.

\* \* \* hot tea puts back my energy

\* \* \* hot invigorating tea

\* \* \* puts back your pep.

PAR. 4. Through the use of the aforesaid statements and claims, and others of similar import and meaning in their said advertising not specifically set out herein, respondents have represented, directly and by implication, that by drinking tea those whose activities are such as to induce chronic fatigue or nervousness will not suffer those consequences, and that those whose activities have induced these consequences will be relieved therefrom; that tea used as a beverage will improve the health of, increase the vitality of, and restore energy to, the user; that tea may be drunk in any quantity without injurious effects, and without interfering with sleep; that the tea drinker will work better and think faster; that tea is a tonic, and that tea is always good for the user.

PAR. 5. The foregoing statements and representations are false and misleading. In truth and in fact, persons whose activities have been such as to produce chronic fatigue or nervousness, will not be relieved of those conditions by drinking tea. Fatigue is a natural and unavoidable consequence of physical or mental exertion, and there are many factors of which the natural and unavoidable consequence is nervousness. Tea-drinkers are not immune to or rendered less susceptible to these consequences. Tea in no way improves, nor is beneficial to, the health of the user. It does not restore expended energy, but is a stimulant which induces a further expenditure of energy from the bodily reserves more rapidly than would otherwise be the case. Tea does not increase the vitality of the user, but merely acts as a spur to a lessened vitality. During the period of stimulation induced by tea, the drinker's physical and mental powers may be somewhat enhanced, but this will be followed by a period of depression during which such powers will be reduced. Tea may not be drunk in any quantity without injurious effects. The physiological effect of tea is due to the presence of caffeine, to which not all persons react alike. Amounts of tea which, for the individual user are immoderate, will interfere with sleep, and will tend to make the drinker irritable, nervous, and fatigued, and may result in chronic caffeine poisoning characterized by symptoms of heightened irritability, nervousness, tremors, mental

confusion, palpitation, and the like. Tea possesses no tonic qualities. There are many persons to whom tea is harmful, and it is not beneficial to anyone in excess of its temporary stimulating effect due to caffeine.

PAR. 6. The use by respondents of the foregoing false and misleading statements, representations, and claims with respect to tea has had the capacity and tendency to mislead, and has misled, a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and by reason of such erroneous and mistaken belief into the purchase of substantial quantities of tea.

PAR. 7. The foresaid 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.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Commission upon motion filed by counsel for respondents February 8, 1950, to dismiss the complaint without prejudice or close the case without prejudice, with affidavits and other material in support thereof, to which counsel supporting complaint filed answer February 20, 1950, in which he conjoined with counsel for respondents' motion stating that, upon the facts as they appear in the said motion and affidavits and other matters attached thereto, there is no public interest which would require further prosecution of the complaint; and upon oral argument February 20, 1948, on a previous motion.

The complaint herein, issued on October 29, 1943, which was placed on the suspense calendar because of conditions imposed by the war, charges respondents with the dissemination of false advertisements concerning tea by the United States mails, and by various other means in commerce, as "commerce" is defined by the Federal Trade Commission Act; and that respondents have also disseminated and caused the dissemination of false advertisements by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of tea in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Having duly considered the motions and the record herein, and it appearing to the Commission that respondent Tea Bureau, Inc., has, for a substantial prior period of time hereto, discontinued the dissemination of advertisements of the character covered by the complaint, with no apparent likelihood of resumption thereof; that respondent William Esty & Co., Inc., has resigned as advertising agency of respondent Tea Bureau, Inc., and does not contemplate the resumption thereof; and that, in the circumstances, the public interest does not require further corrective action in this matter at this time:

*It is ordered,* That the complaint herein be and the same hereby is, dismissed without prejudice to the right of the Commission to institute a new proceeding against respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

*Mr. Randolph W. Branch* for the Commission.

*Davies, Richberg, Beebe, Busick & Richardson,* of Washington, D. C., for respondents.

GEORGIA PEAT MOSS CO., INC. Complaint, October 19, 1944. Order, June 15, 1950. (Docket 5238.)

Charge: Assuming or using misleading trade or corporate name, advertising falsely or misleadingly, and misbranding or mislabeling as to nature of product; in connection with the mining and sale of commercial peat to wholesalers and retailers for resale, and directly to those engaged in agriculture, such as nurserymen, florists, farmers, and poultrymen.

