

dryness of the skin and when the scaly appearance is the result of natural exfoliation, in which latter event the scales will appear to be less noticeable. The use of respondent's Skin Cream will not help to ease out or otherwise facilitate the removal of blackheads. Blackheads are plugs of hardened sebum which extend for a considerable distance into the ducts of the sebaceous glands. Mere cleansing of the surface of the skin at the outer end of the gland, such as provided by respondent's product, will have no effect upon blackheads. They can only be removed by mechanical means. There are many skin blemishes which may be considered as minor in nature which will not be benefited or corrected by the use of respondent's Face Cream, such as freckles, moles, redness, pimples, and other eruptions. This preparation will not overcome or correct lines in the face nor will it cause them to be reduced in size or prominence.

PAR. 10. The aforesaid representations made by the respondent have had and still have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that such representations are true, and have had and still have the capacity and tendency to induce the purchasing public to purchase said products because of such erroneous beliefs.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury 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 June 4, 1946, issued and subsequently served upon the respondent, Sterling Drug, Inc., a corporation, its complaint in this proceeding, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondent's 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 respondent's answer thereto, the testimony and other evidence, the trial examiner's recommended decision and exceptions thereto (which

exceptions have been separately disposed of) and briefs of counsel (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, Sterling Drug, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 170 Varick Street, in the city of New York, State of New York.

PAR. 2. The respondent is now, and for a number of years last past it has been, engaged in the manufacture and in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain products designated by it as "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," "Bayer Aspirin," "Phillips' Milk of Magnesia Cleansing Cream," and "Phillips' Milk of Magnesia Skin Cream." The respondent causes, and at all times mentioned herein it has caused such products, when sold by it, to be shipped to the purchasers thereof located in various States of the United States and in the District of Columbia. There is now, and for a number of years last past there has been, a constant current of trade and commerce in such products between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and at all times mentioned herein it has been, in substantial competition with other corporations and with various persons, firms and partnerships also engaged in the sale and distribution of aspirin tablets and cleansing and skin creams in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of promoting the sale of its product designated Bayer-Tablets of Aspirin, Bayer Aspirin Tablets, and Bayer Aspirin, the respondent during the period from the spring of 1936 until April or May of 1944, caused to be broadcast weekly over Nation-wide hookups a certain radio musical program known as the American Melody Hour. In the opening announcements of said program the respondent caused to be made one or the other of the following statements:

Presented by the druggists of America who supply you with genuine Bayer Aspirin, or

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Presented with the compliments of the druggists of America who supply you with genuine Bayer Aspirin, or

Brought to you by the druggists of America who supply you with genuine Bayer Aspirin.

During the war years the respondent also included in its announcements respecting this program the following statement:

The makers of genuine Bayer Aspirin join the druggists of America in sponsoring War Time Health Week.

In the advertising portions of its broadcast the respondent also caused to be made, among others, one or the other of the following statements:

Bayer Aspirin. Get it at any drug store in the United States now for only 15¢ for 12 tablets, or

Only 15¢ now, for 12 tablets.

PAR. 5. Through the use of the aforesaid statements the respondent represented to the radio listening public (a) that the druggists of America sponsored and presented the radio program known as the American Melody Hour promoting and advancing the sale of Bayer Aspirin, and (b) that the retail price of Bayer aspirin had only recently been reduced to 15 cents for a dozen tablets.

PAR. 6. The record in this proceeding conclusively establishes that the radio program known as the American Melody Hour was sponsored and presented to the radio listening public solely by the respondent, and not by any organization known as the druggists of America, or by any other group of druggists or any individual druggist. The respondent's representations that the program was "presented" or "brought to you" by, or with the compliments or best wishes of the druggists of America were untrue. Importing, as it did, that the druggists of America were recommending the use of Bayer aspirin, such statements necessarily had the potentiality of injuring manufacturers and sellers of competitive products and of deceiving the public.

With respect to the price of Bayer aspirin, the evidence is that the respondent's suggested retail price of this product has been 15 cents for a dozen tablets since July 1, 1934, or for 10 years before the respondent's discontinuance of the representation that the price of such product had only recently been reduced. Thus, the representation when first made in 1934 was true, but as continued thereafter for a period of some 9 years was deceptive.

PAR. 7. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its products designated

"Phillips' Milk of Magnesia Cleansing Cream" and "Phillips' Milk of Magnesia Skin Cream," the respondent has disseminated, and has caused the dissemination, by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of many advertisements concerning said products, and it has also disseminated, and has caused the dissemination, by various means, of many advertisements for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, principally by insertions in newspapers and periodicals and by radio announcements, have been the following:

SPECIAL INGREDIENTS—SPECIAL BENEFITS—make this cream more than a luxurious cosmetic. What a cream does for your skin depends upon what's in it. \* \* \* Phillips' Milk of Magnesia Skin Cream \* \* \* skillfully combines the cosmetic and pharmaceutical arts of offering *special* ingredients \* \* \*. These special ingredients work special benefits on the skin . . . control oiliness, dull shine . . . help to ease out blackheads and prevent enlarged pore openings . . . supply needed moisture and oils to dry flaky skin.

Many a woman and girl may be missing many really thrilling moments of life because oily shine, enlarged pores or scaly roughness are robbing her skin of its natural beauty. Yet by following the remarkable beauty care \* \* \* you may easily make your skin lovelier to look at . . . more romantic to touch than you ever dreamed possible. \* \* \* Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Skin Cream \* \* \* the only beauty creams made from genuine Phillips' Milk of Magnesia.

\* \* \* A skin free of enlarged pores, oily shine and dry scaly roughness? \* \* \* Well, you can achieve thrilling results right in your own home, using the remarkable beauty care \* \* \*. A care that employs two unique creams \* \* \*

PAR. 8. Through the use of the foregoing statements and representations, and others of similar import, the respondent has represented, directly or by implication, that the use of its cleansing and skin creams would (a) keep the skin free of enlarged pores and prevent enlarged pore openings, (b) control oiliness of the skin, or oily shine or dull shine, and (c) keep the skin free of dry scaly roughness.

PAR. 9. (a) The use of the respondent's face creams does temporarily lubricate and soften the surface of the skin, and thus assists in the mechanical removal of blackheads. After a blackhead has been removed, the use of the creams will assist the skin in resuming its normal condition, and to some minor extent in certain cases will assist in preventing the formation of blackheads. Except to the extent that the

use of the creams will facilitate the removal of blackheads, however, which in turn may apparently reduce the size of the follicles of the skin from which the blackheads are removed, the respondent's creams will have no value in the reduction in size of pore openings in the skin, and such creams do not under any circumstances "keep the skin free of enlarged pores" or "prevent enlarged pore openings." Thus, the respondent's representations to the effect that its Milk of Magnesia creams will accomplish these results were false and deceptive.

(b) The petrolatum and mineral oil in the respondent's creams are not true fats, but are drying oils, and the application of either of these creams to the skin, followed by vigorous rubbing, will temporarily remove the accumulated oil on the skin. However, the sebaceous glands cause a more or less continuous flow of oil to the surface of the skin, and persistent use of the respondent's creams will result in over-activity of these glands, resulting in increased oiliness of the skin. Therefore, while the use of the respondent's creams will temporarily remove excess oiliness from the surface of the skin, their use will not "control oiliness" of the skin or control "oily shine" or "dull shine," and the respondent's representations to the contrary were untrue.

(c) The respondent's creams, being lubricants, will mask or decrease the scales on excessively dry skin, and if the roughness of the skin is due to a condition such as chapping the creams will for a time improve the appearance of the skin. The improvement will be only temporary, however, and its duration will depend largely upon the degree of perspiration to which the skin is subjected after the creams are applied. Dry scaly roughness resulting from pathological causes will not be appreciably affected by the use of the respondent's creams, and in no case will the products "keep the skin free of dry scaly roughness," as the respondent represented.

In the manner and to the extent indicated, the respondent's advertisements concerning its products designated "Phillips' Milk of Magnesia Cleansing Cream" and "Phillips' Milk of Magnesia Skin Cream" were false and deceptive, and the advertisements wherein such representations were made constituted false advertisements.

PAR. 10. The complaint in this proceeding also charged that the respondent has falsely represented that its cleansing and skin creams will (a) help neutralize any excess fatty acid accumulations in the pore external openings of the skin, (b) help to retain moisture in the skin, (c) help to ease out blackheads, and (d) seem to smooth out tiny lines of the skin. The Commission is of the opinion, and finds, that the allegations of the complaint with respect to the falsity of these repre-

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sentations have not been sustained by the greater weight of the evidence.

PAR. 11. The use by the respondent of the false, misleading and deceptive statements and representations referred to in Paragraphs Four to Nine, inclusive, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and into the purchase of the respondent's products as a result of such erroneous and mistaken belief. By reason of the erroneous and mistaken belief so engendered such statements and representations have also had the tendency and capacity to unfairly divert to the respondent from its competitors substantial trade in commerce between and among the various States of the United States and in the District of Columbia.

## CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in paragraph 10) were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices 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 respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto, and briefs of counsel (oral argument not having been requested), and the Commission having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondent, Sterling Drug, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its product designated as "Bayer-Tablets of Aspirin," "Bayer Aspirin Tablets," and "Bayer

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Aspirin," or of any other product, do forthwith cease and desist from representing, directly or by implication:

(1) That any entertainment program promoting the sale of such product is presented or sponsored by any individual or group of individuals other than the respondent, unless and until such individual or group of individuals do in fact participate materially in the presentation or sponsorship of such program.

(2) That the retail price of such product has been recently reduced when such is not a fact.

*It is further ordered,* That the respondent, Sterling Drug, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its products designated as "Phillips' Milk of Magnesia Cleansing Cream" and "Phillips' Milk of Magnesia Skin Cream" whether sold under the same names or under any other names, or any other products of substantially similar composition or properties, do forthwith cease and desist from:

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

(a) That any of such products will keep the skin free of enlarged pores or prevent the formation of enlarged pore openings in the skin.

(b) That any of such products will control the oiliness of the skin or the oily or dull shine of the skin, or that they will have any beneficial effect on an oily condition of the skin in excess of temporarily removing accumulated oil from the surface of the skin.

(c) That any of such products will keep the skin free of dry scaly roughness, or that they will have any beneficial effect on dry rough skins in excess of temporarily masking or removing the scales or softening the skin when the dryness or roughness is due to external causes.

