

## Complaint

IN THE MATTER OF  
MIDLAND LABORATORIES

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

*Docket 5676. Complaint, July 7, 1949—Decision, Dec. 27, 1949*

Where a corporation engaged in the interstate sale and distribution of two food insecticides which it designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate"; through statements in leaflets, pamphlets, and circular letters, directly and by inference—

- (a) Represented falsely that pyrethrum, contained in said concentrate, is the only insecticide safe for use around food products; the facts being that, granted proper precautions, insecticides other than those containing said substance are safe; and other active insecticidal ingredients were also contained therein;
- (b) Represented that their said "Mill-O-Cide," when used as directed, would kill food insects in all stages of insect life; and facts being that when applied, as recommended, by spraying, it would kill only those insects, insect eggs and larvae with which it came in contact;
- (c) Represented that the toxic and repellent effects of said product would remain several hours after spraying; the facts being that no particular time after spraying could be fixed within which invading insects would be killed or repelled, since effect on insects invading a storeroom or warehouse after spraying depends on variable factors, including equipment used and density of the mist created;
- (d) Represented that said preparation was not toxic or poisonous to humans or warm-blooded animals; the facts being that while, when used as directed, it was not so, it did contain ingredients which were thus toxic;
- (e) Represented that said preparation created no fire hazard; when in fact it did constitute a fire hazard unless used as directed; and
- (f) Represented that it would not taint or leave an odor on food products; when in fact if sprayed directly on food or bakery products it would impart an odor or taste thereto;

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

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

*Mr. Joseph Callaway* for the Commission.

*O'Connor, Thomas & O'Connor*, of Dubuque, Iowa, for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal

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Trade Commission having reason to believe that Midland Laboratories, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Midland Laboratories is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal place of business located at 210 Jones Street, Dubuque, Iowa.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of two preparations designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate," both advertised as food insecticides. The formula for Mill-O-Cide is as follows:

	<i>Percent</i>
Pyrethrins I and II.....	0.07
Sesamin.....	.27
B-Butoxy-B'-Thiocyanodiethyl Ether.....	1.69
Methyl Salicylate.....	.55
Refined Mineral Oil.....	97.42

Mill-O-Cide Concentrate contains a smaller proportion of refined mineral oil and larger proportions of the other ingredients.

The respondent causes and has caused its said products when sold to be shipped from its place of business located in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia. Respondent's volume of business in said products in said commerce is substantial.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said products, in commerce, respondent has made and is making many statements and representations relating to the value and effectiveness of its said products by means of advertisements in the form of leaflets, pamphlets, and circular letters. Among and typical of such statements and representations contained in said advertisements concerning Mill-O-Cide Concentrate is the following:

Mill-O-Cide Concentrate is a liquid insecticide containing pyrethrum . . . the only type of insecticide proven safe for use around food products.

Among and typical of the statements and representations contained in said advertisements concerning Mill-O-Cide are the following:

Mill-O-Cide is a "specific" aid in the control of all insects infesting flour mills (granary and rice weevil, cadelle, confused flour beetle, Mediterranean flour moth, saw-tooth grain beetle, Indian meal moth, silverfish, cockroaches, and other hard-to-kill insects).

It is a liquid "contact type" spray containing pyrethrum skillfully blended with modern synthetics and is to be regarded as a specific aid in the control of those hard-to-reach and harder-to-kill weevil, roaches (water bugs), flour moths, and silverfish (fire brats) in their egg, larval, and adult stages.

Mill-O-Cide has great "residual toxicity" due to its evaporation being retarded enough to promote prolonged contact with the insect.

High toxicity. Besides being extremely lethal to insects the toxic and repellent action of Mill-O-Cide remains for several hours after spraying.

To the user. Mill-O-Cide offers the incomparable advantages of nontoxicity, pleasant odor, and freedom from fire hazard.

Mill-O-Cide is safe to use, it is nonpoisonous, will not stain, taint, or leave an odor in bakery products.

Mill-O-Cide food insecticide, safe for use around humans and warm-blooded animals.

PAR. 4. Through the use of the above-mentioned statements and others similar thereto, but not specifically set out herein, respondent represented, directly and by inference, that pyrethrum contained in Mill-O-Cide Concentrate is the only insecticide safe for use around food products; that Mill-O-Cide, used as directed, will kill food insects in all states of insect life; that when sprayed, Mill-O-Cide permits prolonged contact with insects; that its toxic and repellent effect on insects will remain for several hours after spraying; that it is not toxic or not poisonous to humans or warmblooded animals; that its use creates no fire hazard, and that it will not taint or leave an odor in food products.

PAR. 5. The above representations are false, misleading, and deceptive in the following respects: There are insecticides other than those containing pyrethrum which are safe to use around food products if proper precautions are taken. Furthermore, Mill-O-Cide Concentrate contains active insecticidal ingredients in addition to pyrethrum. Mill-O-Cide will kill only those insects with which it comes in contact and for this reason cannot be depended upon to kill all insects in any stage of life. Grain and other cereal products when stored can become infested with insect life and in such cases Mill-O-Cide cannot be used in a manner that will kill such insects without contaminating the grain or other cereal products. The evaporation of Mill-O-Cide will not be retarded sufficiently, after spraying, so that prolonged contact with insects will be afforded. Its toxic and repellent effect on insects will not remain for several hours. Insects invading a storeroom or warehouse within a short time after the place

has been sprayed with Mill-O-Cide will not be killed or repelled by it. Mill-O-Cide contains ingredients that are toxic to human and warm-blooded animals and ingredients which are also highly inflammable, the use of which creates a fire hazard. If sprayed directly on food or bakery products, Mill-O-Cide will taint or impart an odor to them.

PAR. 6. The aforesaid false, misleading, and deceptive statements and representations so made by respondent have had and now have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true and to cause and do cause a substantial portion of the purchasing public to purchase respondent's products because of such erroneous belief.

PAR. 7. 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.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 7, 1949, issued and subsequently served upon the respondent, Midland Laboratories, a corporation, its complaint charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's answer to said complaint was filed on August 11, 1949, and pursuant to leave granted the answer was amended by an appropriate document filed on September 26, 1949. Subsequently, a stipulation was entered into by and between the respondent and Daniel J. Murphy, assistant chief trial counsel of the Commission, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted, and its conclusion based thereon and entered its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent further expressly waived the filing of a trial examiner's recommended decision. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's amended answer, and the stipulation as to the facts, said

stipulation having been approved, accepted and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Midland Laboratories, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located at 210 Jones Street, Dubuque, Iowa.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution of two preparations designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate," both advertised as food insecticides. The formula for Mill-O-Cide is as follows:

	<i>Percent</i>
Pyrethrins I and II.....	0.07
Sesamin.....	.27
B-Butoxy-B'-Thiocyanodiethyl Ether.....	1.69
Methyl Salicylate.....	.55
Refined Mineral Oil.....	97.42

Mill-O-Cide Concentrate contains a smaller proportion of refined mineral oil and larger proportions of the other ingredients.

The respondent causes and has caused its preparations, when sold, to be shipped from its place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said preparations in commerce among and between the various States of the United States and in the District of Columbia. The respondent's volume of business in said preparations in said commerce is substantial.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said preparations, in commerce, the respondent has made and is making many statements and representations relating to the value and effectiveness of its said preparations by means of advertisements in the form of leaflets, pamphlets, and circular letters. Among such statements and representations contained in said advertisements concerning Mill-O-Cide Concentrate is the following:

Mill-O-Cide Concentrate is a liquid insecticide containing pyrethrum . . . the only type of insecticide proven safe for use around food products.

Among the statements and representations contained in said advertisements concerning Mill-O-Cide are the following:

Mill-O-Cide is a "specific" aid in the control of all insects, infesting flour mills (granary and rice weevil, cadelle, confused flour beetle, Mediterranean flour moth, sawtooth grain beetle, Indian meal moth, silverfish, cockroaches, and other hard-to-kill insects).

It is a liquid "contact type" spray containing pyrethrum skillfully blended with modern synthetics and is to be regarded as a specific aid in the control of those hard-to-reach and harder-to-kill weevil, roaches (water bugs), flour moths, and silverfish (fire brats) in their eggs, larval, and adult stages.

High toxicity. Besides being extremely lethal to insects the toxic and repellent action of Mill-O-Cide remains for several hours after spraying.

To the user. Mill-O-Cide offers the incomparable advantages of nontoxicity, pleasant odor, and freedom from fire hazard.

Mill-O-Cide is safe to use, it is nonpoisonous, will not stain, taint, or leave an odor in bakery products.

Mill-O-Cide food insecticide, safe for use around humans and warm-blooded animals.

PAR. 4. Through the use of the foregoing statements, and others similar thereto, the respondent has represented, directly and by inference, that pyrethrum contained in Mill-O-Cide Concentrate is the only insecticide safe for use around food products; that Mill-O-Cide, when used as directed, will kill food insects in all stages of insect life; that the toxic and repellent effects of Mill-O-Cide will remain for several hours after spraying; that said preparation is not toxic or poisonous to humans or warm blooded animals; that said preparation creates no fire hazard; and that Mill-O-Cide will not tint or leave an odor on food products.

PAR. 5. There are insecticides other than those containing pyrethrum which are safe for use around food products if proper precautions are taken. Furthermore, Mill-O-Cide Concentrate contains other active insecticidal ingredients in addition to pyrethrum. The recommended method of application of Mill-O-Cide is by spraying. When sprayed it will kill only those insects, insect eggs and insect larvae with which it comes in contact, and for this reason will not kill all insects in any stage of life that may be in a room when the spraying is done. The toxic and repellent effect of Mill-O-Cide on insects invading a storeroom or warehouse after the place has been sprayed depends on a number of variable factors including the type of spraying equipment used and the density of the mist in the room at the time. It is therefore not possible to fix any particular time after spraying within which invading insects will be killed or repelled. Mill-O-Cide contains ingredients that are toxic to humans and warm-blooded animals, but the preparation is not toxic to humans or warm-blooded animals

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when used as directed. Unless this preparation is used as directed it does constitute a fire hazard. If sprayed directly on food or bakery products Mill-O-Cide will impart an odor or taste to them.

PAR. 6. The Commission is of the opinion, therefore, and finds, that the statements and representations referred to in paragraphs 3, 4, and 5 are false, misleading, and deceptive.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondent's preparations.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's amended answer thereto, and a stipulation as to the facts entered into by and between the respondent and Daniel J. Murphy, assistant chief trial counsel of the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure the Commission may proceed upon the complaint, amended answer, and stipulation to make its report, stating its findings as to the facts, including inferences which it may draw from the facts admitted in the stipulation, and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs; and the Commission, having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondent, Midland Laboratories, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of insecticides designated "Mill-O-Cide" and "Mill-O-Cide Concentrate," or any other

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preparation or preparations of substantially similar composition or properties, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

(a) That any of said preparations, when used as directed, will kill all insects in any stage of life: *Provided, however,* That this shall not prohibit the representation that such preparations will kill insects in any stage of life which they actually contact;

(b) That any of said preparations are not toxic to humans or warm-blooded animals, without qualifying the representation in each instance, in immediate conjunction or connection therewith, in letters of equal size and conspicuousness, to clearly indicate that the preparations must be used as directed;

(c) That the use of any of said preparations will not create a fire hazard, without qualifying the representation in each instance, in immediate conjunction or connection therewith, in letters of equal size and conspicuousness, to clearly indicate that the preparations must be used as directed;

(d) That any of said preparations may be sprayed directly on food products without leaving an odor or taste;

(e) That insects invading a storeroom or other enclosure within any particular time after it has been sprayed with any of said preparations will be killed or repelled;

(f) That pyrethrum is the only insecticide which is safe for use around food products.

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

## Syllabus

IN THE MATTER OF  
SKIN CULTURE INSTITUTE, INC. AND ANTHONY GETZCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5490. Complaint, Apr. 7, 1947—Decision, Jan. 4, 1950*

In a proceeding in which there was coupled with a stipulation of facts which had been agreed upon between opposing counsel, a proposed order to cease and desist, which was likewise thus agreed upon and recommended for adoption by the Commission, and which provided that for a period of eight months from the date of its service, the respondent, as respects its misleading corporate name, might use, parenthetically, and following the word "formerly", its old corporate name after any new name adopted:

The Commission was of the opinion that the proposed order failed to adequately prohibit the acts and practices found to be adverse to the public interest, or to supply a proper remedy such as required by the findings of fact and conclusion in the case; but was of the further opinion, as respects said eight months provision, that while the same did not accord with the general policy of the Commission, it nevertheless appeared that the interest of justice might best be served and the public interest more expeditiously protected by making an exception to said policy and accepting said provision, since to reject it would compel abrogation of the entire agreement as to the stipulation of facts, entered into in good faith by counsel for respondents with the understanding that the order would contain such a provision, and would require a hearing on all issues raised by the complaint and answer, and thereby entail considerable expense to all parties and delay the effective date of any order to cease and desist beyond that contemplated.

Where a corporation and its president, who controlled its policies and practices, engaged in the interstate sale and distribution of certain cosmetic preparations, namely, their "Sulphidol," "Acina Lotion," "Olecerin Emollient," "Spexol Soap," "Liquidol," and "Skin Culture Yeast Masque" which they sold and distributed either as single units or, with the exception of the "Skin Culture Yeast Masque," in a combination designated "Home Routine Method," and with the "Liquidol" or "Spexol Soap" furnished interchangeably, depending upon the oiliness or dryness of the purchaser's skin;

In advertising their said preparations in circulars, issues of the New York Daily Mirror, form letters sent in reply to inquiries from readers of newspaper advertisements, and through a circular which purported to be a reprint of a column written by a so-called beauty editor in a certain issue of said Daily—

(a) Falsely represented that the use of a combination of their said "Acina Lotion", "Sulphidol" and "Olecerin", together with their "Liquidol" or "Spexol Soap", constituted an effective treatment and remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin and dry skin, and would result in a clear, unblemished complexion;

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- (b) Falsely represented that their "Liquidol" or "Spexol Soap", used in combination with "Sulphidol", were effective in normalizing the flow of oil in the skin, in shrinking distended or plugged pores, and in removing impurities from the openings of the skin; and
- (c) Falsely represented that their "Skin Culture Yeast Masque", when compounded with Fleischman's Yeast would refine the texture of the skin and that the vitamins in the yeast would be beneficial thereto;

When in fact said preparation would not, singly or otherwise, accomplish such results, nor would the vitamins in the yeast added to said "Masque", be beneficial to the skin; and

Where said corporation and individual—

- (d) Represented, through use of the word "Institute" as a part of their corporate name, in advertising circulars, on letterheads, and otherwise, that said corporation consisted of a group or association of specialists in the care of the skin, instituted for the purpose of considering the problem of said specialized profession from a scientific and technical standpoint, and to further and promote advancement in knowledge and technique in that field, and to conduct research and experiments in that respect;

Notwithstanding the fact said corporation was a commercial enterprise conducted for profit and was not engaged in the activities of an institute, as described above;

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

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

Before *Mr. W. W. Sheppard*, trial examiner.

*Mr. Morton Nesmith* for the Commission.

*Mr. George Landesman*, of New York City, for respondents.

## COMPLAINT

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

PARAGRAPH 1. Respondent Skin Culture Institute, Inc., a corporation, chartered and doing business under the laws of the State of New York, having its office and principal place of business at 545

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Fifth Avenue in the city of New York, State of New York. Respondent Anthony Getz, president of Skin Culture Institute, Inc., is an individual whose address is 545 Fifth Avenue, in the city of New York, State of New York. This individual respondent controls and has controlled the policies and practices of the corporate respondent in the performance of the acts and practices hereinafter alleged.

PAR. 2. Said respondents are now, and have been for several years last past, engaged in the business of selling and distributing certain cosmetic preparations as "Cosmetic" is defined in the Federal Trade Commission Act. The designations used by respondents for their preparations and the formulas and directions for their use are as follows:

(1)	Sulphidol	
Colloidol Sulfur.....	-----	800.0
Silica (Fine Mesh).....	-----	600.0
Aluminum Hydroxide.....	-----	40.0
Bentonite.....	-----	50.0
Propyl-Para Hydroxybenzoate.....	-----	8.0
Aqua.....	Sufficient quantity to make	4,000.0

## SULPHIDOL

(For External Use Only)

DIRECTIONS: Shake the bottle well before using, allowing no sediment to remain on the bottom of the bottle. Pour on a gauze pad and spread evenly over the entire face from the cheekbones down, keeping it away from the corners of the nose, mouth and from the area of the eyes. This preparation will form a thin coating over the surface and will dry within a few minutes. After the first coat is dry, apply a second coat over the first and when that is dry leave on overnight. In the morning, wet the face with luke-warm water in order to soften the mask and wash the face in the regular manner with the liquid soap keeping the eyes closed during this entire procedure.

(2)	Acina Lotion	
Lime.....	-----	165 gm.
Sublimed Sulfur.....	-----	250 gm.
Water.....	Sufficient quantity to make	1,000 cc.

## ACINA LOTION

(For External Use Only)

DIRECTIONS: Dilute one teaspoonful of the Acina Lotion in a full-size drinking glass of luke-warm water. Hold the face over the wash

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basin, close the eyes and mouth. Use a good size piece of cotton, soaked with the solution in the glass and dab on thoroughly over the entire face keeping it away from the area of the eyes. The Solution is not to be rubbed in but dabbed on gently until the face is thoroughly soaked with the solution in the glass. Then allow the excess to drip off the face and mouth and wash the entire face with cold water and dry thoroughly. CAUTION: The eyes are to be kept closed until the face is washed and dried. Use an old spoon and also remove all jewelry from the hands when using this preparation as it has a tendency to turn metal black.