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

PARAGRAPH 1. Respondent Georgia Peat Moss Co., Inc., is a corporation organized under and by virtue of the laws of the State of Georgia with its principal office and place of business located at Lake Park, Ga.

PAR. 2. Said respondent is now and for more than 1 year last past, has been engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen located at points in the various States of the United States and in the District of Columbia.

Respondent causes and has caused said product, when sold, to be transported from its place of business at Lake Park, Ga., to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade by respondent in said commercial peat in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as described in paragraph 2 hereof, and for the purpose of inducing the purchase

of its product, respondent has falsely represented, by the use of the words "Peat Moss" in connection with and as part of its corporate name and by various other means, such as advertisements in pamphlets, newspapers, and trade publications circulated among members of the public and by means of labels on boxes and bags in which its said product is shipped to the purchasing public, and on its letterheads that the commercial peat sold and distributed by it is "Peat Moss."

PAR. 4. There are two general classes of peat: (1) moss peat and (2) reed, sedge, and hypnum peats. There is a pronounced difference in the characteristics, physical properties, and chemical composition of these two types of peat. Moss peat is formed predominantly by the small stems and the leaves of various species of sphagnum moss; and possesses a high capacity for absorbing water, a high degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and hypnum peats have a relatively low capacity for water absorption, a lower degree of acidity, and a high ash content. They are lacking in germicidal properties and, in fact, have a tendency under certain conditions to harbor insects and micro-organisms.

There is a marked difference also in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as litter for poultry. Due to its high degree of acidity and its germicidal properties, it is the only type which can be used for surgical dressings. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. Respondent's product, designated, described, and represented as "Peat Moss" is a peat derived from various sedges and is properly identified as "Sedge Peat." It has a relatively low water absorbing capacity, varies in reaction from acid to alkaline and may contain injurious soluble salts. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "Peat Moss" in its corporate name and in describing and identifying its product, falsely represents, directly and by implication, that said product is "moss peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. Use by the respondent of the false and deceptive and misleading words "Peat Moss" in its corporate name and in designating and describing its product, 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 respondent's product is "moss peat" and that said product possesses all of the qualities and characteristics of "moss peat" and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

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

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon motion filed April 4, 1950, by counsel supporting the complaint to dismiss the complaint without prejudice, assented to by counsel for respondent and approved by Daniel J. Murphy, Chief of the Division of Deceptive Practice Trials.

It appears from said motion and upon the record as a whole that all of the practices charged in the complaint as being in violation of the Federal Trade Commission Act were discontinued by respondent upon its acceptance of Trade Practice Rules for the Peat Industry, approved January 13, 1950, and that respondent has now furnished the Commission with evidence of its compliance with said rules and of its intention to continue to comply therewith.

The Commission being of the opinion that in the circumstances here the public interest does not require further proceedings in this matter at this time:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such other or further action as future facts may warrant.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. R. A. McQuat* and *Mr. R. P. Bellinger* for the Commission.

*Bingham, Collins, Porter & Kistler*, of Washington, D. C., and *Mr. James M. Aungst*, of Canton, Ohio, for respondent.

CELANESE CORP. OF AMERICA. Complaint, September 26, 1944. Order, June 21, 1950. (Docket 5226.)

Charge: Discriminating in favor of certain customers, namely, certain garment or dress manufacturers and some of their retailer customers, on the basis of "prestige," by secretly paying and agreeing to pay them certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and offering for resale of cellulose acetate rayon fabrics converted into women's dresses and women's wearing apparel under the registered trade mark "celanese," while resisting the extension of such allowances to some purchasers of such fabrics and dresses and apparel even though willing to give advertising and

promotional services to respondent, as not prestige customers, in violation of subsection (d) of section 2 of the Clayton Act as amended; and discriminating in favor of certain purchasers of cellulose acetate rayon yarns, cellulose acetate rayon fabrics, and women's dresses and wearing apparel processed therefrom, against other purchasers of such commodities bought for resale, by agreeing to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such garments so purchased, while not according such services and facilities to all purchasers on proportionately equal terms; in violation of subsection (e) of section 2 of said act as amended.