(2) Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of such products, which advertisement contains any of the representations prohibited in the preceding paragraph 1 (a), (b) and (c).

*It is further ordered,* That the respondent, Sterling Drug, Inc., 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.

## Complaint

IN THE MATTER OF

## BARCELONA SALES COMPANY, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5653. Complaint, Apr. 26, 1949—Decision, Sept. 25 1950*

Where a New York City Corporation and its two officers, who directed and controlled its policies and practices, engaged, among other things, in the sale and distribution of their "Kent Castile Soap"; and a Philadelphia concern which purchased said product from it and shipped the same to its retail stores in Pennsylvania, Maryland, New Jersey, and Delaware—

Represented that the sole fatty ingredient used in the manufacture thereof was olive oil, and that said soap contained significant quantities thereof, through the use of the statement "Kent Made with 100 Percent Genuine Imported Olive Oil Castile Soap" on the wrapper of the soap, which thus enclosed, was offered and sold to the public at the retail stores of said Philadelphia concern; when in fact said substance constituted only a small percentage of the fatty ingredients used therein;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce purchase thereof;

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

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

*Wolf, Block, Schorr & Solis-Cohen*, of Philadelphia, Pa., 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 Barcelona Sales Co., Inc., a corporation, and Max Goodman and Rose Goodman, individually and as officers of Barcelona Sales Co., Inc., and Sun Ray Drug Co., a corporation, and Harry S. Sylk and Albert J. Sylk, individually and as officers of Sun Ray Drug Co., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Barcelona Sales Co., Inc., is a corporation organized and existing under and by virtue of the laws of the



State of New York. Respondents Max Goodman and Rose Goodman, are president and treasurer-Secretary, respectively, of the corporate respondent Barcelona Sales Co., Inc. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent, Barcelona Sales Co., Inc. The office and principal place of business of both corporate and individual respondents is located at 135 West Twenty-Fifth Street, New York, N. Y.

Respondent, Sun Ray Drug Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Respondents, Harry S. Sylk and Albert J. Sylk, are president and vice president, respectively, of the corporate respondent Sun Ray Drug Co. These individual respondents formulate, direct, and control the policies, acts, and practices of corporate respondent Sun Ray Drug Co. The office and principal place of business of both corporate and individual respondents is located at 1227 North Broad Street, Philadelphia, Pa.

PAR. 2. Respondent, Barcelona Sales Co., Inc., is now and has been for some time last past engaged in the business of offering for sale, sale and distribution of a product designated as "Kent Castile Soap." This respondent sells and thereafter ships said product from its place of business in New York, N. Y., to respondent Sun Ray Drug Co., at Philadelphia, Pa., after which said respondent Sun Ray Drug Co. ships said product to its retail stores located in Pennsylvania, Maryland, New Jersey, and Delaware, for resale to the public.

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

PAR. 3. In the course and conduct of their businesses, the respondent Barcelona Sales Co., Inc., causes to be printed on the wrapper enclosing bars of said soap, the words "Kent Made with 100% Genuine Imported Olive Oil Castile Soap." Said Soap, so wrapped, is shipped as aforesaid, by said respondent to respondent, Sun Ray Drug Co., and is thereafter shipped by said Sun Ray Drug Co., so wrapped, to its retail stores as aforesaid.

PAR. 4. By means of the aforesaid statement appearing on the label, all of the respondents represent that said soap is made with olive oil exclusively.

PAR. 5. Said statement and representation is false, misleading, and deceptive. In truth and in fact, the said soap is made with only a small percentage of olive oil together with other oily or fatty elements or is made entirely with oily or fatty elements other than olive oil.

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

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

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

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on April 26, 1949, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing by respondents Barcelona Sales Co., Inc., Max Goodman, and Rose Goodman of their answer thereto (no answer having been filed by the other respondents), a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Deceptive Practice Trials, of the Commission, and counsel for the respondents, which provides among other things that subject to the approval of the Federal Trade Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding. Respondents expressly waived the filing of a recommended decision by the trial examiner, but reserved the right to argue the matter orally.

Thereafter this proceeding came on to be heard by the Commission upon the complaint, answer of the respondents Barcelona Sales Co., Inc., Max Goodman, and Rose Goodman, stipulation as to the facts (said stipulation having been approved by the Commission), memo-

randum of counsel for the respondents, and oral argument of counsel; 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 Barcelona Sales Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Respondents Max Goodman and Rose Goodman are president and treasurer-secretary, respectively, of the corporate respondent Barcelona Sales Co., Inc. These individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent, Barcelona Sales Co., Inc., the office and principal place of business of both corporate and individual respondents is located at 135 West Twenty-fifth Street, New York, N. Y.

PAR. 2. Respondent Sun Ray Drug Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1227 North Broad Street, Philadelphia, Pa. Respondents Harry S. Sylk and Albert J. Sylk are president and vice president, respectively, of the corporate respondent Sun Ray Drug Co. The policies, acts, and practices of Sun Ray Drug Co. are controlled by a board of directors and executive committee, of which the respondents Harry S. Sylk and Albert J. Sylk are members as well as being officers as aforesaid. Such participation by the individual respondents Harry S. Sylk and Albert J. Sylk in the conduct of the affairs of the respondent Sun Ray Drug Co., in the absence of further showing as to their responsibility for the acts and practices herein found, does not constitute sufficient grounds for including them in this proceeding as individuals. Consequently, as hereinafter used, the term "respondents" does not include the individual respondents Harry S. Sylk and Albert J. Sylk as individuals.

PAR. 3. Respondent Barcelona Sales Co., Inc., during the years 1947 and 1948 was engaged in the business, among other things, of offering for sale, selling, and distributing a product designated as "Kent Castile Soap." Said respondent sold and thereafter shipped said product from its place of business in New York, N. Y., to respondent Sun Ray Drug Co. at Philadelphia, Pa., after which said respondent Sun Ray Drug Co. shipped said product to its detail stores located in Pennsylvania, Maryland, New Jersey, and Delaware.

All of the respondents maintained a course of trade in said product in commerce among and between various States of the United States.

PAR. 4. In the course and conduct of its business the respondent Barcelona Sales Co., Inc., caused to be printed on the wrapper enclosing bars of said soap the words "Kent Made with 100% Genuine Imported Olive Oil Castile Soap." Said soap so wrapped was shipped as aforesaid by respondent Barcelona Sales Co., Inc., to respondent Sun Ray Drug Co. and was thereafter shipped by said Sun Ray Drug Co., so wrapped, to its retail stores as aforesaid, at which stores said soap was offered for sale and sold to the public.

PAR. 5. Through the use of the aforesaid statement the respondents represented that the sole fatty ingredient used in the manufacture of said soap was olive oil, and that said soap contained significant quantities of olive oil.

PAR. 6. The foregoing statement and representations were false, misleading, and deceptive. In truth and in fact only a small percentage of the fatty ingredients used in the manufacture of said soap was olive oil.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statement and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statement and representations were true and to cause a substantial portion of the public, because of such erroneous and mistaken belief, to purchase said product.

#### CONCLUSION

The acts and practices of the respondents, except the individual respondents Harry S. Sylk and Albert J. Sylk as individuals, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents Barcelona Sales Co., Inc., Max Goodman, and Rose Goodman (no answer having been filed by the other respondents), stipulation as to the facts, memorandum of counsel for the respondents, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents, except the in-

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dividual respondents Harry S. Sylk and Albert J. Sylk as individuals, have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the corporate respondents Barcelona Sales Co., Inc., and Sun Ray Drug Co., their officers, agents, representatives, and employees, and the individual respondents Max Goodman and Rose Goodman, individually and as officers of corporate respondent Barcelona Sales Co., Inc., their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of soap products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

*It is further ordered*, That the complaint herein be, and the same hereby is, dismissed as to Harry S. Sylk and Albert J. Sylk as individuals, but not in their capacity as officers of respondent Sun Ray Drug Co.

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

## Syllabus

IN THE MATTER OF  
IDEAL CEMENT COMPANY, COLORADO PORTLAND  
DIVISION, ET AL.

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

*Docket 5670. Complaint, July 1, 1949—Decision, Sept. 28, 1950*

Where a corporation engaged in the interstate sale and distribution of portland cement produced at manufacturing plants owned and operated by it, to customers who purchased either for resale or for use in the manufacture and sale of ready mixed concrete, concrete building blocks, and other concrete products, and were engaged in competition with each other and with the customers of other cement producers within their respective trading areas—

Discriminated between purchasers transporting such cement by rail and those using motor carrier, during a certain period, through offering and selling cement at its plants located at Portland and Boettcher, Colo., to purchasers transporting cement from those points by motor trucks or motor carriers, at prices 20 cents per barrel higher than it sold said product of like grade and quality to purchasers who transported it from the same points by rail freight;

With the result that in all instances the customer so appreciably favored in price was enabled to obtain greater profits from the resale of such cement and to either undersell its competitors who were not so favored, or to furnish to its consumer purchasers superior facilities and services, and any appreciable differential in the price of its said product had the capacity of diverting trade from the nonfavored competing customers to those receiving the lower price; and effect of its said practice, therefore, might have been substantially to lessen competition in the lines of commerce in which such purchasers were engaged and to injure, destroy, or prevent competition with the purchasers who received the lower price:

*Held*, That said acts and practices of said corporation in selling cement for motor carrier transportation at a price higher than for rail transport, under the circumstances set forth, constituted violations of section 2 (a) of the Clayton Act as amended.

In said proceeding in which the respondent in its amended answer stated, among other things, that on or about July 1, 1948, it abandoned the pricing policy herein concerned, and on or about December 10 thereafter established and since maintained the practice of selling cement only in carload lots in one delivery operation and without regard to the method of transporting employed by the purchaser; that since July 1, 1948, the method of transportation had in no way varied the price charged; that such action was taken by it voluntarily prior to the institution of the instant

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proceeding and without knowledge that the complaint would be issued; and by way of seeking to defend its price policy from January 1, 1947 until about July 1, 1948, herein concerned, that it did not at any time believe that it was unlawfully discriminating; that it believed that the price differential was justified by reason of differences in costs; that ascertainment of the exact amount by which said differential in fact exceeded differences in costs, involved in the differing nature of the transactions, would necessitate a costly and long analysis and breakdown of its accounting records and procedures, and involve conflicting theories of cost accounting, practice and procedure, particularly with respect to indirect cost factors; and that in view of such circumstances and the fact that the practice complained of had been abandoned by it, it expressly waived its right to offer or adduce any testimony or evidence relating to cost justification: the Commission made no finding with respect to any of such statements or contentions.

