

## Syllabus

## IN THE MATTER OF

## P. LORILLARD COMPANY

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

*Docket 4922. Complaint, Mar. 2, 1943—Decision, Mar. 31, 1950*

While the first few puffs from an extra-long cigarette might be somewhat cooler than the smoke from a shorter cigarette and contain less of the irritating properties in the smoke, when an extra-long cigarette is smoked to the same butt length as a shorter cigarette, there is no difference in the temperature of the smoke from the two cigarettes and no lessening of the irritating properties in the smoke entering the smoker's mouth. And, in fact, if the longer cigarette is smoked to the same butt length as the shorter one, the amount of nicotine and tarry substances entering the mouth is probably greater for the former, due to the accumulation of the harmful substances in the butt of the longer one during the first few puffs, and also due to the fact that the longer cigarette contains more tobacco and therefore more of the harmful substances.

The nicotine content of the smoke of a cigarette is in direct proportion to the nicotine content of the tobacco contained in the cigarette, and the nicotine content of the tobaccos used in the manufacture of the popular brands varies greatly, not only as among the several types of tobaccos used, but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even as among the leaves on the same plant, due to a number of variable factors, including weather conditions, type of soil, method of fertilization and cultivation, and others.

There is no index by which the tobacco buyers for any cigarette manufacturer can judge the nicotine content in tobacco leaves by visual inspection; and, due to the above-mentioned variations in the nicotine content of tobacco, consistency in said content of the tobaccos purchased by any cigarette manufacturer cannot be maintained through the purchase of only the leaves in a certain position on the tobacco plant, or by sampling specimens of the tobaccos, or in any other manner. Furthermore, there is no known practical process by which the nicotine in the tobacco leaf may be removed or substantially reduced without at the same time destroying the tobacco for commercial use, and it is not practically possible for the cigarette manufacturers to maintain a consistency of nicotine in the finished cigarette, due to the large amount of tobacco leaves used in the manufacture thereof, and the extreme variation in their nicotine content.

As respects tars and resins in the tobaccos from which popular cigarettes are made, these vary considerably, as does the nicotine content, and for the same reasons. And here too it is not practically possible for the manufacturers to determine the amount of tars and resins in the tobaccos purchased, or to remove or substantially reduce the amount therein, or to maintain consistency in the amount thereof in the finished cigarettes.

Tarry substances or irritating properties in smoking tobaccos generally have an irritating effect on the membrane inside a person's mouth or throat, which varies as between individuals, but not essentially as respects the irritating properties in all common brands of such tobacco, and the temperature of the smoke from such tobacco as it enters the mouth is governed by the length of the stem of the pipe and not by the tobacco.

Where a corporation engaged in manufacturing and processing tobacco products, including its Old Gold cigarettes and its Friends smoking tobacco, and also previously, its Beech-Nut and Sensation cigarettes, and in the competitive interstate sale and distribution thereof; in advertising their said products in magazines of Nation-wide circulation, by local radio broadcasts and Nation-wide hookups, and by other means, directly and by implication—

- (a) Represented that its Beech-Nut cigarettes, with their extra length, were "easy on the throat," provided a "bonus on throat ease," filtered out "heat and bite, completely cooling the smoke," provided "definite defense against throat irritation," and that the extra length filtered out—eliminated "heat and bite, completely cooling the smoke";

The facts being that neither the extra length nor any other property of its said cigarettes prevent the irritating properties in the smoke, common to all cigarettes, from reaching the mouth and throat of the smoker, and did not provide any defense against throat irritation;

- (b) Represented falsely that its Sensation cigarettes were made of "extra choice imported and domestic tobaccos," were "top quality cigarettes," and were "made from the finest tobacco you can buy";

The facts being that the tobaccos used in the manufacture of said cigarettes were primarily lower grades of flue-cured and Burley tobaccos;

- (c) Represented that, of the seven leading brands of cigarettes, its Old Gold cigarettes were lowest in nicotine content and lowest in throat-irritating tars and resins; and that the July 1942 issue of Reader's Digest contained a report of tests which showed that the smoke from its Old Gold cigarettes had less nicotine than the smoke from the other six tested, and contained less throat-irritating tars and resins and were easier on the throat than the other six;

The facts being that said cigarettes and the smoke therefrom contained no less nicotine, tars, or resins than did the cigarettes and smoke from the other leading brands; and with respect to the Reader's Digest article it failed to disclose that the results of the tests reported therein showed that the differences in amount and percentage of harmful substances in the tobacco and in the smoke of the cigarettes tested were insignificant; and that the smoke from the Old Gold cigarettes was no less harmful than was that from the six other brands tested; and

- (d) Represented that its Friends smoking tobacco was rum-cured by special processes and that rum curing enriched said tobacco; and that said tobacco smoked "without bite or burn," free from bite and heat," always \* \* \* without irritation," was always "cool under fire," etc.;

The facts being that the tobacco in question was cured before being purchased by it; addition of the rum flavoring during the processing caused no chemical change or temperature reaction in the tobacco, but affected only the aroma and taste of the tobacco and smoke therefrom, and did not enrich the tobacco or cause the smoke to be less irritating to the mouth; and the smoke from

735

## Complaint

said tobacco, like other smoking tobaccos, had an irritating effect on the mouth or throat; and said tobacco was not cool under fire or without irritation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false belief that said representations were true, and into the purchase of its said brands of cigarettes and smoking tobacco; whereby substantial trade was diverted unfairly to it from its competitors;

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

In said proceeding, tests made by the Food and Drug Administration, at the instance of the Commission, to determine, among other things, the nicotine content of the tobacco in and the smoke from a number of cigarettes of six of the largest selling brands, including Old Golds, showed that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests varied greatly both in actual weight and in percentage by weight of the cigarettes, not only as among the six different brands, but also as among the individual cigarettes of the same brand; and that for the individual cigarettes involved in the tests, the amount of tars and resins in the smoke varied greatly both in actual weight and in percentage by weight of the cigarettes, not only as between the six different brands tested, but also as among the individual cigarettes of the same brand.

Before *Mr. Webster Ballinger* and *Mr. John L. Hornor*, trial examiners.

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

*Perkins, Daniels & Perkins*, of New York City, and *Bingham, Collins, Porter & Kistler*, of Washington, D. C., 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 P. Lorillard Company, 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, P. Lorillard Company, Inc., is a corporation organized and existing and doing business under and by virtue of the law of the State of New Jersey with its principal office at 15 Exchange Bldg., Jersey City, in said State, and with its executive office at 119 West 40th Street, New York City, State of New York. It is now, and for more than 5 years last past has been, engaged in the manufacture and processing of tobacco products,

## Complaint

46 F. T. C.

including cigarettes branded "Beech-Nut," "Sensation," and "Old Gold," and pipe tobacco branded "Friends" smoking tobacco; and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It now causes, and for more than 5 years last past has caused, such tobacco products, when sold by it, to be transported from its factories located in various cities of the United States, including Jersey City, N. J.; Louisville, Ky.; Richmond, Va.; Middletown, Ohio; Danville, Va.; and Lancaster, Pa.; to the purchasers thereof, some located in such States and other located in various other States of the United States and in the District of Columbia, and there is now and has been for more than 5 years last past a constant current of trade and commerce conducted by said respondent in such tobacco products, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 5 years last past has been, one of the largest manufacturers of the tobacco products in the United States, and is now, and for more than 5 years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of tobacco products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it in the commerce aforesaid of its said Beech-Nut brand of cigarettes, respondent has disseminated and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts and by other means in commerce, advertisements in which it has represented and still represents directly and by implication:

- (a) That said Beech-Nut cigarettes are "easy on your throat";
- (b) That such Beech-Nut cigarettes provide "plenty of bonus on throat ease";
- (c) That such Beech-Nut cigarettes "filter out heat and bite, completely cooling the smoke";
- (d) That such Beech-Nut cigarettes provide "definite defense against throat irritation"; and
- (e) That the extra length of such Beech-Nut cigarettes "filters out—eliminates heat and bite, completely cooling the smoke."

PAR. 3. In the course and conduct of its business described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale

by it in the commerce aforesaid of its said Sensation brand of cigarettes, respondent has disseminated and caused to be disseminated by the United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts and by other means in commerce, advertisements in which it has represented and still represents directly and by implication:

(a) That Sensation cigarettes are made of "extra choice imported and domestic tobaccos";

(b) That Sensation cigarettes are "top-quality cigarettes";

(c) That Sensation cigarettes are "made from the finest tobacco you can buy."

PAR. 4. In the course and conduct of its business described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it in the commerce aforesaid of its said Old Gold brand of cigarettes, respondent has disseminated and caused to be disseminated by United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts, and by other means in commerce, advertisements in which it has represented and still represents directly and by implication:

(a) That "ever fresh Old Golds give you a finer, fresher flavor";

(b) That "you can't buy, beg, or borrow a stale Old Gold";

(c) That "double mellow Old Golds not only give you prize crop tobacco, the finest money can buy, but give you cigarettes of guaranteed freshness, no matter where you buy them";

(d) That the smoking of Old Gold cigarettes will assist students in preparing for examinations;

(e) That "something new has been added" to the tobacco content of Old Gold cigarettes;

(f) That of the seven leading brands of cigarettes, Old Gold cigarettes are lowest in nicotine content and are lowest in throat-irritating tars and resins; and

(g) That the July 1942 issue of a monthly magazine published in the United States and having a Nation-wide and international circulation contains a report of tests of "seven leading cigarettes"; that "the cigarette whose smoke was lowest in nicotine was Old Gold. The cigarette with the least throat-irritating tars and resins was Old Gold. On both of these major counts, Old Gold was best among all seven cigarettes tested"; that Old Gold cigarettes are "easier on the throat than are the other six brands of cigarettes"; and that "Old Gold

cigarettes are easier on the throat than is any other brand of cigarettes.”

PAR. 5. In the course of its business described in paragraph 1 hereof, and for the purpose of inducing the purchase of its tobacco products in the commerce aforesaid, the respondent now uses, and since 1940 has used and has published in commerce, paid testimonials from users and purported users of its Old Gold cigarettes which do not present or reflect the actual personal experiences, knowledge, or beliefs of the signers thereof, and in some of such cases the testimonialists smoke not only Old Gold cigarettes, but also other brands of cigarettes and in some of such cases the testimonialists not only do not and have not smoked Old Gold cigarettes, but have not and do not smoke cigarettes of any kind or make. Many of such testimonials are prewritten by representatives of respondent and are signed by the testimonialists without their knowing or being advised by the respondent or by any of its representatives of the contents of them; and many of such testimonials are false and are known by the respondent to be false; and all of such testimonials so obtained by respondent are given and secured in sole consideration of the payments which respondent makes therefor.

PAR. 6. In the course and conduct of its business described in paragraph 1 hereof, and for the purpose of aiding and promoting the sale by it in the commerce aforesaid of its said Friends smoking tobacco, respondent has disseminated and caused to be disseminated by United States mails, in magazines of Nation-wide circulation, in newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts and by other means in commerce, advertisements in which it has represented and still represents directly and by implication:

(a) That rum curing of Friends smoking tobacco “puts out bite and burn”;

(b) That Friends smoking tobacco is “rum-cured by special process”;

(c) That rum curing enriches “Friends smoking tobacco”;

(d) That Friends smoking tobacco “always smokes cool under fire”;

(e) That Friends smoking tobacco “smokes without bite or burn” and “free from bite and heat”;

(f) That “we rescue from tongue distress. Free of harshness, burn and bite. For bite-free coolness”; and

(g) That “Friends tobacco smokes always \* \* \* without irritation.”

PAR. 7. In truth and in fact: (1) Said Beech-Nut cigarettes are not easy on one's throat and do not provide "plenty of bonus on throat ease"; (2) such Beech-Nut cigarettes do not "filter out heat and bite" completely cooling the smoke, when and if such cigarettes are smoked to the same butt length to which other brands of cigarettes are smoked; (3) such Beech-Nut cigarettes do not provide "definite defense against throat irritation"; (4) the extra length of such Beech-Nut cigarettes does not filter out or eliminate heat and bite or completely or in any degree cool the smoke from such cigarettes, when and if such cigarettes are smoked to the same butt length to which other brands of cigarettes are smoked.

PAR. 8. In truth and in fact: (1) Said Sensation cigarettes are not made from extra choice imported and domestic tobaccos; (2) they are not top-quality cigarettes; (3) they are not made from the finest tobacco one can buy.

PAR. 9. In truth and in fact (1) Old Gold cigarettes do not give one a finer or fresher flavor; (2) Old Gold cigarettes are not "ever-fresh"; (3) Old Gold cigarettes become stale by reason of age and for other reasons; (4) Old Gold cigarettes contain tobaccos other than "prize crop" tobacco; (5) the tobaccos in such cigarettes are not the finest money can buy; (6) the smoking of Old Gold cigarettes will not assist students in preparing for examinations; (7) nothing has been added to the tobacco of Old Gold cigarettes which was not known and used in the manufacture of cigarettes prior to the manufacturing and marketing of such Old Gold cigarettes; (8) of the so-called seven leading brands of cigarettes referred to in subparagraphs (f) and (g) of paragraph 4 hereof, Old Gold cigarettes are not lowest in nicotine content nor lowest in throat irritating tars and resins; and (9) while the July 1942 issue of the magazine referred to in subparagraph (g) of paragraph 4 hereof contains a report of tests of "seven leading cigarettes" and while, according to the report of the tests the amount of nicotine in the smoke of Old Gold cigarettes average 2.04 milligrams per cigarette, the amount of nicotine in the smoke of each of two other brands of cigarettes mentioned in such report averaged 2.20 milligrams per cigarette and the greatest amount of nicotine in smoke of all the brands of cigarettes reported tested was an average of 3.02 milligrams per cigarette of that brand, these differences in the amount of nicotine in the brands of cigarettes tested and reported were and are insignificant, which the said respondent in its said advertising conceals and fails to disclose; and the said respondent in its said ad-

vertising of the report of tests contained in said issue of said magazine conceals and fails to disclose the fact that the said report states:

The laboratory's general conclusion will be sad news for the advertising copy writers but good news for the smoker, who need no longer worry as to which cigarette can most effectively nail down his coffin. For one nail is just about as good as another. Says the laboratory report: "The differences between brands are, practically speaking, small, and *no single brand is so superior to its competitors as to justify its selection on the ground that it is less harmful.*" How small the variations are may be seen from the data tabulated on page 7.

The difference between the average amount of nicotine per cigarette in the smoke of each of two other brands of cigarettes reported in the said magazine, and the average amount of nicotine per cigarette in the smoke of Old Gold cigarettes reported in said magazine amounted to only 1/177,187 of an ounce, which fact the said respondent has concealed and still conceals and has failed and still fails to disclose in its advertising mentioned in subparagraph (g) of paragraph 4 hereof; and the difference between the average amount of nicotine per cigarette in the smoke of the brand of cigarettes reported in the said magazine as having the highest average of nicotine per cigarette, and the average amount of nicotine per cigarette in the smoke of Old Gold cigarettes reported in said magazine, amounted to only 1/28,928 of an ounce, which fact the said respondent has concealed and still conceals and and has failed and still fails to disclose in its advertising mentioned in subparagraph (g) of paragraph 4 hereof. The difference shown in the said report between the amount of tar in the smoke of the cigarette shown in the said report to have the greatest amount of tars, and the amount of tars shown by the said report to be contained in the smoke of Old Gold cigarettes is only 0.39 of 1 percent, which fact the said respondent has concealed and still conceals and has failed and still fails to disclose in its advertising mentioned in subparagraph (g) of paragraph 4 hereof. In truth and in fact the content of nicotine, or tarry matter and of other substances, irritating to the throat and nasal passages of the smoker and otherwise harmful, varies continually in respondent's cigarettes and the smoke therefrom, as they are offered for sale to the general public; and the relative content of nicotine, of tarry matter, and of such substances in respondent's cigarettes as compared with that of competing brands of cigarettes likewise varies continually. The number of variable factors involved in the growing of tobacco for cigarettes, in the blending and processing of such tobacco into cigarettes, and in the packing, handling, and distribution of such cigarettes to the consumer make it impossible for respondent or any of its

competitors to produce and market the large volume of cigarettes, which they respectively sell, with a standard or constant content of nicotine, tarry matter, and other harmful substances. Among these variable factors are differences in weather conditions during the tobacco-growing season in different localities in which tobacco of the same variety is grown; differences in such weather conditions from year to year; differences in the soil in which cigarette tobacco is grown and in the cultivation and fertilization thereof; variation in the mixing and blending of the varieties of tobacco incorporated in the cigarettes; variations in the changes brought about in cigarette tobacco in the processing thereof; deviations in the density with which the tobacco is packed in cigarettes and in the weight of the cigarettes themselves; variations in methods of handling and distribution of cigarettes and changes and differences in climatic conditions affecting cigarettes after they leave the factory where made. In truth and in fact, there is no practicable method whereby the content of nicotine, tarry matter, and other harmful substances in the general run of respondent's cigarettes as they reach the consumer or in those of its competitors, or in the smoke therefrom, can be ascertained with any degree of accuracy for any appreciable length of time. Any test which may be made to determine such content must, as a practical matter, be limited to a few samples, infinitesimal in number as compared with the total number of such cigarettes on sale at any one time, and the results obtainable from any such test are indicative of nothing more than the facts sought to be ascertained as of the particular time and place of the imitation of the test. In truth and in fact, the differences in the content of nicotine, tarry matter and other harmful substances to be found in respondent's cigarettes as compared with those of competing cigarettes, and such differences among the cigarettes of such competitors, are so minute as to be insignificant and undetectable from the standpoint of the effect which such substances have on the smoker of respondent's cigarettes as compared to that experienced by the smoker of competing brands. For the above reasons, among others, the representations which respondent has made concerning the content of nicotine, tarry matter and other harmful substances in its cigarettes and the smoke therefrom are false and deceptive, and mislead the public into erroneously believing that respondent's cigarettes are less injurious, when smoked, than are other and competing brands of cigarettes.