COMPLAINT: The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsections (d) and (e) 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:

#### COUNT I

PARAGRAPH 1. Respondent Celanese Corp. of America is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 180 Madison Avenue, New York, N. Y.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, selling, and distributing cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from the said yarns. The respondent is one of the largest producers and distributors of cellulose acetate rayon yarns and fabrics in the United States and occupies a dominant position in said industry. The cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from said yarns are sold and distributed by said respondent under the registered trade-mark "Celanese." Said respondent operates and maintains plants for the manufacture of said yarns at Amcelle, near Cumberland, Md., and Celco, near Pearisburg, Va., and manufactures said fabrics at the Amcelle plant.

The yarns manufactured by the respondent are sold directly to "weavers" and "knitters" for processing by them into greige fabrics. The greige fabrics are then sold by such weavers and knitters to "converters," who dye and finish the greige materials. The finished, dyed fabrics are then resold by such converters principally to "garment or dress manufacturers." Respondent manufactures various fabrics from its processed yarns, and such manufactured fabrics are sold by it

primarily to garment or dress manufacturers, although some sales are made to upholsterers, drapery manufacturers, and the "piece goods" departments of large "dry goods" stores.

The yarns and fabrics manufactured by the respondent and its customers are, after conversion into women's dresses and other women's wearing apparel, sold by such garment or dress manufacturers to single retail dress shops, multiple retail dress shops, department stores, and women's specialty stores. Such women's dresses and women's wearing apparel are resold by such retailers to the consuming public.

Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, and, as a result of such sales, causes said products to be shipped and transported from its places of business to purchasers thereof who are located in various States of the United States other than the States in which respondent's places of business are located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factories and the purchasers of said products. Said products are sold and distributed for use and resale within the various States of the United States and in the District of Columbia.

The respondent's enterprise is one which is operated with the ultimate objective of marketing all its products through the various channels of distribution heretofore set forth to the consuming public in all parts of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during all the time herein mentioned has been, in competition with other corporations and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured from such yarns in commerce.

Many of the respondent's weaving and knitting customers, converting customers, and garment or dress manufacturing customers and their retailer customers are competitively engaged with each other and with customers of the respondent's competitors in the resale of cellulose acetate rayon fabrics, or of women's dresses and women's wearing apparel manufactured from such fabrics, within the trading areas in which the respondent's said customers and their retailer customers respectively offer for sale and sell the said products purchased from the respondent or from its customers.

The respondent's entire plan of distribution, beginning with its sale of cellulose acetate rayon yarns to weavers and knitters, including the processing of such yarns into greige fabrics, the sale of such greige fabrics to "converters" for dyeing and finishing, the sale of such finished fabrics by converters to garment or dress manufacturers for

conversion into women's dresses and women's wearing apparel, the sale of such women's dresses and women's wearing apparel by garment or dress manufacturers to retailers, and ending with the resale of such women's dresses and women's wearing apparel by such retailers to the consuming public, is an integrated whole, and the channels of distribution cannot be separated without effacing and destroying the final objective of the respondent which is to market its processed yarns to the consuming public in the form of women's dresses and women's wearing apparel under the registered trade-mark "Celanese." Respondent's customers are therefore "weavers," "knitters," "converters," "garment or dress manufacturers," and "retailers" and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions between the respondent and such customers.

PAR. 4. In the course and conduct of its business in commerce respondent since June 19, 1936, has secretly paid and agreed to pay to certain garment or dress manufacturers and to some of their retailer customers certain sums of money as compensation for and in consideration of advertising and promotional services furnished by them in connection with the sale and the offering for resale of cellulose acetate rayon fabrics converted into women's dresses and women's wearing apparel under the registered trade-mark "Celanese." The making of such payments was concealed by respondent from competitors of such favored garment or dress manufacturers and retailers. Respondent did not make such payments available on proportionally equal terms or on any terms to other garment or dress manufacturers and to their retailer customers who compete in the sale and distribution of women's dresses and women's wearing apparel made of cellulose acetate rayon fabrics under the registered trade-mark "Celanese."

The respondent arbitrarily classifies its customers on the basis of "prestige" and the respondent's judgment as to the degree of "prestige" such customers enjoy in the women's dress and women's wearing apparel industries in selecting which customers are to be favored with compensation for advertising and promotional services performed on behalf of the respondent. The respondent has paid to some of such favored garment or dress manufacturers or to their retailer customers varying amounts of money, ranging from \$60 to \$11,000 and over and ranging from approximately 25 to 50 percent of the advertising cost expended by such garment- or dress-manufacturer customers and their retailer customers during a single year period for the advertising of women's dresses and women's wearing apparel made of "Celanese" fabrics.