In said proceeding in which it appeared as respects various individuals joined as respondents, that the former president had died on or about the expiration of the period concerned, that the vice president had retired thereafter and was no longer active in its affairs, that the secretary did not participate in the formulation, control or direction of the practices concerned, and that two others, following the demise of the president, thereafter formulated or participated in the formulation, control and direction of the practice with respect to such sale of cement as revised and established after said period; the Commission was of the opinion that as to said individual respondents the complaint should be dismissed.

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

*Mr. James I. Rooney* and *Mr. James S. Kelaher* for the Commission.  
*Lewis, Grant, Newton, Davis & Henry*, of Denver, Colo., for respondents.

## COMPLAINT

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

PARAGRAPH 1. Respondent Ideal Cement Co. is a Colorado corporation with offices and principal place of business located at Denver National Building, Denver, Colo., and is doing business under the trade name and style of Ideal Cement Co., Colorado Portland Division.

## Complaint

Respondents Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne are individuals and are president, vice president and treasurer, vice president, vice president, and secretary, respectively, of the corporate respondent.

These individual respondents formulate, control, and direct the policies, practices, and methods of the corporate respondent.

PAR. 2. Respondents, through their wholly owned subsidiary, The Colorado Portland Cement Co., and since said subsidiary's dissolution on or about December 31, 1947, through their Colorado Portland Division, are now and have been since June 19, 1936, engaged in the business of selling and distributing portland cement, hereinafter referred to as "cement," produced at manufacturing plants located at Portland and Boettcher, Colo.

Respondents cause said cement, when sold, to be transported from the places of manufacture at Portland and Boettcher, Colo., to the purchasers thereof located in States other than the State of Colorado, and there is and has been at all times herein mentioned a continuous current of trade and commerce in said product across State lines, between respondents' manufacturing plants and the purchasers of such product. Said product is sold and distributed for use, consumption, and resale within the various States of the United States.

PAR. 3. Respondents' customers purchase cement either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks and other concrete products.

In the course and conduct of their business, respondents' customers are competitively engaged with each other and with the customers of other cement producers within the various trading areas in which the respondents' said customers offer for sale and sell the said product, at retail or in processed form as described herein.

PAR. 4. Respondents in the course and conduct of their business, as hereinbefore set forth, have been since January 1, 1947, and now are, discriminating in price between different purchasers of their cement of like grade and quality by selling said product to some of their customers at higher prices than they sell and have sold such product of like grade and quality to others of their customers. Such discriminations arise from respondents' pricing policy, in effect since January 1, 1947, whereby the respondents sell or offer for sale cement, at plants located at Portland and Boettcher, Colo., to purchasers who have the said cement transported therefrom by rail freight at 20 cents per barrel lower than they sell or offer for sale said cement to purchasers who transport said cement therefrom by motortruck or other means of motor transportation.



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PAR. 5. The effect of such discriminations in price as set forth in Paragraph Four may be substantially to lessen competition in the lines of commerce in which those purchasers of respondents' product who receive the benefits of such discriminations are engaged and to injure, destroy or prevent competition with the customers of respondents who receive the benefits of such discriminations.

PAR. 6. The foregoing alleged acts and practices of said respondents as set forth herein constitute violations of subsection (a) of section 2 of the Clayton Act (U. S. C. Title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

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

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936, (the Robinson-Patman Act) 15 U. S. C. section 13, the Federal Trade Commission on July 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof (except Charles Boettcher, who was not served and is deceased), charging said respondents with having violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended. After the filing of the respondents' answer to the complaint and the designation of a trial examiner by the Commission, all of said respondents, except Charles Boettcher, deceased, upon leave granted by the trial examiner withdrew their original answer to the complaint and in lieu thereof filed an amended answer in which, solely for the purpose of this proceeding, they admitted all of the material allegations of fact set forth in the complaint and waived all hearings and further procedure, including the filing of a recommended decision by the trial examiner. In said answer the respondents expressly consented for the Commission to proceed upon the complaint and admission answer to make its report, stating its findings as to the facts, including interferences which it may draw therefrom, and its conclusion based thereon, and enter its order requiring the corporate respondents to cease and desist from the discriminations charged in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' amended answer thereto, and certain memoranda of counsel in support of the complaint and of counsel for the respondents proposing disposition of the case; 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, Ideal Cement Co., hereinafter referred to as "respondent," is a corporation organized and existing under the laws of the State of Colorado, with offices and its principal place of business located in the Denver National Building, in the city of Denver, State of Colorado.

PAR. 2. The aforesaid respondent, through its wholly owned subsidiary, the Colorado Portland Co., and since the dissolution of said subsidiary on or about December 31, 1947, through its Colorado Portland Division, was, at the time of the issuance of the complaint, and since June 19, 1936, it has been, engaged in the business of selling, and transporting portland cement produced at manufacturing plants now owned and operated by said respondent located at Portland and Boettcher, Colo. Said cement, when sold, is transported either by the respondent or by its purchasers from the places of manufacture at Portland and Boettcher, Colo., to the respective locations of the purchasers thereof both in Colorado and in States other than Colorado. There is now, and at all times mentioned in the complaint there has been, a continuous current of trade and commerce in said product by the respondent across State lines between the respondent's manufacturing plants and purchasers of such products. Said product is sold and distributed for use, consumption, and resale in various States of the United States.

PAR. 3. The respondent's customers purchase cement either for resale or for use in the manufacture and sale of ready-mixed concrete, concrete building blocks, and other concrete products. Such customers are competitively engaged with each other and with the customers of other cement producers within the various trading areas in which they offer for sale and sell cement purchased by them from the respondent either at retail or in processed form.

PAR. 4. In the course and conduct of its business, as aforesaid, the respondent from January 1, 1947, until approximately July 1, 1948, offered for sale and sold cement at its plants located at Portland and Boettcher, Colo., to purchasers transporting said cement from said points of sale by motor truck or motor carrier at a price 20 cents per barrel higher than it offered for sale or sold cement of like grade and quality to purchasers transporting the same from said points of sale by rail freight. In so doing, the respondent discriminated, to the

extent of 20 cents per barrel, in favor of purchasers transporting such cement by rail freight and against purchasers transporting their cement by motortruck or motor carrier.

PAR. 5. In all instances in which the respondent's cement is sold to one of its customers at a price exceeding by any appreciable amount the price at which its cement of like grade and quality is sold to another competing customer, the customer so favored in price is thereby enabled to obtain greater profits from the resale of such cement and to either undersell its competitor who is not so favored or to furnish to its consumer purchasers superior facilities and services. For this reason, any appreciable differential in the price of the respondent's cement as between competing customers has the capacity of diverting trade from the nonfavored customers to the customers favored with the lower price. The Commission therefore finds that the effect of the respondent's practice of selling its cement to purchasers transporting the same from the place of manufacture by motortruck or motor carrier at a price higher than it sold cement of like grade and quality to competing customers transporting it by rail freight may have been substantially to lessen competition in the lines of commerce in which such purchasers were engaged and to injure, destroy, or prevent competition with the purchasers of such cement who received the lower price.

PAR. 6. In its amended answer to the complaint, the respondent stated that on or about the aforesaid date of July 1, 1948, the pricing policy above described was abandoned and that thereafter, and on approximately December 10, 1948, the respondent established, and has since maintained, the practice of selling cement only in carload lots in one-delivery operations and without regard to the method of transportation employed by the purchaser; that, accordingly, all purchasers of cement from the respondent at either of its plants at Portland or Boettcher, Colo., are now, and since approximately December 10, 1948, they have been, subject to the like requirement of purchasing in not less than carload lots in one loading operation (but more than one vehicle permitted) and at the like price, and that since July 1, 1948, the method of transportation employed by the buyer has in no way varied the price charged; and further that such action was taken by the respondent voluntarily prior to the institution of this proceeding and without knowledge that the complaint herein would be issued. The respondent stated further that, under its present policy, if any purchaser desires delivery of cement to a carrier other than rail and does not have a vehicle or a series of vehicles capable of receiving at least a carload quantity lot in a single or connected

loading operation, the respondent will arrange for delivery of a railroad carload lot of cement on a Public Team track within or near the railroad station at which the mill is located, and without any differential in the respondent's price therefor; and that such purchaser may thereupon remove such cement therefrom in any manner and at any time it may desire.

PAR. 7. In seeking to defend its pricing policy admitted to have been followed from January 1, 1947, until approximately July 1, 1948, the respondent states that it did not at any time believe that it was unlawfully discriminating in price in favor of or against any particular type of transportation and that while the price differential was in effect it believed that the same was justified by reason of differences in costs. In support of this position, the respondent further states that an additional cost is involved in the sale and delivery of cement to carriers by motortrucks at the two plants of said respondent as compared with the sale and delivery of cement to carriers at Portland and Boettcher, Colo., by rail; that ascertainment of the exact amount by which the 20 cents differential charge involved in fact exceeded differences in costs involved in the differing nature of the transactions would necessitate a costly and lengthy analysis and breakdown of the accounting records and procedures of the respondent and would involve conflicting theories of cost accounting, practice and procedure, particularly with respect to the matter of indirect cost factors; and that in view of such circumstances and the fact that the practice complained of has been abandoned by the respondent, it expressly waived its right to offer or adduce any testimony or evidence relating to cost justification.

The Commission, of course, makes no finding with respect to any of the foregoing statements or contentions.

PAR. 8. The complaint in this proceeding named as respondents, in addition to Ideal Cement Co., Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne, as president, vice president and treasurer, vice president, vice president, and secretary, respectively, of said Ideal Cement Co. The record discloses that the respondent Charles Boettcher died on or about July 2, 1948; that the respondent H. O. Warner retired as vice president of the respondent Ideal Cement Co. on or about August 15, 1948, and is no longer an officer of said respondent or active in its affairs, although still a member of its board of directors; that the respondent G. W. Ballantyne did not participate in the formulation, control or direction of the policies of the respondent Ideal Cement Co. with respect to the practices herein described; and that upon the death of Charles

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Boettcher, the respondent C. K. Boettcher became president of the respondent Ideal Cement Co.; and that C. K. Boettcher and Chris Dobbins thereafter formulated or participated in the formulation, control and direction of the practices of said respondent with respect to the sale of cement to persons removing the same by rail or by motor-truck as established from and after approximately July 1, 1948. In view of these circumstances, the Commission is of the opinion that as to all of the respondents except the respondent Ideal Cement Co. the complaint should be dismissed.