PAR. 10. In truth and in fact (1) Friends smoking tobacco does not "put out bite and burn"; (2) Friends smoking tobacco is not rum-

cured; (3) there is no enriching of Friends smoking tobacco by any rum curing; (4) such tobacco does not smoke "cool under fire," it does not smoke without bite or burn; (5) it is not free from bite or heat; (6) it does not relieve a smoker from tongue distress nor from harshness, burn, and bite; (7) it does not afford bite-free coolness; (8) it does not smoke without irritation.

PAR. 11. The aforesaid representations made by the respondent as set out in paragraph 2, 3, and subparagraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*) of paragraph 4 hereof and those set out in paragraph 6 hereof have the capacity and tendency to mislead and deceive the purchasing public into the beliefs that such representations are true and to induce the purchasing public to purchase respondent's products Beech-Nut cigarettes, Sensation cigarettes, Old Gold cigarettes, and Friends smoking tobacco in such erroneous beliefs. Thereby, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce. The failure of the respondent in its advertising described in subparagraph (*g*) of paragraph 4 hereof to disclose that the results of the tests show that Old Gold cigarettes are no less harmful than are the other brands of cigarettes mentioned in such report referred to in subparagraph (*g*) of paragraph 4 hereof, and the failure of the respondent to disclose that the report of such tests shows that the differences between Old Gold cigarettes and such other brands of cigarettes are insignificant, have the capacity and tendency to mislead and deceive the purchasing public into the beliefs that Old Gold cigarettes are less harmful than are the other cigarettes mentioned in said report, and that the differences between Old Gold cigarettes and the other cigarettes mentioned in such report are significant and to induce the purchasing public to purchase respondent's Old Gold cigarettes in such erroneous beliefs. Thereby, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 12. The use by respondent of testimonials, as alleged in paragraph 5 hereof, has the capacity and tendency to mislead and deceive the purchasing public into the beliefs that the statements in such testimonials are true; that some of the testimonialists furnishing such testimonials prefer Old Gold over other brands of cigarettes; that some of such testimonialists smoke Old Gold cigarettes to the exclusion of all other brands of cigarettes; that such testimonials have been furnished to the respondent voluntarily and without compensation and that the persons giving such testimonials have known and did know the contents thereof when signing the same. The aforesaid use by the respondent of such testimonials has the capacity and tendency to induce

and has induced the purchasing public to purchase Old Gold cigarettes in such erroneous beliefs. Thereby, substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 13. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 2, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, P. Lorillard Co., a corporation of the State of New Jersey, charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of the respondent's answer to the complaint, testimony and other evidence were introduced before trial examiners of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer, testimony and other evidence, the trial examiner's recommended decision and exceptions thereto by counsel supporting the complaint, and brief in support of the allegations of the complaint (no brief having been filed by respondent 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. The respondent, P. Lorillard Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office at 15 Exchange Place, Jersey City, N. J., and with its executive office at 119 W. 40th Street, New York, N. Y. It is now, and at all times mentioned herein has been, engaged in manufacturing and processing tobacco products, including cigarettes branded "Old Gold" and pipe

tobacco branded "Friends" smoking tobacco, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. For several years prior to March 2, 1943, respondent was also engaged in manufacturing and processing cigarettes branded "Beech-Nut" and "Sensation" and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent now causes and has caused its tobacco products when sold by it to be transported from the places of manufacture in various cities of the United States, including Jersey City, N. J.; Louisville, Ky.; and Middletown, Ohio; to purchasers thereof located in other States of the United States and in the District of Columbia, and now maintains and has maintained a constant current of trade and commerce in such tobacco products between and among the various States of the United States and in the District of Columbia. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with persons, firms, and partnerships also engaged in the sale of tobacco products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of aiding and promoting the sale of its said Beech-Nut brand of cigarettes, respondent disseminated and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation, by local radio broadcasts, by Nation-wide hookups of broadcasts, and by other means in commerce, advertisements in which it represented directly and by implication that said Beech-Nut cigarettes were "easy on the throat"; provided a "bonus on throat ease"; filtered "out heat and bite, completely cooling the smoke"; provided "definite defense against throat irritation"; and that the extra length of such Beech-Nut cigarettes filtered out—eliminated "heat and bite, completely cooling the smoke."

PAR. 4. The Beech-Nut cigarettes manufactured and sold by respondent from 1940 until 1944 were 84 millimeters in length, as compared with 70 millimeters for respondent's Old Gold brand and other popular brands of cigarettes. This extra length was stressed by respondent in its advertisements of Beech-Nut cigarettes containing the representations set forth in paragraph 3. Respondent's Beech-Nut cigarettes were made from Virginia Bright, Burley, and so-called Turkish and Macedonian tobaccos and were sold at retail at a lesser

price than respondent's Old Gold brand of cigarettes. There is expert testimony in the record to the effect that, due to the extra length of Beech-Nut cigarettes, the first few puffs of smoke therefrom might be somewhat cooler than the smoke from a shorter cigarette and also less of the irritating properties in the smoke might enter the smoker's mouth with the first few puffs. However, when an extra-length cigarette is smoked to the same butt length as a shorter cigarette, there is no difference in the temperature of the smoke from the two cigarettes and no lessening of the irritating properties in the smoke entering the smoker's mouth. In fact, according to the testimony of experts, if a longer cigarette is smoked to the same butt length as a shorter cigarette, the amount of nicotine and tarry substances entering the mouth of the smoker is probably greater for the longer cigarette, due to the accumulation of the harmful substances in the stump or butt of the longer cigarette during the first few puffs and also the fact that the longer cigarette contains more tobacco and therefore more of the harmful substances. The smoke from the tobacco in all cigarettes contains varying amounts of throat irritating properties. The extra length of respondent's Beech-Nut brand of cigarettes, or any other characteristic or property of same, did not prevent the irritating properties in the smoke from such cigarettes from reaching the mouth and throat of a smoker and did not provide any defense against throat irritation. The Commission finds from the evidence of record that the aforesaid representations by respondent concerning its Beech-Nut brand of cigarettes were false, misleading, and deceptive.

PAR. 5. In the course and conduct of its aforesaid business and for the purpose of aiding and promoting the sale of its aforesaid Sensation brand of cigarettes, respondent disseminated and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation and newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts, and by other means in commerce, advertisements in which it represented directly and by implication that said Sensation cigarettes were made of "extra choice imported and domestic tobaccos," were "top quality cigarettes," and were "made from the finest tobacco you can buy."

PAR. 6. The Sensation cigarettes manufactured and sold by respondent from 1938 until about 1943 were made from Virginia Bright, Burley, and so-called Turkish and Macedonian tobaccos, and were sold at retail at a lesser price than respondent's Old Gold brand of cigarettes. Respondent graded the tobaccos purchased according to quality and in connection with such grading used certain symbols, in-

## Findings

46 F. T. C.

cluding D, E, G, M, and L for Virginia Bright or flue-cured tobacco, and G-2, LS, X, XX, S-2, S-3, S-4, ML, OL, PL, HL, H, HH, 10, 11, 12, and 14 for Burley tobacco. The top or best quality of flue-cured tobacco was designated as Grade D, and the top or best quality of Burley tobacco was designated as Grade G-2. Respondent generally paid more for the higher or top grades of tobaccos than for the lower grades. The tobaccos used in the manufacture of Sensation cigarettes were primarily flue-cured, Grades L and M, with a small percentage of Grade G, and Burley, grades lower than XX. They were not made from respondent's top quality tobacco or from the finest tobacco respondent could and did buy. From the evidence of record the Commission finds that the aforesaid representations by respondent as to its Sensation brand of cigarettes were false, misleading, and deceptive.

PAR. 7. In the course and conduct of its aforesaid business and for the purpose of aiding and promoting the sale of its aforesaid Old Gold brand of cigarettes, respondent disseminated and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation and newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts, and by other means in commerce, advertisements in which it represented directly and by implication that of the seven leading brands of cigarettes, Old Gold cigarettes are lowest in nicotine content and are lowest in throat-irritating tars and resins; and that the July 1942 issue of Reader's Digest, a monthly magazine of Nation-wide and international circulation, contained a report of tests of seven leading cigarettes, which tests showed that the smoke from Old Gold cigarettes had less nicotine than the smoke from the other six brands tested and that Old Gold cigarettes contained less throat-irritating tars and resins and were easier on the throat than the other six brands tested.

PAR. 8. Through the use of the aforesaid representations respondent has represented to the public that both the tobacco in Old Gold cigarettes and the smoke therefrom contain less nicotine than the tobacco and the smoke therefrom of any of six other leading brands of cigarettes and that Old Gold cigarettes contain less tars and resins and are therefore less irritating to the throat than any of six other leading brands of cigarettes. It is established by scientific evidence that the nicotine content of the smoke of a cigarette is in direct proportion to the nicotine content of the tobacco contained in the cigarette itself. It is further established by scientific evidence that the nicotine content of the tobaccos used in the manufacture of popular brands of cig-

arettes, including respondent's Old Gold brand and the six other brands with which respondent's Old Gold cigarettes were compared, varies greatly, not only as among the several types of tobaccos used (principally flue-cured, Burley, and Maryland) but also as among the individual plants of the same types of tobacco on the same farm and in the same field, and even as among the leaves on the same plant. These variations are due to a number of variable factors, including weather conditions, type of soil, method of fertilization and cultivation, method of harvesting, and handling after harvesting. There is no index by which the tobacco buyers for any cigarette manufacturer can judge the nicotine content in tobacco leaves by visual inspection. Also due to the afore-mentioned variations in the nicotine content of tobacco, constancy in the nicotine content of the tobaccos purchased by any cigarette manufacturer cannot be maintained through the purchase of only the leaves in a certain position on the tobacco plant, or by sampling specimens of the tobaccos, or in any other manner.

There is no known practical process by which the nicotine in the tobacco leaf may be removed or substantially reduced without at the same time destroying the tobacco for commercial use. Because of the large amount of tobacco leaves used in the manufacture of cigarettes and the extreme variability in nicotine content of the leaves, it is not practically possible for respondent, or any of the other manufacturers of leading brands of cigarettes, to maintain a constancy of nicotine in the finished cigarette. The record contains certain testimony and reports concerning a series of tests which were made by the Food and Drug Administration, at the instance of the Commission, for the purpose of determining, among other things, the nicotine content of the tobacco in and the smoke from a number of cigarettes of six of the largest selling brands, including respondent's Old Gold brand. The results of these tests showed that the nicotine content of both the tobacco in and the smoke from the individual cigarettes involved in the tests varied greatly, both in actual weight and in percentage by weight of the cigarettes, not only as among the six different brands but also as among the individual cigarettes of the same brand.

Since the nicotine content of the tobaccos used by respondent in the manufacture of its Old Gold cigarettes as well as those used by the manufacturers of other leading brands of cigarettes varies materially, and since it is not practically possible for respondent, or any of its principal competitors, to know the nicotine content of the tobaccos purchased, or to remove or substantially reduce such nicotine content, or to maintain constancy in the amount of nicotine in the finished

cigarette or in the smoke therefrom, it follows that respondent's Old Gold cigarettes and the smoke therefrom do not contain any less nicotine than do the cigarettes and the smoke therefrom of other leading brands on the market.

With respect to the aforesaid representations that Old Gold cigarettes contain less tars and resins and are therefore less irritating to the throat than any of six other leading brands of cigarettes, it is established by scientific evidence that the tars and resins in the tobaccos from which respondent's Old Gold cigarettes, as well as other popular brands of cigarettes are made, vary considerably, as does the nicotine content, and for the same reasons. It is not practically possible for respondent, or any of its principal competitors, to determine the amount of tars and resins in the tobaccos purchased, or to remove or substantially reduce the amount of tars and resins in such tobaccos, or to maintain constancy in the amount of tars and resins in the finished cigarettes. The testimony and reports concerning a series of tests made by the Food and Drug Administration, mentioned hereinabove in connection with the nicotine content of cigarettes, also show that for the individual cigarettes involved in the tests the amount of tars and resins in the smoke varied greatly, both in actual weight and in percentage by weight of the cigarettes, not only as between the six different brands tested but also as among the individual cigarettes of the same brand. The tars and resins in the smoke from all cigarettes have an irritating effect on the human body. Respondent's Old Gold cigarettes contain no less tars and resins than other leading brands of cigarettes and, therefore, the smoke from respondent's Old Gold cigarettes is no less irritating to the human body, or easier on the throat, than the smoke from other leading brands of cigarettes.

The Commission finds from the evidence that the aforesaid representations by respondent that the tobacco in Old Gold cigarettes and the smoke therefrom contain less nicotine than the tobacco and the smoke therefrom of any of six other leading brands of cigarettes on the market, and that its Old Gold cigarettes contain less tars and resins and are therefore less irritating to the throat than any of six other leading brands of cigarettes, are false, misleading, and deceptive.

The July 1942 issue of Reader's Digest contained an article entitled "Cigarette Ad Fact and Fiction," which was based on a report by a research laboratory on certain tests of seven commercial brands of cigarettes. Respondent in its advertising made representations concerning said article and the report on which it was based, as set out in paragraph 7 hereof, without disclosing significant facts contained

therein. Said article showed that the average amount of nicotine per cigarette and the percentage of tars in the smoke from the cigarettes tested varied but little as between the different brands of cigarettes, and contained the following statement with respect to the tests reported on therein:

The laboratory's general conclusion will be sad news for the advertising copy writers, but good news for the smoker, who need no longer worry as to which cigarette can most effectively nail down his coffin. For one nail is just about as good as another. Says the laboratory report: "The differences between brands are, practically speaking, small, and no single brand is so superior to its competitors as to justify its selection on the ground that it is less harmful."

In fact, the difference shown in said article in the average amount of nicotine content per cigarette in the smoke of the Old Gold cigarettes tested and that in each of two other brands tested was only 1/177,187 of an ounce, and the difference shown in said article between the average amount of nicotine content per cigarette in the smoke of the brand of cigarette reported as having the highest average amount of nicotine content per cigarette and the average amount of nicotine content per cigarette of the Old Gold cigarettes tested was only 1/28,928 of an ounce. The difference shown in said article in the percentage of tars in the smoke of the cigarette reported to have the highest percentage of tars and the percentage of tars reported to be contained in the smoke of the Old Gold cigarettes tested was only 0.39 of 1 percent. The testimony of expert witnesses establishes that these differences in the nicotine content and in the percentage of tars in the smoke of the cigarettes tested are insignificant from a physiological standpoint.

The representations by respondent concerning said article failed to disclose that the results of the tests reported therein showed that the differences in amount and percentage of harmful substances in the tobacco and in the smoke of the cigarettes tested were insignificant and that the smoke from the Old Gold cigarettes tested was no less harmful than was the smoke from the six other brands of cigarettes tested. The Commission finds from the evidence of record that said representations were misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business and for the purpose of aiding and promoting the sale of its aforesaid Friends smoking tobacco, respondent disseminated and caused to be disseminated, by the United States mails, in magazines of Nation-wide circulation and newspapers of interstate circulation, by local radio broadcasts and by Nation-wide hookups of broadcasts, and by other means in commerce, advertisements in which it represented directly and by

implication that the rum curing of Friends smoking tobacco "puts out bite and burn"; that Friends smoking tobacco is "rum cured by special process"; that rum curing enriches "Friends smoking tobacco"; that Friends smoking tobacco "always smokes cool under fire"; that Friends smoking tobacco "smokes without bite or burn" and "free from bite and heat"; that "we rescue from tongue distress. Free of harshness, burn and bite. For bite-free coolness"; and that "Friends tobacco smokes always \* \* \* without irritation."

PAR. 10. The aforesaid representations by respondent concerning its Friends brand of smoking tobacco may be segregated into two general groups, namely, those involving respondent's use of rum in the processing of said tobacco and those involving the effect of the smoke from said tobacco on the smoker. As to the first group, the evidence shows that the tobacco used in the manufacture of Friends smoking tobacco is cured before it is purchased by respondent. During the processing of the tobacco a rum flavoring is added. The addition of such rum flavoring causes no chemical change or temperature reaction in the tobacco and affects only the aroma and taste of the tobacco and the smoke therefrom. It does not in any manner enrich the tobacco or cause the smoke therefrom to be any less irritating to the smoker's mouth than it would be if such rum flavoring were not added.

As to the second group of representations, the evidence shows that the tarry substances or irritating properties in the smoke from tobacco used in the manufacture of Friends smoking tobacco, as well as that used in the manufacture of other smoking tobaccos, have an irritating effect on the membranes inside a person's mouth or throat. The terms "bite," "burn," and "harshness" as used by respondent in the aforesaid representations referred to such irritating effect. The degree of irritation varies as between individuals but there is essentially no difference in the irritating properties of the smoke from the tobacco in all common brands of smoking tobacco. Friends smoking tobacco, or any other tobacco, is not cool under fire. The temperature of the smoke from smoking tobacco as it enters the smoker's mouth is governed by the length of the stem of the pipe and not by the tobacco.

The Commission finds from the evidence that the aforesaid representations by respondent as to its Friends smoking tobacco are false, misleading, and deceptive.

PAR. 11. The complaint in this proceeding listed a number of advertising statements and representations in addition to those referred to herein which have been used by respondent in promoting

735

Order

the sale of its Old Gold brand of cigarettes, and charged that such statements and representations were also false, deceptive, and misleading. The Commission finds that the charges with respect to these additional statements and representations have not been sustained by the evidence.