(3)	Olecerin Emollient	
Lanolin.....	-----	150. 00
Aqua.....	-----	150. 00
Aquaphor.....	-----	150. 00
Glycerine.....	-----	50. 00
Perfume.....	-----	5. 00
Cetyl Alcohol.....	-----	5. 00

## OLECERIN EMOLLIENT

DIRECTIONS: This preparation is used to offset any excessive dryness and does not interfere with the regular routine. After washing the face with the liquid soap, rinse thoroughly with luke-warm water and leave the face wet, then apply OLECERIN EMOLLIENT on the wet face rubbing in thoroughly over the entire face for a few moments, then rinse off again with luke-warm water and wipe the face with a towel removing all the moisture and the excess Emollient. After the face is thoroughly wiped, rinse again with cold water and dry.

(4)

## SPEXOL SOAP

(A Soapless Soap Substitute)

DIRECTIONS: The hands are to be thoroughly cleansed with an ordinary soap. Then wet the face with luke warm water, pour the liquid soap in the palm of the hands and rub into the face, wash with luke warm water and rinse with cold. Dry thoroughly. Never use hot water or a complexion brush in washing the face and always wash before retiring, upon arising, and during the day as often as necessary.

(5)	LIQUIDOL	
Sulphonated Castor Oil.....	-----	260. 00
Sulphonated Olive Oil.....	-----	80. 00
Ethylene Glycol.....	-----	15. 00
Water .....	-----	645. 00
Tincture Green Soap.....	-----	3000. 00

Colored by 3% solution of vegetable coloring F. D. & C. Red #2 purchased from R. F. Revson Co., 144 W. 18th St., New York City.

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## LIQUIDOL

(For Oily Skin)

DIRECTIONS: The hands are to be thoroughly cleansed with an ordinary soap. Then wet the face with luke warm water, pour the liquid soap in the palm of the hands and rub into the face, wash with luke warm water and rinse with the cold. Dry thoroughly. Never use hot water or a complexion brush in washing the face and always wash before retiring, upon arising, and during the day as often as necessary.

## (6) SKIN CULTURE YEAST MASQUE

Talcum .....	3 lbs.
Almond Meal.....	1 lb.
Orris Root.....	10 oz.
Oatmeal .....	½ lb.
Magnesium Carbonate.....	2 oz.
Oil of Gardenia.....	3 drams
Zinc Sterate.....	1½ lbs.
Zinc Oxide.....	5 lbs.
Boric Acid.....	2 lbs.
Titanium Dioxide.....	2½ lbs.
Bolted Kaolin.....	34¼ lbs.

DIRECTIONS: Cleanse the skin thoroughly with Spexol soap and water and pat the skin until partly dry. Dissolve one cake of Fleischman's Yeast in 3 teaspoons full of hot water. Pour the entire contents of 1 package of masque into a cup, then pour the solution of the yeast into the powder making a thick smooth paste. Apply the masque evenly over the entire face and allow to dry. When the masque is thoroughly dried on the fact, remove by washing the face with hot water. After the masque is entirely removed, rinse the face with cold water and dry. Finish the treatment by the use of Skin Culture's Cleansing Cream thoroughly massaged into the skin.

For best results, and to retail a glamorous, youthful complexion, apply Skin Culture's Yeast Masque at least three times a week

These preparations are sold and distributed either as single units or in a combination designated "Home Routine Method." When sold in such combination "Skin Culture Yeast Masque" is not included, and "Liquidol Soap" and "Spexol" are furnished interchangeably, depending upon the oiliness or dryness of the purchasers' skin.

Said respondents cause said cosmetic preparations, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States in the United States and 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 said cosmetic preparations by the United States mails and by various means in com-

merce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, circulars and advertisements appearing in the August and November 1943 issues of the New York Daily Mirror, form letters soliciting the purchase of respondents' cosmetic preparations used in replying to inquiries from readers of newspaper advertisements, and a circular purporting to be a reprint of a column written by a so-called beauty editor in the August 1941 issue of the New York Daily Mirror; and respondents have disseminated, and caused the dissemination of, advertisements concerning said cosmetic preparations 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 cosmetic preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

**PIMPLES** Cleared Quickly! Blackheads, Large Pores, Oily, Dry Skin corrected by our proven methods. **MEN! WOMEN!** Clear your face NOW!

**PIMPLES. MEN! WOMEN!** If Pimples, Black Heads, Muddy, Oily, Dry Complexions of external origin handicap your social or business career, don't tolerate these defects. **N. Y. SKIN CULTURE INSTITUTE**, now makes it possible for you, **QUICKLY AND INEXPENSIVELY** to help obtain a **CLEAR COMPLEXION**, right in **YOUR OWN HOME**, by their modern methods.

Just think, is there anything more distressing, more annoying or more disheartening in both business and social life than days and weeks utterly spoiled by Ugly Facial Blemishes such as Pimples, Blackheads, Oily Skin which shines like the summer sun, Dry Skin which causes premature Wrinkles, Enlarged Pores and Other Complexion Defects.

Why continue the mental agony any longer, when just making up your mind to attend to your complexion **SENSIBLY** can bring you results quickly and inexpensively. Our home routine method was developed so that those who are unable to call at the Institute in person may also have the benefits of obtaining a clear unblemished complexion by this routine.

The skin culture routine begins with a rather astonishing liquid soap substitute, then progresses to a special-formula medication, the combination of the two applications gradually normalizing the oil flow of the plugged pores. Impurities work out of the tiny openings. Finally, as the functioning of the skin glands becomes healthy and normal, this expert is very successful in actually refining the texture of the skin by means of a secret facial pack to which the client adds a cake of Fleischmann's fresh yeast for the powerful vitamin value.

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 represented that the use of a combination of said cosmetic preparations Acina Lotion, Sulphidol and Olecerin Emollient, together with the preparations

Liquidol Soap or Spexol, constitutes an effective treatment and remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin and dry skin and will result in a clear, unblemished complexion; that their preparations "Spexol" or "Liquidol Soap" used in combination with "Sulphidol" are effective in normalizing the flow of oil in the skin, in shrinking distended or plugged pores and in removing impurities from openings of the skin; that their preparation "Skin Culture Yeast Masque" when compounded with Fleischmann's Yeast will refine the texture of the skin and that the vitamins in the yeast will be beneficial to the skin.

PAR. 6. 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 use of said cosmetic preparations, when used singly, in combination, or as supplementary to each other, will not constitute an effective treatment or remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin or dry skin, and will not result in a clear or unblemished complexion, regardless of the cause thereof. None of said preparations used alone or any combination thereof will normalize the oil flow of the skin, will not shrink distended or plugged pores or remove impurities from openings of the skin. The use of the "Skin Culture Yeast Masque" will not refine the texture of the skin and the vitamins in the yeast, which is added to said preparation, will not be beneficial to the skin.

PAR. 7. The respondents, by and through the use of the word "Institute" as a part of the corporate name, "Skin Culture Institute, Inc.," in advertising literatures, on letterheads and otherwise, represent that the corporate respondent, Skin Culture Institute, Inc., consists of a group or association of specialists in the care of the skin, instituted for the purpose of considering the problems of said specialized profession from a scientific and technical standpoint and to further and promote advancement in knowledge and technique in that field and to conduct research and experiments in that respect. In truth and in fact, said respondent is a commercial enterprise conducted for profit and is not engaged in the activities of an institute as described above.

PAR. 8. The use by the respondents of the aforesaid statements and representations disseminated as aforesaid, has had, and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said cosmetic preparations.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 7, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondents filed their answer, hearings were held before a trial examiner of the Commission theretofore duly designated by it for the purpose of receiving testimony and other evidence in support of and in opposition to the allegations of the complaint. At one of said hearings, held on December 14, 1948, a stipulation of facts was agreed upon between counsel for respondents and counsel in support of the complaint and read into the record in lieu of evidence in support of and in opposition to the allegations of the complaint. At said hearing there was also read into the record a proposed order to cease and desist agreed upon by said counsel and recommended for adoption by the trial examiner and the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, the stipulation of facts, and the recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, accepts and approves the stipulation of facts, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Skin Culture Institute, Inc., is a corporation, chartered and doing business under the laws of the State of New York, with its office and principal place of business at 545 Fifth Avenue, New York, N. Y. The individual respondent, Anthony Getz, is president of respondent Skin Culture Institute, Inc., and controls and has controlled its policies and practices.

PAR. 2. (a) Said respondents are now, and for several years last past have been, engaged in the offering for sale, sale, and distribution of

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certain cosmetic preparations, the designations, formulas, and directions for the use of which are as follows:

(1) SULPHIDOL	
Colloidol Sulfur.....	800.0
Silica (Fine Mesh).....	600.0
Aluminum Hydroxide.....	40.0
Bentonite.....	50.0
Propyl-Para Hydroxybenzoate.....	8.0
Aqua.....	Sufficient quantity to make 4000.0

## SULPHIDOL

(For External Use Only)

**DIRECTIONS:** Shake the bottle well before using allowing no sediment to remain on the bottom of the bottle. Pour on a gauze pad and spread evenly over the entire face from the cheekbones down, keeping it away from the corners of the nose, mouth and from the area of the eyes. This preparation will form a thin coating over the surface and will dry within a few minutes. After the first coat is dry, apply a second coat over the first and when that is dry leave on overnight. In the morning, wet the face with lukewarm water in order to soften the mask and wash the face in the regular manner with the liquid soap keeping the eyes closed during this entire procedure.

(2) ACINA LOTION	
Lime.....	165 gm.
Sublime Sulfur.....	250 gm.
Water.....	Sufficient quantity to make 1000 cc.

## ACINA LOTION

(For External Use Only)

**DIRECTIONS:** Dilute one teaspoonful of the Acina Lotion in a full size drinking glass of lukewarm water. Hold the face over the wash basin, close the eyes and mouth. Use a good size piece of cotton, soaked with the solution in the glass and dab on thoroughly over the entire face keeping it away from the area of the eyes. The Solution is not to be rubbed in but dabbed on gently until the face is thoroughly soaked with the solution in the glass. Then allow the excess to drip off the face and mouth and wash the entire face with cold water and dry thoroughly.

**CAUTION:** The eyes are to be kept closed until the face is washed and dried. Use an old spoon and also remove all jewelry from the hands when using this preparation as it has a tendency to turn metal black.

(3) OLECERIN EMOLLIENT	
Lanolin.....	150.00
Aqua.....	150.00
Aquaphor.....	150.00
Glycerine.....	50.00
Perfume.....	5.00
Cetyl Alcohol.....	5.00

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## OLECERIN EMOLLIENT

**DIRECTIONS:** This preparation is used to offset any excessive dryness and does not interfere with the regular routine. After washing the face with the liquid soap, rinse thoroughly with lukewarm water and leave the face wet, then apply OLECERIN EMOLLIENT on the wet face rubbing in thoroughly over the entire face for a few moments, then rinse off again with lukewarm water and wipe the face with a towel removing all the moisture and the excess Emollient. After the face is thoroughly wiped, rinse again with cold water and dry.

(4)

## SPEXOL SOAP

(A Soapless Soap Substitute)

**DIRECTIONS:** The hands are to be thoroughly cleansed with an ordinary soap. Then wet the face with lukewarm water, pour the liquid soap in the palm of the hands and rub into the face, wash with lukewarm water and rinse with cold. Dry thoroughly. Never use hot water or a complexion brush in washing the face and always wash before retiring, upon arising, and during the day as often as necessary.

(5)

## LIQUIDOL

Sulphonated Castor Oil.....	260.00
Sulphonated Olive Oil.....	80.00
Ethylene Glycol.....	15.00
Water.....	645.00
Tincture Green Soap.....	3000.00

Colored by 3% solution of vegetable coloring F. D. & C. Red #2 purchased from R. F. Revson Co., 144 W. 18th St., New York City.

## LIQUIDOL

(For Oily Skin)

**DIRECTIONS:** The hands are to be thoroughly cleansed with an ordinary soap. Then wet the face with lukewarm water, pour the liquid soap in the palm of the hands and rub into the face, wash with lukewarm water and rinse with the cold. Dry thoroughly. Never use hot water or a complexion brush in washing the face and always wash before retiring, upon arising, and during the day as often as necessary.

(6)

## SKIN CULTURE YEAST MASQUE

Talcum.....	3 lbs.
Almond Meal.....	1 lb.
Orris Root.....	10 oz.
Oatmeal.....	½ lb.
Magnesium Carbonate.....	2 oz.
Oil of Gardenia.....	3 drams
Zinc Stereate.....	1½ lbs.
Zinc Oxide.....	5 lbs.
Boric Acid.....	2 lbs.
Titanium Dioxide.....	2½ lbs.
Bolted Kaolin.....	34¼ lbs.

DIRECTIONS: Cleanse the skin thoroughly with Spexol soap and water and pat the skin until partly dry. Dissolve one cake of Fleischmann's Yeast in 3 teaspoons full of hot water. Pour the entire contents of 1 package of masque into a cup, then pour the solution of the yeast into the powder making a thick smooth paste. Apply the masque evenly over the entire face and allow to dry. When the masque is thoroughly dried on the face, remove by washing the face with hot water. After the masque is entirely removed, rinse the face with cold water and dry. Finish the treatment by the use of Skin Culture's Cleansing Cream thoroughly massaged into the skin. For best results, and to retain a glamorous, youthful complexion, apply Skin Culture's Yeast Masque at least three times a week.

(b) The aforesaid preparations are sold and distributed either as single units or in a combination designated "Home Routine Method." When sold in such combination "Skin Culture Yeast Masque" is not included, and "Liquidol Soap" and "Spexol" are furnished interchangeably, depending upon the oiliness or dryness of the purchasers' skin.

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

PAR. 4. (a) In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, have disseminated, and caused the dissemination of certain advertisements concerning said cosmetic preparations by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, circulars and advertisements appearing in the August and November 1943 issues of the New York Daily Mirror, form letters soliciting the purchase of respondents' cosmetic preparations used in replying to inquiries from readers of newspaper advertisements, and a circular purporting to be a reprint of a column written by a so-called beauty editor in the August 1941 issue of the New York Daily Mirror; and respondents have disseminated, and caused the dissemination of, advertisements concerning said cosmetic preparations 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 cosmetic preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

(b) Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

**PIMPLES Cleared Quickly! Blackheads, Large Pores, Oily, Dry Skin corrected by our proven methods. MEN! WOMEN! Clear your face NOW!**

**PIMPLES. MEN! WOMEN! If Pimples, Blackheads, Muddy, Oily, Dry Complexions of external origin handicap your social or business career, don't tolerate these defects. N. Y. SKIN CULTURE INSTITUTE, now makes it possible for you, QUICKLY AND INEXPENSIVELY to help obtain a CLEAR COMPLEXION, right in YOUR OWN HOME, by their modern methods.**

Just think, is there anything more distressing, more annoying or more disheartening in both business and social life than days and weeks utterly spoiled by Ugly Facial Blemishes such as Pimples, Blackheads, Oily Skin which shines like the summer sun, Dry Skin which causes premature Wrinkles, Enlarged Pores and Other Complexion Defects.

Why continue the mental agony any longer, when just making up your mind to attend to your complexion SENSIBLY can bring you results quickly and inexpensively. Our home routine method was developed so that those who are unable to call at the Institute in person may also have the benefits of obtaining a clear unblemished complexion by this routine.

The skin culture routine begins with a rather astonishing liquid soap substitute, then progresses to a special-formula medication, the combination of the two applications gradually normalizing the oil flow of the plugged pores. Impurities work out of the tiny openings. Finally, as the functioning of the skin glands becomes healthy and normal, this expert is very successful in actually refining the texture of the skin by means of a secret facial pack to which the client adds a cake of Fleischmann's fresh yeast for the powerful vitamin value.

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, all of which purport to be descriptive of the therapeutic and cosmetic values and properties of respondents' said preparations, respondents have represented that the use of a combination of said cosmetic preparations "Acina Lotion," "Sulphidol," and "Olecerin Emollient," together with the preparations "Liquidol" or "Spexol Soap," constitutes an effective treatment and remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin, and dry skin and will result in a clear, unblemished complexion; that their preparations "Liquidol" or "Spexol Soap" used in combination with "Sulphidol" are effective in normalizing the flow of oil in the skin, in shrinking distended or plugged pores, and in removing impurities from openings of the skin; that their preparation "Skin Culture Yeast Masque" when compounded with Fleischmann's Yeast will refine the texture of the skin and that the vitamins in the yeast will be beneficial to the skin.

PAR. 6. Said advertisements containing the statements and representations set forth in paragraphs 4 and 5 above, which are false, misleading, and deceptive in material respects, are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of said cosmetic preparations, either singly, in combination, or as supplementary to each other, will not constitute an effective treatment or remedy for pimples, blackheads, enlarged pores, wrinkles, oily skin or dry skin, and will not result in a clear or unblemished complexion, regardless of the cause thereof. None of said preparations used alone nor any combination thereof will normalize the oil flow of the skin, shrink distended or plugged pores, or remove impurities from openings of the skin. The use of the "Skin Culture Yeast Masque" will not refine the texture of the skin, and the vitamins in the yeast, which is added to said preparation, will not be beneficial to the skin.

PAR. 7. The respondents, by and through the use of the word "Institute" as a part of the corporate name, "Skin Culture Institute, Inc.," in advertising literatures, on letterheads and otherwise, represent that the corporate respondent, Skin Culture Institute, Inc., consists of a group or association of specialists in the care of the skin, instituted for the purpose of considering the problems of said specialized profession from a scientific and technical standpoint and to further and promote advancement in knowledge and technique in that field and to conduct research and experiments in that respect. In truth and in fact, said respondent is a commercial enterprise conducted for profit and is not engaged in the activities of an institute as described above.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their cosmetic preparations disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said cosmetic preparations.