## CONCLUSION

The acts and practices of the respondent Ideal Cement Co. in selling cement to purchasers transporting the same from the place of manufacture by motortruck or motor carrier at a price higher than it sold cement of like grade and quality to purchasers transporting it from such place of manufacture by rail freight, as herein found, constituted violations of subsection (a) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress approved June 19, 1936 (The Robinson-Patman Act).

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' amended answer thereto, and certain memoranda of counsel in support of the complaint and of counsel for the respondents proposing disposition of the case, and the Commission having made its findings as to the facts and its conclusion that the respondent, Ideal Cement Co., has violated the provisions of subsection (a) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

*It is ordered*, That the respondent, Ideal Cement Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of portland cement in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from directly or indirectly discriminating in price between different purchasers of its cement of like grade and quality

who are competitively engaged with each other in the resale of such cement, either at retail or in processed form, by offering to sell or selling such product to purchasers who have said cement transported from the place of sale by motortruck or other means of motor carrier at any higher price than said product is offered for sale or sold to purchasers who have it transported from the place of sale by rail freight: *Provided, however*, That the foregoing shall not be construed to prevent the respondent from defending any alleged violation of this order by showing that any differences in price make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said product is to such purchasers sold or delivered.

*It is further ordered*, For reasons appearing in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondents, Charles Boettcher, C. K. Boettcher, Chris Dobbins, H. O. Warner, and G. W. Ballantyne.

*It is further ordered*, That the respondent, Ideal Cement Co., 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.

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## IN THE MATTER OF

## VALLEY STEEL PRODUCTS COMPANY ET AL.

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

*Docket 5708. Complaint, Nov. 8, 1949—Decision, Sept. 29, 1950*

Where a corporation and two individuals who formulated, directed and controlled its practices, engaged in the interstate sale and distribution of steel pipe and tubing; in letters, circulars, price lists, telegrams, orally and by other means—

Falsely and deceptively represented that they had on hand and offered for sale certain quantities of new pipe and tubing of strictly standard construction, of specified lengths and thicknesses and of certain specified kinds, and, in a number of instances, filled orders for customers who purchased pursuant to such representations, with pipe and tubing which was rusted and corroded, not of standard construction, and of different kinds, lengths, and thicknesses from that ordered;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations were true, and with effect of causing it thereby to purchase their said products:

*Held*, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices.

Before *Mr. Frank Hier*, trial examiner.

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

*Rosenblum & Mellitz*, of St. Louis, Mo., 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 Valley Steel Products Co., a corporation, and Joseph B. Fleischman, individually and as an officer of Valley Steel Products Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Valley Steel Products Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 124 Sidney Street, St. Louis, Mo. Respondent,

Joseph B. Fleischman, is the president and general manager of the corporate respondent and acting in such capacity, formulates, directs, and controls the practices of corporate respondent.

PAR. 2. The respondents are now and for several years last past, have been engaged in the sale and distribution of steel pipe and tubing.

PAR. 3. Respondents cause and have caused, their said products when sold to be transported from their place of business in the State of Missouri, to purchasers thereof located in various other States of the United States. Respondents maintain, and have maintained, a course of trade in their said products in commerce among and between the various States of the United States. Their volume of business in said products has been, and is, substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents, during the years of 1947 and 1948, in letters, circulars, price lists, telegrams, orally, and by other means, represented that they had on hand and offered for sale certain quantities of new pipe and tubing of strictly standard construction, of specified lengths and thicknesses and of certain specified kinds.

PAR. 5. The representations so made were false, misleading, and deceptive. In truth and in fact, respondents, at the time of their advertisements and offers, did not have on hand, for delivery to purchasers, new pipe or tubing or pipe or tubing of standard construction, of the kind or of the lengths or thickness set out and specified in their said advertising matter. Respondents, in filling orders for their said pipe and tubing for customers who purchased pursuant to their advertisements and offers and upon the basis of the statements appearing in said advertisements and offers, did not, in many instances, ship new pipe and tubing, but instead shipped used, rusted, and corroded pipe and tubing. Furthermore, in many instances, pipe and tubing not of standard construction, of different kinds and of different lengths and thicknesses from that ordered, was shipped.

PAR. 6. The use by the respondents of the foregoing false and misleading representation has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were and are true and causes and has caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products.

PAR. 7. The acts and practices of the respondents in making the false, misleading and deceptive statements in their advertisements and



offers and the shipping of different products than those ordered, as above alleged, were and 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.

#### DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 29, 1950, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION

By FRANK HIER, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 8, 1949, issued and subsequently served its complaint in this proceeding on respondents, Valley Steel Products Co., a corporation, and George B. Fleischman, erroneously named as Joseph B. Fleischman, its president, charging them with unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After respondents filed their joint answer, a stipulation was entered into the record by which it was agreed that the facts stipulated may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. It was also agreed that Lester A. Crancer, vice-president and general manager of the corporate respondent, during the time covered by the complaint, should be added as a party respondent. Counsel for said Lester A. Crancer, on his behalf and on behalf of the other respondents, expressly waived the issuance and service of an amended complaint, the filing of answers thereto and all intervening procedure. Thereupon, the trial examiner ordered the addition of the said Lester A. Crancer as a party respondent, without the issuance and service of an amended complaint.

Thereafter, the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulations of fact, the latter having been approved by the trial examiner, who after

consideration of the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Valley Steel Products Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 124 Sidney Street, St. Louis, Mo. Respondent George B. Fleischman, erroneously named in the complaint as Joseph B. Fleischman, is the president of the corporate respondent, and respondent Lester A. Crancer is the vice president and general manager of the corporate respondent, and were such officers respectively at all times mentioned in the complaint, and as such jointly formulated, directed and controlled the practices of the corporate respondent at all times mentioned in the complaint in this proceeding.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of steel pipe and tubing.

PAR. 3. Respondents cause, and have caused, their said products, when sold, to be transported from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States. Respondents maintain, and have maintained, a course of trade in their said products in commerce among and between the various States of the United States, the volume of which has been, and is, substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents during the years 1947 and 1948, in letters, circulars, price lists, telegrams, orally, and by other means, represented that they had on hand, and offered for sale, certain quantities of new pipe and tubing of strictly standard construction, of specified lengths and thicknesses and of certain specified kinds.

PAR. 5. The representations so made were false, misleading, and deceptive. Respondents, in filling orders for pipe and tubing for customers who purchased pursuant to such representations so made, in a number of instances shipped rusted and corroded pipe and tubing, and shipped pipe and tubing not of standard construction and of different kinds and of different lengths and thicknesses from that ordered by customers.

PAR. 6. The use by the respondents of the false, misleading, and deceptive representations described above has had, and does have, the

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capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations were and are true, and causes and has caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products.

## CONCLUSION

The acts and practices of respondents in making the false, misleading, and deceptive representations and statements described, to secure purchase orders for their products and the shipment of different products than those ordered, as above described, were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered*, That the Valley Steel Products Co., a corporation, its officers, directors, employees, and representatives, George B. Fleischman, individually and as its president, and Lester A. Crancer, individually and as its vice president and general manager, through any corporate or other device, in connection with the sale, offering for sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of steel pipe and tubing, do forthwith cease and desist from:

1. Representing directly or by implication, by means of letters, circulars, price lists, telegrams, telephone conversations, or by other means, that respondents have for sale and delivery steel pipe and tubing of strictly standard construction, of specified lengths and thicknesses, of specified kinds different in any respect from steel pipe and tubing which respondents are then in a position to sell and deliver.
2. Offering for sale steel pipe and tubing different in any respect from steel pipe and tubing which respondents are then in a position to sell and deliver.
3. Selling, shipping, delivering or distributing steel pipe and tubing different in any respect from the steel pipe and tubing offered for sale.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order [as required by said declaratory decision and order of September 29, 1950].

## Syllabus

IN THE MATTER OF  
HENRY MODELL ET AL., TRADING AS HENRY MODELL  
& COMPANY, AND MODELL'S

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

*Docket 5363. Complaint, July 30, 1945—Decision, Oct. 2, 1950*

The words "Army" or "Navy", in the opinion of the Commission, when used alone or in conjunction with terms of similar import to describe articles of merchandise, connote, in the absence of other language of disclosure to the contrary, that the articles so designated have been accepted for use as standard merchandise by the service branch to which the advertising refers.

Where three partners engaged as jobbers, wholesalers, and retailers in the interstate sale and distribution of various items of merchandise such as clothing, sheets, and blankets, and including, in recent years, substantial quantities of war surplus goods purchased by the public for general utility and sports use; in widely advertising their merchandise, through newspaper advertisements to a limited extent, but principally through circulars and pamphlets distributed through the mails to numerous prospective purchasers throughout the United States, particularly small retail dealers—

Represented directly and by implication that the articles advertised and referred to were regulation or standard Army or Navy goods meeting all service specifications, were regular Government issue, and were purchased directly from the Army and Navy, through such statements as "ONLY BRAND NEW ARMY AND NAVY GOODS OFFERED. Over 50 Years in Army and Navy Business. The Largest Assortment of G. I. Army & Navy Goods in the Country. If it is 'Government Issue' Merchandise—We Have It", "U. S. ARMY KHAKI HANDKERCHIEFS" etc., "GOV'T. ISSUE NAVY NECKERCHIEFS x x x", "STAINLESS STEEL MESS KIT OUTFITS. BRAND NEW REGULATION G. I. x x x", "U. S. REGULATION WHITE NAVY TOGS, White Navy Blouses. . . . Made of U. S. Navy specification white duck material x x x White Navy Pants. . . . Made of U. S. Navy specifications", etc;

The facts being that many of the articles offered for sale by them in their advertising were not Government issue which had been accepted by the Army or Navy as meeting all service specifications, and were not purchased by them or their suppliers from the United States Government or any branch thereof; their merchandise was generally obtained from stocks in the hands of manufacturers who produced merchandise for the Government, and consisted as a rule of excess stocks, seconds, and articles which had been rejected by the armed services either because of defects in manufacture or changes in specifications subsequent to the time when arrangements were made for production thereof; the handkerchiefs were sold to them by their suppliers as "O. D. Seconds;" the neckerchiefs and mess kits were sold and invoiced to them as "rejects"; and the "U. S. Regulation White Navy Togs" were rejected by the Navy since they did not conform to

revised specifications made subsequent to their production, or arrangements therefor;

With tendency and capacity to mislead and deceive a substantial number of prospective purchasers and thereby cause them to purchase substantial quantities of said merchandise:

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

In said proceeding the Commission did not concur with the opinion of the trial examiner that those charges of the complaint which alleged that respondents represented that all of their Army and Navy goods were purchased directly from the Government or its branches, were not sustained by the record, in view of its opinion as to the connotation of the words "Army" or "Navy" when used to describe articles of merchandise in the absence of other disclosure to the contrary, and therefore required respondents as a condition to use of said words in designating merchandise not procured from a branch of the Government, to further disclose in their advertising the character of such merchandise, including the facts as to whether the articles constituted seconds, defective merchandise which had been rejected due to departures from contract specifications, manufacturers' excess stocks, or merchandise which was not accepted for other reasons by the branch of the service referred to, when such was the case.