PAR. 12. The use by the respondent of the false, deceptive, and misleading representations, as set forth in paragraphs 3, 5, 7, and 9, hereof, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations were true and into the purchase of the Respondent's Beech-Nut, Sensation, and Old Gold brands of cigarettes, and Friends smoking tobacco. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors.

## CONCLUSION

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

ORDER TO CEASE AND DESIST<sup>1</sup>

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

*It is ordered,* That the respondent, P. Lorillard Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its products, Beech-Nut cigarettes, Sensation cigarettes, Old Gold cigarettes, and Friends smoking tobacco, or any other products possessing the

<sup>1</sup> See footnote on following page.

Order

46 F. T. C.

same or similar properties or ingredients, do forthwith cease and desist from representing by any means, directly or indirectly:

(1) That Beech-Nut cigarettes or (the smoke therefrom) will not harm or irritate the throat, or will provide any defense against throat irritation; (or that the extra length of such cigarettes) will filter out or eliminate the harmful properties in the smoke from such cigarettes, or will cause the smoke from such cigarettes to be cooler than the smoke from other brands of cigarettes;

(2) That Sensation cigarettes are made of extra-choice imported and domestic tobaccos, or are top-quality cigarettes, or are made from the finest tobacco that can be bought;

(3) That Old Gold cigarettes or the smoke therefrom contains less nicotine, or less tars and resins, or is less irritating to the throat than the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes; or

(4) That Friends smoking tobacco is rum-cured, or that the process by which a rum flavoring is added to such tobacco enriches the tobacco or causes the smoke therefrom to be any less irritating to the throat or any cooler than if such rum flavoring were not added; or that the smoke from Friends smoking tobacco will not irritate the mouth or throat of a smoker, or is cool, or is free from bite, burn, or harshness.

*It is further ordered*, That 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.<sup>1</sup>

<sup>1</sup> On May 24, 1950, the Commission modified said order as below indicated:

"(1) That Beech-Nut cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, or the smoke therefrom, will not harm", etc.; "or that the extra length of Beech-Nut cigarettes, or of any other cigarette of substantially the same length, will filter out", etc.; "Provided, however, that nothing herein shall be construed to prohibit the respondent from representing that during the time the extra length of any such cigarette is being smoked the smoke therefrom will contain less irritating properties and will be cooler than the smoke from standard length cigarettes;

"(2) That Sensation cigarettes, or any other cigarette composed of substantially the same blend of tobaccos, are made of extra choice imported and domestic tobaccos", etc.;

(3) Unchanged except for insertion of the word "six" before "other leading brands of cigarettes."

"(4) That Friends smoking tobacco, or any other smoking tobacco manufactured in substantially the same manner, is rum-cured," etc.; "or that the smoke from Friends smoking tobacco or from any other smoking tobacco composed of substantially the same blend of tobaccos, will not irritate the mouth or throat of a smoker," etc.

## Syllabus

## IN THE MATTER OF

## ENGLISHTOWN CUTLERY, LTD. 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 5492. Complaint, May 6, 1947—Decision, Apr. 4, 1950*

The British Royal coat of arms, which is one of the most widely known national insignia in the world and is unique in certain respects, is the property of the British Government, and the right to its use is limited to said Government and its functions, to the British royal family and to Royal Warranty Holders and members of the Royal Warranty Holders Association, namely, concerns and individuals who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission to use said coat of arms in recognition of such service.

England has been a seat for the manufacture of cutlery for several centuries, and English cutlery has been noted for its excellence; and a substantial portion of the purchasing public, by reason of such reputation, prefers it.

Where a domestic corporation and its president, who controlled its affairs, engaged in New Jersey in the manufacture and advertising of knives, spoons, forks, and other cutlery, and in the competitive interstate sale and distribution thereof—

Made use on certain of their cutlery products, and in their advertising matter in newspapers and other media of general circulation, of a heraldic device or design which simulated the British coat of arms, including the rampant lion on the left and the rampant unicorn on the right, its most distinguishing features, and thereby indicated to the purchasing public and especially to persons of English blood and origin and those with a preference for cutlery and similar products designed and made in England, that said products were there made and were offered for sale under the authority of the Royal Warrant and Royal Warranty Holders Association;

The facts being that neither of them had ever rendered any conspicuous service to the British Government or royal family and neither said Government nor family, or any member of the latter, had granted or consented to their use of the British coat of arms; any use thereof or, of any part by them was without authority, warrant or consent of the rightful owner and users; said corporation was not a British company or association and had no British connections; and the cutlery products concerned were not designed or made in or brought from England, but on the contrary, were made in New Jersey:

With tendency and capacity to mislead and deceive substantial numbers of the purchasing public and thereby to induce them to purchase substantial quantities of said products; whereby trade was unfairly diverted from competitors who do not use such false and misleading representations, to their prejudice; and with effect of placing in the hands of retailers and other distributors means whereby they might deceive members of the purchasing public:

## Complaint

46 F. T. C.

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

While respondents at the conclusion of the hearings in the foregoing matter expressed a willingness, in connection with said use of the insigne which were found to resemble and simulate the English coat of arms, to display the words "made in U. S. A.," in conspicuous letters and in close proximity to such insigne, the Commission was of the opinion that to sanction the unauthorized use in this country of such emblem or imitation thereof would be to ignore the spirit and purport of the International Convention of June 2, 1934, under which the United States, Great Britain, and other signatory States undertook to prevent, for the benefit of their respective nationals, unauthorized use of trade-marks, commercial names, indications of origin and, when such use was liable to cause confusion as to the origin of the product, of State coats of arms; and was of the further view that an absolute prohibition as to use of the insigne connoting royal warrant was necessary to eliminate the deception engendered by the use of such emblem under the circumstances involved.

As respects charges of the complaint pertaining to respondents' use in the advertising of the corporate name "English Cutlery, Ltd.," and the word "Englishtown" as a brand or products name when used alone or in combination with a circular design depicting a coronet, or in conjunction with a simulation of a framed portrait entitled "Dover," which, it was alleged, also conveyed the impression that respondents' cutlery was designed and made in England: While members of the purchasing public testified to impressions respecting British origin in the proceeding, as engendered by the advertising in question, such impressions obviously were derived in some measure from the presence in the advertising of the insigne which simulated the British coat of arms, and the record did not disclose with the degree of certainty deemed desirable by the Commission in such matters, whether, if used in the absence of said insigne, said challenged practices had the alleged capacity to mislead; and was accordingly of the opinion that such additional charges should be dismissed without prejudice.

Before *Mr. Clyde M. Hadley*, trial examiner.

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

*Mr. Jacob M. Zinaman*, of New York City, for Englishtown Cutlery, Ltd., Norman J. Mercer and Edward W. Ginsburg.

*Mr. Simon J. Trosty*, of New York City, for Joseph Berger.

## 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 Englishtown Cutlery, Ltd. (Inc.), a corporation, Norman J. Mercer, Joseph Berger, and Edward W. Ginsburg, individually, and as officers of English-

town Cutlery, Ltd (Inc.), 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. Englishtown Cutlery, Ltd. (Inc.) is a corporation organized and established under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Englishtown, N. J. Said respondent also maintains a business office at 230 Fifth Avenue, in the city of New York, N. Y. Respondents Norman J. Mercer, Joseph Berger, and Edward W. Ginsburg are president, vice president, and secretary, respectively, of respondent corporation Englishtown Cutlery, Ltd. (Inc), with their office and principal place of business located at Englishtown, N. J. Said individual respondents direct, and have directed, the activities of respondent corporation, and formulate and control and have formulated and controlled, its policies and affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the business of manufacturing, advertising, selling, and distributing in commerce, cutlery, including knives, spoons, forks, and other kitchen and table cutlery.

The respondents cause and have caused their said products, when sold, to be transported from their said places of business in the States of New Jersey and New York to purchasers located at various points in other States of the United States and in the District of Columbia. Respondents maintain and at all times herein mentioned have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid the respondents are now and at all times mentioned herein have been in substantial competition with other corporations, partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of cutlery, including such articles as those sold by the respondents, in commerce among and between the various States of the United States and the District of Columbia.

PAR. 4. The word or term "Limited," as applied to or as associated with a business company or enterprise, including its abbreviation "Ltd.," is English in its origin, application, and significance.

Neither the word "Limited" nor its abbreviation "Ltd." is known to or employed in the American system under which the conventional corporation is chartered.

PAR. 5. The royal arms of the Government of Great Britain with its lion and unicorn rampant supporting the emblems of England, Scotland, and Ireland combined in a shield is one of the most widely known national insignias in the world. Said coat of arms of Great Britain is the only one in the world employing the figure of the legendary single-horned unicorn, originally typifying Scottish arms. The British royal coat of arms is the property of the British Government and the right to its use including the use of pictorial representations thereof is limited to the British Government and its functions, to the British royal family, and to royal warranty holders and members of the Royal Warranty Holders Association, that is to say, those corporations, partnerships, and individuals, who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission so to use said coat of arms in recognition of such service.

A crown is an official adornment worn on the head by a sovereign to symbolize royalty and is an expression of the prerogatives of a monarch. There is only one major power in the world today in which the sovereign wears a crown, namely, Great Britain. A coronet is a lesser crown, originating early in England and worn by dukes, marquises, and earls, and likewise symbolizing British royalty.

"Old English" text or style of lettering or printing is likewise distinctly English in origin and suggestion. It employs a distinctive type of black lettering, originally done by hand by skilled draftsmen, and is based upon the Old English or Anglo-Saxon alphabet.

Dover is an English city located on a bay opening into the English Channel a short distance southeast of London. It is one of the oldest and best known cities in England, a celebrated British naval base and steamship port, and has been termed by historians the "Key to England." The Romans and Saxons had forts there. The suggestion of the name "Dover" is distinctly English, historically and currently.

England has been a seat for the manufacture of cutlery since the fourteenth century. English cutlery is noted for its excellency and there is a substantial portion of the purchasing public, who, by reason of the reputation of such cutlery, has a preference for it.

PAR. 6. In the course and conduct of their said business and for the purpose of inducing the purchase of their said cutlery products, the respondents have falsely represented and implied that their cutlery was designed, manufactured, and made in England. Said false and

misleading representations and implications have been and are now being made by various means including the use of advertising matter published in newspapers of general circulation throughout the United States, and by other advertising media, all of general circulation. Among, but not all-inclusive of the deceptive acts and practices of respondents are the following:

The corporate name under which respondent company was granted a charter by the State of New Jersey concludes with the term "Inc." The manufacturing plant operated by respondents is located in the State of New Jersey at a small city called Englishtown. In advertising material of general circulation as aforesaid respondents have printed and represented the name of respondent company in heavy Old English type so as to read "Englishtown Cutlery Ltd.," the term "Inc." being omitted from the name of respondent company. Likewise omitted, from such advertising in connection with the printing of the company name, is any reference to Englishtown in the State of New Jersey. In advertising material in which the name of respondent company is printed in Old English as "Englishtown Cutlery, Ltd." appears a circular design simulating the British coat of arms consisting of the English lion and unicorn rampant supporting a shield on which appears the letter "E" in Old English, this in turn under the word "Englishtown," carried in Old English. In close proximity to this design appears a representation of a pennant reading "Englishtown Brands," the word "Englishtown" again printed in Old English. Another circular design in the same group depicts a coronet. In other advertising matter of general circulation in connection with the use of the name "Englishtown Cutlery, Ltd.," printed in Old English as aforesaid, is a simulation of a framed portrait of dinnerware entitled "'Dover' by Englishtown," the word "Englishtown" again printed in Old English type. In no instance in any of said advertising material is the name of respondent company printed in other than Old English type.

PAR. 7. Said designations, descriptions, and representations herein set out including the use by respondent company, in Old English type, of the name "Englishtown Cutlery, Ltd." a pictorial simulation of the British coat of arms, and of a crown, and the use of the word "Dover," as employed by respondents in describing their said products sold in interstate commerce, convey an English meaning, implication, and suggestion, and indicate to the purchasing public, especially persons of English blood and origin, and to other persons having a preference for cutlery or similar products designed and manufactured in England, that said products were designed, manufactured, and made in

## Complaint

46 F. T. C.

England, and by and upon authority of royal warranty holders and members of the Royal Warranty Holders Association, when in truth such is not the fact.

Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer, Edward W. Ginsburg, and Joseph Berger have not rendered any conspicuous service to the British Government or to the British royal family, and neither the British Government nor British royal family or any member thereof has ever granted or consented to the use by said respondents of the British coat of arms, and any use thereof, or of any part thereof, by said respondents is without authority, warrant, or consent of the rightful owners and the users thereof.

Respondent company is not a British company or association and has no British connections but is a corporation created by the laws of the State of New Jersey. None of the cutlery products sold by respondents was designed or manufactured in or came from England but on the contrary all of such cutlery products advertised and sold by respondents were made in the State of New Jersey.

PAR. 8. The said representations of respondents are false and misleading and have had and do have a tendency and capacity to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that the cutlery, including knives, forks, spoons, kitchen, and tableware so advertised and sold by respondents is manufactured by and with the authority of the British Government, the royal British family and the British royalty holders, and is designed, manufactured, and made in England and imported from England, when such is not the fact. The said representations of respondents further have had and do thereby have the capacity and tendency to induce members of the purchasing public by reason of the erroneous belief so engendered to purchase substantial quantities of respondents' said products. As a result, trade has been unfairly diverted to respondents from competitors who are engaged in the sale of merchandise like that sold by respondents in commerce in and among the various States of the United States and in the District of Columbia but who do not use such false and misleading representations. Said acts and practices thereby prejudice and injure competitors who do not misrepresent like products manufactured and sold by them, and likewise place in the hands of retail dealers and other distributors a means whereby they may deceive members of the purchasing public.

PAR. 9. The above alleged acts and practices of respondent are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in commerce and

unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of joint answer to the complaint by the corporate respondent and Norman J. Mercer and Edward W. Ginsburg, 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 designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, joint answer of the respondents Englishtown Cutlery, Ltd., Norman J. Mercer, and Edward W. Ginsburg, testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the allegations of the complaint (oral argument not having been requested); and the Commission, 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 Englishtown Cutlery, Ltd., is a New Jersey corporation with its office and principal place of business located at Englishtown, N. J., and with a business office at 280 Fifth Avenue, New York, N. Y. Respondent Norman J. Mercer is the president of said corporation, with his office also at 280 Fifth Avenue, New York, N. Y., and formulates and controls its affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

Respondent Joseph Berger ceased to be vice president of corporate respondent on December 4, 1945, and respondent Edward W. Ginsburg ceased to be secretary thereof on March 7, 1946.

PAR. 2. Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer are now, and for more than 1 year last past have been, engaged

in the manufacture, advertising, sale, and distribution in commerce of cutlery, including knives, spoons, forks, and other kitchen and table cutlery. Respondents cause their products, when sold, to be transported from their said places of business to purchasers in other States and in the District of Columbia and maintain a course of trade therein in commerce between and among the various States of the United States and in the District of Columbia. Respondents compete with other corporations, firms, and individuals engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 3. The royal arms of the Government of Great Britain with its lion and unicorn rampant supporting the emblems of England, Scotland, and Ireland combined in a shield is one of the most widely known national insignia in the world. Said coat of arms of Great Britain is the only one in the world employing the figure of the legendary single-horned unicorn, originally typifying Scottish arms. The British royal coat of arms is the property of the British Government and the right to its use, including the use of pictorial representations thereof, is limited to the British Government and its functions, to the British royal family, and to royal warranty holders and members of the Royal Warranty Holders Association, that is to say, those corporations, partnerships, and individuals, who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission so to use said coat of arms in recognition of such service.

The United States and Great Britain are, along with other countries, members of a "Union for the Protection of Industrial Property," through an international convention signed in London, June 2, 1934, and ratified by the United States June 27, 1935, by which the signatory states undertake to prevent, for the benefit of their respective nationals, unauthorized use of trade-marks, commercial names, indications of origin and, when such use is liable to cause confusion as to the origin of the product, of state coats of arms.

PAR. 4. England has been a seat for the manufacture of cutlery for several centuries. English cutlery has been noted for its excellence and a substantial portion of the purchasing public, by reason of such reputation, have a preference for it.

PAR. 5. Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer, on certain of their cutlery products and in advertising matter published in newspapers and in other media of general circulation throughout the United States, for the purpose of inducing the purchase of their cutlery products, have used a depiction of a heraldic device or design which resembles and simulates the British coat of

Arms, including its most distinguishing features, the rampant lion on the left and the rampant unicorn on the right.

PAR. 6. The pictorial simulation of the British coat of arms or British royal arms as employed by said respondents in describing and designating their cutlery products sold in interstate commerce conveys an English meaning, implication, and suggestion, and indicates to the purchasing public, especially persons of English blood and origin and to others having a preference for cutlery and similar products designed and manufactured in England, that said products were made in England and are offered for sale under the authority of the royal warrant and the Royal Warranty Holders Association.

PAR. 7. In truth and in fact, none of the respondents herein has ever rendered any conspicuous service to the British Government or to the British royal family, and neither the British Government nor the British royal family or any member thereof has ever granted or consented to the use by respondents of the British coat of arms; and any use thereof, or of any part thereof, by respondents is without authority, warrant, or consent of the rightful owners and users thereof.

The respondent corporation is not a British company or association and has no British connections, but is a corporation created by the laws of the State of New Jersey. The cutlery products thus sold by respondents Englishtown Cutlery, Ltd., and Norman J. Mercer were not designed or manufactured in or brought from England, but on the contrary were made in the State of New Jersey.