#### CONCLUSION

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

The provisions of the proposed order to cease and desist agreed upon by counsel and recommended for adoption by the Commission, as aforesaid, fail to adequately prohibit the acts and practices herein found to be adverse to the public interest or to supply a proper remedy such as is required by the findings of fact and conclusion heretofore set forth. Said order also provides that for a period of eight months from the date of its service the corporate respondent, Skin Culture Institute, Inc., may use, parenthetically, the words "Formerly Skin Culture Institute, Incorporated" after any new name adopted by it. Such a provision does not accord with the general policy of the Commission. However, it appears that counsel for respondents entered into the stipulation of facts in good faith, with the understanding that the order to cease and desist would contain such a provision. To reject this provision would compel abrogation of the entire agreement as to the stipulation of facts and require a hearing on all issues raised by the complaint and answer, which would entail considerable expense to all parties and delay the effective date of any order to cease and desist beyond that contemplated by such a provision. Under these circumstances, it appears that the interest of justice may best be served and the public interest more expeditiously protected by this exception to the general policy.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, a stipulation of facts agreed upon between counsel for respondents and counsel in support of the complaint and read into the record in lieu of evidence, and the recommended decision of the trial examiner (no briefs having been filed and oral argument not having been requested) : and the Commission having accepted and approved said stipulation of facts and having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act :

I. *It is ordered*, That the corporate respondent, Skin Culture Institute, Inc., its officers, the respondent Anthony Getz, acting in his individual capacity or as an officer of the corporate respondent, their agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of their cosmetic preparations designated "Sulphidol," "Acina Lotion," and "Olecerin Emollient," "Spexol Soap," "Liquidol," "Skin Culture Yeast Masque," or any other preparation or preparations of substantially similar composition or possessing sub-

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stantially similar properties, whether sold under the same name or any other name or names, either singly or in combination thereof or as supplementary to each other, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference,

1. That the preparations "Sulphidol," "Acina Lotion," "Olecerin Emollient," when used singly or by any combination thereof, or when used singly or by any combination in conjunction with the use of either of the preparations "Liquidol" or "Spexol Soap," constitute an effective treatment for pimples, blackheads, enlarged pores, wrinkles, oily skin, or dry skin, or that the use of any of said preparations as aforesaid will result in a clear or unblemished skin.

2. That the use of the preparations "Liquidol" or "Spexol Soap," either alone or in combination with the preparation "Sulphidol," will normalize the oil flow of the skin, shrink distended or plugged pores, or remove impurities from the openings of the skin.

3. That the use of the preparation "Skin Culture Yeast Masque," either alone or compounded with yeast, will refine the texture of the skin or that the vitamins in the yeast will have any value in the treatment of the skin.

B. Disseminating, or causing the dissemination of, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any of said preparations which advertisement contains any of the representations prohibited in paragraph A above.

II. *It is further ordered,* That the corporate respondent, Skin Culture Institute, Inc., its officers, the respondent Anthony Getz, acting in his individual capacity or as an officer of the corporate respondent, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their aforesaid cosmetic preparations or any other preparation, product, commodity, or merchandise, do forthwith cease and desist from, directly or indirectly,

A. Using the word "Institute," or any abbreviation or simulation thereof, as a part of their corporate name or otherwise, to designate, describe, or refer to a commercial enterprise conducted for profit; *Provided however,* That for a period of 8 months from the date of service of this order said corporate respondent may use the words

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“formerly Skin Culture Institute, Incorporated” parenthetically after any name adopted by it which otherwise meets the requirements of this provision.

III. *It is further ordered*, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with it, and that 6 months thereafter a supplemental and additional report of the same nature be filed as to paragraph II.

of a kit to be thereafter assembled into a finished instrument by the purchaser of the said kit.

PAR. 5. In the course and conduct of their aforesaid businesses and for the purpose of inducing the purchase of their products, the respondents have disseminated and have caused the dissemination of many false, misleading and deceptive statements and representations respecting their said products to be inserted in their catalogs, magazines, and other advertising literature all of general circulation. Among and typical of such false and misleading statements and representations, but not all inclusive, are the following:

To all students, amateurs, radio men, hospitals and schools: RADIO KITS COMPANY offers the various kits described in this circular to fit training programs of schools and hospitals. The kits described herein have been carefully planned by instructors in cooperation with our engineers.

Our kits have been designed by one of the leading instructors of our defense program . . .

Professionally engineered, professionally designed and professional looking . . .

The kits are designed so that an individual working alone at home or in a hospital may be able to build the kits without any outside help providing he follows the diagrams and instructions carefully.

All parts are furnished to build a complete kit, including instructions, pictorial diagram and wiring diagram.

These receivers tune from 550 kc. to 1500 kc. . . .

\* \* \* tunes from 550 kc. to 1600 kc.

Kit manufacturers.

We manufacture complete radio kits.

Four tube TRF kit complete . . .

Build your own radio . . .

PAR. 6. By and through the use of said statements and representations and others similar thereto not specifically set forth herein, respondents have represented and implied that said kits were designed by one of the leading instructors of our national defense program and by graduate professional engineers; that any individual can build or construct a complete radio from the parts contained in said kits without any assistance, provided he follows the diagrams and instructions supplied therewith; that said kits contain all the necessary parts for the building or construction of a radio; that said radio sets of parts when assembled into a radio receiving set will receive the broadcasts of all radios operating on a wave-length frequency of from 550 kilocycles to 1500 kilocycles or on a wave-length frequency of from 550 kilocycles to 1600 kilocycles; and that respondents own, operate or directly and absolutely control, a plant or plants wherein are made or manufactured the radio parts offered for sale and sold by them.

PAR. 7. In truth and in fact said kits were not designed by one of the leading instructors of our national defense or by professional graduate engineers; all purchasers of respondents' said radio kits cannot build or construct a radio from the radio parts contained therein; said radio kits do not contain all of the radio parts necessary for the building or construction of a complete radio; said radios, when built or constructed, will not receive the broadcasts of all radios operating on wave-length frequency of from 550 kilocycles to 1500 kilocycles or from 550 kilocycles to 1600 kilocycles; and respondents neither own, operate nor directly or absolutely control the plants in which their said products are made or manufactured. All products sold and offered for sale by respondents were and are manufactured in plants owned, operated and controlled by others.

PAR. 8. The acts and practices of respondents in using the foregoing false, deceptive and misleading statements and representations, have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public by creating the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous beliefs, so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 9, 1947, issued and subsequently served its complaint in this proceeding upon the respondents, Radio Kits, Inc., a corporation; Harold Becker, individually and as an officer of Radio Kits, Inc., and formerly trading as Radio Kits Co.; and Irving Becker and Abraham Becker, individually and as officers of Radio Kits, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondents filed their answer, testimony and other evidence in support of, and in opposition to, the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by the respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Radio Kits, Inc., is a corporation organized on February 1, 1946, and existing and doing business under and by virtue of the laws of the State of New York. Individual respondents, Irving Becker, Harold Becker, and Abraham Becker, are president, vice president, and secretary-treasurer, respectively, of respondent corporation; and they, acting in their capacities as officers of said corporate respondent, control and direct its acts, practices, and policies. The corporate respondent, on the date of its incorporation, succeeded to the business which had been formerly operated for more than 1 year prior thereto, by the individual respondent Harold Becker, trading and doing business as Radio Kits Co. During all of said period, respondents have maintained their offices and principal places of business at 120 Cedar Street, New York, N. Y. Respondents, during these respective periods, doing business as aforesaid, have been, and are now, engaged in the offering for sale, sale, and distribution of radio parts, assembled and packed into boxes designated as "radio kits."

PAR. 2. Respondents purchase radio parts from various manufacturers throughout the country. These parts are wrapped and labeled as separate items and placed in a package or kit, together with a diagram identifying each part and instructions on how to assemble them into a radio receiving set. Each kit contains 40 to 50 parts, including a metal chassis, tube sockets, condensers, resistors, speakers, coils, and knobs for adjusting switch and volume controls. Said parts, unassembled and packed in a kit or package, are designed to be assembled by the purchaser into a complete, operating radio receiving set.

PAR. 3. In the course and conduct of their aforesaid business, respondents cause, and have caused, their radio kits, when sold, to be shipped and transported from their place of business in the State

of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia; and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. For the purpose of inducing the purchase of their radio kits, respondents advertise in magazines distributed throughout the United States and in printed circulars, stationery, catalogs, and other advertising material, circulated and distributed, or caused to be circulated and distributed, by them, among the purchasing public throughout the United States and in the District of Columbia. Among and typical of the statements and representations made by such advertising are the following:

To all students, amateurs, radio men, hospitals and schools: RADIO KITS COMPANY offers the various kits described in this circular to fit training programs of schools and hospitals. The kits described herein have been carefully planned by instructors in cooperation with our engineers.

Our kits have been designed by one of the leading instructors of our defense program . . .

Professionally engineered, professionally designed and professional looking . . .

The kits are designed so that an individual working alone at home or in a hospital may be able to build the kits without any outside help providing he follows the diagrams and instructions carefully.

All parts are furnished to build a complete kit, including instructions, pictorial diagram and wiring diagram.

These receivers tune from 550 kc. to 1500 kc. . . .

\* \* \* tunes from 550 kc. to 1600 kc.

Kit manufacturers.

We manufacture complete radio kits.

Four tube TRF kit complete . . .

Build your own radio . . .

PAR. 5. Through the use of the above statements and representations, and others of similar import and meaning not set out herein, respondents represent, and have represented, directly and by implication, that the radio kits sold and distributed by them are designed by one of the leading instructors of the national defense program and by graduate professional engineers; that any individual will be able to, and can, build or construct a complete radio receiving set from the parts contained in each kit, without any assistance, provided the diagrams and instructions supplied therewith are carefully followed;

that said kits contain all the parts necessary or essential for building or constructing a complete radio receiving set; that said kit, when assembled into a radio receiving set, will receive standard broadcasts from radio transmitters operating on a wave-length frequency of from 550 to 1600 kilocycles; and that respondents own, operate, or directly and absolutely control the plant or plants in which are produced, made, or manufactured the radio parts offered for sale and sold by them.

PAR. 6. (a) The aforesaid statements and representations are false misleading, and deceptive in the particulars hereinafter set forth.

(b) There are many persons members of the purchasing public without technical skill or training who cannot build or construct complete radio receiving sets from the radio parts sold by respondents as a radio kit, in the absence of assistance from someone trained or experienced in radio techniques, even if they carefully follow the diagrams and instructions which respondents supply with each of their radio kits. There are also many other persons who do not have sufficient technical skill and training to enable them to properly read and interpret said diagrams and instructions. Such persons will not be able to build or construct a complete radio receiving set from respondents' radio kits.

(c) Respondents do not supply with each and every radio kit sold by them each and every part essential, necessary, or usual to the building or construction of a complete radio receiving set.

(d) Not all radio receiving sets assembled, built, or constructed from the radio parts which comprise respondents' radio kits are capable of receiving standard broadcasts from radio transmitters operating on a wave-length frequency of from 550 to 1600 kilocycles.

(e) Respondents purchase the component parts, including cabinets and other material which go into their radio kits, from manufacturers and others who produce and sell said parts. They do not own, operate, or control any plant or plants in which any of said parts are produced or manufactured, except to the extent that some of the coils which they sell and distribute are wound in their place of business from wire and upon spools produced by others.

PAR. 7. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations made are true; and causes, and has caused, a substantial portion of the purchasing public,

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because of such erroneous and mistaken belief, to purchase respondents' radio parts or kits.

## CONCLUSION

The acts and practices of respondents as herein found are all to the injury and 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. No evidence was adduced as to whether or not respondents' radio kits are designed by one of the leading instructors of the national defense program or by graduate professional engineers, and consequently no findings are made with respect thereto.

## ORDER TO CEASE AND DESIST

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

*It is ordered*, That respondent Radio Kits, Inc., a corporation, its officers, representatives, agents, and employees, and respondents Irving Becker, Harold Becker, and Abraham Becker, individually and as officers of respondent corporation, and respondent Harold Becker, individually, trading as Radio Kits Co. or under any other name or names, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any radio cabinets and parts packed or assembled into a radio kit, do forthwith cease and desist from directly or indirectly representing that:

1. Any member of the purchasing public not having technical skill or training will be able to, or can, build or construct a complete radio receiving set from one of said radio kits, without assistance, by carefully following the diagrams and instructions supplied by respondents.

2. Any radio kit is complete unless it contains each and every part essential, necessary, or usual to the construction or building of a complete and finished radio receiving set.

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3. Radio receiving sets constructed or built from one of said radio kits will receive any standard radio broadcast of a wave-length frequency beyond its actual capacity.

4. They manufacture radio kits unless and until each of the component parts thereof are produced or manufactured in a factory or plant owned, or directly and absolutely controlled, by them.

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

## IN THE MATTER OF

## A. P. DURHAM TRADING AS HERB PRODUCTS CO.

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

*Docket 5630. Complaint, Dec. 28, 1948—Decision, Jan. 9, 1950*

Where an individual engaged in the interstate sale and distribution of his "Vim Herb" preparation, which consisted of a mixture of ordinary irritant laxative and bitter ingredients in a sugar-sweetened and volatile oil-flavored vehicle of water and alcohol; in advertising the product through newspapers and by continuities broadcast over different radio stations and otherwise—

- (a) Represented that constipation and faulty elimination were the cause of various bodily ills including, among many others set forth, poor digestion, loss of weight, bloating, loss of appetite, irritability, worn-out feeling, headaches, pains in the shoulders, dizzy spells, bad breath, coated tongue, floating specks before the eyes, kidney disorders, piles, liver trouble, etc.; and,
- (b) Represented falsely that his said preparation was an adequate and competent treatment for constipation; would correct such condition, and was capable of preventing and curing the underlying cause thereof, and of influencing the factors which give rise thereto; that said preparation had therapeutic value in the treatment of all the above mentioned symptoms and conditions; and would make the lazy muscles of the intestine work, cleanse the intestinal tract, stimulate the flow of gastric juices, and rid the system of accumulated waste;

The facts being that its therapeutic efficiency was limited to the therapeutic relief afforded by an evacuation, and to said extent in those cases of headaches, loss of appetite, bad breath and coated tongue which sometimes accompany constipation; and

- (c) Falsely represented that its use would improve the digestion, restore the appetite, prevent excessive acid stomach condition, clean or strengthen the entire system, restore health, provide energy and build up body resistance to influenza, bronchitis, pneumonia and colds, thereby enabling a person to ward off attacks of such ailments;

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

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

*Mr. Morton Nesmith* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that A. P. Durham, indi-

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

PARAGRAPH 1. Respondent, A. P. Durham, is an individual trading and doing business as Herb Products Co., with his office and principal place of business located in Anderson, S. C.

PAR. 2. The said respondent is now and has been for several years last past, engaged in the business of selling and distributing a certain drug preparation as "drug" is defined in the Federal Trade Commission Act. The designation used by respondent for his preparation, the formula and directions for its use, are as follows:

Designation: Vim Herb.

Formula:

Cascara Aromatic.....	6%
F. E. Senna Soluble.....	8%
F. E. Gentian Root N. F.....	½%
F. E. Indian Rhubarb.....	½%
F. E. Nux Vomica N. F. per oz.....	0.24 min.

The above ingredients are in solution in a non-active vehicle, suitably flavored with a mixture of flavoring oils.

Directions for Use:

"As a General Laxative—Adults—A Teaspoonful three times daily and one tablespoonful on retiring. Increase or decrease dose according to action on bowels. Children 4 to 12 years Half Adult Dose.

"Avoid forming habit of taking laxative continuously. In case of vomiting, nausea, or severe abdominal pains, indicative of appendicitis, avoid all purgatives, cathartics and laxative preparations."

The respondent causes said drug preparation when sold to be shipped from his place of business in the State of South Carolina to dealers and individuals located in various other States of the United States and in the District of Columbia. Said dealers in turn sell such drug preparation to the general public. 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. His volume of business in said drug preparation in such commerce is substantial.

PAR. 3. In the course and conduct of his business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in

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commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in the following newspapers on the dates mentioned, as follows:

The Daily Mail, Anderson, S. C.—August 6, 11, 14, 16, 19, and 26, 1948;

The Independent, Anderson, S. C.—May 13, June 4, August 12 and 28, 1948;

and on various other dates between September, 1944, and January, 1945, in the Independent, and in the Daily Mail, both of Anderson, South Carolina, and on various other dates in the Spring and Fall of 1947 in the Independent and in the Daily Mail of Anderson, South Carolina; the Greenville News Piedmont of Greenville, South Carolina, and the Spartanburg Herald Journal of Spartanburg, South Carolina, and by continuities broadcast over radio stations

WORD—Spartanburg, S. C.

WRDW—Augusta, Ga.

WRLC—Tocca, Ga.

WAIM—Anderson, S. C.

WFBC—Greenville, S. C.

during the period from January 1944 and September 1948; and respondent has disseminated and caused the dissemination of advertisements concerning said preparation 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 said advertisements disseminated as aforesaid, are the following:

Are you underweight? Do you tire easily? Do you lose your patience on the spur of the moment and say things you are later sorry for having said? Friends, such conditions, in many cases, can be traced to faulty elimination, the one ailment that often causes aches and pains, poor digestion, loss of appetite, nervousness and that tired, worn-out feeling. But we believe that you can be relieved of faulty elimination in a reasonably short time and then the other ailments should improve. How can you do this? By starting the Vim-Herb Treatment.