As respects charges of the complaint relating to alleged failure by respondents to attach a mark or label disclosing that certain of their merchandise had been rejected for failure to meet service standards or specifications in those instances where the articles themselves bore a mark, numbers or statements showing that they had been produced under a particular contract with one of the service branches, it being alleged that, absent such a disclosure, dealers and members of the public purchased such articles as accepted Army or Navy products which met all specifications of the service branch concerned: the Commission dismissed such additional charges without prejudice to its right to institute a new proceeding in respect thereto if future conditions warranted, since it appeared, as regards the product particularly concerned, advertised as "U. S. Navy Socks"—the only instance as to which evidence was introduced in support of said allegation—that respondents denied knowledge of such rejection at the time of the advertising involved, testified that merchandise thus rejected is usually so identified and labeled by the manufacturer and that such socks bore no such markings; and the Commission's opinion, in view of the doubt which might be entertained as to whether respondents were informed as to all the circumstances under which the socks became available to the civilian trade, that the evidence adduced in support of such additional charges was inadequate for an informed determination of the issues presented by said charges.

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

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

*Mr. Milton Solomon*, 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 Henry Modell, Rose Modell, and William Modell, individually and as copartners, trading and doing business as Henry Modell & Co., and as Modell's, herein-after 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. The respondents, Henry Modell, Rose Modell, and William Modell, are copartners, trading and doing business as Henry Modell & Co., and as Modell's. They have their principal office and place of business at 280 Broadway, New York, N. Y., which is the location of their wholesale division. They also operate retail establishments at 198 Broadway, 204 Broadway, and 243 West Forty-second Street, New York, N. Y. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing general merchandise, such as clothing, sheets, blankets, and other commodities. During the past 2 or 3 years they have sold substantial quantities of so-called Army and Navy equipment.

Respondents cause and have caused said products, during the time mentioned herein, when sold by them, to be transported from the State of New York to various purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents advertised their so-called Army and Navy goods by means of circulars, pamphlets, and other types of advertising matter, circulated among the trade and the purchasing public throughout the United States. Among and typical of statements and representations used by respondents in the aforesaid advertising matter are the following:

ONLY BRAND NEW ARMY & NAVY GOODS OFFERED.

U. S. REGULATION—GOVERNMENT ISSUE.

GOVERNMENT ISSUE. ARMY REGULATION.

Over 50 years in Army & Navy Business.

The Largest Assortment of G. I. Army & Navy Goods in the Country.

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If it is "Government Issue" Merchandise—We Have It.

G. I. Army & Navy Goods Outlet—Henry Modell & Company.

PAR. 3. By means of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, the respondents have represented and now represent, directly and by implication, that the articles advertised and referred to as aforesaid were regulation or standard Army or Navy goods, and that they met all Army and Navy specifications, that they were regular Government issue, and that all of said articles were purchased directly from the Army and Navy.

PAR. 4. In truth and in fact, many of respondents' said articles were not standard or regulation United States Army or Navy goods and did not meet Army or Navy specifications but were classed as seconds or rejects, that is, articles that were inspected and rejected by the Army or Navy because of some defect in the merchandise. Said articles were not Government issue and were not purchased direct from the United States Government or any branch thereof, but were obtained, as a rule, from stocks in the hands of manufacturers of Army and Navy goods and consisted, as a rule, of seconds, rejects and excess stocks.

PAR. 5. In the course and conduct of their business as aforesaid, the respondents have used and are now using other statements and representations in their aforesaid advertising matter. Typical of such statements and representations are the following:

**MAKE HIM HAPPY WITH A BUNDLE OF U. S. NAVY SOCKS**

(Illustration of a sock)

Naval Clothing Depot

(Illustration of a bundle of socks held together by a wrapper reading as follows):

Contract NXSX 21658, February 1, 1943

10 Pairs Socks, Cotton, Merc. Black

Size 11

\$1.44 for 5 pairs

MEN'S  
Sizes: 10½, 11-11½

These are excellent quality black socks of fine combed mercerized yarn; double re-inforced heels, soles and toes for extra wear. We bought 3,000 dozen from a leading Navy Contractor to bring them to you at this extremely low price.

Mail Order Dept. 280 E'way, N. Y. 7, Add 10¢  
bundle for mailing—no C. O. D.'s

MODELL'S Cort. 7-4830  
Founded in 1889 198 and 204 Broadway  
243 W. 42nd St.

## Complaint

The aforesaid socks were not regulation U. S. Navy socks but were rejected by the Navy Department because they had not been dyed properly or according to Navy specifications.

## U. S. ARMY KHAKI HANDKERCHIEFS

No. Q 1002. Closely woven cotton that's soft and absorbent. Wash fast khaki. Rolled hems, 18×18 inches. 1.50 doz.

The aforesaid handkerchiefs did not meet Army specifications but were seconds, that is, articles which did not meet all Army specifications and were rejected because of that fact.

GOV'T ISSUE NAVY NECKERCHIEFS..... 6.50 doz.

## U. S. REGULATION WHITE NAVY TOGS

White Navy Blouses . . . . Made of U. S. Navy specification white duck material..... 15.75 doz.

White Navy Pants . . . . . Made of U. S. Navy specification tough, white duck..... 15.75 doz.

NAVY REGULATION—FIRST QUALITY WHITE GOB HATS..... 7.50 doz.

## ARMY &amp; NAVY RAINCOATS

STAINLESS STEEL MESS KIT OUTFITS. BRAND NEW REGULATION G. I.

None of the aforesaid articles met the standard requirements of the Army or Navy but were rejected on inspection because of some defect in the merchandise.

PAR. 6. There is a demand on the part of a substantial portion of the purchasing public for Army and Navy goods, and the use by the respondents of the foregoing acts and practices has had and now has the tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that the respondents have truthfully represented the nature and character of their merchandise. The aforesaid acts and practices of respondents have the effect of placing in the hands of retail dealers who purchase said merchandise and resell same to the purchasing public a means and instrumentality whereby they may and do mislead and deceive the purchasing public in the particulars aforesaid. As the result of such erroneous and mistaken beliefs, engendered as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of the respondents' merchandise.



PAR. 7. Many of the articles offered for sale and sold by the respondents, as aforesaid, bear marks, numbers or statements showing that they have been manufactured under a contract with and for the United States Army or Navy.

Said articles are sold to retail dealers and to the consuming public without any label, mark or designation stamped thereon or attached thereto showing that such articles have been rejected because they do not meet the standards or specifications of the particular branch of the service involved.

When such articles, bearing the aforesaid marks, numbers, and statements are offered for sale and sold to dealers and the public, without any statement or notice that said articles have in fact been rejected by the Army or Navy, they are believed to be and are accepted as standard Army or Navy merchandise that meets all Army or Navy specifications.

By the aforesaid acts and practices respondents also place in the hands of dealers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the true facts in regard to respondents' said merchandise.

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

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 30, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint and filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto filed by counsel for respondents, briefs in support of and in opposition to the complaint, and oral arguments

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

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents herein are Henry Modell, Rose Modell, and William Modell, who at the time of issuance of complaint in this proceeding were copartners trading and doing business under the names Henry Modell & Co., and Modell's with their office and principal place of business located at 280 Broadway, New York, N. Y. Since that time the copartnership has been dissolved and the business which is now located at 700 Broadway has been incorporated. Respondents were engaged as jobbers, wholesalers, and retailers in the sale and distribution of various items of merchandise such as clothing, sheets, and blankets. During recent years, respondents' merchandise has included substantial quantities of war surplus goods purchased by the public for general utility and sports use.

PAR. 2. Respondents have caused their merchandise when sold to be transported from their places of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents in the conduct of their business have maintained a course of trade in war surplus merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents have advertised their merchandise widely using newspaper advertisements to a limited extent but relying principally upon advertising circulars and pamphlets distributed through the mails to numerous prospective purchasers located throughout the United States, particularly small retail dealers. Among such advertisements were the following:

## U. S. ARMY KHAKI HANDKERCHIEFS

No. Q 1002. Closely woven cotton that's soft and absorbent. Wash fast khaki. Rolled hems, 18 x 18 inches. 1.50 doz.

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GOV'T ISSUE NAVY NECKERCHIEFS. \* \* \*

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STAINLESS STEEL MESS KIT OUTFITS.

BRAND NEW REGULATION G. I. \* \* \*

## Findings

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## U. S. REGULATION WHITE NAVY TOGS

White Navy Blouses . . . . Made of U. S. Navy specification white duck material. 15.75 doz.

White Navy Pants . . . . Made of U. S. Navy specification tough, white duck. 15.75 doz.

Such advertisements were headed by legends or slogans of which the following are typical:

## ONLY BRAND NEW ARMY &amp; NAVY GOODS OFFERED.

Over 50 Years in Army & Navy Business.

The Largest Assortment of G. I. Army & Navy Goods in the Country.

If it is "Government Issue" Merchandise—  
We Have It.

G. I. Army & Navy Goods Outlet—  
Henry Modell & Company.

PAR. 4. By means of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, including use of the words "Army" and "Navy" to designate particular articles of merchandise, the respondents have represented directly and by implication that the articles advertised and referred to were regulation or standard Army and Navy goods meeting all service specification, that they were regular Government issue and that all of said articles were purchased directly from the Army and Navy.