PAR. 8. The aforesaid representations as used by the respondents Englishtown Cutlery, Ltd., and Norman J. Mercer are false and misleading and have had and do have the tendency and capacity to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that the cutlery, including knives, forks, spoons, kitchen, and tableware so designated, advertised and sold by respondents is manufactured by and with the authority of the British Government, the royal British family and the Royal Warranty Holders Association, and is designed, manufactured and made in England and imported from England, when such is not the fact. The said representations further have had and do thereby have the capacity and tendency to induce members of the purchasing public, by reason of the erroneous belief so engendered, to purchase substantial quantities of said respondents' cutlery. As a result, trade has been unfairly diverted to said respondents from competitors who are engaged in the sale of like merchandise in commerce in and among the various States of the United States and in the District of Columbia but who do

## Conclusion

46 F. T. C.

not use such false and misleading representations. Said acts and practices thereby prejudice and injure competitors who do not misrepresent like products manufactured and sold by them, and likewise place in the hands of retail dealers and other distributors a means whereby they may deceive members of the purchasing public.

PAR. 9. In connection with future use of the insigne herein found to resemble and simulate the British coat of arms, said respondents, at the conclusion of the hearings, expressed a willingness to display the words "Made in U. S. A." in conspicuous letters and in close proximity to such insigne. To sanction unauthorized use in this country of such emblem or an imitation thereof would be to ignore the spirit and purport of the International Convention of June 2, 1934, referred to hereinabove, and the Commission is of the further view that an absolute prohibition as to use of the insigne connoting royal warrant is necessary to eliminate the deception engendered by the use of such emblem under the circumstances here.

## CONCLUSION

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

Other charges of the complaint pertain to respondents' use in the advertising of the corporate name "Englishtown Cutlery, Ltd.," and the word "Englishtown" as a brand or product name when used alone or in combination with a circular design depicting a coronet, or in conjunction with a simulation of a framed portrait entitled "Dover," it being alleged that such use also conveys the impression that respondents' cutlery is designed and manufactured in England. The impressions respecting British origin which the members of the purchasing public testifying as witnesses in this proceeding affirm may be engendered by respondents' advertising obviously were derived in some measure from the presence in such advertising of the insigne simulating the British coat of arms. The record in this proceeding does not disclose, with the degree of certainty deemed desirable by the Commission in these matters, whether, if used in the absence of said insigne, the practices to which such additional charges pertain have the capacity to mislead as alleged in the complaint. In the circumstances the Commission is of the opinion that such additional charges should be dismissed without prejudice.

755

## Order

The evidence does not show that respondents Joseph Berger and Edward W. Ginsburg were responsible for the acts and practices which are the subjects of this proceeding, and accordingly the charges of the complaint are being dismissed with respect to said respondents.

## 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 Englishtown Cutlery, Ltd., a corporation, Norman J. Mercer, and Edward W. Ginsburg, testimony and other evidence introduced before a trial examiner theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents Englishtown Cutlery, Ltd., a corporation, and Norman J. Mercer have violated the provisions of the Federal Trade Commission Act:

It is ordered, That Englishtown Cutlery, Ltd., a corporation, and its officers, and Norman J. Mercer, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their cutlery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using on their products or in advertising any pictorial representation or depiction of the British royal arms or any simulation thereof; or otherwise representing, directly or by implication, that they are holders of a royal warrant authorizing them to display the British royal arms on their products or in their advertising or that cutlery products made in the United States are manufactured in the British Isles.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to the respondents Joseph Berger and Edward W. Ginsburg.

*It is further ordered,* That the allegations of the complaint pertaining to use in the advertising of the corporate name, "Englishtown Cutlery, Ltd.," and the word "Englishtown" as a brand or product name when used alone or in combination with a circular design depicting a coronet or in conjunction with a simulation of a framed portrait entitled "Dover" be, and the same are hereby, dismissed without

Order

46 F. T. C.

prejudice to the right of the Commission to take such further action in the future as the then existing circumstances may warrant.

*It is further ordered,* That the respondents Englishtown Cutlery, Ltd., and Norman J. Mercer shall, within 60 days from the date of service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Complaint

IN THE MATTER OF  
LADY CAROLE COATS, 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5664. Complaint, June 14, 1949—Decision, Apr. 4, 1950*

Where a corporation and its president who controlled it and was directly responsible for all its acts and practices, engaged in the manufacture for introduction into commerce, and in the interstate sale and distribution of ladies' coats which were composed in whole or in part of wool, reprocessed wool or reused wool, as defined in the Wool Products Labeling Act of 1939, and were thus subject to the provisions of said act and the rules and regulations promulgated thereunder—

Sold misbranded coats which were composed (a) in whole of reprocessed or reused wool, (b) in part of such wool and in part of viscose rayon, and (c) in part of such wool and in part of cotton, and did not have on or affixed thereto the required stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of "wool," "reprocessed wool," "reused wool," fiber other than wool, and the other information called for by said act and rules, but, on the contrary, had affixed thereto stamps, tags, or labels which showed their fiber content as being "100% wool":

*Held*, That such acts and practices in the manufacture, sale, transportation, and distribution in commerce of misbranded wool products, were in violation of the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

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

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

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

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Lady Carole Coats, Inc., a corporation, and Max Indig, individually and as an officer of Lady Carole Coats, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

## Complaint

46 F. T. C.

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

PARAGRAPH 1. Respondent Lady Carole Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 252 West Thirty-eighth Street, New York, N. Y.

Respondent Max Indig is president of respondent Lady Carole Coats, Inc., with his office and principal place of business located at 252 West Thirty-eighth Street, New York, N. Y. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents Lady Carole Coats, Inc., a corporation, and Max Indig are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation, and distribution in commerce of wool products as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

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

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

767

## Findings

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

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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 and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on June 14, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing of the respondents' 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 designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission, having 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 Lady Carole Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 252 West Thirty-eighth Street, in the city of New York, State of New York. Respondent Max Indig is the president of Lady Carole Coats, Inc., and as such he dominates and controls and is directly responsible for all of the acts and practices of said corporation. This respondent also maintains his office and principal place of business at 252 West Thirty-eighth Street, in the city of New York, State of New York.

PAR. 2. The respondents are now, and since April of 1947 they have been, engaged in the manufacture and in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of ladies' coats. The respondents maintain, and at all times mentioned herein they have maintained, a regular 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, the respondents have manufactured for introduction into commerce, and have sold, transported, and distributed in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, ladies' coats composed, in whole or in part, of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939. Such products were therefore "wool products" within the intent and meaning of said act and were subject to the provisions thereof and to the rules and regulations promulgated thereunder.

Some of the coats so manufactured and sold by the respondents have been composed in whole of reprocessed wool or reused wool, but such coats, when sold and transported in commerce have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

Other coats so manufactured and sold by the respondents have been composed in part of reprocessed wool or reused wool and in part of viscose rayon, but these coats, when sold and transported in commerce, have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to

767

Order

be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

Still other coats so manufactured and sold by the respondents have been composed in part of reprocessed wool or reused wool and in part of cotton, but these coats, when sold and transported in commerce, have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

PAR. 4. The wool products manufactured for introduction into commerce and sold, transported, and distributed in commerce by the respondents, as aforesaid, have been misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that each of said products has not had on or affixed to it a stamp, tag, label, or other means of identification, or a substitute therefor, showing (a) the percentage of the total fiber weight of said wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; or (c) in the case of such wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof.

#### CONCLUSION

The acts and practices of the respondents in the manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce, of wool products, which were misbranded as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer

Order

46 F. T. C.

thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent Lady Carole Coats, Inc., a corporation, and its officers, and the respondent Max Indig, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture for introduction, or introduction, into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of ladies' coats which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, or any other wool products, as that term is defined in said act, do forthwith cease and desist from misbranding such products by failing to affix securely to or place on each such product a stamp, tag, label, or other means of identification or a substitute therefor, showing in a clear and conspicuous manner:

(A) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers;

(B) The maximum percentage of the total weight of such wool product, of any nonfibrous loading, filling, or adulterating matter;

(C) In the case of a wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof;

*Provided*, That the foregoing shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided, further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or of the rules and regulations promulgated thereunder.

767

Order

*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.

IN THE MATTER OF  
REXALL DRUG COMPANY ET AL.

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

*Docket 5465. Complaint, Oct. 9, 1946—Decision, Apr. 6, 1950*

Where a corporation engaged in the manufacture of drugs, medicines, and other preparations and commodities usually sold in the modern drug store, and in the interstate sale and distribution thereof through retail stores owned and operated by its two wholly owned subsidiaries in many parts of the United States, and also through independently owned drug stores which secured from it a so-called franchise to operate under its trade name; and in supplying to said stores its publication listing its products, together with their wholesale prices and a suggested "usual retail price," and also, in the case of "two-priced" items, a smaller "minimum price"—

(a) Represented in advertising matter which it prepared and furnished to its said stores in connection with its so-called occasional "One-Cent Sales," that two units of the advertised items might be purchased during such sales for the prices customarily and usually charged at the stores concerned for one unit plus 1 cent, through use of the term "One-Cent Sale" and through setting out therein prices of single units of each of the articles included, followed by an offer of two items for 1 cent more than the single unit price, and through stating that two items might be had for the price of one, plus 1 cent;

The facts being that the prices used by it in said advertising, in the case of its "two priced" items, were in all instances the higher or so-called "usual retail prices" listed for its products, as distinguished from the "minimum prices"; and in the case of its independent stores which adhered to the suggested "minimum prices" during off-sale periods, but sold on the basis of the higher or so-called "usual retail prices" during the "one cent sales," they thereby represented to the purchasing public contrary to fact, that the said higher "size" or "value" prices were their prices; and

Where said corporation, while making its practice, in connection with said "One-Cent Sales" of its subsidiary retailers, to refer only to its one-priced items in connection with statements of regular prices, and to segregate the two-priced items in a blocked-off section under the caption "Four-Day Specials—Not Regular Once-Cent Sales Items," in conjunction with which said subsidiary retailers showed "minimum prices" as the regular sale prices, together with the prices for which two might be purchased—

(b) Falsely represented in one instance in which its subsidiary distributor featured in an advertisement some of said "Four-Day Specials" as "One-Cent Sale" items, that two units of the articles were being offered for the price customarily charged for one unit plus 1 cent, through representing the so-called "usual retail price" thereof as the regular price, when in fact said subsidiary regularly sold such items at the so-called "minimum price" between sales;

774

## Complaint

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with result that a substantial number of said public purchased substantial quantities of their said products:

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

As respects charges of the complaint which pertained to certain advertising representations made by said corporation in connection with so-called "Factory-to-You" sales, formerly conducted by the subsidiary retailers and independently owned stores involved herein, it appeared that no "Factory-to-You" sales had been conducted by them since July 1944, or for more than 2 years prior to the institution of the instant proceeding, and the Commission was of the opinion, in view of their discontinuance of the advertising to which such additional charges pertained, and the further fact that they had disclaimed any intention of resuming any such advertising, that a determination of the issues thus raised was not then required in the public interest, and such charges were accordingly dismissed without prejudice.

Before *Mr. Abner E. Lipscomb*, trial examiner.

*Mr. Robt. N. MacMillen* and *Mr. Edward F. Downs* for the Commission.

*Mr. William F. Davis, Jr.*, *Mr. Benjamin H. Dorman*, and *Mr. R. F. Hallett*, of Los Angeles, Calif., and *Mr. Richard A. Mahar*, of Washington, D. C., 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 United-Rexall Drug Co., a corporation, Liggett Drug Co., Inc., a corporation, and Owl Drug Co., 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 United-Rexall Drug Co. is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at 43 Leon Street, Boston, Mass. Prior to about May 1945, this respondent bore the name of, and was known as, United Drug Co., Inc.

This respondent is now, and since about 1928 has been, engaged in the manufacture and distribution of drugs, medicines, and other preparations and commodities usually sold in the modern drug store.

It operates factories at Boston, Mass., and St. Louis, Mo., where many of the products sold and distributed by it are made, with branches at San Francisco and Los Angeles, Calif.; Atlanta, Ga.; Portland, Oreg.; and Pittsburgh, Pa. Other products sold and distributed by it are made for it by wholly owned subsidiary manufacturing companies. A part of its retail distribution is through retail stores owned and operated by the other two respondents named in the caption hereof; the rest of its retail distribution is through independently owned drug stores which secure from this respondent a so-called franchise to operate as "Rexall Stores," and they are so designated and so known to the public.

In the course of its business as aforesaid, respondent sells the products manufactured by it and by its said wholly owned subsidiary manufacturing companies, and pursuant thereto, and as a part of such sales, ships, said products from its factories and the factories of its said subsidiaries and from its branch places of business and from other supply depots to the stores of the other two respondents named herein and to the Rexall Stores, many of them located in States of the United States other than the points of origin of such shipments.

PAR. 2. Respondent Liggett Drug Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 43 Leon Street, Boston, Mass.; and respondent Owl Drug Co. is a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business at 657 Mission Street, San Francisco, Calif. These two respondents are now, and since at least the year 1934 have been, wholly owned subsidiaries of respondent United-Rexall Drug Co., and respectively own and operate retail drug stores in many localities in various States of the United States.

PAR. 3. At various times during each year respondent United-Rexall Drug Co. causes its said subsidiary retailers and the Rexall Stores, to hold "Factory-to-You Sales," at which times it is advertised and represented to the public that the prices offered during the sales are substantially lower than their regular and usual prices. The advertisements set out, in juxtaposition, so-called regular or usual prices and the special sale prices.

In the case of many of the stores so advertising, including both the Liggett and Owl stores, and the Rexall stores, the prices advertised and represented as the regular or usual prices are higher than the usual or regular prices in fact, so that the difference between the regular or usual prices and the sale prices is not as great as advertised.

PAR. 4. For use in connection with the conduct of these sales, respondent United-Rexall Drug Co. prepares and furnishes to the Liggett and Owl companies, and to the Rexall stores, various forms of advertising material, such as banners announcing "Factory-to-You Sale Now on"; circulars for distribution among prospective customers, newspaper mats for display advertising in newspapers; and different forms of advertising for display in the stores. In all this advertising it is stressed that substantial savings are to be had by reason of the "Factory-to-You" element of the sale.

The two retail subsidiaries of respondent United-Rexall Drug Co. and many of the Rexall stores purchase and use the advertising material so prepared by this respondent, although some prepare their own advertising material. In the latter case, the advertising is of the same tenor and embodies the features of the advertising material suggested and prepared by respondent United-Rexall Drug Co.

Excerpts from typical advertisements, disseminated and displayed for these Factory-to-You sales, are as follows:

Factory-to-You Sale—Millions of people will take advantage of this sale to cut down their cost of living. Rexall laboratories produce this finest of quality merchandise solely for Rexall Drug Stores \* \* \*

Naturally the savings of this plan are passed along to the consumer.

\* \* \* \* \*

19¢ items 2 for 35¢ 3 for 50¢ during Factory-to-You sale.

\* \* \* \* \*

Factory-to-You Sale 25¢ size Klenzo Shaving Cream 19¢

\* \* \* \* \*

Factory-to-You Sale—Rexall products are shipped from the factory direct to more than 8,000 Rexall Drug Stores. Many in-between profits are eliminated. These big savings are passed along to you every day \* \* \* Extra savings during this sale.

PAR. 5. By the use of the advertising matter hereinbefore described, by the subsidiary retailers and Rexall Stores, these respondents represent to the public that, by reason of the sale being direct from the factory to the consumer the consumer buys at the factory price without the addition of a retailer's profit.

In truth and in fact, there is a mark-up by the retail stores which adds a profit for them. Further, by reason of the fact that the price advertised as the usual or regular price is substantially higher than the price at which the store regularly sells during the periods between sales, the public is lead to believe that the reduction in price during the sales is greater than it is in fact.

PAR. 6. At various times during each year respondent United-Rexall Drug Co. causes its said subsidiary retailers and the Rexall stores to conduct a so-called "One-Cent Sale," at which times it is

## Complaint

46 F. T. C.

advertised and represented to the public that two units of the items advertised may be bought for the "regular" price of one unit, plus 1 cent. In the case of many of the stores so advertising, the prices advertised and represented as the regular prices are higher than the prices these stores usually and regularly charge for said items, so that the price for the two units is, in fact, more than the regular price of one unit plus 1 cent.

PAR. 7. For use in connection with the conduct of these "One-Cent Sales," respondent United-Rexall Drug Co. prepares and furnishes to its said subsidiary retail companies, and to the Rexall stores, advertising material similar in form to that furnished in connection with the Factory-to-You sales, as above alleged.

The stores of the two retail subsidiaries and many of the Rexall stores purchase and use the advertising material so prepared by this respondent, or prepare their own advertising material. In the latter case it is of the same tenor and embodies the features of the advertising material suggested and prepared by respondent United-Rexall Drug Co.

Following are specimens typical of the representations appearing in the advertisements of these 1-cent sales:

Liggett's 1¢ Sale. 2 for the price of 1 plus 1¢. Add a penny!  
Get two! Save 48¢. 49¢ Puretest 5-grain aspirin (100 tablets).  
One bottle for regular price. Another for only a penny. Two hundred tablets for 50¢. Ordinarily you pay ninety-eight! 4 days only at this price!  
50¢ After-Shave Lotion 2 for 51¢.

PAR. 8. By use of the advertising matter hereinabove described by the subsidiary retailers and Rexall stores, respondents represent to the public that two units of the advertised items may be purchased for the regular price of one unit plus 1 cent. In truth and in fact, in the case of many of the stores the regular and usual selling price of these items is not as represented, but is lower, and the difference between the regular price and the sale price is not as great as advertised.

PAR. 9. The acts and practices of the 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 into the erroneous and mistaken belief that said statements and representations were and are true. As a result of such erroneous and mistaken belief, so induced, a substantial number of the purchasing public have purchased substantial quantities of respondents' said products.