Aid your system from the strain and suffering brought on by accumulated poison waste, by using Vim Herb, and you too should have better health, just like hundreds of folks say they have.

\* \* \* should be taken long enough to aid in cleansing the thirty feet of intestinal tract.

\* \* \* will aid in relieving constipation and attendant ills, such as: gas and stomach pains; poor digestion and many other similar ailments that are caused or aggravated by faulty elimination.

If you are suffering some type of an organic disorder brought on by faulty elimination, start the Vim Herb treatment today.

\* \* \* perhaps you too can enjoy better health by starting the Vim Herb treatment.

Start the Vim Herb treatment today and we believe you will soon be on the road to health.

If faulty elimination is causing you to suffer with poor digestion, headaches, pains in the shoulders, chest and back; loss of appetite; sluggishness or that tired, all-in feeling, then we believe Vim Herb will help relieve you of this condition. These are all symptoms warning you that your system is in need of a medicine that will aid in bringing relief to such a dangerous condition.

\* \* \* will help cleanse and strengthen the main organs of the body, thus bringing aid to these vital organs in their timely duties.

\* \* \* will aid you to have better health if you are suffering bilious attacks, nervousness, backaches, pains in the shoulders, chest and arms, loss of appetite and perhaps other aches and pains, if brought on by faulty elimination, because after this fine medicine aids Nature in relieving your system of the accumulated poison waste brought on by faulty elimination, the main organs of your body are then relieved and at the same time, help to carry on their duties, thus your system will be in better condition to ward off sickness.

If you are suffering with bilious attacks, loss of appetite; poor digestion and perhaps loss of energy, due to and aggravated by constipation \* \* \* get a bottle of Vim Herb \* \* \* soon you should feel like a different person. Digestion improves, appetite returns, and you get more energy and strength from the food you eat after Vim Herb helps Nature relieve your system of the accumulated poison waste caused by constipation.

If there are any of you who seem to be suffering from some disorder caused by faulty elimination, which may be sapping your energy and strength, start the Vim Herb treatment. Let this modern laxative with the tonic ingredients, help relieve your system of the strain and suffering brought on by improper elimination and then you should be in a better condition to do your work. You know, Neighbors, age itself, is a factor in slowing-up the tiny organs of your system and they sometimes need assistance in carrying on their daily duties.

Are you bothered with headaches, dizzy spells, indigestion attacks and perhaps other similar ailments caused from faulty elimination? If so, no doubt the reason for your suffering is due to a run-down condition, which usually prevails when faulty elimination exists. Vim Herb \* \* \* is bringing relief to hundreds who were troubled with headaches, dizziness, poor digestion caused by constipation.

\* \* \* the accumulated poisons, if allowed to remain in your system, can and often do cause serious troubles. \* \* \* start the Vim Herb treatment today. Get satisfying relief from constipation and soon the many ailments caused from this condition should be relieved also. Remember, Vim Herb is a proven remedy; one that's helped hundreds of sufferers of constipation back to better health. So, if you or any member of your family are suffering from improper elimination, go to the nearest drug counter and ask for Vim Herb. Start on the road to health and happiness today, the Vim Herb way.

Vim Herb aids free bowel movement, aids in cleansing the intestinal tract; helps restore the appetite, as it is a preparation especially for constipation and the relief of attendant ills, after which you should have more strength and you should be in a better condition to ward off cold and flu germs.

**BAD BREATH—COATED TONGUE—DIZZY FEELING THAT IS THE WARNING.**

A serious complication may develop. Vim Herb is generally recognized as a good laxative with tonic ingredients. Most upsets in health are attributed to improper functioning of elimination organs, in many cases caused from faulty elimination. Therefore, why not try the medicine that so many people are talking about?

**TROUBLED WITH ACIDOSIS?**

Help your stomach fight the acid condition. It is easy . . . stimulate the flow of gastric juice in your stomach by letting Vim Herb aid your system from constipation—then your other organs should function more properly.

**DON'T LET HOT WEATHER GET YOU DOWN. VIM HERB HELPS PROVIDE THE NEEDED ENERGY.**

The fact that you are tired and without your usual pep is no sign that you are lazy. Perhaps it's constipation. But it is a sign that you need quick, revitalizing energy. If so you can easily overcome this condition. Try Vim Herb \* \* \*

\* \* \* a good medicine to use in fighting off the cold and flu germs which are attacking so many people now. Be on the safe side \* \* \* Start the Vim Herb treatment today and we believe you will be less apt to catch a cold or flu, because your system will then have more resistance in throwing off the cold and flu germs.

If you suffer from constipation and attending ills, such as gas, bloating, acid indigestion, dizzy spells, coated tongue and bad breath, you will find Vim Herb the ideal laxative. This herb laxative with tonic ingredients added makes the lazy muscles of the intestines active. Most people when constipated need the tonic ingredients of Vim Herb.

It will relieve you of that tired, sluggish feeling often caused or aggravated by constipation. Regain your lost pep and vitality by taking Vim Herb.

Vim Herb, the popular herb laxative, with stomachics added stimulates the lazy muscles of the intestines to activity. Many people when constipated need the stomachics as well as the laxative effect Vim Herb supplies.

**OLD FOLKS ATTENTION—**

Do you feel tired, worn-out, pepleless, depressed, nervous, irritable, bilious, see floating specks before your eyes, gas on stomach, indigestion, heartburn, fullness after meals, pains under your ribs, in back and legs; if so, these symptoms indicate that there is something wrong. You too may be suffering that dreaded ailment constipation \* \* \* try Vim Herb.

A gradual accumulation of waste matter is dangerous. The elimination organs must function properly to avoid constipation which in some cases brings about stomach trouble, acid indigestion, biliousness, backache, liver trouble, weak kidneys, piles and tired, worn-out run down condition. Vim Herb makes the lazy muscles of the intestines active and promotes proper elimination.

Winter diseases—Flu and Colds, sometimes cause Constipation, Biliousness, Kidney Disorders and other serious ailments. Don't drag around from day to day. Take this medicine that has helped thousands right here at home. Results guaranteed.

Keep Your System Cleansed with Vim Herb.

HEALTH IS YOUR GREATEST ASSET. GIVE HIM VIM HERB LAXATIVE WITH TONIC INGREDIENTS.

KEEP YOUR SYSTEM CLEAN DURING FLU EPIDEMICS. A WEAK RUN-DOWN SYSTEM OFTEN PAVES THE WAY NOT ONLY FOR INFLUENZA BUT BRONCHITIS AND PNEUMONIA ALSO MANY OTHER SERIOUS ILLS. BUILD UP YOUR BODY RESISTANCE WITH VIM HERB.

Authorities claim that constipation in many cases is the cause of stomach disorders and numerous other complaints of the human system. Hundreds have testified that they suffer with constipation, indigestion, gas on stomach, coated tongue, no appetite, no vitality, but by the aid of medicine eliminating the poisonous waste matters from the system through its free action on the bowels, they now owe their good health to its use and once more enjoy hearty meals without any ill effects and no longer suffer with the most common ailment of the day, constipation. If you want to enjoy good health you must free yourself from the clutches of constipation.

PAR. 5. Through the use of the advertisements hereinabove set forth and others of the same import not specifically set out herein, respondent has represented that constipation and faulty elimination are the cause of various bodily ills including poor digestion, loss of weight, bloating, acid indigestion, heartburn, fullness after meals, loss of appetite, nervousness, irritability, loss of energy, tiring easily, a worn-out feeling, stomach trouble including gas and stomach pains, headaches, pains in the shoulders, chest, back, arms, under the ribs and in the legs, sluggishness, bilious attacks, dizzy spells, bad breath, coated tongue, a depressed feeling, floating specks before the eyes, weak kidneys and kidney disorders, piles, liver trouble, and many other similar ailments; that Vim Herb is an adequate and competent treatment for constipation; that it will correct such condition; that it is capable of preventing and curing the underlying causes of constipation and of influencing the factors which give rise to such condition; and that said preparation has therapeutic value in the treatment of all of the above-mentioned symptoms and conditions; that it will make the lazy muscles of the intestines work, cleanse the intestinal tract, stimulate the flow of gastric juices and rid the system of accumulated poison waste; that its use will improve the digestion, restore the appetite, prevent an excessive acid stomach condition, clean and strengthen the entire system, restore health, act as a tonic, provide energy and build up the system and body resistance to influenza, bronchitis, pneumonia and colds thereby enabling a person to ward off an attack of these ailments.

PAR. 6. 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, Vim Herb is a mixture of ordinary irritant laxative and bitter ingredients in a sugar sweet-

ened and volatile oil flavored vehicle of water and alcohol. Its therapeutic efficacy is limited to the temporary relief afforded by an evacuation of the bowels. It is incapable of preventing or curing the underlying causes of constipation or to in any way favorably influence the several factors which give rise to this condition. It does not activate or stimulate lazy intestinal muscles in the sense of restoring their normal functions, its use simply results in an irritation to which the musculature responds with a bowel movement to expel the irritant. It will not cleanse the intestinal tract; will not appreciably stimulate the flow of gastric juices nor will it relieve the system of accumulated poison waste.

Headache, loss of appetite, bad breath and coated tongue, may, and sometimes do, accompany irregularity of bowel movement. The other symptoms and conditions referred to in Paragraph Five and kindred symptoms and conditions are not caused by constipation and would not be improved or corrected by this preparation. Headache, loss of appetite, bad breath and coated tongue are frequently caused by and associated with many ailments that have no relation to or connection with constipation or irregularity of bowel movement and when caused by any condition other than constipation, Vim Herb would be of no value in the treatment thereof. When headache, loss of appetite, bad breath and coated tongue are caused by or associated with constipation the use of this preparation will have no value in the treatment thereof other than the temporary relief afforded by an evacuation of the bowels.

Vim Herb contains ingredients which may under proper and adequate directions act as a bitter tonic or stomachic. The directions for use are improper and inadequate, however, in that they do not specify that said preparation must be taken shortly before meals in order to act as a bitter tonic or stomachic. When taken at any other time, Vim Herb will not act as a bitter tonic or stomachic. Regardless of when taken, said preparation will not improve the digestion, prevent an excessive acid stomach condition, clean or strengthen the system, restore health, provide energy or build up the system or body resistance. Its use is of no value in warding off attacks of influenza, bronchitis, pneumonia or colds.

PAR. 7. The use by the respondent of the aforesaid statements and representations disseminated as aforesaid, has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements are true, and to induce a substantial portion of the

purchasing public, because of such erroneous and mistaken belief, to purchase said medicinal preparation Vim Herb.

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.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 28, 1948, issued and thereafter served its complaint in this proceeding upon respondent, A. P. Durham, an individual trading as Herb Products Co., charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 26, 1949, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. P. Durham, is an individual trading and doing business as Herb Products Co., with his office and principal place of business located in Anderson, S. C.

PAR. 2. The said respondent is now, and has been for several years last past, engaged in the business of selling and distributing a certain drug preparation, as "drug" is defined in the Federal Trade Commission Act. The designation used by respondent for his preparation, the formula, and the directions for use of the preparation are as follows:

Designation: Vim Herb

Formula:

Cascara Aromatic.....	6%
F. E. Senna Soluble.....	8%
F. E. Gentian Root N. F.....	½%
F. E. Indian Rhubarb.....	½%
F. E. Nux Vomica N. F. per oz.....	0.24 min.

The above ingredients are in solution in a non-active vehicle, suitably flavored with a mixture of flavoring oils.

Directions for Use:

"As a General Laxative—Adults—A Teaspoonful three times daily and one tablespoonful on retiring. Increase or decrease dose according to action on bowels. Children 4 to 12 years Half Adult Dose.

"Avoid forming habit of taking laxative continuously. In case of vomiting, nausea, or severe abdominal pains, indicative of appendicitis, avoid all purgatives, cathartics and laxative preparations."

The respondent causes said drug preparation when sold to be shipped from his place of business in the State of South Carolina to dealers and individuals located in various other States of the United States and in the District of Columbia. Said dealers in turn sell such drug preparation to the general public. 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. His volume of business in said drug preparation in such commerce is substantial.

PAR. 3. In the course and conduct of his business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in the following newspapers on the dates mentioned, as follows:

The Daily Mail, Anderson, S. C.—August 6, 11, 14, 16, 19, and 26, 1948;

The Independent, Anderson, S. C.—May 13, June 4, August 12 and 28, 1948;

and on various other dates between September 1944 and January 1945 in the Independent and in the Daily Mail, both of Anderson, South Carolina, and on various other dates in the Spring and Fall of 1947 in the Independent and in the Daily Mail of Anderson, South Carolina, and Greenville News Piedmont of Greenville, South Carolina, and the Spartanburg Herald Journal of Spartanburg, South Carolina, and by continuities broadcast over radio stations

WORD—Spartanburg, S. C.

WRDW—Augusta, Ga.

WRLC—Toccoa, Ga.

WAIM—Anderson, S. C.

WFBC—Greenville, S. C.

during the period from January 1944 and September 1948; and respondent has disseminated and caused the dissemination of advertisements concerning said preparation 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 said advertisements disseminated and caused to be disseminated, as and for the purposes hereinabove set out, have been the following:

Are you underweight? Do you tire easily? Do you lose your patience on the spur of the moment and say things you are later sorry for having said? Friends, such conditions, in many cases, can be traced to faulty elimination, the one ailment that often causes aches and pains, poor digestion, loss of appetite, nervousness and that tired, worn-out feeling. But we believe that you can be relieved of faulty elimination in a reasonably short time and then the other ailments should improve. How can you do this? By starting the Vim-Herb Treatment.

Aid your system from the strain and suffering brought on by accumulated poison waste, by using Vim Herb, and you too should have better health, just like hundreds of folks say they have.

\* \* \* should be taken long enough to aid in cleansing the thirty feet of intestinal tract.

\* \* \* will aid in relieving constipation and attendant ills, such as: gas and stomach pains; poor digestion and many other similar ailments that are caused or aggravated by faulty elimination.

If you are suffering some type of an organic disorder brought on by faulty elimination, start the Vim Herb treatment today.

\* \* \* perhaps you too can enjoy better health by starting the Vim Herb treatment.

Start the Vim Herb treatment today and we believe you will soon be on the road to health.

If faulty elimination is causing you to suffer with poor digestion, headaches, pains in the shoulders, chest and back; loss of appetite; sluggishness or that tired, all-in feeling, then we believe Vim Herb will help relieve you of this condition. These are all symptoms warning you that your system is in need of a medicine that will aid in bringing relief to such a dangerous condition.

\* \* \* will help cleanse and strengthen the main organs of the body, thus bringing aid to these vital organs in their timely duties.

\* \* \* will aid you to have better health if you are suffering bilious attacks, nervousness, backaches, pains in the shoulders, chest and arms, loss of appetite and perhaps other aches and pains, if brought on by faulty elimination, because after this fine medicine aids Nature in relieving your system of the accumulated poison waste brought on by faulty elimination, the main organs of your body are then relieved and at the same time, helped to carry on their duties, thus your system will be in better condition to ward off sickness.

If you are suffering with bilious attacks, loss of appetite; poor digestion and perhaps loss of energy, due to and aggravated by constipation \* \* \* get a

bottle of Vim Herb \* \* \* soon you should feel like a different person. Digestion improves, appetite returns, and you get more energy and strength from the food you eat after Vim Herb helps Nature relieve your system of the accumulated poison waste caused by constipation.

If there are any of you who seem to be suffering from some disorder caused by faulty elimination, which may be sapping your energy and strength, start the Vim Herb treatment. Let this modern laxative with the tonic ingredients, help relieve your system of the strain and suffering brought on by improper elimination and then you should be in a better condition to do your work. You know, Neighbors, age itself, is a factor in slowing-up the tiny organs of your system and they sometime need assistance in carrying on their daily duties.

Are you bothered with headaches, dizzy spells, indigestion attacks and perhaps other similar ailments caused from faulty elimination? If so, no doubt the reason for your suffering is due to a rundown condition, which usually prevails when faulty elimination exists. Vim Herb \* \* \* is bringing relief to hundreds who were troubled with headaches, dizziness, poor digestion caused by constipation.

\* \* \* the accumulated poisons, if allowed to remain in your system, can and often do cause serious troubles. \* \* \* start the Vim Herb treatment today. Get satisfying relief from constipation and soon the many ailments caused from this condition should be relieved also. Remember, Vim Herb is a proven remedy; one that's helped hundreds of sufferers of constipation back to better health. So, if you or any member of your family are suffering from improper elimination, go to the nearest drug counter and ask for Vim Herb. Start on the road to health and happiness today, the Vim Herb way.

Vim Herb aids free bowel movement, aids in cleansing the intestinal tract; helps restore the appetite, as it is a preparation especially for constipation and the relief of attendant ills, after which you should have more strength and you should be in a better condition to ward off cold and flu germs.

**BAD BREATH—COATED TONGUE—DIZZY FEELING THAT IS THE WARNING.**

A serious complication may develop. Vim Herb is generally recognized as a good laxative with tonic ingredients. Most upsets in health are attributed to improper functioning of elimination organs, in many cases caused from faulty elimination. Therefore, why not try the medicine that so many people are talking about?

**TROUBLED WITH ACIDOSIS?**

Help your stomach fight the acid condition. It is easy . . . stimulate the flow of gastric juice in your stomach by letting Vim Herb aid your system from constipation—then your other organs should function more properly.

**DON'T LET HOT WEATHER GET YOU DOWN. VIM HERB HELPS PROVIDE THE NEEDED ENERGY.**

The fact that you are tired and without your usual pep is no sign that you are lazy. Perhaps it's constipation. But it is a sign that you need quick, revitalizing energy. Is so you can easily overcome this condition. Try Vim Herb \* \* \*.