PAR. 5. In truth and in fact many of the articles offered for sale by the respondents in their advertising were not Government issue which had been accepted by the Army or Navy as meeting all service specifications and were not purchased by respondents or their suppliers from the United States Government or any branch thereof. Respondents' merchandise was generally obtained from stocks in the hands of manufacturers producing merchandise for the Government and consisted as a rule of excess stocks, seconds, and articles rejected by the armed services either because of defects in the manufacture of the goods or because of changes in specifications subsequent to the time when arrangements were made for the production thereof.

The handkerchiefs were sold to respondents by their suppliers as "O. D. Seconds," and such articles being seconds did not comply with the specifications of the Army. The neckerchiefs and mess kits were not Government issue or purchased by respondents from the Government or any of its branches but, on the contrary, were sold and invoiced

to the respondents as "rejects," namely, articles which had not been accepted by the armed services. The U. S. Regulation White Navy Togs were not procured from the Government or any of its branches but were rejected for use by the Navy for the reason that they did not conform to revised service specifications which revisions or modifications, however, were made subsequent to the production or the arrangements therefor of such merchandise.

PAR. 6. The use by respondents of the erroneous and misleading representations referred to above has the tendency and capacity to mislead and deceive a substantial number of prospective purchasers with respect to respondents' merchandise, and the tendency and capacity to cause such parties to purchase substantial quantities of such merchandise as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

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

In the recommended decision submitted by him in this proceeding, the trial examiner has recommended that respondents be prohibited from representing as "regulation" or "standard" Army or Navy goods, or as "Government Issue" any merchandise which is not such in fact. The trial examiner is of the further opinion that those charges of the complaint which allege that respondents represent that all of their Army and Navy goods are purchased directly from the Government or its branches are not sustained by the record. The Commission does not concur in this conclusion. In the opinion of the Commission, the words "Army" or "Navy" when used alone or in conjunction with terms of similar import to describe articles of merchandise connote in the absence of other language of disclosure to the contrary that the articles so designated have been accepted for use as standard merchandise by the service branch to which the advertising refers. The order to cease and desist which is issuing herewith, therefore, requires respondents as a condition to use of the words "Army" or "Navy" in designating merchandise which has not been procured from a branch of the United States Government to further disclose in their advertising the character of such merchandise including the facts as to whether the articles constitute seconds, defective merchandise which has been rejected due to departures from contract specifications, manufacturers'

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excess stocks, or merchandise not accepted for other reasons by the branch of the service referred to, when such is the case.

Other charges of the complaint relate to an alleged failure by respondents to attach a mark or label disclosing that certain of their merchandise has been rejected for failure to meet service standards of specifications in those instances where the articles themselves bear a mark, numbers, or statements showing that they have been produced under a particular contract with one of the service branches. It is alleged in this connection that, in the absence of a tag or stamping which reveals that the merchandise has been rejected, dealers and members of the public purchase such articles under the impression that they have been accepted as Army or Navy products meeting all specifications of the service branch named. One instance in which merchandise was sold by respondents bearing markings which had been affixed by the manufacturer showing that the articles were produced under contract with the Navy occurred in connection with the sale by respondents of certain socks which were advertised by them as "U. S. Navy Socks." No statement in the form of a label or tag was affixed thereon disclosing that the hose had been rejected by the Navy. The record contains evidence which shows that such socks were rejected as departing from standard specifications and that the reason assigned for such action was the color of the dye.

Respondents deny having knowledge at the time the socks were offered for sale in their advertising that this lot of goods failed to conform to contract specifications or had been rejected for this reason. The testimony of one of the respondents is to the effect that merchandise rejected by the Government as defective under contract specifications usually is so identified and labeled by the manufacturer thereof, and this witness further stated that such socks bore no markings when received by respondents showing that they had been rejected. Inasmuch as the evidence introduced in support of the allegations of the complaint pertaining to this issue directly relates to but a single instance in which merchandise imprinted with a contract number and other indicia of service origin was resold by respondents without appropriate markings disclosing its defective character and in view of the doubt which may be entertained as to whether respondents were informed as to all the circumstances under which the socks became available to the civilian trade, the Commission is of the opinion that the evidence adduced in support of these additional charges is inadequate for an informed determination of the issue presented thereby. Such

additional charges are accordingly dismissed without prejudice to the right of the Commission to institute a new proceeding in respect thereto if future conditions warrant.

Commissioner Mead not participating.

ORDER TO CEASE AND DESIST

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

*It is ordered,* That the respondents Henry Modell, Rose Modell, and William Modell, individually and as copartners trading under the names Henry Modell & Co., and Modell's, or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

(1) Representing through use of the term "Government Issue" or "G. I." or in any other manner that merchandise which has not been procured from a branch of the United States Government is Government issue; or representing through use of the term "Regulation" or "U. S. Regulation" or by any other means that merchandise which has not been procured from a branch of the United States Government is regulation or standard service merchandise unless the article so designated conforms to all specifications of the branch of the service for which such merchandise was produced.

(2) Using the word "Army" or Navy" or the name of any other branch of the armed services either alone or in connection with the term "U. S." to designate or to refer to merchandise which has not been procured from a branch of the United States Government unless such merchandise has been produced for the service branch designated and unless the character of the merchandise, including the facts as to whether such articles constitute seconds, defective mer-

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chandise which has been rejected due to departures from contract specifications, manufacturers' excess stocks, or merchandise not accepted for other reasons by the branch of the service referred to, when such is the case, is conspicuously disclosed in immediate conjunction therewith.

*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.

Commissioner Mead not participating.

## Complaint

## IN THE MATTER OF

W. L. HOPPERSTEAD TRADING AS OLD MISSION TABLET  
COMPANY

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

*Docket 5591. Complaint, Oct. 4, 1948—Decision, Oct. 2, 1950*

Where an individual engaged in the interstate sale and distribution of its "O-M Tablets"; in advertising the same through certain daily newspapers and otherwise, directly and by implication—

- (a) Falsely represented that constipation causes impairment of the stomach, liver and kidneys, and soreness and weakness of the stomach and palpitation due to gas; and that its product was an adequate and competent treatment therefor, which would improve and strengthen digestion, and relieve digestive troubles; impart to the stomach a feeling of ease and comfort, and increase the rapidity of digestion;
- (b) Falsely represented that gas in the stomach or intestines was due to slow digestion or constipation; and that his product was an adequate and competent eliminator of gas; and
- (c) Represented that headache, "feeling bad" and "unnatural feelings" are usually caused by constipation and, when so caused, will be relieved by its product;

The facts being that the value of said product in the treatment of "feeling bad" and "unnatural feelings" when due to constipation, is limited to the relief afforded by evacuation of the bowels; and that when such conditions are not due to constipation, they will not be benefited by the use of said product:

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

Other allegations in the complaint to the effect that the use of the tablets would improve, restore and preserve the general health; that the product was an adequate and competent treatment for a preventive of chronic constipation; and that when headache, diminished appetite and "unnatural feelings" exist, there is a reasonable likelihood that they are due to constipation, were not supported by the stipulation in the proceeding, or any other evidence in the record.

Before *Mr. Frank Hier*, trial examiner.

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

*Mr. Leon W. Delbridge*, of Pasadena, Calif., for respondent.

## COMPLAINT

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



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Trade Commission, having reason to believe that W. L. Hopperstead, an individual trading as Old Mission Tablet Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, W. L. Hopperstead, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug product, or "drug" as defined in the Federal Trade Commission Act.

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

Designation: O-M Tablets

Formula: Cascarin-----	½ grain
Aloin-----	¼ grain
Podophyllin-----	⅛ grain
Ipecac Pow-----	⅙ grain
Sugar Milk or Powder Milk Coating-----	Q. S.

Directions: One tablet after evening meal is the usual dose. In some cases one after breakfast and one or two after supper should be tried. One half tablet for children over six.

Respondent causes the said product, when sold to be transported from his place of business in the State of California, to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his business respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing directly or indirectly, the purchase of the said product, including, but not limited to, advertisements in the following daily newspapers:

Los Angeles (Calif.) Herald-Express,

Los Angeles (Calif.) Times,

Pasadena (Calif.) Independent,

Bakersfield (Calif.) Californian,  
 San Francisco (Calif.) Examiner,  
 Oakland (Calif.) Enquirer,  
 Portland (Oreg.) Journal,  
 Seattle (Wash.) Post Intelligencer,  
 Ogden (Utah) Standard Examiner,  
 Denver (Colo.) R. M. News,  
 El Paso (Tex.) Times and Post Herald,  
 Kansas City (Mo.) Star;

all of said newspapers are sent through the United States mails; and respondent has disseminated and caused the dissemination of advertisements concerning said product by various means, including, but not limited to, the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the advertisements disseminated as aforesaid are the following:

READ WHAT A WEEK'S TRIAL WILL DO FOR

Gastric	Too Slow	Dizzy
Attacks	Digestion	Spells
Spells of	Due to	
Feeling Bad	Costiveness	

Our 10¢ Week's trial is more than enough to prove their value in spells of this kind.

O-M TABLETS contain GENUINE oldtime Vegetable Herb medication. THEY ACT TO RELIEVE THE CAUSE OF THESE TROUBLES.

These gastric attacks, dizziness, ill effects of too-slow digestion due to costive stagnation, with its slow kidney and stomach poisoning, are relieved quickly with O-M TABLETS. AMONG THE FIRST BENEFITS FROM THESE FINE OLD TABLETS IS RELIEF FROM TORMENTING GAS PRESSURE DUE TO TOO SLOW DIGESTION.

THESE TABLETS also relieve intermittent lumpy or sore feeling in the stomach due to a costive system and act to build up a costive slowed digestion. This effect on the stomach is wonderful—SEE HOW QUICKLY THEY RELIEVE DIGESTIVE AND GAS TROUBLE AND GIVE YOUR STOMACH A FEELING OF EASE AND COMFORT.

THESE OLD MISSION TABLETS also contain one of the oldest and believed to be one of the greatest of all herb constipation medicines. A costive or recurring constipated disorder weakens the stomach, causes spells of feeling bad—the liver and kidneys are often affected—the blood cells and system cannot assimilate or make use of undigested food. FOR GENUINE RESULTS TRY O-M TABLETS.