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 9, 1946, 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 that act. After the filing of joint answer to the complaint by the respondents, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it, following which, on October 24, 1949, a stipulation was entered into upon the record whereby it was stipulated and agreed by and between the respondents and counsel supporting the complaint that the statement of facts entered upon the record might be taken as the facts in this proceeding in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, 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 it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a recommended decision by the trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted and filed; and the Commission, having duly considered the same 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 Rexall Drug Co., known as United-Rexall Drug Co. at the time this proceeding was instituted, and prior thereto known as United Drug Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 8480 Beverly Boulevard, Los Angeles,

## Findings

46 F. T. C.

Calif. Since 1928 respondent Rexall Drug Co. has engaged in the manufacture and distribution of drugs, medicines, and other preparations and commodities usually sold in the modern drug store, some of which products are made for it by wholly owned subsidiary manufacturing companies.

Respondent Liggett Drug Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 71 West Twenty-third Street, New York, N. Y.

Respondent the Owl Drug Co., named in the complaint as Owl Drug Co., is a corporation organized and existing under the laws of the State of Nevada, with its principal office and place of business at 8480 Beverly Boulevard, Los Angeles, Calif.

Respondents Liggett Drug Co., Inc., and the Owl Drug Co. are now and have been since at least the year 1934 wholly owned subsidiaries of respondent Rexall Drug Co. and respectively own and operate retail drug stores in many localities in various States of the United States.

PAR. 2. A part of the retail distribution of respondent Rexall Drug Co. is through the retail stores owned and operated by respondents Liggett Drug Co., Inc., and the Owl Drug Co.; the rest of its retail distribution is through individually owned drug stores which secure from this respondent a so-called franchise to operate as "Rexall Stores" and they are so designated and so known to the public. In the course of its business as aforesaid, respondent Rexall Drug Co. sells the products manufactured by it and by its wholly owned subsidiary manufacturing companies, and in making sales thereof ships said products from its factories and from the factories of its said subsidiary manufacturers and from its branch places of business and from other supply depots to the stores of the other two respondents named herein and to the independently owned Rexall stores, many of which subsidiary retail stores and independently owned Rexall stores are located in States of the United States other than the States from which such shipments originate.

PAR. 3. To all Rexall stores respondent Rexall Drug Co. distributes a publication called "The Medicine Man," which lists various products offered for sale by this respondent, together with the wholesale prices and the suggested retail prices of such products. Some of the items so listed show two suggested retail prices, one being designated therein as the "usual retail price" and the other being designated as the "minimum price," the "usual retail price" being the larger of the two. With respect to the said items which hereinafter will be referred to as "two-priced" items, some independently owned enfran-

chised Rexall stores charge the higher of the two prices, that is, the so-called "usual retail price," at all times for all items except during sale periods. Other independently owned enfranchised Rexall stores charge the "minimum price" therefor except during sale periods; and still other independently owned enfranchised Rexall stores charge the "minimum price" for some of such items, the so-called "usual retail price" for some of such items, and a price in between these two for others thereof except during sale periods. Both the independently owned Rexall stores and said subsidiary retailers obtain the "usual retail price" for those items where the items do not contain two prices except during sale periods. Such items will hereinafter be referred to as "one-priced" items.

PAR. 4. At various times during each year respondent Rexall Drug Co. offers to its independently owned Rexall stores an opportunity to conduct, and causes its subsidiary retailers to conduct, so-called "One-Cent Sales." At such times, in advertising matter prepared and furnished by it to the independently owned Rexall stores, respondent Rexall Drug Co. causes prices pertaining to single units of each of the articles included to be shown followed immediately in each instance by a statement offering two of the items for a price calculated by adding 1 cent to the price used to designate the single unit, and in such advertising it is further stated that two units of the items offered may be purchased for the price of one unit plus 1 cent.

Other advertising prepared and furnished by respondent Rexall Drug Co. to respondents Liggett Drug Co., Inc., and the Owl Drug Co. for use in connection with such "One-Cent Sales" contain statements that the prices used to designate single units of the merchandise described as coming within the sale are "regular" prices or values for such merchandise and that two of the articles so described may be purchased for the price of one unit plus 1 cent.

The stores of the respondents Liggett Drug Co., Inc., and the Owl Drug Co. and many of the independently owned Rexall stores have purchased and used, and do purchase and use, said advertising material as prepared for them by respondent Rexall Drug Co., or have prepared their own advertising material in the same tenor and to embody the same features as appear in the advertising provided by respondent Rexall Drug Co.

PAR. 5. Through the use of the advertising representations hereinbefore described, including the expression "One-Cent Sale," as used in this connection by such subsidiary retailers and the independently owned Rexall stores, respondents represent to the public that two units of the advertised items may be purchased at retail stores to which said

## Findings

46 F. T. C.

advertising relates during the so-called "One-Cent Sales" for the price customarily and usually charged at said stores for one unit plus 1 cent.

PAR. 6. During the sales conducted by the independently owned Rexall stores, the prices used in the advertising of respondent Rexall Drug Co. to designate the "one-priced" items, previously referred to, are in all instances the "usual retail prices." Inasmuch as the prices which are advertised and represented by respondent Rexall Drug Co. to be the regular prices for "one-priced" articles included in these sales are in fact the customary and usual prices at which such merchandise is sold, no challenge is directed in this proceeding to the advertising statements pertaining to this category of merchandise.

In further reference to the sales conducted by the independently owned Rexall stores, the prices used in the advertising by respondent Rexall Drug Co. to designate the "value" or "size" of the previously referred to "two-priced" items are in all instances the higher or so-called "usual retail prices" appearing in said respondent's listing to the stores of its products as distinguished from the "minimum prices" appearing therein. Those independently owned Rexall stores using the advertising prepared by said respondent or advertising similar thereto which adhere to the suggested "minimum prices" during off-sale periods sell on the basis of the higher or so-called "usual retail prices" during the "One-Cent Sales," and represent to the purchasing public, contrary to fact, that the said "size" or "value" prices are the prices at which such articles are, by those stores, customarily and usually offered for sale and sold. When furnished for use and used in such circumstances, the Commission concludes that the representations of the respondent Rexall Drug Co. that two units of the articles offered for sale may be purchased for the price customarily and usually charged by such stores for one unit plus 1 cent are false and misleading.

In connection with the sales which respondent Rexall Drug Co. causes its subsidiary retailers to conduct, the prices represented as regular prices for 1-cent sale items refer in all instances except as hereafter related to the so-called "one-priced" items and constitute the prices at which such articles are customarily offered and sold by said subsidiary retailers. The so-called "two-priced" items are not designated as "One-Cent Sale" articles, but appear in a blocked-off section of the advertisements under the caption "Four Day Specials—Not Regular One Cent Sale Items." In conjunction therewith the said subsidiary retailers show the regular sale prices which in all instances are the so-called "minimum prices" together with the price for which two of them may be purchased. In one instance, however, respondent the Owl Drug Co. featured in an advertisement some of said "Four

774

## Conclusion

Day Specials" as "One-Cent Sale" items, so that the price relating to each in such advertisement which was represented to be the regular price was in fact the so-called "usual retail price," whereas, said respondent regularly sold each of these items at the so-called "minimum price" between sales. Respondents Rexall Drug Co. and the Owl Drug Co. falsely represented in such instance that two units of the articles were being offered for the price customarily and usually charged by the stores for one unit plus 1 cent.

PAR. 7. The acts and practices of the respondents Rexall Drug Co. and the Owl Drug Co., in using the foregoing false and misleading statements and representations, have had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a result of the erroneous and mistaken belief so engendered a substantial number of the purchasing public have purchased substantial quantities of said respondents' products.

## CONCLUSION

The aforesaid acts and practices of the respondents Rexall Drug Co. and the Owl Drug Co., 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.

Additional charges of the complaint pertain to certain of the advertising representations made by respondents in connection with so-called "Factory-to-You" sales formerly conducted by the subsidiary retailers and independently owned Rexall stores. No "Factory-to-You" sales have been conducted by the respondents, however, since July 1944, which is more than 2 years prior to the institution of this proceeding. In view of respondents' discontinuance of the advertising to which such additional charges relate and the additional fact that they have disclaimed any intention of resuming such advertising, the Commission is of the opinion that a determination of the issues raised thereby is not at this time required in the public interest, and such charges, accordingly, are being dismissed without prejudice.

It does not appear from the record that the respondent Liggett Drug Co., Inc., has participated in the acts and practices found hereinbefore to be in violation of the act, and the Commission, therefore, is of the opinion that dismissal of the charges in respect to said respondent is warranted in the circumstances here.

Order

46 F. T. C.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents, and upon a stipulation as to the facts entered into between respondents and counsel supporting the complaint which provides, among other things, 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 said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a recommended decision by the trial examiner; and the Commission having made its findings as to the facts and its conclusion that the respondents Rexall Drug Co. and the Owl Drug Co. have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That respondents Rexall Drug Co., a corporation, and the Owl Drug Co., a corporation, and their respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of drug products or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of the term "One-Cent Sale," or words of similar import, or otherwise, that two units of respondents' merchandise may be purchased for the price of one unit plus one cent, when the price of one unit of said merchandise used in said representations is in excess of the price at which one unit of said merchandise is customarily and usually sold in the respective stores to which the representations relate; or representing in any manner that the customary or usual price of respondents' merchandise at retail stores to which the representations relate is in excess of the price at which the merchandise is by the respective stores customarily offered for sale and sold in the normal course of business.

*It is further ordered,* That the charges of the complaint relating to the advertising representations made by the respondent Liggett Drug Co. in connection with the "One-Cent Sales" conducted by said respondent be, and the same hereby are, dismissed.

*It is further ordered,* That the charges of the complaint relating to certain of the representations used by respondents in the advertising of so-called "Factory-to-You" sales be, and the same hereby are dismissed without prejudice to the right of the Commission to institute a

774

Order

new proceeding against the respondents or to take such further or other action in the future as may be warranted by the then existing circumstances.

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

IN THE MATTER OF  
NORTHWESTERN EXTRACT COMPANY

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

*Docket 5641. Complaint, Mar. 1, 1949—Decision, Apr. 21, 1950*

Where a corporation engaged in the manufacture and interstate sale and distribution of extracts and concentrates, including its "Imitation Grape Sparkle Beverage Base No. 179," to bottlers for their use in the manufacture of a soft drink known as "Grape Sparkle"; in advertising said "Grape Sparkle" in trade periodicals—

Represented through the use of said trade name and through such statements as "Grape Sparkle Soda" and reference to "Grape Leaf Shaped" decalcomanias in color, available for distribution to customers, and through decalcomanias transmitted by it to its bottlers for use by them and retailers in advertising and promoting the sale of "Grape Sparkle," bearing the words, among others, "Grape Sparkle Soda" printed upon a picturization of a green leaf of the grapevine, that the product in question was prepared from the fruit or natural juice of the grape;

The facts being that while said beverage simulated the odor, appearance, and taste of a grape product, it derived said characteristics chiefly from imitation ingredients and was an imitation grape product;

With result of placing in the hands of bottlers and retailers means and instrumentalities through which they might and did represent said product as prepared by the use of the fruit or natural juice of the grape; and with tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the representations and depictions involved therein were true, and thereby induce it to purchase substantial quantities of said product:

*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. William L. Taggart* for the Commission.

*Mr. Roy R. Stauff*, of Milwaukee, Wis., 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 the Northwestern Extract Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commis-

sion 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. Northwestern Extract Co. is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin with its principal place of business located at 214-216 North Broadway, Milwaukee, Wis.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture of extracts and concentrates which it sells and distributes to bottling plants located in various States of the United States. One of said extracts or concentrates is designated by it as "Imitation Grape Sparkle Beverage Base No. 179." Said product is used by bottlers in the manufacture of a soft drink known as "Grape Sparkle."

Respondent causes its said product when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States. When the soft drink "Grape Sparkle" has been prepared by the use of respondent's said product, it is frequently shipped by bottlers to retailers located in States other than the State in which such shipments originate. Respondent maintains and has maintained a course of trade in its said extract or concentrate between and among the various States of the United States and bottlers of the product "Grape Sparkle" maintains and have maintained a course of trade in said product between and among the various States of the United States.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of various advertisements concerning the product "Grape Sparkle" made by the use of its said concentrate or extract by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of advertisements concerning said product "Grape Sparkle" by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said "Grape Sparkle" in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the advertisements disseminated and caused to be disseminated as hereinbefore set forth is that appearing in the publication, National Bottlers' Gazette, issue of November 1946, a copy of which is as follows:

## Complaint

46 F. T. C.

Delicious  
GRAPE  
SPARKLE  
SODA

This New Four-Color Grape  
Leaf Shaped Decalomania,  
size 7½" X 7½" available  
for your customer's win-  
dows and back bars.

A  
NORWESCO  
PRODUCT

A TASTY,  
ENJOYABLE  
DRINK . . .

SPOTLIGHTING  
A TASTY TREAT  
a Proven  
SALES REPEAT

Outstanding  
Grape  
Flavor

NORTHWESTERN  
EXTRACT CO.

Serving Bottlers Since 1906  
214-216 N. Broadway Milwaukee 2, Wis.

Appearing as part of this advertisement are picturizations of two leaves of the grape vine.

PAR. 4. In the course and conduct of its business respondent has also transmitted a decalomania to bottlers buying its product by means of the United States mails or in commerce by other means, designed and intended to be used and which is used by bottlers and retailers in advertising and promoting the sale of "Grape Sparkle." A copy of said decalomania is as follows:

Delicious  
GRAPE  
SPARKLE  
SODA

A  
NORWESCO  
PRODUCT

A TASTY,  
ENJOYABLE  
DRINK . . .

These words are printed upon a picturization of a green leaf of the grape vine.

PAR. 5. By means of the statements and picturizations set out in paragraphs 3 and 4 and the use of the trade name "Grape Sparkle" respondent represented and thereby placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the product "Grape Sparkle" is prepared by the use of the fruit or natural juice of the grape.

PAR. 6. The aforesaid statements, picturizations, and trade name are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Grape Sparkle," while simulating the odor, appearance, and taste of a product prepared by the use of the fruit or natural juice of the grape, derives its odor, appearance, and taste chiefly from imitation ingredients and is an imitation grape product.

PAR. 7. The use by the respondent of the aforesaid false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements, representations, and picturizations contained therein are true and cause a portion of the purchasing public to purchase substantial quantities of the product "Grape Sparkle" because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, 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 March 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Northwestern Extract Co., a corporation, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After respondent filed its answer to the complaint, a written stipulation was entered into by and between the respondent, by its counsel, and Daniel J. Murphy, chief of trial division, for 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 and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, 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 said stipulated facts) and its conclusion based thereon and enter its order disposing of this matter without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and

## Findings

46 F. T. C.

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. Northwestern Extract Co. is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin with its principal place of business located at 214-216 North Broadway, Milwaukee, Wis.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture of extracts and concentrates which it sells and distributes to bottling plants located in various States of the United States. One of said extracts or concentrates is designated by it as "Imitation Grape Sparkle Beverage Base No. 179." Said product is used by bottlers in the manufacture of a soft-drink food product known as "Grape Sparkle."

Respondent causes its said product when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States. Respondent maintains and has maintained a course of trade in its said extract or concentrate between and among the various States of the United States, and bottlers of the produce "Grape Sparkle" maintain and have maintained a course of trade in said product between and among the various States of the United States.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of advertisements concerning the product "Grape Sparkle" made by the use of its said concentrate or extract, in commerce as "commerce" is defined in the Federal Trade Commission Act, by way of the following copy in the October 1946 and November 1946 trade magazines, "The American Carbonator & Bottler" and "National Bottler's Gazette" for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "Grape Sparkle" in such commerce, to wit:

Delicious	This New Four-Color Grape
GRAPE	Leaf Shaped Decalcomania
SPARKLE	size 7½" X 7½" available
SODA	for your customer's windows
	and back bars.

A	A TASTY
NORWESCO	ENJOYABLE
PRODUCT	DRINK . . .

786

## Findings

SPOTLIGHTING  
 A TASTY TREAT  
 a Proven  
 SALES REPEAT

Outstanding  
 Grape  
 Flavor

NORTHWESTERN  
 EXTRACT CO.

Serving Bottlers Since 1806  
 214-216 N. Broadway Milwaukee 2, Wis.

Appearing as part of this advertisement are picturizations of two leaves of the grape vine.

PAR. 4. In the course and conduct of its business respondent has also transmitted a decalcomania to bottlers buying its product in commerce as "commerce" is defined in the Federal Trade Commission Act, designed and intended to be used and which is used by bottlers and retailers in advertising and promoting the sale of "Grape Sparkle." A copy of said decalcomania is as follows:

A	Delicious	A TASTY
NORWESCO	GRAPE	ENJOYABLE
PRODUCT	SPARKLE	DRINK . . .
	SODA	

These words are printed upon a picturization of a green leaf of the grape vine.

PAR. 5. By means of the statements and picturizations set out in paragraphs 3 and 4 and the use of the trade name "Grape Sparkle" respondent represented and thereby placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the product "Grape Sparkle" is prepared by the use of the fruit or natural juice of the grape.

In truth and in fact, "Grape Sparkle," while simulating the odor, appearance, and taste of a product prepared by the use of the fruit or natural juice of the grape, derives its odor, appearance, and taste chiefly from imitation ingredients and is an imitation grape product. The Commission therefore finds that the aforesaid statements, picturizations, and trade name are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 6. The use by the respondent of the aforesaid false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that

Order

46 F. T. C.

the statements, representations, and picturizations contained therein are true and cause a portion of the purchasing public to purchase substantial quantities of the product "Grape Sparkle" because of such erroneous and mistaken belief.