\* \* \* a good medicine to use in fighting off the cold and flu germs which are attacking so many people now. Be on the safe side \* \* \* Start the Vim Herb treatment today and we believe you will be less apt to catch a cold or flu, because your system will then have more resistance in throwing off the cold and flu germs.

If you suffer from constipation and attending ills, such as gas, bloating, acid indigestion, dizzy spells, coated tongue and bad breath, you will find Vim Herb the ideal laxative. This herb laxative with tonic ingredients added makes the lazy muscles of the intestines active. Most people when constipated need the tonic ingredients of Vim Herb.

It will relieve you of that tired, sluggish feeling often caused or aggravated by constipation. Regain your lost pep and vitality by taking Vim Herb.

Vim Herb, the popular herb laxative with stomachics added stimulates the lazy muscles of the intestines to activity. Many people when constipated need the stomachics as well as the laxative effect Vim Herb supplies.

**OLD FOLKS ATTENTION—**

Do you feel tired, worn-out, pepleless, depressed, nervous, irritable, bilious, see floating specks before your eyes, gas on stomach, indigestion, heartburn, fullness after meals, pains under your ribs, in back and legs; if so, these symptoms indicate that there is something wrong. You too may be suffering that dreaded ailment constipation \* \* \* try Vim Herb.

A gradual accumulation of waste matter is dangerous. The elimination organs must function properly to avoid constipation which in some cases brings about stomach trouble, acid indigestion, biliousness, backache, liver trouble, weak kidneys, piles and tired, worn-out run down condition. Vim Herb makes the lazy muscles of the intestines active and promotes proper elimination.

Winter diseases—Flu and Colds, sometimes causes Constipation, Biliousness, Kidney Disorders and other serious ailments. Don't drag around from day to day. Take this medicine that has helped thousands right here at home. Results guaranteed.

Keep Your System Cleansed with Vim Herb.

**HEALTH IS YOUR GREATEST ASSET. GIVE HIM VIM HERB LAXATIVE WITH TONIC INGREDIENTS.**

**KEEP YOUR SYSTEM CLEAN DURING FLU EPIDEMICS: A WEAK RUN-DOWN SYSTEM OFTEN PAVES THE WAY NOT ONLY FOR INFLUENZA BUT BRONCHITIS AND PNEUMONIA ALSO MANY OTHER SERIOUS ILLS. BUILD UP YOUR BODY RESISTANCE WITH VIM HERB.**

Authorities claim that constipation in many cases is the cause of stomach disorders and numerous other complaints of the human system. Hundreds have testified that they suffer with constipation, indigestion, gas on stomach, coated tongue, no appetite, no vitality, but by the aid of medicine eliminating the poisonous waste matters from the system through its free action on the bowels, they now owe their good health to its use and once more enjoy hearty meals without any ill effects and no longer suffer with the most common ailment of the day, constipation. If you want to enjoy good health you must free yourself from the clutches of constipation.

**PAR. 5.** Through the use of the advertisements containing the aforesaid statements and representations, and others of the same import, respondent has represented that constipation and faulty elimination are the causes of various bodily ills including poor digestion, loss of weight, bloating, acid indigestion, heartburn, fullness after meals, loss of appetite, nervousness, irritability, loss of energy, tiring easily, a worn-out feeling, stomach trouble including gas and stomach pains,

headaches, pains in the shoulders, chest, back, arms, under the ribs and in the legs, sluggishness, bilious attacks, dizzy spells, bad breath, coated tongue, a depressed feeling, floating specks before the eyes, weak kidneys and kidney disorders, piles, liver trouble, and many other similar ailments; that Vim Herb is an adequate and competent treatment for constipation; that it will correct such condition; that it is capable of preventing and curing the underlying causes of constipation and of influencing the factors which give rise to such conditions; and that said preparation has therapeutic value in the treatment of all of the above-mentioned symptoms and conditions; that it will make the lazy muscles of the intestines work, cleanse the intestinal tract, stimulate the flow of gastric juices and rid the system of accumulated poison waste; that its use will improve the digestion, restore the appetite, prevent an excessive acid stomach condition, clean and strengthen the entire system, restore health, provide energy and build up the system and body resistance to influenza, bronchitis, pneumonia, and colds, thereby enabling a person to ward off an attack of these ailments.

PAR. 6. The aforesaid preparation is a mixture of ordinary irritant laxative and bitter ingredients in a sugar sweetened and volatile oil flavored vehicle of water and alcohol. Its therapeutic efficacy is limited to the temporary relief afforded by an evacuation of the bowels. It is incapable of preventing or curing the underlying causes of constipation or favorably influencing in any way the several factors which give rise to this condition. It does not activate or stimulate lazy intestinal muscles in the sense of restoring their normal functions, its use simply results in an irritation to which the musculature responds with a bowel movement to expel the irritant. It will not cleanse the intestinal tract; will not appreciably stimulate the flow of gastric juices nor will it relieve the system of accumulated poison waste.

Headache, loss of appetite, bad breath, and coated tongue may, and sometimes do, accompany irregularity of bowel movement. The other symptoms and conditions referred to in paragraph 5 and kindred symptoms and conditions are not caused by constipation and would not be improved or corrected by this preparation. Headache, loss of appetite, bad breath, and coated tongue are frequently caused by and associated with many ailments that have no relation to or connection with constipation or irregularity of bowel movement and when caused by any condition other than constipation, Vim Herb would be of no value in the treatment thereof. When headache, loss of appetite, bad breath, and coated tongue are caused by or associated with constipation the use of this preparation will have no value in the treatment thereof other than the temporary relief afforded by an evacuation of

the bowels. Said preparation will not improve the digestion, prevent an excessive acid stomach condition, clean or strengthen the system, restore health, provide energy, or build up the system or body resistance. Its use is of no value in warding off attacks of influenza, bronchitis, pneumonia, or colds.

PAR. 7. The Commission therefore finds that the respondent's claims for and representations concerning the preparation "Vim Herb," as set forth in paragraph 5 hereof, are false, misleading, and deceptive.

PAR. 8. The use by the respondent of the aforesaid false advertisements has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations made in said advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said preparation.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

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

*It is ordered,* That the respondent, A. P. Durham, individually and trading as Herb Products Co. or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's drug preparation designated "Vim Herb," or any preparation of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

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

defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That said preparation will prevent or is a cure or remedy for constipation or any of the causes of constipation; or that it has any therapeutic value in the treatment of any of the symptoms thereof in excess of the temporary relief afforded by its laxative action.

(b) That said preparation is a cure or remedy or a competent or effective treatment of poor digestion, loss of weight, heartburn, bloating, acid indigestion, fullness after meals, nervousness, irritability, loss of energy, tiring easily, stomach trouble including gas or stomach pains, a worn-out feeling, pains in the shoulders, chest, back, arms, under the ribs, or in the legs, sluggishness, bilious attacks, dizzy spells, a depressed feeling, floating specks before the eyes, weak kidneys or kidney disorders, piles, or liver trouble.

(c) That said preparation is a cure or remedy for headache, loss of appetite, bad breath, or coated tongue; or that it is a competent or effective treatment of such conditions in excess of the temporary relief afforded by an evacuation of the bowels in those cases in which such conditions are caused by and associated with constipation.

(d) That said preparation will restore the normal functions of the intestinal muscles, cleanse the intestinal tract, appreciably stimulate the flow of gastric juices, or rid the system of accumulated poison waste.

(e) That said preparation will improve the digestion, prevent an excessive acid stomach condition, clean or strengthen the system, restore health, provide energy, or build up body resistance to, or have any effect in warding off, attacks of influenza, bronchitis, pneumonia, or colds.

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

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

## Complaint

IN THE MATTER OF  
BABIGLO CO., INC., ET AL.

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

*Docket 5652. Complaint, Apr. 26, 1949—Decision, Jan. 11, 1950*

Where a corporation, and its two officers who formulated and controlled its policies, acts and practices, engaged in the interstate sale and distribution of soap products—

- (a) Represented through the statement "made with 100 percent genuine imported olive oil castile soap", on the wrappers of their "Kent Castile Soap" that the only oil used in the manufacture thereof was olive oil; when in fact none was used;
- (b) Represented through the statement "rich in olive oil" on their "Babiglo Castile" that said product contained significant quantities of said substance; the facts being it contained none nor was olive oil used in its manufacture;
- (c) Falsely represented through the use of the word "Hospital" in the name of its "Hospital Brand Castile Soap" on the wrapper, that said product had been approved or endorsed by a hospital; and
- (d) Falsely represented through the use of the words "Dr. Beck" in the name of its "Dr. Beck's Germicidal Soap", that said product was made from a formula or under the supervision of a doctor;

With tendency and capacity to mislead and deceive a substantial portion of the public and thereby induce its purchase of their said products; and with the result of placing in the hands of purchasers of such products for resale a means and instrumentality whereby they might mislead and deceive said public as to the actual composition of said products:

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

*Mr. B. G. Wilson* for the Commission.

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

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Babiglo Co., Inc., a corporation, and Louis Funder and Carrie Funder, individually and as officers of Babiglo 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. Respondent Babiglo Co., Inc., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York. Respondents, Louis Funder and Carrie Funder, are individuals and are president, and secretary and treasurer, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 120 West Twentieth Street, New York, N. Y.

PAR. 2. The respondent Babiglo Co., Inc., and individual respondents, Louis Funder and Carrie Funder, are now, and have been for several years last past, engaged in the business of offering for sale, sale and distribution of soap products among them being those designated as "Kent Castile Soap," "Babiglo Castile," "Hospital Brand Castile Soap" and "Dr. Beck's Germicidal Soap."

The respondents cause and have caused the aforesaid products when sold to be transported from their aforesaid place of business to purchasers thereof at their respective points of location in various States of the United States.

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

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said products, the respondents have caused to be printed on the wrappers enclosing their various kinds of soap products, the following statements and designations:

On Kent Castile Soap—"Made with 100% Genuine Imported Olive Oil Castile Soap."

On Babiglo Castile—"Rich in Olive Oil."

On Hospital Brand Castile Soap—"Hospital Brand Castile Soap. Rich in Olive Oil. Selected for Purity. Absolute Purity Guaranteed. Suitable for The Most Tender Skin."

In addition to the foregoing practices, respondents imprint on the wrappers of another soap, the words "Dr. Beck's Germicidal Soap."

PAR. 4. Through the use of the aforesaid statements and designations respondents represent that the only oil used in the manufacture of Kent Castile Soap is olive oil; that the Babiglo Castile contains significant quantities of olive oil. Further, through the use of the word "Hospital" as a part of the name Hospital Brand Castile Soap and the words "Dr. Beck" as a part of the name Dr. Beck's Germicidal Soap, respondents represent, respectively, that said Hospital Brand

Castile Soap is approved or endorsed by a hospital or hospitals and that Dr. Beck's Germicidal Soap is made from a formula or under the supervision of a doctor.

PAR. 5. The foregoing statements and designations are false, misleading and deceptive. In truth and in fact, olive oil is not used in the manufacture of Kent Castile Soap. There is no olive oil in Babiglo Castile and olive oil is not used in its manufacture. Hospital Brand Castile Soap has not been approved or endorsed by a hospital and Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 6. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations are true and causes a substantial portion of the public because of such erroneous and mistaken belief, to purchase respondents' said products. Said acts and practices of respondents also place in the hands of purchasers of said products for resale a means and instrumentality whereby they may mislead and deceive the purchasing public as to the actual composition of said products.

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 26, 1949, issued and thereafter served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On May 27, 1949, the respondents filed their joint answer to said complaint, and in such answer they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Babiglo Co., Inc., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York. The respondents, Louis Funder and Carrie Funder, are individuals and are president, and secretary and treasurer, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both the corporate respondent and the individual respondents is located at 120 West Twentieth Street, New York, N. Y.

PAR. 2. The corporate respondent, Babiglo Co., Inc., and the individual respondents, Louis Funder and Carrie Funder, are now, and for several years last past they have been, engaged in the business of offering for sale, and in the sale and distribution of soap products. Among such products are those designated by the respondents as "Kent Castile Soap," "Babiglo Castile," "Hospital Brand Castile Soap" and "Dr. Beck's Germicidal Soap."

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

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents have caused to be printed on the wrappers enclosing their various kinds of soap products the following statements and designations:

On Kent Castile Soap—"Made with 100% Genuine Imported Olive Oil Castile Soap."

On Babiglo Castile—"Rich in Olive Oil."

On Hospital Brand Castile Soap—"Hospital Brand Castile Soap. Rich in Olive Oil. Selected for Purity. Absolute Purity Guaranteed. Suitable for The Most Tender Skin."

In addition to the foregoing practices, the respondents imprint on the wrappers of another soap the words "Dr. Beck's Germicidal Soap."

PAR. 4. Through the use of the aforesaid statements and designations the respondents represent that the only oil used in the manufacture of Kent Castile Soap is olive oil, and that Babiglo Castile contains significant quantities of olive oil. Further, through the use of the word "Hospital" as a part of the name Hospital Brand Castile

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Soap and the words "Dr. Beck" as a part of the name Dr. Beck's Germicidal Soap, the respondents represent that said Hospital Brand Castile Soap is approved or endorsed by a hospital or hospitals and that Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 5. The foregoing statements and designations are false, misleading and deceptive. In truth and in fact, olive oil is not used in the manufacture of Kent Castile Soap. There is no olive oil in Babiglo Castile, and olive oil is not used in its manufacture. Hospital Brand Castile Soap has not been approved or endorsed by a hospital, and Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations are true, and causes a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondents' said products. Said acts and practices of the respondents also place in the hands of purchasers of such products for resale a means and instrumentality whereby they may mislead and deceive the purchasing public as to the actual composition of said products.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

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

*It is ordered*, That the respondent Babiglo Co., Inc., a corporation, and its officers, and the respondents, Louis Funder and Carrie Funder, individually and as officers of said corporation, and the respective

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

1. Representing, directly or by implication, that any such product the entire oil content of which is not olive oil is made exclusively of olive oil, or that any such product not containing significant quantities of olive oil is made with or contains olive oil.

2. Using the word "Hospital," or any other word or words or similar import or meaning, to designate, describe or refer to any such product which has not been approved or endorsed by a hospital; or otherwise representing, directly or by implication, that any such product has been so approved or endorsed.

3. Using the word "Doctor," or any abbreviation or simulation thereof, to designate, describe or refer to any such product not made from a formula or under the supervision of a doctor; or otherwise representing, directly or by implication, that any such product has been so made, or that it has special properties or characteristics which are the result of medical advise.

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

## Syllabus

## IN THE MATTER OF

## MORRIS SHAPIRO, CHARLES SHAPIRO, AND MARY SHAPIRO TRADING AS U-C-A MANUFACTURING CO.

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

*Docket 5190. Complaint, Nov. 24, 1947<sup>1</sup>—Decision, Jan. 16, 1950*

Where three individuals engaged in the interstate sale of salve, vapor balm, menthol inhalers and miscellaneous merchandise, through agents under the "return or remit plan", and in advertising a variety of articles offered to agents as premiums, commissions, or compensation for selling their products; through newspapers, magazines, premium lists, premium plan books, circulars, post cards, reward coupons and other mediums, by pictures and descriptive matter—

- (a) Represented that the articles described were given free to agents selling specified amounts of merchandise; and that other premiums were given free to those submitting orders within five days of the receipt of the order blanks, and to those submitting the proceeds from the sale of merchandise within ten days of receipt of the latter;

The facts being that none of the articles advertised as "free" or "given free" were actual gifts or given as a gratuity without consideration; but were simply additional compensation for the agents' services in selling their salve and balm, or admittedly extra commissions for prompt return of orders or proceeds of sale; with certain exceptions (stated in their premium list), all due postage or express charges were paid by the recipients; and some of the premiums represented as "given free" were in fact never delivered at all;

- (b) Made use of the terms "fleece twill" and "unexcelled value" in describing certain blankets offered by them as premiums; notwithstanding the fact that said products were not, as thus represented, made of wool, but were made of cotton, and worth no more than about a dollar;
- (c) Falsely represented certain billfolds made of sheepskin with cloth linings as "genuine leather", and certain fountain pens as equipped with 14 Karat gold plated pen points and as "amazing offers";
- (d) Falsely advertising certain clocks as "America's most beautiful," "masterpieces in time telling", and worth five dollars each;
- (e) Falsely represented certain sachet perfume as "given free" to purchasers of salve and balm; when in fact said perfume was not a gift but was a part of a combination offer with salve or balm, sold together for twenty-five cents;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of substantial quantities of their products:

<sup>1</sup> Amended.

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

Before *Mr. Webster Ballinger*, trial examiner.

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

*Mr. Morris R. Shapiro*, of Chicago, Ill., for respondents.

## AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Morris Shapiro, Charles Shapiro, and Mary Shapiro, individuals, trading as U-C-A Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals trading and doing business under the name U-C-A Manufacturing Co., with their principal office and place of business at 1425 South Racine Avenue, Chicago, Ill. Respondents are now and for many years last past have been engaged in the sale of salve, vapor balm, menthol inhalers, and miscellaneous merchandise. Respondents cause said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. Respondents' method of conducting their business is what is commonly known as the "return or remit plan." In the course and conduct of their business in said commerce as aforesaid and for the purpose of inducing the purchase of their said products, respondents have advertised and do advertise in various newspapers, magazines, premium lists, premium plan books, circulars, post cards, reward coupons, and other media for agents to sell their merchandise on the said "return or remit plan," under which plan such agents are furnished the merchandise to be sold and are allowed 30 days to sell the same and remit to respondents the agreed portion of its selling price or to return the unsold portion of the merchandise. No deposit is

required and the goods remain the property of the respondents until paid for. Respondents include with the shipment of merchandise one sachet perfume pack to be included with each box of salve sold, which respondent represented to "give away free." The selling agent may remit the stated sum of the amount collected and keep the rest as commission; or may remit the entire sum collected and receive merchandise in lieu of cash commissions. Said premiums are represented by respondents as "given" to agents "free." If the sum collected by the agent on the sale of the merchandise is remitted within 10 days, the agent is promised an additional premium, which premium is advertised and represented by respondents to be "given" the agent "free." The agent may remit other stated amounts in addition to and together with the sum collected upon the sale of the merchandise and receive an additional premium described as a "gift," and if the agent submits his order for the sale of merchandise within 5 days of the receipt by him of the order blank, respondents promise to send to him an additional premium as a "gift," "free."

PAR. 3. The advertising placed by respondents in various newspapers, magazines and other media as aforesaid, is variously devised to show by pictures and descriptive matter representations of blankets, billfolds, pen and pencil sets, clocks, guitars, movie projectors, bicycles, wagons, rifles, radio sets, watches and various and sundry other articles not herein enumerated offered to agents as premiums, commissions, or compensation for selling respondents' "U. C. A. Salve," "U. C. A. Menthol Salve" and "U. C. A. Vapor Balm." The articles so featured and offered as premiums are variously designated, described and represented as follows:

**Blankets.**

Given \* \* \* a pair of blankets or cash commission \* \* \* a pair of fleece twill blankets \* \* \* a premium of unexcelled value \* \* \* for selling only 12 boxes U-C-A Salve at 25¢ a box (nothing more to sell). Sachet perfume sent to give away free.

**Billfold.**

Given, genuine leather billfold. Genuine leather. Given for selling only 12 boxes U-C-A Salve.

**Pen and Pencil Set, and Wallet.**

GIVEN! An Amazing offer GIVEN! Fountain Pen Set and Wallet. \* \* \* a nationally known manufacture \* \* \* backed by a guarantee service and has most of the features found on high priced pens. \* \* \* 14 K Gold Plate \* \* \* Pen Point.

**Clock.**

ALL AMERICAN CLOCK GIVEN. America's most beautiful Clock. A REAL \$5.00 value, masterpiece in perfect time telling. Flag automatically twirls

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round and round and this action shows the clock operates. Suitable for finest homes. Fully guaranteed Electric movement. GIVEN for selling only \$3 worth of U-C-A Products (12 articles at 25¢ each) giving Sachet Free.

## Guitar.

**BIG GUITAR GIVEN.** Standard size Guitar—Regulated fretted, ebonized finger-board—Pearl Position dobts—GIVEN—Simply given away FREE Sachet Perfume and famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

## Movie Projector.

**GIVEN, BOYS! GIRLS! MOVIE PROJECTOR. SHOW MOVIES AT HOME.** Fully equipped with alternating current electric motor. Will accommodate 200 feet of film—8 minute show. GIVEN—Simply given away FREE Sachet Perfume with famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

**BIKE GIVEN**

## Bicycle.

You can get a Boy's or Girl's RANGER Zephyr Bicycle easy. Fully equipped, Electric horn and headlight, coaster brake, balloon tires, for SIMPLY GIVING AWAY FREE Fragrant Sachet Perfume with our Famous UCA MENTHO SALVE \* \* \* which you sell at 25¢ a box (with Sachet Perfume FREE) and remitting as per our Premium Catalog Plan Book. Write today for order of UCA Mentho Salve and Sachet Perfume sent, Postage Paid \* \* \*.

## Wagon.

**WAGON GIVEN. NOTHING TO BUY! NO RISK—NO CASH, JUST MAIL CARD.** \* \* \* GIVEN without one cent of cost by simply GIVING AWAY FREE Sachet Perfume with our famous U. C. A. Salve which you easily sell at 25¢ a box and remit as explained in Premium Catalog Book.

## Radio Set and Rifle.

**PHILCO RADIO GIVEN**

This 22 Cal. Bolt Action Safety Rifle or Superhetrodyne Philco, or ZENITH Radio—you can easily get one of these Radios or Rifles by SIMPLY GIVING AWAY FREE Sachet Perfume with famous U-C-A Household SALVE which you sell at 25¢ a box and remit as per new big Premium Plan Book! SPECIAL: Large list of premiums in catalog for selling only 12 boxes—\$3.00 worth. It's easy. Mail Coupon NOW—today. Be first.

## Wrist Watch.

**7 JEWEL—WRIST WATCH GIVEN, GIRLS. LADIES!** Here is just the prettiest watch you can imagine! Made in America. Case has Charm and color of Natural Yellow Gold Stainless steel back. Raised Gold numerals on Silvered Background. Watch is small—width of dial is smaller than a dime. Given—Simply given away FREE Sachet Perfume with famous U-C-A Salve which you sell to friends at 25¢ per box and remit as per premium plan book.

Big list of premiums for selling only 12 Boxes U-C-A Salve at 25¢ each \* \* \* You can have cash if you prefer.

**SPECIAL OFFER FOR PROMPTNESS FREE** of extra cost. This is in addition to your regular premium, JUST FOR BEING PROMPT! We want quick action and we are willing to pay for it \* \* \*. All you have to do is get busy and sell this package of salve. Send us \$3 which you collect so it will reach

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us in 10 days and you will have this beautiful \* \* \* in addition to your regular premium \* \* \*.

**SPECIAL EXTRA PRESENT. RETURN NO MONEY. GET AN EXTRA PRESENT FREE.** As soon as you receive this order of goods, start out at once and sell them quickly. Send us the money within 10 days after you receive the goods, and you will be rewarded with an extra present absolutely free \* \* \*.

**SPECIAL PRESENT FOR PROMPTNESS.**

**FREE SINGING LARIET SENT FREE \* \* \*** IF you will mail this card within 5 days after its receipt by you. \* \* \*

**CHOOSE ANY PREMIUM. YOURS WITHOUT ONE CENT COST. DON'T DELAY! ACT NOW!** You will be delighted with these beautiful articles of guaranteed quality! Oh Boy! Imagine yourself speeding down the avenue on an up-to-the minute Streamlined Bike, fully equipped. Imagine yourself the proud owner of the big advertised Wagon shown here, the boys' or Girls' wrist watches \* \* \*—yes and cash for spending money—all yours for simply giving away **FREE** Sachet Perfume with famous U-C-A Salve which easily sells at 25¢ a box \* \* \* (with **FREE** perfume) and remit as explained in Premium Catalog Plan Book. *Big list of premiums for selling only 12 boxes U-C-A Salve at 25¢ each.* U-C-A Manufacturing Company, Chicago, Illinois.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that they are manufacturers or makers of the products so advertised; that the particular premiums so advertised are given free to agents selling the specified amounts of merchandise stated and other premiums are given free to persons submitting orders for the merchandise within 5 days from the receipt of the order blank and submitting the proceeds from sales of merchandise within 10 days from the receipt of the merchandise; that the blankets are made of the wool of sheep; that the billfolds are genuine leather; that the fountain pens are equipped with 14 K gold plate pen points and are backed by service guarantee of a nationally known manufacturer; that the clocks are America's most beautiful and are masterpieces in time telling and are of a value of \$5 and will run 7 days without rewinding; that the movie projectors are fully equipped with 200 feet of film; that the bicycles, wagons, radio sets, rifles, wrist watches and other articles offered as premiums are delivered to agents in lieu of the \$1 cash commission for the sale of 12 boxes of salve sold at 25 cents each for a total of \$3; that the packets of sachet perfume distributed with other articles of merchandise sold are given to the purchasers of the merchandise as a gift or gratuity; that the premiums listed are fully equipped and function in the manner and according to the purposes

for which like articles similarly designed and constructed are represented and intended to be used.

PAR. 5. In truth and in fact, respondents are not manufacturers or makers of the products which they vend and do not own, operate, or control a factory, plant or laboratory where such products are manufactured, made or compounded; the various aforesaid articles offered to agents as premiums for the submission of orders within 5 days and for the remittance of sums of money procured from the sale of respondents' products within 10 days after the receipt of the merchandise are not gifts and are not given free, but are compensation in lieu of cash paid for services rendered; the sachet perfume included with the sale of respondents' products is not given away free, and the so-called gifts offered for promptness are never delivered to the agents. Respondents do not pay postage on all goods shipped to the agents and the premiums offered for the sale of merchandise are not awarded in conformity with the representations made by respondents, and some of the aforesaid premiums are never awarded to agents and other of said premiums are not fully equipped to perform the functions for which they are represented, designed and intended and for which they are ordinarily and customarily used and are only awarded upon payment by the agent of a sum in cash over and above the commission allowed. The blankets represented as premiums are not made from the wool of sheep, and are not all wool, and are not of unexcelled value; the billfolds are not genuine leather; the fountain pens are not equipped with 14 K gold plate pen points and are not backed by service guarantee of a nationally known manufacturer; the clocks are not America's most beautiful and are not masterpieces in time telling and are not of the value of \$5 and are not 7-day clocks and will not run over 24 hours without rewinding; the movie projectors are not delivered fully equipped with 200 feet of film. Respondents' sales plan generally contemplates the sale of specified amounts of merchandise to obtain premiums, and the said bicycles, wagons, radio sets, rifles, wrist watches and many other articles of value offered as principal premiums are not "free," or "given," or "given free," or "given away free" where no cash commission payment is involved, inasmuch as the premium constitutes in fact compensation for valuable services rendered respondents. Likewise where premiums are given or accepted in lieu of or in addition to the commissions due, said premiums are not "free," or "given," or "given free" or "given away free" inasmuch as they represent the equivalent of money earned and due for valuable services rendered. The use of the word "given" in the manner employed by respondents in their advertising conveys the impression to

purchasers that the articles so described are in fact free, when in fact payment is required in order to obtain said articles as hereinabove described.

In truth and in fact, the majority, if not all, of the aforesaid various premiums, so-called gifts, represented as given free, and advertised by respondents to be obtainable by their selling agents on completing the sales of a specified number of packages of salve or other merchandise are only obtainable by such selling agents upon the payment of various sums in cash in addition to cash remittances realized upon the sale of such merchandise, and in truth and in fact, the only goods upon which respondents pay postage are the items of merchandise forwarded to selling agents for sale by them. While it is true that upon receiving an application from an individual who desires to become a selling agent, respondents send with the merchandise forwarded to such selling agent various communications in which it is indicated that the receipt of many of the so-called gifts or premiums aforesaid is conditional upon payment of an amount in cash in excess of the proceeds from the sale of such merchandise; nevertheless, such conditions are so presented to prospective selling agents as to fail to negative the representations in this regard contained in respondents' advertising.

PAR. 6. The use by respondents of the false, deceptive, and misleading statements and representations set forth herein has had and now has the capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase or sale of substantial quantities of respondents' said products as a result of such erroneous belief.

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1944, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of that act. The respondents' answer to said complaint having been filed, testimony and other evidence were introduced before a trial examiner of

the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the trial examiner submitted his report, to which the respondents filed a number of exceptions, and in due time written briefs in support of and in opposition to the complaint were filed.

After having afforded the respondents an opportunity to show cause why the complaint should not be amended pursuant to a motion filed by counsel in support of the complaint, and after having considered said motion and the respondents' written objections thereto, the Commission on November 24, 1947, issued and subsequently served upon the respondents its amended complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. The respondents' answer to said amended complaint was filed on January 19, 1948.

At a hearing before the trial examiner held on October 7, 1948, a stipulation was entered into by and between the respondents and counsel in support of the amended complaint, and in said stipulation it was agreed that for the purpose of disposing of this proceeding the record should consist of the amended complaint and the answer thereto, the testimony and other evidence theretofore received in support of and in opposition to the original complaint, the trial examiner's report, and the briefs theretofore filed, and that the Commission might proceed upon such record to make its findings as to the facts and to enter its order disposing of said proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' answer thereto, the testimony and other evidence, the stipulation, the trial examiner's report and the respondents' exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Morris Shapiro, Charles Shapiro, and Mary Shapiro, are individuals trading and doing business under the name U-C-A Manufacturing Co. Their office and principal place of business was formerly maintained at 1425 South Racine Avenue,

Chicago, Ill., but is now located at 1933 South Halsted Street, Chicago, Ill. Said respondents are now, and for a number of years last past they have been, engaged in the business of selling salve, vapor balm, menthol inhalers, and miscellaneous merchandise.

PAR. 2. The respondents cause the aforesaid products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in such products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. The respondents' method of selling their products consists of a plan commonly referred to as the "return or remit plan," under which plan agents are furnished the products in lots of 12 boxes, to be sold at 25 cents a box, and are allowed 30 days within which to sell the same and remit to the respondents 2 dollars of the proceeds, retaining as their commissions 1 dollar thereof; or, if the entire 12 boxes have not been sold, to remit to the respondents 25 cents for each box sold and return the unsold portion of the merchandise. In lieu of the 1 dollar cash commission for selling the 12 boxes of salve and balm, the agents may elect to receive any one of a number of premiums depicted in a catalog furnished them by the respondents, each of which premiums is described as a "\$3 Prize." No deposit is required on the salve and balm so furnished the agents, and the merchandise remains the property of the respondents until paid for. With each shipment of 12 boxes of salve and balm the respondents formerly included 12 packs of sachet perfume, it being intended by them that 1 pack of such perfume should be "given free" to the purchaser of each box of salve or balm at 25 cents a box, but the respondents testified that this particular practice was discontinued sometime in 1944.

Under the respondents' plan of operation, if a prospective agent accepts the respondents' offer of an agency within 5 days after receiving the offer the respondents promise him a "special extra present" which they describe as being a reward given "absolutely free." If the agent sells the 12 boxes of salve and balm and remits the sales price, less his commission, within 10 days after receipt of the merchandise the respondents promise him still another "extra present—absolutely free." The agent may also remit other stated amounts in addition to and together with the sum collected upon the sale of the merchandise and receive from the respondents other premiums described by them as "gifts."

The volume of salve and balm sold by the respondent by the above-described method has been around 1,000,000 boxes a year.

PAR. 4. In an effort to obtain agents to sell their products under the aforesaid plan, the respondents advertise in various newspapers, magazines, premium lists, premium-plan books, circulars, and on post cards, reward coupons, and other media. Such advertising is variously devised to show by pictures and descriptive matter representations of blankets, billfolds, pen and pencil sets, clocks, guitars, movie projectors, bicycles, wagons, rifles, radio sets, watches, and various other articles offered to agents as premiums, commissions, or compensation for selling the respondents' products.

In the manner and by the means aforesaid, the respondents have represented, among other things, that the particular articles described in their literature were given free to agents selling the specified amounts of merchandise stated; that other premiums were given free to persons submitting orders within 5 days of the receipt of the order blanks and to persons submitting the proceeds from the sale of merchandise within 10 days of the receipt of the merchandise; that the blankets described were made of the wool of sheep and were of unexcelled value; that the billfolds described were made of genuine leather; that the fountain pens described were equipped with 14-karat gold-plate pen points; that the clocks described were America's most beautiful and were masterpieces in time telling, each of which was of the value of 5 dollars; and that the packets of sachet perfume to be distributed with the salve and balm sold by the agents were given free to the purchasers of the salve and balm as gifts or gratuities.

PAR. 5. The record clearly establishes that none of the articles advertised by the respondents as being "free" or "given free" to agents selling the specified amounts of merchandise, or to persons submitting orders within 5 days of the receipt of such orders, or to persons submitting the proceeds from the sale of merchandise within 10 days of the receipt of the merchandise, were actual gifts or were given as a gratuity without consideration. In the case of agents selling specified amounts of merchandise the articles described were simply additional compensation for the agents' services in selling the respondents' salve and balm, and in the case of persons submitting orders within 5 days and persons submitting the proceeds of sale within 10 days the respondents admitted that the articles awarded were extra commissions for prompt returns. Moreover, except in certain instances in which the respondents "directly" stated in their premium lists that they would pay the postage or express charges on such articles, all of these charges were paid by the recipients, and it further appears

that some of the premiums which the respondents represented as being "given free" were in fact never delivered at all.

The blankets offered by the respondents as premiums and described by them as "fleece twill" and of "unexcelled value" were not made of wool, but of cotton, and each of such blankets was worth no more than approximately 1 dollar. They were not of "unexcelled value." The billfolds described in the respondents' advertising as "genuine leather" were made of sheep skin with cloth linings, and the fountain pens referred to by the respondents as "amazing offers" were not equipped with 14-karat gold plate pen points. The clocks offered by the respondents were not "America's most beautiful," were not "masterpieces in time telling," and they were not worth 5 dollars each as the respondents advertised. Contrary to the respondents' representations, the sachet perfume, said to have been "given free" to purchasers of salve and balm, was not a gift, but was a part of a combination offer of salve or balm and sachet perfume, both of which together sold for the price of 25 cents.

For the foregoing reasons and in the particulars stated, the respondents' advertising representations referred to in paragraph 4 were and are false, misleading and deceptive.

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

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondents' answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, a stipulation entered into by and between the respondents and counsel in support of the amended complaint, the trial examiner's report and

the respondents' exceptions thereto, and written briefs (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Morris Shapiro, Charles Shapiro, and Mary Shapiro, individually and as co-partners trading as U-C-A Manufacturing Co., or trading under any other name or through any corporate or other device, and said respondents' agents, representatives and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of salve, vapor balm, menthol inhalers or other articles of merchandise, do forthwith cease and desist from:

1. Using the words or terms "given," "free," "given free" or "given away free", or any other word or term expressly or impliedly importing a like meaning, in advertising, to designate, describe or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondents.