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**REMEMBER**—If food remains undigested longer than four to six hours, due to recurring costiveness or spells of constipation, it may mean sluggish liver, gastric attacks, headaches, dizziness and gas pressure palpitation. **MANY SPELLS OF FEELING BAD ARE CAUSED BY TOO SLOW DIGESTION.**

You can often relieve the cause of these many related complaints with even a sample of **O-M TABLETS**, and you are not asked to diet when you take them. Here is a chance to try these fine old tablets, and at small cost. Our 10¢ Week's Trial is more than enough to prove their value in all of these complaints. **TRY THEM FOR ONE WEEK.**

**WEEK'S TRIAL—10¢**

Send this notice with 10¢ to Old Mission Tablet Company, Pasadena 1, Calif., and they will send you a good week's trial. This trial is often sufficient to relieve every trace of palpitation due to gas pressure caused by **TOO SLOW DIGESTION** or a costive constipated condition. This sample will prove their value in all of these complaints. . . **TRY THEM. TWO SIZES AT DRUGGISTS.** Just follow directions.

**READ WHAT A WEEK'S TRIAL OF O-M TABLETS WILL DO FOR**

Gastric Attacks	Too Slow Digestion	Dizzy Spells
	Spells of Feeling Bad	Due to Constipation

Our 10¢ Week's Trial is more than enough to prove their value in spells of this kind **THEY ACT TO RELIEVE THE CAUSE.**

Here is a chance to try these fine old tablets and at small cost.

One woman writes that she received more good from the 10¢ week's trial than from many dollars spent in other treatments.

Many say that these O-M Tablets do more than they are claimed to do and make them feel natural again, and take a week's course occasionally for protection.

(Too Slow Digestion and Costive Spells, cause of much trouble)—**THE BLOOD CELLS AND SYSTEM CANNOT ASSIMILATE OR MAKE USE OF UNDIGESTED FOOD, SOON RESULTING IN WEAKNESS, FAILING STRENGTH—MAY EVEN AFFECT THE LIVER AND KIDNEYS. MANY SPELLS OF FEELING BAD ARE CAUSED BY TOO SLOW DIGESTION.**

Illnesses brought on by recurring constipation, or costiveness, such as gastric attacks, too slow digestion, stomach soreness, gas pressure palpitation, dizzy spells, failing appetite and an unnatural feeling, are relieved promptly by **O-M TABLETS. TRY THEM—SEE HOW QUICKLY THEY RELIEVE THIS FORM OF DIGESTIVE AND GAS TROUBLE, AND GIVE YOUR STOMACH A FEELING OF EASE AND COMFORT.**

These **OLD MISSION TABLETS** also contain one of the oldest and believed to be one of the greatest of all herb constipation medicines. If you want something genuine, try **O-M TABLETS.** When you are feeling bad, you want a tablet that does something. **TRY THEM FOR ONE WEEK.**

## WEEK'S TRIAL—10¢

Send this notice with 10¢ to Old Mission Tablet Company, Pasadena 1, Calif., and they will send you a good week's trial. This trial is often sufficient to relieve every trace of palpitation due to gas pressure caused by TOO SLOW DIGESTION or a costive constipated condition. This sample will prove their value in all of these complaints. TRY THEM. TWO SIZES AT DRUGGISTS. Just follow directions.

PAR. 5. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that gastric attacks or disorders, slow digestion, dizziness, discomforts included in the term "feeling bad," poisoning or impairment of the stomach, kidneys and liver, soreness of the stomach, weakness of the stomach, and palpitation and pressure due to gas, are due to constipation, and that respondent's product is an adequate and competent treatment for, and will relieve, these conditions; that gas in the stomach or intestines is due to slow digestion or constipation and that respondent's product is an adequate and competent eliminator of gas; that the use of the product will improve and strengthen the digestive processes of the body, will relieve digestive troubles, and impart to the stomach a feeling of ease and comfort; that the use of the tablets will cause food to be digested more rapidly; that the use of the tablets will improve, restore and preserve the general health; that the product is an adequate and competent treatment for, and preventive of, chronic constipation; that headache, diminished appetite and "unnatural feelings" due to constipation will be relieved by the product, and that when these conditions exist there is reasonable likelihood that they are due to constipation.

PAR. 6. The said advertisements are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact gastric attacks or disorders, slow digestion, dizziness, discomforts included in the term "feeling bad," poisoning or impairment of the stomach, kidneys and liver, soreness of the stomach, weakness of the stomach and palpitation due to gas, are not caused by constipation, and respondent's product will not relieve them, nor is it an adequate or competent treatment therefor. Gas in the stomach or intestines is not caused by slow digestion or constipation and respondent's preparation will not cause the expulsion of gas except as an incident to a movement of the bowels. The use of "O-M Tablets" will not improve nor strengthen the digestive processes of the body, will not relieve digestive troubles, nor impart to the stomach a feeling of ease or comfort. The product will

not increase the rapidity of the digestion of food. No improvement, restoration or preservation of the general health will be obtained by the use of the product. It is not an adequate or competent treatment for, nor a preventive of, chronic constipation. The value of the product in the treatment of headache, diminished appetite and "unnatural feelings," due to constipation, is limited to the temporary relief afforded by an evacuation of the bowels; such conditions, when not due to constipation, will not be benefited by the use of the product. In the aggregate, headache, diminished appetite and "unnatural feelings" are due much less frequently to constipation than to other causes.

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

#### DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 2, 1950, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

#### INITIAL DECISION

By FRANK HIER, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 4, 1948, issued and subsequently served its complaint in this proceeding upon respondent W. L. Hopperstead charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed his answer in this proceeding and at an adjournment of the initial hearing herein, a stipulation of facts was entered in the record which it was agreed might be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis of findings as to the facts and conclusion based thereon and order disposing of the proceeding without presentation of proposed findings and conclusions or oral argument. Thereafter, this proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulation of facts, the latter having been approved by the trial examiner who, after con-

sideration of the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. L. Hopperstead, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

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

Designation: O-M Tablets

Formula: Cascarin .....	½ grain
Aloin .....	¼ grain
Podophyllin .....	⅛ grain
Ipecac Pow.....	⅙ grain
Sugar Milk or Powder Milk Coating.....	Q. S.

Directions: One tablet after evening meal is the usual dose. In some cases one after breakfast and one or two after supper should be tried. One half tablet for children over six.

PAR. 3. Respondent causes the said product, when sold, to be transported from his place of business in the State of California to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia. Respondent's total gross volume of business in such commerce is \$50,000.

PAR. 4. In the course and conduct of his business, respondent, subsequent to March 21, 1939, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing directly or indirectly the purchase of said product including, but not limited to, advertisements in the following daily newspapers:

- Los Angeles (Calif.) Herald-Express,
- Los Angeles (Calif.) Times,
- Pasadena (Calif.) Independent,

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Bakersfield (Calif.) Californian,  
 San Francisco (Calif.) Examiner,  
 Oakland (Calif.) Enquirer,  
 Portland (Oreg.) Journal,  
 Seattle (Wash.) Post Intelligencer,  
 Ogden (Utah) Standard Examiner,  
 Denver (Colo.) R. M. News,  
 El Paso (Tex.) Times and Post Herald,  
 Kansas City (Mo.) Star.

Said newspapers are regularly sent through the United States mails. Respondent has disseminated and caused the dissemination of advertisements concerning said product by various means, including but not limited to, the advertisements referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among the advertisements disseminated by respondent up to and including 1949 is the following:

## [Pictorial Representation of Two Women]

Mrs. Friend: I thought all laxative tablets were alike until you recommended O-M Such Relief!

Mrs. Neighbor: Indigestion and Costiveness tormented me for years until I found O-M TABLETS.

## READ WHY THOUSANDS GET RELIEF WITH O-M TABLETS

O-M TABLETS are intended to relieve your miserable logy feeling and other troubles brought on by poor digestion and a costive or constipated condition. these ailments may also bring on Headaches, Backaches, Stomach Soreness, Gas Distress and other weakness. Gastric Attacks, Dizziness and other ill effects of indigestion due to insufficient flow of bile and costive congestion are relieved quickly with O-M TABLETS.

For over 30 years we have sincerely tried to make O-M TABLETS the finest and safest tablet of its kind. Much money and tireless effort have been spent on medical research. O-M TABLETS are a prescription-like compound of pure vegetable herb medicines. They have proven to be dependable, soothing and thorough. No disagreeable after-effects or disturbed rest. They do not contain mineral or chemical laxative.

## PROOF OFFER

HERE IS OUR GUARANTEE OF CONFIDENCE. Send this request and 10c to the OLD MISSION TABLET COMPANY, Pasadena 1, Calif., for a liberal trial package. If you are not completely satisfied with their relief, return the unused portion and we will refund immediately the cost plus postage. Just follow directions. DRUGGISTS have sold O-M TABLETS for over 30 years in two economical sizes.

PROVE TO YOURSELF AND RECOMMEND TO OTHERS

PAR. 6. Among the advertisements disseminated by respondent in 1950 is the following:

READ WHAT A WEEK'S TRIAL OF O-M TABLETS WILL DO

FOR GASTRIC	TOO SLOW	DIZZY	SPELLS OF
ATTACKS	DIGESTION	SPELLS	FEELING BAD

DUE TO  
CONSTIPATION

Our 10c Week's Trial is more than enough to prove their value in spells of this kind.

THEY ACT TO RELIEVE THE CAUSE

Here is a chance to try these fine old tablets and at small cost.

One woman writes that she received more good from the 10c week's trial than from many dollars spent in other treatments.

Many say that these O-M Tablets do more than they are claimed to do and make them feel natural again, and take a week's course occasionally for protection.

(Too Slow Digestion and Costive Spells, cause of much trouble)—THE BLOOD CELLS AND SYSTEM CANNOT ASSIMILATE OR MAKE USE OF UNDIGESTED FOOD, SOON RESULTING IN WEAKNESS, FAILING STRENGTH—MAY EVEN AFFECT THE LIVER AND KIDNEYS. MANY SPELLS OF FEELING BAD ARE CAUSED BY TOO SLOW DIGESTION.