## CONCLUSION

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

Commissioner Ayres absent.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Chief of Trial Division, for the Commission, in which stipulation the respondent 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 respondent, Northwestern Extract Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its extract or concentrate used by bottlers in the manufacture of a soft-drink food product known as "Grape Sparkle," or any other product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, by the use of the words "Grape Sparkle," or the word "Grape," or any other word or words of similar import or meaning, or in any other manner, that said product is prepared from the fruit or natural juice of the grape: *Provided, however*, That the foregoing shall not be construed to prohibit the use in advertising of the words "Grape Sparkle" or the word "Grape" if it is made prominently to appear in said ad-

786

Order

vertising that the product is an imitation, artificially colored and flavored.

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

*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.

Commissioner Ayres absent.

Complaint

46 F. T. C.

## IN THE MATTER OF

HENRY G. PEARL AND MILDRED PEARL, TRADING AS  
PEARL GARMENT CO., MODE CRAFT CO., AND MODE  
CRAFT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND AN ACT  
OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5489. Complaint, Apr. 1, 1947—Decision, May 10, 1950*

Where three partners engaged in the manufacture and interstate sale and distribution of women's wearing apparel made from fabrics or piece goods, which were composed in some cases of 100 percent virgin wool, and in others of varying combinations of wool and reused wool and cotton, and were "wool products" within the intent and meaning of the Wool Products Labeling Act, and subject to its provisions—

Sold misbranded coats, which, labeled as 100 percent wool, contained only 70 percent wool and 20 percent reused wool and labels on which, in certain instances, contained no reference to the fiber content of the cotton interlining; and sold wool skirts which did not have on or affixed thereto the required stamp, tag, label or other means of identification showing the percentage of the total fiber weight of "wool," "reprocessed wool," "re-used wool," fiber other than wool, and other information called for by said act and rules and regulations promulgated thereunder:

*Held*, That such acts and practices were in violation of the provisions of the Wool Products Labeling Act of 1939 and said rules and regulations, and were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. William L. Pack*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

*Mr. Isadore H. Hermann*, of Camden, N. J., for respondents.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Henry G. Pearl and Mildred Pearl, individually and as copartners trading as Pearl Garment Co., Mode Craft Co., and Mode Craft, hereinafter referred to as respondents, have violated the provisions of said acts, and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect

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

PARAGRAPH 1. The respondents, Henry G. Pearl and Mildred Pearl, are individuals doing business as copartners under the trade names of Pearl Garment Co., Mode Craft Co., and Mode Craft, and have their office and principal place of business at 620 Viola Street, Camden, N. J.

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

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce and offered for sale, sold, transported, and distributed, in commerce as aforesaid, are ladies' coats and suits. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder, is their misbranding of the aforesaid wool products in violation of the provisions of said act and said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was five per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling or adulterating matter; (c) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than

wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

Respondents have further violated the said act and the rules and regulations promulgated thereunder by their failure to set forth the fiber content of interlinings of their garments. Respondents have also violated said act and the rules and regulations promulgated thereunder by their failure to label the skirts of the suits sold by them, as required by said act.

PAR. 4. The aforesaid acts, practices and methods of respondents, as alleged constitute misbranding and were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, 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 and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on April 1, 1947, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing of the respondents' answer and the designation of a trial examiner by the Commission, a stipulation of facts in lieu of all other evidence was entered into on the record by and between counsel for the respondents and counsel in support of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the aforesaid stipulation of facts, and the trial examiner's recommended decision (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 and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Henry G. Pearl and Mildred Pearl, are individuals who for a number of years immediately preceding Oc-

tober 1948 were engaged<sup>†</sup> in business as copartners under the trade names Pearl Garment Co., Mode Craft Co., and Mode Craft, their office and principal place of business being located at 620 Viola Street, in the city of Camden, State of New Jersey. The respondents were engaged in the manufacture and in the sale of women's wearing apparel, and they caused their products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States.

PAR. 2. Many of the respondents' products so manufactured and sold were composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939. Such products were therefore "wool products" within the intent and meaning of said act, and were subject to the provisions thereof and to the rules and regulations promulgated thereunder.

Among the fabrics or piece goods used by the respondents in the manufacture of the aforesaid products were fabrics or piece goods composed of 100 percent virgin wool, while others of such fabrics and piece goods contained varying percentages or combinations of wool and reused wool and cotton.

PAR. 3. An inspection of 330 of the respondents' coats which had been labeled and sold and distributed in interstate commerce as 100 percent wool disclosed that these coats actually contained only 70 percent wool and 30 percent reused wool. This inspection also revealed that certain of the coats contained a cotton interlining, but no reference to the fiber content of the interlining was made on any of the tags or labels affixed by the respondents to these garments. The inspection revealed further that the skirts of certain of the suits manufactured and sold in commerce by the respondents, and which were composed of wool, had no tags or labels affixed thereto disclosing the fiber contents of such skirts.

PAR. 4. The wool products manufactured for introduction into commerce and sold, transported and distributed in commerce by the respondents, as aforesaid, were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that each of said products did not spondents, as aforesaid, were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that each of said products did not exceeding 5 per centum of said total fiber weight of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers; (b) the maximum

Order

46 F. T. C.

percentage of the total weight of the wool product, of any nonfibrous loading, filling or adulterating matter; or (c) in the case of such wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof.

PAR. 5. The record indicates that the respondents have discontinued the practices above referred to and that all of the respondents' products are now properly labeled in accordance with the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

## CONCLUSION

The acts and practices of the respondents, as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, a stipulation of facts entered into by and between counsel for the respondents and counsel in support of the complaint, and the trial examiner's recommended decision (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Henry G. Pearl and Mildred Pearl, individually and as copartners trading under the names Pearl Garment Co., Mode Craft Co., and Mode Craft, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture for introduction, or introduction, into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of women's coats, suits or other articles of wearing apparel, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by failing to securely affix to or place on each of such products

## Order

a stamp, tag, label, or other means of identification, or a substitute therefor, showing in a clear and conspicuous manner :

(A) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers;

(B) The maximum percentage of the total weight of such wool product, of any nonfibrous loading, filling, or adulterating matter;

(C) In the case of a wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof;

*Provided*, That the foregoing shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *And provided, further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or the rules and regulations promulgated thereunder.

*It is further ordered*, That the respondents shall, within 60 days after services 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.

Complaint

46 F. T. C.

IN THE MATTER OF  
ALEXANDER CONN AND LIONEL CONN DOING BUSINESS AS CONN'S CLOTHIERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 5716. Complaint, Dec. 2, 1949—Decision, May 10, 1950*

Where two individuals engaged in selling to the general public from their store, wool products composed in whole or in part of "wool," "reprocessed wool," or "reused wool" as defined in the Wool Products Labeling Act, including men's wearing apparel and other garments which they purchased from manufacturers both in other States and their own, and which they sold to purchasers in other States—

- (a) Sold some of the aforesaid wool products which were misbranded in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, in that there was not affixed to them the required stamp, tag, label, or other means of identification showing the percentage of wool and nonwool fiber and aggregate, including filling or adulterating matter, and identification of the manufacturer or seller; and
- (b) With intent to violate said act and rules, etc., removed and mutilated and caused and participated in the removal and mutilation, after receipt of products concerned and prior to their offer or sale, of such stamps, etc., which had been affixed to said wool products by the manufacturer or other authorized person, and did not replace them with substitute stamps, etc.;

With the result that the products concerned, when offered and sold by them to the general public, did not have affixed thereto stamps, etc., containing the information required by law:

*Held*, That said acts, practices, and methods, under the circumstances set forth, were in violation of said Wool Products Labeling Act and rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. DeWitt T. Puckett* for the Commission.

*Spengler, Nathanson, Hebenstreit & Heyman*, of Toledo, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Alexander Conn and Lionel Conn, doing business as Conn's Clothiers, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it

appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Alexander Conn and Lionel Conn, doing business as Conn's Clothiers, have their place of business at 242 South Saginaw Street, Flint, Mich. They are engaged in the sale of men's wearing apparel.

PAR. 2. Respondents are now and for several years last past have been operating a store at the aforesaid address, selling to the general public wool products, as such products are defined in the Wool Products Labeling Act of 1939, in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act.

PAR. 3. During all the time aforementioned, the respondents have purchased and are now purchasing said wool products from various manufacturers located in States other than the State of Michigan, and have caused and are now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through respondents reach the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondents also purchase said products from various manufacturers located in the State of Michigan who manufacture such products for introduction into said commerce.

Said wool products transported in commerce as aforesaid and said wool products manufactured for introduction into said commerce are thereafter offered for sale and sold by respondents to the general public at their said place of business. Said products are offered for sale and some are sold to purchasers residing in States other than the State of Michigan and shipped to said purchasers at their respective points of residence from respondents' place of business in Flint, Mich.

PAR. 4. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents as aforesaid since July 15, 1941, were men's wearing apparel and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when offered for

## Complaint

46 F. T. C.

sale and sold by respondents, in that said products, when offered for sale and sold by respondents, did not have affixed thereto a stamp, tag, label, or other means of identification showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product, as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product; (d) the percentage in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondents at their said place of business, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondents at their said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondents to the general public, said respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did mutilate, and participate in and cause the mutilation of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said Act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. Said respondents did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' said acts and practices in mutilating said stamps, tags, labels, or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondents to the general public at their said store and place of business, did not have affixed

thereto stamps, tags, labels, or other means of identification containing the information required by said act and said Rules and Regulations.

PAR. 8. The aforesaid acts, practices, and methods of the respondents, as herein alleged, were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, 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 and the Wool Products Labeling Act of 1939, the Federal Trade Commission on December 2, 1949, issued and thereafter served upon the respondents, Alexander Conn and Lionel Conn, individuals trading as Conn's Clothiers, its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On December 23, 1949, the respondents filed their answer to said complaint, but on February 9, 1950, they filed a motion to be permitted to withdraw said original answer and in lieu thereof to substitute an answer dated January 10, 1950, which was annexed to said motion, and on February 9, 1950, the substitute answer was received and filed. In said substitute answer the respondents, for the purposes of this proceeding, 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 on the complaint of the Commission and the respondents' substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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, Alexander Conn and Lionel Conn, are individuals trading and doing business as Conn's Clothiers, with their place of business located at 242 South Saginaw Street, in the city of Flint, State of Michigan.

PAR. 2. Respondents are now and for several years past have been operating a store at the aforesaid address selling to the general public "wool products," as such products are defined in the Wool Products Labeling Act of 1939, in that said products are composed in

whole or in part of "wool," "reprocessed wool" or "reused wool," as those terms are defined in said act.

PAR. 3. During all of the time mentioned herein, respondents have purchased and are now purchasing said wool products from various manufacturers located in States other than the State of Michigan, and they have caused and are now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through the respondents reach the ultimate purchasers in States other than the State of manufacture or the State where such products were first introduced into commerce. Respondents also purchase some of said wool products from various manufacturers located in the State of Michigan who manufacture such products for introduction into commerce.

The wool products transported in commerce and manufactured for introduction into commerce, as aforesaid, are thereafter offered for sale and sold by the respondents to the general public at their place of business in the city of Flint, State of Michigan. Such products are offered for sale and some are sold to purchasers residing in States other than the State of Michigan, and when so sold are shipped to said purchasers at their respective points of residence from respondents' place of business in Flint, Mich.

PAR. 4. Among the wool products purchased and transported in commerce and manufactured for introduction into commerce and thereafter offered for sale and sold in commerce by respondents, as aforesaid, since July 15, 1941, have been men's wearing apparel and other garments. All of said wool products have been subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products, when offered for sale and sold by respondents, have been misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said products did not have on or affixed to them a stamp, tag, label, or other means of identification, or a substitute therefor, showing (a) the percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter; (c) the name or registered identification number of the manufacturer of the wool product or of one or more persons introducing such wool product into commerce, or

engaged in the sale, transportation or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; (d) the percentage, in words and figures plainly legible, by weight of the wool content of said wool product where it contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondents at their place of business, had affixed to them stamps, tags, labels, or other means of identification, purporting to contain the information required by the Wool Products Labeling Act of 1939. After such products were delivered to respondents and before they were offered for sale or sold by respondents to the general public, respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did mutilate, participate in and cause the mutilation of the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to such products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said products.

PAR. 7. Respondents did not replace said stamps, tags, labels, or other means of identification, with substitute stamps, tags, labels, or other means of identification, containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. As a result of respondents' mutilation of said stamps, tags, labels, or other means of identification affixed to said wool products, such products, when offered for sale and sold by the respondents to the general public, did not have on or affixed to them stamps, tags, labels, or other means of identification, containing the information required by said act and the rules and regulations promulgated thereunder.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondents, in which answer said respondents admitted all of

Order

46 F. T. C.

the material allegations of fact set forth in said 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 and the Wool Products Labeling Act of 1939:

*It is ordered*, That the respondents, Alexander Conn and Lionel Conn, individually and trading as Conn's Clothiers, or trading under any other name, jointly or severally, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, transportation or distribution in commerce, as "commerce" is defined in the aforesaid acts, of men's wearing apparel or any other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products by failing to affix securely to, or place on, such products a stamp, tag, label, or other means of identification, showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any nonfibrous loading, filling, or adulterating matter.

(c) The name or registered identification number of the manufacturer of such wool products or of one or more persons introducing such wool products into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

(d) In the case of a wool product containing a fiber other than wool, the percentages, by weight, in words and figures plainly legible, of the wool contents thereof.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *And provided, further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or the rules and regulations promulgated thereunder.

800

Order

*It is further ordered,* That said respondents and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale or distribution of men's wearing apparel or any other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the mutilation of any stamp, tag, label, or other means of identification, affixed to any such "wool product" pursuant to the provisions of the Wool Products Labeling Act of 1939, with intent to violate the provisions of said act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by said act.

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

IN THE MATTER OF  
JACOB COLON AND EVELYN COLON, TRADING AS E. & J.  
DISTRIBUTING CO.

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

*Docket 5368. Complaint, Aug. 18, 1945—Decision, May 15, 1950*

Where two individuals engaged in the competitive interstate sale and distribution of household merchandise, novelties, toiletries, and other articles; in promoting the sale of their products—

Distributed to prospective sales representatives throughout the United States advertising or sales circulars which contained pictorial and descriptive matter with respect to certain articles offered by them as compensation for the sale of their products, and depictions and descriptive matter as to articles offered for sale, and included also a list of items and the prices thereof, and adjacent thereto a pull card for use in accordance with a plan whereby the legend concealed under the tab selected and pulled by the customer determined the price he paid and the article he received; and the sales representative or operator collected and remitted the amounts thus called for; distributed to his customers the merchandise thus secured by them; and was compensated in merchandise or cash; and thereby,

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise through the aforesaid typical scheme, through which there was determined by the fortune of the draw which article each purchaser received and the amount of money he was required to pay, and whether he received an article which was of appreciable utility or value to him or met with his desires for other reasons; contrary to an established public policy of the United States Government;

With the result that many persons were attracted by their sales methods and by the element of chance involved therein, and were induced thereby to buy and sell said merchandise in preference to that offered and sold by competitors who do not use such or any equivalent methods; and with tendency and capacity to divert trade in commerce unfairly from aforesaid competitors:

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

As respects the fact that the pull tab device involved in the foregoing proceeding contained a "notice to purchasers," which advised them that the price of an article was printed on the back of each slip and that they were privileged, if they wished to buy the article, to pay the holder of the book the price shown, and that they were not required to buy the article if they did not want it, it appearing that said notice was not ordinarily called to the attention of the prospective purchaser by the sales representative; that the successful operation of the sales plan was dependent upon the ability of the representa-

## Complaint

tive to sell all the articles listed; that only in special cases were partial orders forwarded and that no instance appeared in which a person who pulled one of the tabs refused to accept or pay for the merchandise designated thereon; and that respondent's instructions to representatives contained no provision for such a contingency, but, on the contrary, contemplated that all of the articles listed should be sold;

The Commission found as a practical matter that the so-called notice to purchasers had no substantial effect upon the operation of the sales plan and did not serve to remove the lottery element from their sales method.

Before *Mr. James A. Purcell*, trial examiner.

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

*Mr. Armen D. Anderson, Jr.*, and *Mr. Arthur D. Herrick*, 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 Jacob Colon and Evelyn Colon, individuals, and trading as E. & J. Distributing 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Jacob Colon and Evelyn Colon, are individuals trading and doing business as E. & J. Distributing Co., with their office and principal place of business located at 313-15 East Thirteenth Street in the city of New York, N. Y. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of household merchandise, novelties, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, 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 States of the United States other than New York, and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, respondents are and have been in competition with other individuals and firms and with corporations engaged in the sale and distribution of similar

articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents cause to be distributed to representatives and salesmen and prospective representatives and salesmen certain advertising literature including a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers, or prospective purchasers, of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values of some of said articles induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the same sums to the respondents, the said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute various assortments of said merchandise and furnish various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance, or the sale of a chance to procure an article of merchandise at a price less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in commerce in competition with the respondents, as above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said methods by respondents, because of said game of chance, has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from the said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 18, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Jacob Colon and Evelyn Colon, individuals trading as E. & J. Distributing Co., charging said respondents with the use of unfair methods

of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of that act. After the filing by respondents of their joint answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, respondents' answer thereto, testimony, and other evidence, recommended decision of the trial examiner, briefs in support of the complaint and in opposition thereto, and oral arguments; 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, Jacob Colon and Evelyn Colon, are individuals trading and doing business as E. & J. Distributing Co., with their office and principal place of business located at 313-315 East Thirteenth Street in the city of New York, N. Y.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of household merchandise, novelties, toiletries, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia, and have caused said merchandise, 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 States of the United States other than New York, and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are, and have been, in competition with other individuals, firms, and corporations engaged in the sale of similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In promoting the sale of their merchandise respondents have distributed advertising or sales circulars to prospective sales representatives located at various points throughout the United States. These circulars contain pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondents as compensation for the sale of their products and also pictorial representations and descriptive matter as to certain of the articles of merchandise offered for sale.