2. Using the term "fleece twill," or any other term of similar import or meaning, to designate, describe or refer to blankets or other articles not made of wool or otherwise representing, directly or by implication, that any article not made of the wool of sheep is made of wool.

3. Representing, directly or by implication, that billfolds or other articles made of substance other than leather are made of leather.

4. Representing, directly or by implication, that fountain pens not equipped with 14-karat gold plate pen points are so equipped.

5. Misrepresenting in any manner the value, quality, condition or characteristics of any article offered as a premium, commission or compensation for selling the respondents' products.

6. Offering as a premium, commission or compensation any article which it not in fact delivered upon full compliance with the terms or conditions of the offer.

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

## Syllabus

IN THE MATTER OF  
THE RUBEROID CO.

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

*Docket 5017. Complaint, July 26, 1943—Decision, Jan. 20, 1950*

Where one of the largest manufacturers of asbestos and asphalt roofing, insulating materials and allied products in the United States, with principal office and place of business in New York and branch warehouses and sales offices in Baltimore, Mobile, Erie, Pa.; Millis, Mass.; and Chicago, engaged in the competitive interstate sale and distribution of said products to wholesalers, retailers, and building or roofing contractors, or "applicators," many of whom were competitively engaged with one another and with customers of said manufacturer's competitors in the resale of said products within the several trade areas concerned—

Discriminated in price between purchasers of its said products who competed keenly in the resale thereof as roofing contractors or applicators and as retailers, and under conditions where a difference of a dollar in the price of a roofing job as between equally reputable applicators could be decisive in securing the business for the one offering the lower price, through granting to some, with no contention of cost justification, an additional 5 percent discount not extended to others for products of like grade and quality;

With the result that customers who receive such preferential discounts had a material advantage over the others, and that such discrimination might substantially lessen competition in the line of commerce concerned and injure, destroy, or prevent competition between those receiving the benefit of such discriminatory prices and those from whom such prices were withheld:

*Held*, That such discriminations in price, under the circumstances set forth, were violative of subsection 2 (a) of the Clayton Act as amended.

In said proceeding in which there was sharp disagreement between counsel as to whether the record established discriminations by respondent among wholesalers, the trial examiner, in the opinion of the Commission, was correct in his conclusion that there was insufficient evidence to establish such discrimination.

As respects the fact, in said proceeding, that the particular designations given purchasers were not always controlling as indicating the functions actually performed by them—as, for example, in the case of a roofing contractor or applicator who sold quantities to other applicators, and a purchaser classified as a wholesaler who also functioned as an applicator—and the confusion for which this was responsible with respect to the question of whether or not discrimination by respondent among wholesalers was established; the fundamental and controlling factor in the proceeding was that the record established price discriminations by respondent among purchasers who were in fact competing with one another in the resale of the products in question, and the Commission was of the view that the particular designations applied

## Complaint

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to the various purchasers was of little importance, and that the corrective action taken by it in the matter should be sufficiently comprehensive to stop the discriminations irrespective of such designations.

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

*Mr. James I. Rooney* for the Commission.

*Hannon & Evans*, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondent.

## 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, has been since June 19, 1936, and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. Title 15, Sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Ruberoid Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 500 Fifth Avenue, New York, N. Y. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing, manufacturing, offering for sale, selling, and distributing asbestos and asphalt roofing, insulating materials, and allied products in all parts of the United States.

The respondent is one of the largest manufacturers and distributors of asbestos and asphalt roofing, insulating materials and allied products in the United States. It maintains and operates branch warehouses and sales offices at Baltimore, Md.; Mobile, Ala.; Erie, Pa.; Millis, Mass.; and Chicago, Ill. The respondent sells its products directly to wholesalers, retailers, and "applicators." The term "applicators" herein used applies to corporations, individuals, partnerships, and firms known as building or roofing contractors who apply the products purchased from the respondent to buildings. The "applicators" usually sell the respondent's products to consumers on a contract basis, charging the consumer for the materials used and the labor employed in connection with the applying of the asbestos and asphalt roofing and insulating materials to buildings.

PAR. 2. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sales, causes such products to be shipped and transported from the place of

production or origin of the shipment to the purchasers thereof who are located in various States of the United States and in the District of Columbia other than the State of origin of the shipment and there is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's plants, factories or warehouses and the purchasers of such products. Said products are then sold and distributed for use and resale within the various States of the United States and within the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent has been and is now in substantial competition in commerce with other manufacturers and sellers of asbestos and asphalt roofing and insulating materials and allied products and who for many years prior hereto have been and are now engaged in manufacturing, selling and shipping such products in commerce across State lines to purchasers thereof located in the various States of the United States.

Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the resale of said products within the several trade areas in which respondent's said customers respectively offer for sale and sell the said products purchased from respondent.

PAR. 4. In the course and conduct of its said business, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said products, by selling them to some of its customers at higher prices than it sells products of like grade and quality to other customers who are competitively engaged in the resale of said products within the United States with customers receiving the lower prices.

The respondent grants and allows to all of its customers a cash discount of 2 percent if the invoice is paid within a specified time.

PAR. 5. The respondent has discriminated in price by the use of a so-called trade discount schedule whereby it has sold to some customers at higher prices than it has sold goods of like grade and quality to other customers who are in competition with them in the resale of said products within the United States. The so-called trade discount schedule includes two types of discounts, one known as a "distributor commission" and the other known as a "wholesaler discount." The trade discount schedule used by the respondent is more particularly described as follows:

(a) The respondent grants to some of its customers who are engaged in the resale of asphalt roofing products of like grade and quality in

competition with other of respondent's customers, a "distributor commission" ranging from 5 to 10 percent to be deducted from the invoice price and a "wholesaler discount" of 5 percent off the invoice price.

The "wholesaler discount" of 5 percent allowed by the respondent to its favored customers is in addition to the "distributor commission" ranging from 5 to 10 percent granted and allowed to the same customers.

(b) The respondent grants to some of its customers who are engaged in the resale of asbestos shingles and siding of like grade and quality in competition with other of respondent's customers, a "distributor commission" of 5 percent, and in some instances 6 percent, to be deducted from the invoice price and a "wholesaler discount" of 6 percent off of the invoice price. The "wholesaler discount" of 6 percent allowed by the respondent to its favored customers is in addition to the "distributor commission" of 5 percent, and in some instances 6 percent granted and allowed to the same customers.

The "distributor commission" and "wholesaler discount" herein referred to are allowed to some and withheld from other customers of the respondent who purchase from the respondent asphalt roofing products and asbestos shingles and siding and allied products and who are in competition with each other.

PAR. 6. The effect of the discrimination in price generally alleged in paragraph 4 hereof and of the discriminations specifically set forth in paragraph 5 hereof has been, or may be, substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those from whom they are withheld. The effect also has been or may be to tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in the said line of commerce in the various localities or trade areas in the United States where said favored customers and their disfavored competitors are engaged in business.

Such discriminations in price by respondent between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of subsection 2 (a) of section 1 of said act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of an act entitled, 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended, U. S. C. Title 15, Section 13 and for other purposes."

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

Pursuant to the provisions of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13). The Federal Trade Commission on July 26, 1943, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with violation of subsection (a) of section 2 of that act as amended. After the filing by respondent of its answer to the complaint and after certain evidence in support of the complaint had been introduced before a trial examiner of the Commission theretofore duly designated by it, counsel supporting the complaint and counsel for respondent agreed that the matter might be determined upon the evidence introduced up to that time, without the necessity of further evidence. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, evidence, recommended decision of the trial examiner, the briefs of counsel, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Ruberoid Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 500 Fifth Avenue, New York, N. Y. Respondent is now and since June 19, 1936, has been engaged in the business of processing, manufacturing, offering for sale, selling, and distributing asbestos and asphalt, roofing, insulating materials, and allied products.

Respondent is one of the largest manufacturers and distributors of asbestos and asphalt roofing, insulating materials, and allied products in the United States. It maintains and operates branch warehouses and sales offices at Baltimore, Md.; Mobile, Ala.; Erie, Pa.; Millis, Mass.; and Chicago, Ill. Respondent sells its products directly to wholesalers, retailers, and "applicators." The term "applicator" herein used applies to purchasers known as building or roofing contractors, who apply to buildings the products purchased from respondent. The applicator usually sells respondent's products to consumers on a contract basis, charging the consumer for the material

used and the labor employed in connection with the applying of the products to buildings.

PAR. 2. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia, and preliminary to or as the result of such sales causes such products to be shipped and transported from the place of production or origin of the shipment to the purchasers thereof who are located in various States of the United States and in the District of Columbia. There is, and at all times mentioned herein has been, a continuous current of trade and commerce in such products across State lines between respondent's plants, factories, or warehouses and the purchasers of such products. The products are then sold and distributed for use and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent has been and is in substantial competition with other manufacturers and sellers of similar products who have been and are engaged in the sale of such products in commerce between and among the various States of the United States.

Many of respondent's customers are competitively engaged with one another and with the customers of respondent's competitors in the resale of asbestos and asphalt roofing, insulating materials, and allied products within the several trade areas in which respondent's customers respectively offer for sale and sell the products purchased from respondent.

PAR. 4. In the sale of its products in commerce, as aforesaid, respondent has discriminated in price by selling its products to some of its customers at prices lower than those at which it sells products of like grade and quality to other customers who compete with such favored customers in the resale of such products. Among the specific instances of discrimination disclosed by the record are the following, all of the purchasers involved being located in the New Orleans, La., trade area:

On March 12, 1941, respondent sold A. H. White Roofing Co. 17 squares of jade green, 16-inch hexagonal asbestos roofing shingles at \$6.72 per square, and granted a 6 percent discount on this item. On March 13, 1941, respondent sold National Roofing Co. 25 squares of the same type of shingles as it sold A. H. White Co. at \$6.72 per square, and granted it a 6 percent discount and a further discount of 5 percent.

On March 17, 1941, respondent sold A. H. White Roofing Co. 15 rolls of 30-pound asphalt felt at \$1.50 a roll, and granted a 6 percent dis-

count on this item. On the same date respondent sold F. J. Villars & Son 100 rolls of the same type of asphalt felt as it sold the A. H. White Co. at \$1.50 a roll, and granted it a 6 percent discount and a further discount of 5 percent.

On February 8, 1941, respondent sold Jordy Bros., 13 squares of tile red, 16-inch hexagonal asbestos roofing shingles and the A. H. White Co., 15 squares of the same type of shingles at \$6.52 per square, and granted a 6% discount on this item. On February 7, 1941, respondent sold Brandin Slate Co. 10 squares of the same type of shingle that it sold Jordy Bros. and the A. H. White Co. at \$6.52 per square, and granted to this purchaser both a 6 and a 5 percent discount.

On September 29, 1941, respondent sold A. H. White Roofing Co. 50 rolls of 15-pound asphalt at \$1.66 per roll. On the same date it sold the National Roofing Co. 50 rolls of the same type of felt at \$1.66 per roll, and granted a 5 percent discount.

On June 30, 1941, respondent sold Joseph Modenbach & Sons 30 rolls of 30-pound asphalt felt at \$1.50 a roll. On June 24, 1941, respondent sold National Roofing Co. 75 rolls of this same type of asphalt at \$1.50 a roll, and granted a 5 percent discount.

On August 4, 1941, respondent sold Joseph Modenbach & Sons 25 squares of blue-black, 16-inch hexagonal asbestos roofing shingles at \$6.52 per square and 30 rolls of 30-pound asphalt felt at \$1.58 per roll, and granted a 6 percent discount on the shingles. On August 23, 1941, respondent sold F. J. Villars & Son 22 squares of the same type of shingles at \$6.52 per square and 65 rolls of the same type of asphalt felt at \$1.58 per roll and granted a 6 percent discount and a further discount of 5 percent on the shingles and a 5 percent discount on the asphalt felt.

On April 22, 1941, respondent sold A. H. White Roofing Co. 50 squares of Snow White, 12-inch asbestos colonial siding at \$5.88 per square, and granted a 6 percent discount. On the same date it sold the National Roofing Co. 3 squares of the same type of siding at \$5.88 per square, and granted both a 6 percent discount and a 5 percent discount.

On May 13, 1941, respondent sold A. H. White Roofing Co. 25 squares of Snow White, 12-inch asbestos colonial siding at \$5.88 per square, and granted a 6 percent discount. On the same date it sold Brandin Slate Co. 14 squares of the same type of siding at \$5.88 per square, and granted both a 6 percent discount and a 5 percent discount.

The respective purchasers of respondent's products referred to above were competing in the resale of these products as roofing contractors or applicators and as retailers. The competition among these customers of respondent was keen. Respondent recognized that a difference of 2½ percent was material to its customers in the possible diversion of trade. In fact, a difference of a dollar or more in the price of a roofing job as between equally reputable applicators could be decisive in securing the business for the applicator offering the lower price. In these circumstances customers receiving preferential discounts had a material competitive advantage over customers to whom such discounts were denied.

There is no contention on the part of respondent that the preferential discounts were justified by lower costs.

PAR. 5. There is a sharp disagreement between counsel as to whether the record establishes discriminations by respondent among wholesalers. In the opinion of the Commission, the trial examiner is correct in his conclusion that there is insufficient evidence to establish such discriminations. However, as the trial examiner points out, there is some confusion on this point due to the fact that the particular designations given purchasers are not always controlling as indicating the functions actually performed by such purchasers. For example, one purchaser, although engaged primarily as a roofing contractor or applicator, sold quantities of the products to other applicators. And another purchaser, although classified by respondent as a wholesaler, also functioned as an applicator.

The Commission is of the view that the particular designations applied to the various purchasers is of little importance. The fundamental and controlling factor in the proceeding is that the record establishes price discriminations by respondent among purchasers who are in fact competing with one another in the resale of the products in question, and the particular terms used to describe the various purchasers are immaterial. The corrective action taken by the Commission in the matter should be sufficiently comprehensive to stop the discriminations, irrespective of the designations applied to the purchasers.

PAR. 6. The effect of the discriminations in price referred to herein may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy, or prevent competition between the purchasers receiving the benefit of such discriminatory prices and those from whom such prices are withheld.

## CONCLUSION

The discriminations in price by respondent as herein found are violative of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, briefs filed by counsel supporting the complaint and counsel for respondent, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C. Sec. 13) :

*It is ordered*, That the respondent, the Ruberoid Co., a corporation and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of asbestos or asphalt roofing materials in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price:

By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products.

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

## IN THE MATTER OF

## WILBUR F. DARNELL AND GEORGE W. DARNELL TRADING AS DARNELL DRUG COMPANY

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

*Docket 5621. Complaint, Nov. 22, 1948—Decision, Feb. 2, 1950*

Where two individuals engaged in the interstate sale and distribution of a product designated "Glancaps," compounded under two formulae with two directions supplied for use; through advertisements in newspapers and otherwise—

- (a) Represented falsely that said product, used as directed, constituted a competent and effective treatment for diseases of the prostate, kidneys and bladder, and would restore the normal functions thereof when impaired for any reason;
- (b) Represented falsely that use thereof would clear the entire system, and particularly said organs, of poisons; and
- (c) Represented falsely that it would build up the strength and energy of the user, and was safe and harmless;
- (d) Failed to reveal in said advertisements facts material with respect to the consequence which might result from the use of said product under customary conditions in that the irritant diuretics therein contained, were likely to result in serious and irreparable injury to injured or diseased kidneys and prolonged use was likely to cause serious injury to normal kidneys; and
- (e) Falsely represented through use of the trade name "Glancaps," that the preparation was of value in the treatment of the body glands;

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

*Held*, That such acts and practices were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

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

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

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Wilbur F. Darnell and George W. Darnell, individuals, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Wilbur F. Darnell and George W. Darnell are individuals doing business and trading as Darnell Drug Co. with their principal office and place of business at 1434 Concord Street, Indianapolis, Ind.

PAR. 2. Said respondents are now and for several years last past have been, engaged in the business of selling and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for the said product and the formulae and directions for use thereof, are as follows:

*Designation:* Glancaps.

*Formulae:*

Albasantal.....	3 minims
Oleoresin of Cubebs.....	2 minims
Oil of Copaida (Copaiba).....	3 minims
Rectified Turpene Oil.....	2 minims
Extract Zea Mays.....	5 grains
and	
Oil Santal.....	2 minims
Salol.....	2 grains
Copaiba.....	3 minims
Venice Turpentine.....	2 minims
Oleoresin Cubeb.....	1 minim

*Directions:*

"One capsule every twenty-four hours with one-half glass of water to be taken only at bedtime. Avoid alcoholic liquors."

"The minimum dose of Glancaps is one capsule every twenty-four hours, and should be taken only at bedtime. In extreme cases, or cases of long standing, two capsules may be taken and continued only until an improvement is noted."

Respondents cause their said product, when sold, to be transported from their place of business in Indianapolis, Ind., to purchasers thereof located in various other States of the United States. Respondents maintain, and all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents, subsequent to March 31, 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 newspaper, Indianapolis News, published in Indianapolis, Ind., in the issues of May 6, 1941, and July 11, 1941; the newspaper, Indianapolis Star, published in Indianapolis, Ind., issues of September 14, 1941, November 9, 1941, and

in issues during June and July, 1943, also issues of November 5, 1943, March 12 and 19, 1944, April 2, 1944, December 30, 1945, February 17, 1946, March 10 and 31, 1946; and the newspaper, Cincinnati Enquirer, published in Cincinnati, Ohio, in the issues of August 12, 1945, October 7, 1945, December 9 and 30, 1945, February 10, 1946, March 2, 1947, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have disseminated and caused the dissemination of advertisements concerning their 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 their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

**RELIEF FOR MEN**

Prostate—Kidney—Bladder

Hundreds of men endorse GLANCAPS. 50 Day treatment, price \$3; write DARNELL DRUG CO., MONTECELLO, IND. Indianapolis Office, 1206 E. Wash.