PAR. 5. It has been the policy of respondent to conceal from all of its garment- or dress-manufacturing customers and all of their retail customers, except those favored by the respondent, the details of

its agreements relating to compensation of garment- or dress-manufacturing customers and their retailer customers for services in connection with advertising and promotional facilities. Customers of the respondent and their retailer customers are denied knowledge of such allowances and compensation, and the respondent does not and has not made it known to any customers except its favored ones and to their retailer customers that it pays compensation for advertising and promotional services in connection with the sale of women's dresses and women's wearing apparel to the consuming public. Respondent has resisted the extension of such allowances to some purchasers of cellulose acetate rayon fabrics and women's dresses and women's apparel made therefrom, even though such customers were willing to give advertising and promotional services to the respondent in connection with the sale of such commodities to the consuming public, for the reason that such nonfavored customers did not come within the respondent's classification of "prestige" customers.

PAR. 6. The above-described acts and practices of the respondent are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S. C. title 15, sec. 13).

#### COUNT II

PARAGRAPH 1. For its charges under this paragraph of this count the Commission relies upon the matters and things set out in paragraphs 1 to 3, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 to 3, inclusive, of said count I were here set out in full. Said paragraphs 1 to 3, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraphs 1 to 3, inclusive, of count I hereof, respondent has discriminated and is discriminating in favor of certain purchasers of cellulose acetate rayon yarns, cellulose acetate rayon fabrics, and women's dresses and women's wearing apparel processed therefrom, against other purchasers of such commodities bought for resale, by agreeing to furnish or furnishing or by contributing to the furnishing of services and facilities connected with the offering for sale of such commodities so purchased and by not according such services and facilities to all purchasers on proportionally equal terms.

PAR. 3. The respondent has entered into advertising and promotional arrangements with certain of its customers, among which are: Alder & Alder, Inc., of New York, N. Y.; Davidow, Inc., of New York, N. Y.; Kane-Weil, Inc., of New York, N. Y.; Mutual-Rosenbloom Corp. of New York, N. Y.; Zoltan Rosenberg, of New York,

N. Y.; Sam Steinberg & Co., Inc., of New York, N. Y.; Murray Hamburger, Inc., of New York, N. Y.; Jeannette Modes, Inc., of New York, N. Y.; Kallman & Morris, Inc., of New York, N. Y.; Peck & Peck, of New York, N. Y.; Lord & Taylor, of New York, N. Y.; Page Boy Co., of Dallas, Tex.; Associated Merchandising Corp., of New York, N. Y.; Saks Fifth Avenue, of New York, N. Y.; Gorgeous Frocks, Inc., of New York, N. Y.; and others. As a result of such arrangements, large sums of money have been expended by respondent since June 19, 1936, in cooperatively advertising with such purchasers the "Celaneese" dresses and women's wearing apparel so purchased and the respondent has not accorded such services or facilities to other garment or dress manufacturers and retailers competitively engaged with the aforementioned purchasers on proportionally equal terms or on any terms.

PAR. 4. The aforesaid acts of respondent constitute a violation of the provisions of subsection (e) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

Complaint dismissed without prejudice by the following order:

This matter came on to be heard in regular course upon a motion to dismiss the complaint without prejudice (designated "Memorandum Proposing Disposition") filed March 31, 1950, by counsel supporting the complaint and Chief, Division of Antimonopoly Trials, to which no answer was filed by respondent.

It appearing to the Commission from said motion and from the record herein that the complaint charges respondent with having discriminated in favor of certain of its customers as against others by furnishing services or facilities, or paying for services or facilities furnished by such customers, in connection with the processing, handling, sale, or offering for sale of its cellulose acetate rayon yarns and cellulose acetate rayon fabrics manufactured and processed from said yarns in violation of subsections (d) and (e) of section 2 of the Clayton Act as amended; that war conditions prevented an early trial of the case; that a supplemental investigation made in 1949 disclosed that the practices complained of were in substance discontinued about 1941 and have not been resumed; and that there is no present reason to anticipate a resumption of said practices:

*It is ordered*, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action as future circumstances may warrant.

*Mr. Philip R. Layton* and *Mr. Eldon P. Schrup* for the Commission.

*Davies, Richberg, Beebe, Busick & Richardson* and *Roberts & McInnis*, of Washington, D. C., and *Mr. Matthew H. O'Brien*, of New York City, for respondent.