A portion of said sales circular consists of a list in which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card, consisting of a number of tabs under each of which are concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and its price are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive and the price which they are to pay, until after the tab is separated from the card. When a purchaser has detached a tab from such pull card and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise.

When the person or representative operating the pull card has succeeded in selling all the tabs or chances, collected the amounts called for and remitted the same sums to the respondents, respondents thereupon ship to such representative the merchandise designated on the card, together with a premium or premiums for the representative as compensation for operating the pull card and selling the merchandise. If the representative so desires, he is permitted to deduct from the amount of money remitted a special cash premium in lieu of the merchandise premium. The operator then delivers the merchandise to purchasers of the tabs in accordance with the list which was filled out at the time the tabs were detached by the purchasers.

PAR. 5. The particular article of merchandise each purchaser is to receive and the amount of money which he is required to pay are determined wholly by a game of chance, and whether the purchaser receives an article which is of appreciable utility or value to him, or meets with his desires for other reasons, depends on the fortune of the draw. Respondents sell and distribute various assortments of merchandise and furnish pull cards varying in detail for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme, but the foregoing is illustrative of the principle involved.

The persons to whom respondents furnish the pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise, and the sale of such merchandise by and through the use thereof and by the aid of such method is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 6. In connection with the pull tab device, the following reading matter appears:

**NOTICE TO PURCHASERS**—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds, however, that despite this notice the articles of merchandise in fact are sold and distributed by means of the pull-card device in accordance with the sales plan described in paragraph 4 hereof. The record indicates that the notice is not ordinarily called to the attention of the prospective purchaser by the sales representative. Moreover, the successful operation of the sales plan is dependent upon the ability of the representative to sell all the articles listed inasmuch as it makes possible remittance of the required amount to respondents in order to obtain the merchandise purchased and in order for the operator to obtain the premium for the sale of the merchandise. It is only in exceptional cases that partial orders are forwarded to respondents.

The record discloses no instance in which a person who pulled one of the tabs from the card has refused to accept or pay for the merchandise designated on the tab. Moreover, in respondents' instructions to the representative which appear in the circular there is no direction as to what should be done in the event all articles of merchandise are not sold. The circular likewise omits any information as to the premium or compensation which may be obtained by the representative in the event of refusal on the part of any purchaser to accept the article listed on the tab pulled by such purchaser.

It is apparent from the instructions that the plan contemplates that all of the articles listed are to be sold. For example, the instructions contain the following:

**THESE ARE THE THREE EASY STEPS TO YOUR AWARD:**

1. Sell to your friends, relatives and neighbors the 24 articles of merchandise listed on this catalog.

They will be glad to buy one or more of the articles. The name and price of the article is printed plainly on each slip.

2. Collect the purchase price of each article from your friends. Prices range from 9¢ to 48¢, none higher. When all 24 articles are sold, and money is collected by you, follow step number three.

3. Send us your money order and order, advising premium you have selected. Detach and fill out order blank, mail it to us with the \$10.18 you have collected plus whatever extra charge on premium you have selected.

808

## Order

The part of the circular designed to be detached for use by the representative as an order blank reads, in part:

After you have sold the 24 articles of merchandise and collected \$10.18 fill out this order blank, stating the correct number of premium you have selected. Also print your name and address plainly, and mail it to us.

The E. & J. Distributing Co., 313-15 E. 13th St., New York 3, N. Y.

GENTLEMEN: Please ship at once all charges prepaid, the 24 articles of merchandise I sold amounting to \$10.18 and one of the valuable premiums.

The Commission therefore finds that as a practical matter the so-called notice to purchasers has no substantial effect upon the operation of the sales plan and that it does not serve to remove the lottery element from respondents' sales method.

PAR. 7. Among the individuals, partnerships, and corporations engaged in the sale and distribution of merchandise in competition with respondents are those who have not adopted or used methods involving a game of chance or method opposed to public policy. Many persons have been attracted by respondents' sales method and by the element of chance involved therein and have been induced thereby to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by those competitors of respondents who do not use the same or any equivalent method. The use by respondents of their sales method has the tendency and capacity to divert trade in commerce unfairly from said competitors.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

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

Order

46 F. T. C.

below have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That respondents, Jacob Colon and Evelyn Colon, individuals trading as E. & J. Distributing Co., or trading under any other name or designation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of household merchandise, novelties, toiletries, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Supplying to or placing in the hands of others pull cards or any other device or devices which are to be used, or may be used, in the sale or distribution of respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

(2) Shipping, mailing, or transporting to agents or distributors, or to members of the public, pull cards or any other device or devices which are to be used, or may be used, in the sale or distribution of respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

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

Commissioner Mason concurring in the findings as to the facts and conclusion, but not concurring in the form of order to cease and desist, for the reasons stated in his opinion concurring in part and dissenting in part in Docket 5203—Worthmore Sales Co.<sup>1</sup>

<sup>1</sup> See 46 F. T. C. 606 at 622 et seq.

## Syllabus

## IN THE MATTER OF

## UNIVERSAL RADIO-VISION TRAINING CORP. 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 5626. Complaint, Dec. 7, 1948—Decision, May 15, 1950*

Where a corporation, three officers thereof, and its "Superintendent of Instruction," who controlled and formulated its advertising policy, including the acts and practices below described; engaged in conducting correspondence courses of instruction for home study in the theory of radio and television, and in promoting the sale thereof through field agents who personally approached their prospects, and through newspapers published in California, Kansas, and Louisiana, and others published and circulated throughout the United States, and in leaflets, circulars, form letters and cards, printed contracts, and other mediums; in their said advertising, directly and by implication—

- (a) Represented that said corporation was a successor of the American Institute of Technology and had been in continuous operation since 1934; the facts being there was no connection whatever between said American Institute of Technology of Detroit, and their school, which was incorporated in California in 1946;
- (b) Represented that any one with a liking for radio, electronics, and television might become part of said industry and be assured of high-paying positions therein; that men and women from 17 to 50 might successfully train for and become certified technicians in the electronic industry; and that there should be millions of high-paid jobs for personnel trained in electronics;

The facts being that while the study of electronics and allied subjects requires a minimum of high-school training and special aptitude, they enrolled numerous individuals who were in nowise qualified, as the soliciting individuals knew; their course was confined to the teaching of theory and was wholly insufficient properly to prepare and train one as a technician in the field concerned, in which practical training and experience is required to qualify anyone; and the representation as to prospective public jobs available not only grossly exaggerated the number, but misleadingly implied that their graduates would be qualified for any position in the electronic field at a higher salary;

- (c) Represented that the course included the building of testing equipment for the purpose of performing home laboratory experiments, and that the equipment therefor was furnished by them; when in fact they furnished no equipment of any kind to students other than the 100 lessons which comprised the course; and

Where said corporation and individuals—

- (d) Represented personally through their field agents and officers that graduates might earn from \$125 to \$325 weekly and up to \$700 a month in the television industry; and that their course properly prepared students to obtain and hold lucrative positions in the electronics industry, including broadcasting, public address systems, and sound;

## Complaint

46 F. T. C.

The facts being that the electronic industry would not employ persons who had not had practical training or experience of from 3 to 5 years; no graduate of their school could qualify as other than an apprentice; and the wages paid to apprentice employees were substantially less than the minimum amount represented by them as being paid to graduates;

(e) Represented as aforesaid that graduates became certified radio technicians and that they were qualified to make such certification; and that graduates might be certified as radio technicians by the Federal Communications Commission through their branch offices;

The facts being that they had not been empowered by any State or national or educational organization to certify their students as technicians, nor did said Commission so certify graduates; said students did not become technicians in radio electronics; and the diploma issued to that effect was not recognized in the industry as evidence of proper qualification therefor; and

(f) Falsely represented that the Bell Telephone Co. and other large electronic organizations employed graduates of their school at the beginning salary of \$500 a month;

The fact being that neither said company nor any other firm engaged in the radio, television, and electronics industry was employing their graduates; all employees engaged in the electronic industry are subject to the rules and regulations established by the trade unions in said industry; and generally no persons can be employed who have not had from 3 to 5 years apprentice training in said trade unions;

With effect of misleading and deceiving many members of the purchasing public into the erroneous belief that such representations were true, and thereby causing a substantial portion of the public to purchase their said course of instruction, and with capacity and tendency so to mislead and deceive:

*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. William L. Pencke* for the Commission.

*Mr. Frederick I. Frischling*, of Los Angeles, Calif., 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 Universal Radio-Vision Training Corp., a corporation, and Earl G. Hopkins, Hiram W. Haueter, and Charles L. Turly, individually and as officers of Universal Radio-Vision Training Corp., and Benjamin P. Scott, individually and as superintendent of instruction of said 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, Universal Radio-Vision Training Corp., is a California corporation, with its office and principal place of busi-

**Complaint**

ness located at 1025-7 North Highland Avenue, Hollywood, Calif. Respondents, Earl G. Hopkins, Hiram W. Haueter, and Charles L. Turly, are individuals and officers of the corporate respondent, Universal Radio-Vision Training Corp., and as such officers, together with Benjamin P. Scott, acting as superintendent of instruction, they are responsible for and control and formulate and have controlled and formulated the advertising policies of said corporate respondent, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondent.

Respondents are now, and since March 14, 1946, have been engaged in conducting a correspondence school, and in selling and distributing in commerce between and among the various States of the United States and in the District of Columbia courses of instruction for home study in the theory of radio and television. They have caused and are causing printed courses of instruction in said subjects, when sold, to be transported from their place of business in the State of California to student enrollees, who are the purchasers thereof, at their respective addresses in other States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business in commerce as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of their said courses of instruction, respondents, through field agents, who personally approach their prospects, and also by means of advertisements inserted and caused by respondents to be inserted in newspapers published in the States of California, Kansas, Louisiana, and other newspapers published and circulated throughout the United States, and in leaflets, circulars, form letters and card, printed contracts and other mediums, distributed through the United States mails, have made and are making numerous false, deceptive, and misleading statements and representations with respect to the advantages and benefits which the purchasers of their said course of instruction could expect to receive. Among and typical of such false and misleading statements and representations so used by the respondents are the following:

History of Universal Radio-Vision Training Corporation (formerly American Institute of Technology, Detroit, Michigan).

American Institute of Technology founded by B. P. Scott in 1934 and licensed by State of Michigan in 1935.

## Complaint

46 F. T. C.

Hundreds of students have been trained by American Institute of Technology and placed in nearly every broadcasting station in Michigan, as well as several with State police net in Michigan and other States . . .

Reopened in Hollywood as Universal Training Corporation in February, 1946 . . .

If you like RADIO, ELECTRONICS and TELEVISION—and are anxious to secure a better job with MORE PAY—this letter will interest you . . . YOU, TOO, may become a part of this new and fast-growing industry, an industry which should offer millions of HIGH PAID jobs to personnel trained in this work.

We are selecting MEN and WOMEN NOW to be trained as certified radio, electronic and television technicians.

Wanted! Men and women 17 to 50, to train now as certified technicians in F. M. radio and television.

Training will not interfere with your present position.

You learn by building your own testing equipment, and by performing 50 home laboratory experiments. Equipment furnished.

Television! Today's most promising new field of opportunity, offers excellent pay for trained personnel. Wanted, immediately, men and women to train now as certified radio and television technicians—broadcasting, public address systems and sound.

Through personal representations made by field agents and officers of respondent corporation, respondents further represent that graduates may earn from \$125 to \$325 weekly, and up to \$700 a month in the television industry; that students having enrolled and subscribed for said course of study may discontinue the same at any time without being required to pay the balance of tuition fees which may be due; that graduates may be certified as radio technicians by the Federal Communications Commission through their branch offices; that the Bell Telephone Co. and other large electronic organizations employ graduates of respondents' school at a beginning salary of \$500 a month; that respondents' school gives more actual training in 9 months than may be received at the Massachusetts Institute of Technology in 4 years; that graduates become certified radio technicians and that respondents are qualified to make such certification.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and many others of similar import and effect, respondents represent, directly and by implication, that the corporate respondent, Universal Radio-Vision Training Corp., is a successor of the American Institute of Technology and has been in continuous operation since 1934; that anyone with a liking for radio, electronics, and television may become part of said industry and be assured of high paid positions therein; that men and women from the ages of 17 to 50 may successfully train for and become certified technicians in the electronic industry; that the studies may be pursued without interfering with any other work done by students, and that the course of study includes the building of testing equipment for the purpose of

performing home laboratory experiments, and the equipment therefor is furnished by respondents; that graduates may be assured of earning anywhere from \$125 a week to \$700 a month in the television industry; that said course of study properly prepares said students to enable them to obtain and hold lucrative positions in the electronics industry, including broadcasting, public address systems, and sound; that students may discontinue said course of study at any time without being obligated to pay the balance of the tuition fee; that respondents' school is recognized as having authority to certify its graduates as radio technicians, and that the Federal Communications Commission, through its branch offices, certifies respondents' graduates as radio technicians; that prominent firms in the electronic and radio industry employ respondents' graduates at salaries beginning at \$500 a month; that said course of study is superior to the work offered by Massachusetts Institute of Technology, and that students may be trained in less time through respondents' course than by attending standard residence schools.

PAR. 4. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' course in electronics, radio, and television is confined to the teaching of theory in said subject and is wholly insufficient to properly prepare and train one as a technician in said fields. Substantial practical training and experience is required to qualify anyone as a technician and respondents' course of study can offer no more than a fundamental theoretical knowledge of electronics.

The representation that respondents' business was established in 1934 as the American Institute of Technology and implying that the school has been operated continuously, is wholly false and misleading. There is no connection whatever between said American Institute of Technology of Detroit, Mich., and respondents' present school, which was incorporated in the State of California in 1946.

The representation that there should be millions of high paid jobs to personnel trained in electronics is not only grossly exaggerated with respect to the number of jobs actually available, but also misleadingly implies that respondents' graduates would be qualified for any position in the electronic field at a high salary.

Respondents' students do not become certified technicians in radio electronics, and the diploma issued to that effect is not recognized in the electronic industry as evidence of proper qualification for certified radio technicians; and respondents have not been empowered by any State or national or educational organization to certify their students as technicians. Neither will the Federal Communications Commis-

sion, either directly or through any branch office, certify any of respondents' graduates as radio technicians.

The representation that said course of study may be pursued during the spare time of the student and will not interfere with other activities and may be completed within 2 years time is unwarranted and misleading. The subject of electronics requires not only special aptitude, but is so intricate that no average student could possibly master said subject by studying in his or her spare time within a period of 2 years and become qualified to hold a position as radio technician or similar position requiring a thorough knowledge of electronics.

The representation that equipment is furnished for home laboratory experiments is false in that no equipment of any kind is furnished to students, other than the 100 lessons comprising the course.

The representations that students may earn from \$125 weekly, to \$700 monthly, are false. The electronic industry will not employ persons who have not had practical training or experience of from 3 to 5 years, and no graduate of respondents' school could qualify as other than an apprentice; and the wages paid to apprentice employees are substantially less than the minimum amounts represented by the respondents as being paid to graduates. Neither the Bell Telephone & Telegraph Co., nor any other firm engaged in the radio, television, and electronics industry is employing respondents' graduates. Moreover, all employees engaged in the electronic industry are subject to the rules and regulations established by the trade unions in said industry, and generally no persons can be employed who have not had from 3 to 5 years' apprentice training in said trade unions. Although the study of electronics and allied subjects requires a minimum of high-school training and special aptitude, respondents have enrolled numerous individuals who are in no wise qualified, either by education or aptitude, to pursue said course, respondents knowing, at the time of soliciting said students, that they had no such qualifications.

PAR. 5. The statements, representations, and implications made and caused to be made by respondents, as set forth herein, have had and now have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such statements, representations, and implications are true, and because of such erroneous and mistaken belief, cause a substantial portion of the public to purchase respondents' said course of instruction.

PAR. 6. 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 December 7, 1948, issued and subsequently served its complaint in this proceeding on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of said act. After the issuance of said complaint and the filing of respondents' answer thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and substitute in lieu thereof an answer admitting all of the material allegations of facts set forth in the complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer, 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, Universal Radio-Vision Training Corp., is a California corporation, with its office and principal place of business located at 1025-7 North Highland Avenue, Hollywood, Calif. Respondents Earl G. Hopkins, Hiram W. Haueter, and Charles L. Turley are individuals and officers of the corporate respondent, Universal Radio-Vision Training Corp., and as such officers, together with Benjamin P. Scott, acting as superintendent of instruction, they are responsible for and control and formulate and have controlled and formulated the advertising policies of said corporate respondent, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondent.

Respondents are now, and since March 14, 1946, have been, engaged in conducting a correspondence school and in selling and distributing in commerce between and among the various States of the United States and in the District of Columbia courses of instruction for home study in the theory of radio and television. They have caused and are causing printed courses of instruction in said subjects, when sold, to be transported from their place of business in the State of California to student enrollees, who are the purchasers thereof, at their respective

addresses in other States of the United States and in the District of Columbia.