**PERSONAL TO MEN**

Every man who suffers with KIDNEY, BLADDER, PROSTATE or URINARY trouble should know about GLANCAPS. \* \* \* Hundreds of men endorse GLANCAPS.

**URINARY HEALTH FOR MEN**

Write CLANCAPS, 1206 E. Wash., Indpls.

**GLANCAPS FOR MEN!**

Remove dangerous poisons; Clean up Prostate, Kidneys, Bladder, Urinary Organs. Renew normal strength and energy. \* \* \*

**GLANCAPS END PROSTATE MISERY (OR MONEY REFUNDED) 40-DAY TREATMENT PRICE \$3.** Regardless of age or condition.

**DON'T SUFFER!**

For over 35 years thousands of discouraged men suffering with PROSTATES—KIDNEYS—BLADDER have obtained quick relief and fast build-up to Strength and Energy at a low daily cost of only a few cents. Get GLANCAPS Special 40 day treatment from your local Druggist, or mail \$3 direct to Darnell Drug Co., 1434 Concord, Indianapolis, Ind.

**MEN Suffer Needlessly With PROSTATES—KIDNEYS—BLADDER**

Regardless of age, or condition if you suffer with enlarged Prostate Glands, Kidney or Bladder irritation, break up congestion and cleanse the entire system with **GLANCAPS SPECIAL FORMULA**

A safe internal medication in capsule form proven effective in thousands of extreme cases.

**"RID SYSTEM OF POISONS"**

For a quick build-up to normal **STRENGTH AND ENERGY**

**"RID SYSTEM OF POISONS"**

If you suffer with **PROSTATES—KIDNEY—BLADDER**

## Complaint

For Men Who Suffer from swollen irritated Prostate Glands, Kidney, Bladder and Urinary Poisons. At the first sign of congestion, indicated by nervousness, backache, abdominal pains, leg ache and that tired, run-down feeling, \* \* \*

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth and others of the same import not specifically set out herein, respondents represented that said product, used as directed, constitutes a competent and effective treatment for diseases of the prostate, kidneys, and bladder and will restore the normal functions of said organs when such functions are for any reason impaired; that its use will clear the entire system of poisons and particularly the prostate glands, kidneys, and bladder; that said product will build up the strength and energy of the user and is safe and harmless.

PAR. 6. The aforesaid 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 product under either formula or according to either direction for use does not constitute a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder and will have no beneficial effect upon such diseases. It will not restore the functions of such organs to any extent. It will not clear the system or any part or organ thereof of poisons nor will it build up the strength and energy of the user. It is not a safe or harmless product to use.

PAR. 7. The advertisements designated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the said product to which the advertisements relate, under the conditions as are customary or usual. In truth and in fact, the Oil Santal (Albasantal), Oleoresin of Cubebs, Oil of Copaida (Copaiba), Rectified Turpene Oil, and Venice Turpentine are irritant diuretics and the use of this product in accordance with the directions or as is customary or usual is likely to result in serious and irreparable injury to kidneys which are injured or diseased and prolonged use of the product is likely to cause serious injury to normal kidneys.

PAR. 8. The use by the respondents of the trade name "Glancaps" is misleading and deceptive in that it serves as a representation that said product is of value in the treatment of various glands. In truth and in fact, the use of the product, as directed or otherwise, will have no beneficial effect upon any gland of the body.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations have had, and

now have, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that the use of the product is safe and harmless, and to induce the purchasing public to purchase substantial quantities of respondents' said product because of such erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of the respondents, as alleged herein, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 22, 1948, issued and subsequently served its complaint in this proceeding upon the respondents Wilbur F. Darnell and George W. Darnell, individually and trading as Darnell Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, at a hearing before a trial examiner of the Commission theretofore duly designated by it, respondent George W. Darnell, admitted in oral answer to the complaint all the material allegations of fact set forth in the complaint and waived further hearings as to the facts and all intervening procedure, and such answer, together with other testimony, was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer as aforesaid, and testimony and recommended decision of the trial examiner (other intervening procedure having been waived); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Wilbur F. Darnell and George W. Darnell, individuals trading as Darnell Drug Co., for several years prior to the institution of this proceeding were engaged in the sale and distribution of a product designated "Glancaps," with their principal office and place of business at 1434 Concord Street, Indianapolis, Ind. Respondent Wilbur F. Darnell died on December 9, 1948.

PAR. 2. The formulae and their respective directions for use of the product Glancaps were as follows:

*Formulae:*

Albasantal.....	3 minims
Oleoresin of Cubebs.....	2 minims
Oil of Copaiba (Copaiba).....	3 minims
Rectified Turpene Oil.....	2 minims
Extract Zea Mays.....	5 grains
and	
Oil Santal.....	2 minims
Salol.....	2 grains
Copaiba.....	3 minims
Venice Turpentine.....	2 minims
Oleoresin Cubeb.....	1 minim

*Directions:*

"One capsule every twenty-four hours with one half glass of water to be taken only at bedtime. Avoid alcoholic liquors."

"The minimum dose of Glancaps is one capsule every twenty-four hours, and should be taken only at bedtime. In extreme cases, or cases of long standing, two capsules may be taken and continued only until improvement is noted."

PAR. 3. Respondents have caused said product, when sold, to be transported from their place of business in Indianapolis, Ind., to purchasers thereof located in various other States of the United States. Respondents have maintained a course of trade in their said product in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their business for several years prior to the institution of this proceeding respondents in newspapers and otherwise have disseminated and caused the dissemination of advertisements concerning the product Glancaps by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Such advertisements were for the purpose of inducing and were likely to induce the purchase of said product in commerce, as "commerce" is defined in said act.

PAR. 5. The advertisements disseminated as aforesaid have represented that said product, used as directed, constitutes a competent and effective treatment for diseases of the prostate, kidneys, and bladder and will restore the normal functions of said organs when such functions are for any reason impaired; that its use will clear the entire system of poisons and particularly the prostate glands, kidneys, and bladder; that said product will build up the strength and energy of the user and is safe and harmless.

## Conclusion

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PAR. 6. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. The product Glancaps, under either formula or according to either direction for use, does not constitute a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder and will have no beneficial effect upon such diseases. It will not restore the functions of such organs to any extent. It will not clear the system or any part or organ thereof of poisons nor will it build up the strength and energy of the user. It is not a safe or harmless product to use.

PAR. 7. Oil Santal (Albasantal), Oleoresin of Cubebs, Oil of Copaiba (Copaiba), Rectifier Turpene Oil, and Venice Turpentine are irritant diuretics and the use of the product Glancaps in accordance with the directions or as is customary or usual is likely to result in serious and irreparable injury to kidneys which are injured or diseased and prolonged use of the product is likely to cause serious injury to normal kidneys. The said advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they have failed to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the said product under such conditions as are customary or usual.

PAR. 8. The use of the trade name Glancaps to designate said preparation has been misleading and deceptive in that it has served as a representation that said product is of value in the treatment of the various body glands. The use of the product as directed or otherwise will have no beneficial effect upon any gland of the body.

PAR. 9. The use by the respondent, George W. Darnell, of the foregoing false, misleading, and deceptive statements and representations has had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that the use of the product is safe and harmless and to induce the purchasing public to purchase substantial quantities of the product designated as Glancaps because of such erroneous and mistaken beliefs.

## CONCLUSION

The aforesaid acts and practices of the respondent George W. Darnell are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer admitting all of the material allegations of fact set forth in the complaint and waiving further intervening procedure and hearings as to said facts, made orally by respondent George W. Darnell at a hearing in this proceeding before a trial examiner of the Commission theretofore duly designated by the Commission, testimony, and recommended decision of the trial examiner; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That respondent George W. Darnell, individually and trading under the name of Darnell Drug Co., or any other name, and his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of the product designated "Glancaps," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That said product is a competent or effective treatment for any disease of the prostate gland, kidneys, or bladder, or will have any beneficial effect upon such diseases;

(b) That said product will restore the functions of the prostate gland, kidneys, or bladder;

(c) That said product will clear the human system or any organ or part thereof of poisons;

(d) That said product will build up the strength or energy of the user;

(e) That said product is safe and harmless.

2. Disseminating, or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which fails to reveal that the use of said product by persons having injured or diseased kidneys is likely to result in serious injury and that prolonged use thereof may cause serious injury to normal kidneys.

Order

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

4. Using in connection with the offering for sale or sale of any preparation in commerce the term "Glancaps," or any word or words of similar import or meaning, unless such preparation is of value in the treatment of the glands.

It appearing that Wilbur F. Darnell, named as a respondent in the complaint in this proceeding, died on December 9, 1948:

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to Wilbur F. Darnell.

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

Complaint

IN THE MATTER OF  
 SETCHELL CARLSON, INC.

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

*Docket 5639. Complaint, Feb. 18, 1949—Decision, Feb. 2, 1950*

A substantial portion of the purchasing public is not able to, and does not, distinguish or recognize the difference between radio receiving tubes, which perform the primary function of detecting, amplifying, and receiving broadcast radio signals, and rectifiers or "rectifier" tubes, which perform only the auxiliary function of converting alternating current into direct current and which do not increase the power of a radio receiving set to detect, amplify, or receive broadcast radio signals; and believes that the power of a radio receiving set to detect, amplify, and receive broadcast radio signals is increased by the extent to which the number of tubes is increased.

Where a corporation engaged in manufacturing and assembling radio receiving sets, and in the interstate sale and distribution thereof to the purchasing public and to dealers; in advertising their sets through folders, price lists, pamphlets, circulars, and other advertising material—

Represented directly and by implication that some of said sets were equipped with five necessary, active and fully functioning tubes which performed the recognized and customary functions of radio receiving set tubes in detecting, amplifying, and receiving radio signals broadcast by radio transmitters, and that others of such sets were equipped with six such tubes, through such statements as "Five G. T. Tubes, Including Rectifier," "Six G. T. Tubes, Including Rectifier," and others of similar import;

The facts being that one or more of the devices in each of its sets referred to as a tube was not a radio receiving tube and did not perform the recognized and customary function of such a tube in detecting, amplifying, and receiving radio signals broadcast by a radio transmitter, but performed the auxiliary function of converting alternating current into direct current and was known as a rectifier or "rectifier tube," and did not increase the power of the set to detect, amplify, and receive broadcast radio signals;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and with effect of thereby inducing purchase by it of its said sets:

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

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

*Smith & Sehm*, of St. Paul, Minn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

Trade Commission, having reason to believe that Setchell Carlson, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent Setchell Carlson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at 2233 University Avenue, St. Paul, Minn. The respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing, assembling, selling, and distributing radio receiving sets.

PAR. 2. In the course and conduct of its said business, respondent corporation sells and distributes its radio receiving sets to dealers for resale and to buyers among the purchasing public. Said respondent now causes, and for more than 2 years last past has caused, its said products when sold to be transported from its place of business in St. Paul, Minn., to purchasers thereof located in the various States of the United States other than the State of Minnesota and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of its business for the purpose of inducing the purchase of respondent's radio receiving sets, respondent has circulated by mail, and otherwise, advertising folders, price lists, pamphlets, circulars, and otherwise, many statements and representations concerning its said radio receiving sets. By said means, respondent has made false and misleading statements and representations in describing said radio receiving sets, their power, capacity, and reception, and the number of active, fully functioning tubes in said radio sets. Among such statements and representations so made and circulated by respondent are the following:

Five G. T. Tubes, Including Rectifier.

Six G. T. Tubes, Including Rectifier.

6 Tubes—Including Rectifier.

6 Tubes—2-12SK7, 1-2SA7, 1-12SQ7, 1-50L6, 1-35Z5.

Tubes used are: 1-12SA7, 1-12SK7, 1-12SQ7, 1-50L6, 1-35Z5.

The aforesaid statements and representations together with similar statements and representations of respondent not herein set out, purport to be descriptive of respondent's radio receiving sets, the number of necessary functioning tubes with which they are equipped and serve as representations on the part of the respondent to members of said purchasing public and to dealers that said radio receiving sets are equipped, some with five and some with six active, fully functioning tubes.

A substantial number of the purchasing public believe that radio means the reception and transmission of sound waves and their audible reproduction, and believe that the greater the number of active, fully functioning tubes in the radio receiving set, the better the performance and the greater its power of detection, amplification and reception of sound waves, and a substantial number of the purchasing public buy radio sets under that belief.

PAR. 4. In truth and in fact, the foregoing statements and representations made by the respondent are false, deceptive and misleading. Respondent's aforesaid radio receiving sets are not equipped with five or six active, necessary, fully functioning tubes, respectively, but have installed therein, one or more ballast nonfunctioning, tuning beacon tubes or rectifier tubes. Such ballast or tuning beacon tubes or rectifier tubes, devices, and accessories do not serve as amplifying, detecting, or oscillating tubes and do not perform any recognized, customary function of radio tubes in the detection, amplification and reception of radio signals.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent describing its said radio receiving sets and the number of tubes contained therein, were and are calculated to, and have had and now have the tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true. As a result of these erroneous and mistaken beliefs, a substantial number of the purchasing public have purchased a substantial volume of respondent's radio receiving sets.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 18, 1949, issued and sub-

sequently served its complaint in this proceeding upon the respondent, Setchell Carlson, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. No answer has been filed by respondent. On July 21, 1949, a stipulation as to the facts was entered into by and between the respondent and Daniel J. Murphy, Chief of the Trial Division, subject to approval by the Commission, whereby it was stipulated that the statement of facts set out in said stipulation might be made a portion of the record herein and taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts, including inferences which might be drawn from said stipulated facts, and its conclusion based thereon and enter its order disposing of this proceeding without the presentation or oral argument or the filing of briefs. Respondent expressly waived the filing of a recommended decision by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and stipulation. The Commission, having approved, accepted, and filed said stipulation, and having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom :

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Setchell Carlson, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2233 University Avenue, St. Paul, Minn. It is now, and for more than 2 years last past has been, engaged in the business of manufacturing and assembling radio receiving sets, which it has sold and distributed, and now sells and distributes, to buyers among the purchasing public and to dealers for resale.

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

PAR. 3. (a) In the course and conduct of its business and for the purpose of inducing the purchase of the radio receiving sets sold and distributed by it, respondent has circulated, by means of the United States mails and by various other means, advertising folders, price lists, pamphlets, circulars, and other advertising material in which it has made various statements and representations with respect to the power and capacity of said radio sets to detect, amplify, and receive signals broadcast by radio transmitters and with respect to the number of necessary, active, fully functioning tubes contained in such radio sets. Among such statements and representations are the following:

Five G. T. Tubes, Including Rectifier.

Six G. T. Tubes, Including Rectifier.

6 Tubes—Including Rectifier.

6 Tubes—2-12SK7, 1-2SA7, 1-12SQ7, 1-50L6, 1-35Z5.

Tubes used are: 1-12SA7, 1-12SK7, 1-12SQ7, 1-50L6, 1-35Z5.

(b) Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, all of which purport to be descriptive of the radio receiving sets sold and distributed by respondent and of the number of necessary, active, and fully functioning tubes contained in such sets, respondent represents, and has represented, directly and by implication, that some of said sets are equipped with five necessary, active, and fully functioning tubes which perform the recognized and customary functions of radio receiving set tubes in detecting, amplifying, and receiving radio signals broadcast by radio transmitters, and that other of such radio sets are equipped with six such tubes.

PAR. 4. (a) The aforesaid statements and representations are false, misleading, and deceptive. One or more of the devices in each of respondent's respective radio receiving sets referred to as a tube is not a radio receiving tube and does not perform the recognized and customary function of such a tube in detecting, amplifying, and receiving radio signals broadcast by a radio transmitter, but, in fact, performs the auxiliary function of converting alternating current into direct current and is known as a rectifier or "rectifier" tube. Thus, each of respondent's respective radio receiving sets contains one or more rectifiers or "rectifier" tubes which have been designated, described, or referred to as a radio receiving tube. Such tubes do not increase the power of a radio receiving set to detect, amplify, and receive broadcast radio signals.

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(b) A substantial portion of the purchasing public is not able to, and does not, distinguish or recognize the difference between radio receiving tubes, which perform the primary function of detecting, amplifying, and receiving broadcast radio signals, and rectifiers or "rectifier" tubes which perform only the auxiliary function of converting alternating current into direct current and which do not increase the power of a radio receiving set to detect, amplify, or receive broadcast radio signals. Such a portion of the purchasing public believes that the power of a radio receiving set to detect, amplify, and receive broadcast radio signals is increased by the extent to which the number of tubes is increased.

PAR. 5. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that these statements and representations are true and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's radio receiving sets.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation of facts entered into by and between respondent and Daniel J. Murphy, Chief of the Trial Division, and said stipulation providing among other things, that the statement of facts set forth therein may be made a part of the record herein and taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, including inferences which may be drawn from said stipulated facts, and its conclusion and enter its order disposing of this proceeding without the presentation of oral argument or the filing of briefs; and respondent having expressly waived a recommended decision by a trial examiner and the Commission having approved and accepted said stipulation of facts and having made its findings as to

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the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That respondent, Setchell Carlson, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any radio receiving set, do forthwith cease and desist from directly or indirectly representing that any such radio receiving set is equipped with or contains a designated number of tubes or is of a designated tube capacity unless each and every one of the tubes referred to is capable of performing the recognized or customary function of detecting, amplifying, and receiving broadcast radio signals.

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