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

PAR. 2. In the course and conduct of their business in commerce as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of their said course of instruction, respondents, through field agents, who personally approach their prospects, and also by means of advertisements inserted and caused by respondents to be inserted in newspapers published in the States of California, Kansas, and Louisiana, and other newspapers published and circulated throughout the United States, and in leaflets, circulars, form letters and cards, printed contracts, and other mediums, distributed through the United States mails, have made and are making numerous false, deceptive, and misleading statements and representations with respect to the advantages and benefits which the purchasers of their said course of instruction could expect to receive. Among and typical of such false and misleading statements and representations so used by the respondents are the following:

History of Universal Radio-Vision Training Corporation (formerly American Institute of Technology, Detroit, Michigan).

American Institute of Technology founded by B. P. Scott in 1934 and licensed by State of Michigan in 1935.

Hundreds of students have been trained by American Institute of Technology and placed in nearly every broadcasting station in Michigan, as well as several with State police net in Michigan and other States . . .

Reopened in Hollywood as Universal Training Corporation in February, 1946 . . .

If you like RADIO, ELECTRONICS and TELEVISION—and are anxious to secure a better job with MORE PAY—this letter will interest you . . . YOU, TOO, may become a part of this new and fast-growing industry, an industry which should offer millions of HIGH PAID jobs to personnel trained in this work.

We are selecting MEN and WOMEN NOW to be trained as certified radio, electronic and television technicians.

Wanted! Men and women 17 to 50, to train now as certified technicians in F. M. radio and television.

You learn by building your own testing equipment, and by performing 50 home laboratory experiments. Equipment furnished.

Television! Today's most promising new field of opportunity, offers excellent pay for trained personnel. Wanted, immediately, men and women to train now as certified radio and television technicians—broadcasting, public address systems and sound.

Through personal representations made by field agents and officers of respondent corporation, respondents further represent that graduates may earn from \$125 to \$325 weekly, and up to \$700 a month in the television industry; that graduates may be certified as radio technicians by the Federal Communications Commission through their branch offices; that the Bell Telephone Co. and other large electronic organizations employ graduates of respondents' school at a beginning salary of \$500 a month; that graduates become certified radio technicians and that respondents are qualified to make such certification.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and many others of similar import and effect, respondents represent, directly and by implication, that the corporate respondent, Universal Radio-Vision Training Corp., is a successor of the American Institute of Technology and has been in continuous operation since 1934; that anyone with a liking for radio, electronics, and television may become part of said industry and be assured of high-paid positions therein; that men and women from the ages of 17 to 50 may successfully train for and become certified technicians in the electronic industry; that the course of study includes the building of testing equipment for the purpose of performing home laboratory experiments, and the equipment therefor is furnished by respondents; that graduates may be assured of earning anywhere from \$125 a week to \$700 a month in the television industry; that said course of study properly prepares said students to enable them to obtain and hold lucrative positions in the electronics industry, including broadcasting, public address systems, and sound; that respondents' school is recognized as having authority to certify its graduates as radio technicians, and that the Federal Communications Commission, through its branch offices, certifies respondents' graduates as radio technicians; and that prominent firms in the electronic and radio industry employ respondents' graduates at salaries beginning at \$500 a month.

PAR. 4. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' course in electronics, radio, and television is confined to the teaching of theory in said subject and is wholly insufficient to properly prepare and train one as a technician in said field. Substantial practical training and experience is required to qualify anyone as a technician and respondents' course of study can offer no more than a fundamental theoretical knowledge of electronics.

The representation that respondents' business was established in 1934 as the American Institute of Technology and implying that the school has been operated continuously is wholly false and misleading.

There is no connection whatever between said American Institute of Technology of Detroit, Mich., and respondents' present school, which was incorporated in the State of California in 1946.

The representation that there should be millions of high-paid jobs to personnel trained in electronics is not only grossly exaggerated with respect to the number of jobs actually available, but also misleadingly implies that respondents' graduates would be qualified for any position in the electronic field at a high salary.

Respondents' students do not become certified technicians in radio electronics, and the diploma issued to that effect is not recognized in the electronic industry as evidence of proper qualification for certified radio technicians; and respondents have not been empowered by any State or national or educational organization to certify their students as technicians. Neither will the Federal Communications Commission, either directly or through any branch office, certify any of respondents' graduates as radio technicians.

The representation that equipment is furnished for home laboratory experiments is false in that no equipment of any kind is furnished to students, other than the 100 lessons comprising the course.

The representations that students may earn from \$125 weekly to \$700 monthly are false. The electronic industry will not employ persons who have not had practical training or experience of from 3 to 5 years, and no graduate of respondents' school could qualify as other than an apprentice; and the wages paid to apprentice employees are substantially less than the minimum amounts represented by the respondents as being paid to graduates. Neither the Bell Telephone & Telegraph Co. nor any other firm engaged in the radio, television, and electronics industry is employing respondents' graduates. Moreover, all employees engaged in the electronic industry are subject to the rules and regulations established by the trade-unions in said industry, and generally no persons can be employed who have not had from 3 to 5 years' apprentice training in said trade-unions. Although the study of electronics and allied subjects requires a minimum of high-school training and special aptitude, respondents have enrolled numerous individuals who are in nowise qualified, either by education or aptitude, to pursue said course, respondents knowing, at the time of soliciting said students, that they had no such qualifications.

PAR. 5. The statements, representations, and implications made and caused to be made by respondents, as set forth herein, have had and now have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such statements, representations, and implications

817

Order

are true, and because of such erroneous and mistaken belief, cause a substantial portion of the public to purchase respondents' said course of instruction.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

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

*It is ordered,* That the corporate respondent, Universal Radio-Vision Training Corp., a California corporation, and its officers, agents, representatives, and employees, and the individual respondents, Earl G. Hopkins, Hiram W. Haueter, Charles L. Turly, and Benjamin P. Scott, and their 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 courses of study and instruction, do forthwith cease and desist from representing by any means, directly or indirectly:

(1) That their business of conducting a correspondence school was established in 1934, or in any other year prior to that in which it was actually established;

(2) That their correspondence school is a successor to, or has any connection with, the American Institute of Technology, of Detroit, Mich.

(3) That the course of study and instruction sold by them is sufficient to properly prepare and train men and women as technicians in the electronic industry;

(4) That equipment for performing home laboratory experiments is furnished to students;

(5) That graduates of their correspondence school become certified radio technicians, or that respondents have any authority to certify graduates of their correspondence school as radio technicians;

## Order

46 F. T. C.

(6) That the Federal Communications Commission, either directly or through any branch office, will certify graduates of respondents' correspondence school as radio technicians;

(7) That graduates of their correspondence school are qualified to fill highly paid positions in the electronic industry;

(8) That graduates of their correspondence school may earn amounts in excess of the wages currently being paid in the electronic industry to apprentice employees;

(9) That prominent firms in the electronic industry employ graduates of respondents' correspondence school.

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

## Complaint

## IN THE MATTER OF

NATIONAL TEA COMPANY AND NATIONAL TEA  
COMPANY—STANDARD GROCERY DIVISION

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

*Docket 5648. Complaint, Apr. 7, 1949—Decision, May 15, 1950*

Where a corporation engaged in the operation of some 700 retail grocery stores in Chicago, and 48 stores in Indianapolis, and in purchasing in interstate commerce, as thus engaged, from various sellers numerous food and grocery items for resale, in competition with others similarly engaged—

Adopted and pursued purchasing policies and practices which were knowingly designed and intended to induce, and which did induce, from a number of sellers, discriminatory prices favorable to it in its purchases of the aforesaid merchandise, and which included, as illustrative, its advertised "Multi-Million Dollar Profit-Sharing Plan," pursuant to which (and following prior arrangements solicited from a number of its sellers), it issued books of coupons of a designated cash value when used and applied to the purchase of the merchandise depicted thereon, which it redeemed and delivered to the respective sellers whose merchandise had been concerned in said transactions, so that the latter might reimburse it through paying to it the coupons' designated cash value;

With the result that it purchased the food and grocery items involved therein at prices below the sellers' customary prices, and was enabled to and did resell said merchandise below the retail prices usually obtained by it and by its competitors;

Effect of which discriminations in price, so induced and received by it, was and might be to substantially lessen competition in the line of commerce in which said sellers and its competitors were engaged, and to injure, destroy, or prevent competition with said sellers and with it in the resale of food and grocery items and similar merchandise of like grade and quality:

*Held*, That such acts and practices, under the circumstances set forth, constituted violations of Sec. 2 (f) of the Clayton Act, as amended by the Robinson-Patman Act.

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

*Kirkland, Fleming, Green, Martin & Ellis*, of Chicago, Ill., for respondents.

## COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19, 1936

## Complaint

46 F. T. C.

(U. S. C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. National Tea Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 1000 Crosby Street, Chicago, Ill.

National Tea Co.-Standard Grocery Division is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 675 East Washington Street, Indianapolis, Ind. Said Indiana corporation is a wholly owned subsidiary of National Tea Co. the aforesaid Illinois corporation.

National Tea Co. and National Tea Co.-Standard Grocery Division are engaged in the business of the purchase of food and grocery items for resale, and in such connection conduct a chain grocery business. Respondent National Tea Co., the Illinois corporation, operates some 700 retail grocery stores in various of the central States of the United States, including 236 such stores in the city of Chicago, Ill. Respondent National Tea Co.-Standard Grocery Division, the Indiana corporation, operates 48 such stores in the city of Indianapolis, Ind.

PAR. 2. Respondents National Tea Co. and National Tea Co.-Standard Grocery Division, in the course and conduct of their aforesaid businesses, have purchased and now purchase in interstate commerce from sellers or from sellers engaged in interstate commerce, numerous food and grocery items for resale and in such purchase and resale transactions, said respondent corporations are now and have been in active and substantial competition with other corporations, partnerships, firms and individuals similarly so located and engaged in the business of such purchase for resale of the same or similar merchandise of like grade and quality from the same or competitive sellers.

The aforesaid merchandise sellers are variously located in the several States of the United States and the aforesaid merchandise buyers and said sellers cause said merchandise when purchased as aforesaid to be shipped and transported among and between the several States of the United States from the respective locations of the various sellers to the respective locations of the various buyers of the same for resale.

PAR. 3. Respondents National Tea Co. and National Tea Co.-Standard Grocery Division, since June 1936, have adopted, followed and pursued purchasing policies and practices which were knowingly designed and intended to induce and did induce from such of the aforesaid merchandise sellers as acceded, discriminatory purchase prices favorable to said respondent corporations in their purchases of the afore-described merchandise for resale.

Said respondents, in furtherance of said policies and practices, during the months of October, November, and December 1948, advertised certain offers to the purchasing public illustrative of which was what respondents termed a "Multi-Million Dollar Profit-Sharing Plan" to prospective and potential customers whereunder respondents offered to give away and redeem during designated times in connection with merchandise purchases made in respondents' retail stores located in Chicago, Ill., Indianapolis, Ind., and variously in the States of Illinois, Iowa, Michigan, and Indiana approximately 500,000 coupon books containing some 25,000,000 coupons of the aggregate total cash value of \$2,700,000.

Respondents National Tea Co. and National Tea Co., Standard Grocery Division, following prior arrangements and agreements solicited from and made with the aforesaid acceding sellers in connection with such resale of said merchandise purchased as hereinbefore described, thereupon issued said coupon books containing said coupons each of a designated cash value when used and applied to the purchase of the merchandise depicted thereon. Following such merchandise resale and pursuant to said prior arrangements and agreements, each acceding seller reimbursed and paid to respondents National Tea Co. and National Tea Co., Standard Grocery Division, the designated cash value appearing on such coupons as were redeemed by said respondents in connection with such resale of the particular seller's merchandise.

PAR. 4. Respondents National Tea Co. and National Tea Co., Standard Grocery Division, through the adoption and use of said coupons in the aforesaid merchandise purchase and resale transactions at said times as afore described, were enabled to and did both purchase and resell the merchandise therein concerned, at a selling price below the sellers customary and normal selling price to said respondents and respondents' said competitors for the same or similar merchandise of like grade and quality, and at a retail price below the customary and normal retail price usually obtained by respondents and respondents' said competitors for such merchandise.

The effect of said discriminations in price as hereinbefore set forth has been and may be to substantially lessen competition in the lines of commerce in which the aforesaid sellers and the respondents and respondents' said competitors are engaged, and to injure, destroy, or prevent competition with the aforesaid sellers and the respondents in the resale of food, grocery items, and similar merchandise of like grade and quality purchased from the sellers hereinbefore described.

PAR. 5. The foregoing acts and practices of said respondents are in violation of section 2 (f) of the said act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the 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, sec. 13) and for other purposes."

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

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), the Federal Trade Commission on April 7, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended. The answer of the respondent, National Tea Co., was filed on May 31, 1949. On July 8, 1949, the respondent, National Tea Co., filed with the Commission a motion for permission to withdraw the aforesaid answer and in lieu thereof to file a substitute answer in which said respondent, solely for the purposes of this proceeding, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and hearings as to said facts, but reserved to itself the right to file a brief and present oral argument as to what order, if any, should be issued on the facts admitted. By order issued September 30, 1949, the Commission granted said motion and directed the respondent within 20 days after service upon it of said order to file its brief. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and substitute answer (respondent, National Tea Co., not having filed a brief within the time fixed in the Commission's order of September 30, 1949, and not having requested 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, National Tea Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Said respondent maintains its office and principal place of business at 1000 Crosby Street, in the city of Chicago, State of Illinois.

The complaint in this proceeding alleged also that the National Tea Co., Standard Grocery Division, is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Indiana, with its office and principal place of business located at 675 East Washington Street, in the city of Indianapolis, State of Indiana. According to the original answer of the respondent National Tea Co., however, the National Tea Co., Standard Grocery Division, has no separate corporate existence from the National Tea Co., the Illinois corporation, and is merely a division of said corporation. On the basis of this information, the Commission in using the term "respondent" hereinafter refers solely to the National Tea Co., the Illinois corporation.

PAR. 2. The respondent, National Tea Co., is engaged in the retail grocery business. Said respondent operates a chain of some 700 retail grocery stores in a number of the Central States of the United States, including 236 such stores in the city of Chicago, State of Illinois, and 48 such stores in the city of Indianapolis, State of Indiana.

PAR. 3. In the course and conduct of its business, the respondent purchases in interstate commerce from various sellers numerous food and grocery items for resale. In such purchase transactions, and in the subsequent resale of the merchandise, the respondent is now and at all times mentioned herein has been in active and substantial competition with other corporations and with partnerships, firms, and individuals similarly engaged in the purchase and resale of the same or similar merchandise of like grade and quality from the same or competitive sellers. The sellers of said merchandise are variously located in the several States of the United States, and their merchandise, when purchased by the respondent, and by other purchasers, is shipped and transported among and between the several States of the United States from the respective locations of said sellers to the respective locations of the respondent and other purchasers.

PAR. 4. The respondent, National Tea Co., since June 19, 1936, has adopted, followed, and pursued purchasing policies and practices which were knowingly designed and intended to induce, and which have induced, from a number of the aforesaid sellers, discriminatory purchase prices favorable to said respondent in its purchases of the aforesaid food and other merchandise.

The respondent, pursuant to and in furtherance of said policies and practices, during the months of October, November, and December of 1948, advertised to the purchasing public certain offers, illustrative of which was one termed by the respondent a "Multi-Million Dollar Profit-Sharing Plan." Under this plan, the respondent offered to give out and to redeem during certain designated times, in connection with purchases made in its retail stores located in Chicago, Ill., Indianapolis, Ind., and in various other cities in the States of Illinois, Iowa, Michigan, and Indiana, approximately 25 million coupons, con-

Order

46 F. T. C.

tained in approximately 500,000 coupon books, having an aggregate total cash value of \$2,700,000. Following prior arrangements and agreements solicited from and made with a number of sellers from whom the respondent purchased its food and grocery items for resale, the respondent thereupon issued the coupon books described in said advertisements, each of which coupon therein was of a designated cash value when used and applied to the purchase of the merchandise depicted thereon. Upon the redemption of said coupons by the respondent, they were in turn delivered to the respective sellers in connection with the resale of whose merchandise said coupons were issued, and each of such sellers participating in the plan thereupon reimbursed and paid to the respondent the designated cash value appearing on such coupons.

PAR. 5. The respondent, National Tea Co., through the adoption and use of the aforesaid plan in connection with its purchase transactions was enabled to and did purchase the food and grocery items involved therein at prices below the sellers' customary and normal prices to the respondent and its competitors for the same or similar merchandise of like grade and quality. Said respondent at the same time was enabled to and did resell said merchandise below the customary and normal retail prices usually obtained by it and by its competitors for such merchandise.

PAR. 6. The effect of the discriminations in price, induced and received by the respondent, as aforesaid, was and may be to substantially lessen competition in the lines of commerce in which the sellers of the merchandise involved and the respondent and its competitors are engaged, and to injure, destroy, or prevent competition with said sellers and with the respondent in the resale of food and grocery items and similar merchandise of like grade and quality.

#### CONCLUSION

The acts and practices of the respondent, as herein found, constituted violations of subsection (f) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13).

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, National Tea Co., in which answer said respondent

admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated subsection (f) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13):

*It is ordered,* That the respondent, National Tea Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of food products or other items of merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Knowingly inducing or receiving from any manufacturer or seller, by or through the use of any profit-sharing plan, or otherwise, any discount, rebate or other allowance higher than, or any price lower than, that allowed by such manufacturer or seller to competitors of said respondent; provided, however, that the foregoing shall not be construed to preclude the respondent from defending any alleged violation of this order by showing that any higher discount, rebate or other allowance, or any lower price, knowingly induced or received by it, was one available to said respondent's competitors who were customers of the manufacturer or seller upon openly announced prices of such manufacturer or seller.

*It is further ordered,* For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to National Tea Co., Standard Grocery Division.

*It is further ordered,* That the respondent, National Tea Co., shall, within 60 days after service upon it of a copy 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.