Illnesses brought on by recurring constipation, or costiveness, such as gastric attacks, too slow digestion, stomach soreness, gas pressure palpitation, dizzy spells, failing appetite and an unnatural feeling, are relieved promptly by O-M TABLETS. TRY THEM—SEE HOW QUICKLY THEY RELIEVE THIS FORM OF DIGESTIVE AND GAS TROUBLE, AND GIVE YOUR STOMACH A FEELING OF EASE AND COMFORT.

These OLD MISSION TABLETS also contain one of the oldest and believed to be one of the greatest of all herb constipation medicines. If you want something genuine, try O-M TABLETS. When you are feeling bad, you want a tablet that does something. TRY THEM FOR ONE WEEK.

WEEK'S TRIAL—10c

Send this notice with 10c to Old Mission Tablet Company, Pasadena 1, Calif., and they will send you a good week's trial. This trial is often sufficient to relieve every trace of palpitation due to gas pressure caused by TOO SLOW DIGESTION or a costive constipated condition. This sample will prove their value in all of these complaints. TRY THEM. TWO SIZES AT DRUGGISTS. Just follow directions.

PAR. 7. Through the use of said advertisements, and others similiar thereto, respondent has represented, directly and by implication, that constipation causes impairment of the stomach, liver and kidneys, soreness and weakness of of the stomach and palpitation due to gas and that respondent's product is an adequate and competent treat-



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ment therefor; that it will improve and strengthen digestion, will relieve digestive troubles, will impart to the stomach a feeling of ease and comfort and will increase the rapidity of digestion; that gas in the stomach or intestines is due to slow digestion or constipation and that respondent's product is an adequate and competent eliminator of gas; that headache, "feeling bad" and "unnatural feelings" are usually caused by constipation and, when so caused, will be relieved by respondent's product.

PAR. 8. Said representations are misleading in material respects, and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In fact, impairment of the stomach, kidneys and liver, soreness of the stomach, weakness of the stomach and palpitation due to gas are not caused by constipation; gas in the stomach is not caused by slow digestion; the use of respondent's product will not improve nor strengthen the digestive processes of the body; will not relieve digestive troubles nor impart to the stomach a feeling of ease or comfort, nor increase the rapidity of digestion of food and the value of respondent's product in the treatment of "feeling bad" and "unnatural feelings" when due to constipation is limited to the relief afforded by evacuation of the bowels. Such conditions, when not due to constipation, will not be benefited by the use of respondent's product.

PAR. 9. Other allegations made in the complaint are not supported by the stipulation or any other evidence in the record.

#### CONCLUSION

The acts and practices of respondent, as herein found, are to the actual and potential 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

*It is ordered,* That W. L. Hopperstead, his employees, representatives and agents, directly or indirectly, through any corporate or other device, under the trade name of Old Mission Tablet Co. or under any other trade name, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act of "O-M Tablets," or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from, directly or indirectly,

## Order

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

(a) That impairment of the stomach, kidneys and liver, soreness of the stomach, weakness of the stomach and palpitation due to gas are caused by constipation.

(b) That gas in the stomach is caused by slow digestion.

(c) That respondent's product will effectively relieve gas caused by constipation.

(d) That the use of respondent's product will improve or strengthen the digestive processes of the human body.

(e) That the use of respondent's product will increase the rapidity of digestion of food or impart to the stomach a feeling of ease or comfort.

(f) That "feeling bad" and "unnatural feelings," when due to constipation, can be effectively treated by the use of respondent's product beyond the temporary relief of bowel evacuation.

(g) That "feeling bad" and "unnatural feelings," when not due to constipation, can be benefited at all by the use of respondent's product.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's O-M Tablets, any advertisement which contains any of the representations prohibited in paragraph 1 of this order.

## ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered,* That the respondent herein, W. L. Hopperstead, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order [as required by said declaratory decision and order of October 2, 1950].

IN THE MATTER OF  
**JOSEPH L. MORSE ET AL., TRADING AS UNICORN PRESS**  
 COMPLAINT, FINDINGS, ORDER AND OPINION IN REGARD TO THE ALLEGED  
 VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5488. Complaint, Mar. 27, 1947—Decision, Oct. 16, 1950*

The Commission's administrative interpretation which sets out that "the use of the word 'free', or words of similar import, in advertising to designate or describe merchandise sold or distributed in interstate commerce, that is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the advertiser, seller or distributor, is considered by the Commission to be a violation of the Federal Trade Commission Act", was based upon the experience which the Commission had had in dealing with the problem as it affects the public interest; does not have the force of law; and was intended only to serve as a general guide for the business community and to outline the circumstances under which the use of the word "free" and words of similar import are likely to be misleading; must be applied realistically, and hypertechnical applications designed to condemn the use of the word "free" in advertising under all conditions must be avoided.

Where four partners engaged in the competitive interstate sale and distribution of books, including books of an encyclopedic nature; in advertising their "Funk and Wagnalls New Standard Encyclopedia" through newspaper advertisements, folders, circulars and other advertising media—

- (a) Represented that the sales of their encyclopedia were many thousands more than the sale of all other encyclopedias put together; the facts being that the annual sales of each of two other encyclopedias approximated those of their said product;
- (b) Represented that their encyclopedia covered over 60,000 subjects; the facts being that the actual count thereof was 52,571;
- (c) Represented that each volume of their encyclopedia was larger than it actually was;
- (d) Disparaged products of competitors through representing that certain encyclopedias were too expensive for the average American citizen and were not built for home use at all;

The facts being that 90 to 95 percent of the total sales of the Encyclopedia Britannica and 90 percent of the total sale of the Encyclopedia Americana, identified in the record as the two encyclopedias thus referred to, were to individual purchasers, with the remainder going to institutions; and

- (e) Unwarrantably reflected on the quality of competitors' products through representing that encyclopedias published by its competitors contained a mass of outworn and false and misleading information;

The facts being that the great bulk of the text in their encyclopedia and in those published by their competitors is fixed matter, which requires com-

paratively few revisions; and revisions, it appears, are currently made by the publishers of other encyclopedias as well as by themselves;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby into the purchase of their said product, and to unfairly divert trade to them from their competitors:

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

As respects the recommendations of the trial examiner which would require respondents to cease and desist from the use of most of the advertising representations challenged in the complaint, including, in addition to those hereinabove noted, representations to the effect that their volume one was given away free and without cost to the recipient or profit to themselves; that their other volumes were sold at a price so incredibly low as to be almost a gift; that their volumes were bound in lifetime bindings, lavishly gilded in gold, and in expensive leather grained material; and as to the comparative currency and merit of their work as compared with the products of competitors; the currency thereof, measures taken to maintain such alleged currency, and personnel employed to maintain it; and the setting aside of certain sets of their products for readers of the newspapers and magazines in which they advertised, etc.; the Commission disagreed with certain of the recommendations as to certain of such charges because the representations involved were not shown by the evidence to be false and misleading, or were not challenged in the complaint, or because they were in the nature of "puffing" rather than misrepresentations of fact.

As respects the trial examiner's recommendation that respondents be required to cease and desist from the use of the words "free", "outright gift", "without any obligation", or similar terms in connection with merchandise which was not, in fact, a gift or gratuity, it appearing that respondents advertised among other things, "Amazing new offer. Get this world famous 512 page encyclopedia volume for only a 7¢ and a 3¢ stamp. No other charges to pay. Your gift \* \* \* sent to you for only the cost of mailing the book to you, and, of course, this volume belongs to you whether or not you wish to own the rest of the set"; that the order form usually contained in respondents' advertising required the customer, in addition to enclosing said amount in stamps or coins "to cover mailing cost of my gift book", to also "reserve the balance of the set in my name", followed by the statement, "After I examine my gift volume one, I can cancel this reservation. Otherwise you may send me the rest of the set at the rate", etc.; and in which it further appeared that respondents derived no profit or benefit from the 10 cents to cover mailing costs, and that said amount went entirely into the process of delivering the book to the prospective customers:

The Commission was of the opinion, under the circumstances, that said volume was in fact given without requiring the purchase of other merchandise; that the fact that the customer, in ordering said volume, was also required to order a full set at the regular price should not be construed as an act

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inuring to the benefit of the recipients, since the order for the full set was subject to bona fide cancellation by the recipient of volume I without in any way obligating him to return the volume; that the recipient's action of cancelling the order for the balance of the set after receiving the free book could scarcely be construed as a service inuring to the benefit of the respondents and effectively neutralized any benefit which might have inured to them from the original order; that they derived no benefit from the 10 cents; that thus those who cancelled their orders for the full set actually received volume I by paying only the delivery costs, without being required to purchase other merchandise and without performing a service which inured to the benefit of respondents; and that, accordingly, all of the terms and conditions of the Commission's administrative interpretation had been complied with by the respondents; and that volume I was, in fact, a free book and given without cost or other obligation to prospective customers who cancelled their orders for the balance of the set after receiving the first volume; and accordingly entered no order against respondents on said charge of the complaint.

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

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

*Mr. Marcus Miller*, 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 Joseph L. Morse, Mac Gache, Gertrude Morse, and Rose Gache, individually and as copartners trading as Unicorn Press, 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. The respondents, Joseph L. Morse, Mac Gache, Gertrude Morse, and Rose Gache, individuals, are copartners trading as Unicorn Press, with their principal place of business located at 80 Willoughby Street, city of Brooklyn, New York.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of books including, among others, a 25-volume set designated "Funk & Wagnalls New Standard Encyclopedia."

In the course and conduct of their business, respondents cause and have caused their said books, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said books in com-

merce among and between the various States of the United States and in the District of Columbia.

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

PAR. 4. Respondents, in the course and conduct of their said business, and for the purpose of inducing the purchase of their product, "Funk & Wagnalls New Standard Encyclopedia," in preference to the encyclopedias sold by other publishers, have made many false representations and statements concerning their product, Funk & Wagnalls New Standard Encyclopedia, and directly and by inference, have also made numerous unfair and disparaging statements and representations concerning encyclopedias sold by their competitors. Said statements and representations have been disseminated by respondents between and among the various States of the United States and in the District of Columbia among prospective purchasers by the United States mails, by advertisements in newspapers and trade journals, and by means of advertising folders, pamphlets, catalogs, circulars, and other advertising media, all of general circulation.

Among and typical of such false and disparaging statements and representations, but not all inclusive, are the following:

Amazing new offer. Get this world-famous 512 page encyclopedia volume for only a 7¢ and a 3¢ stamp. No other charges to pay.

Your gift book. It is amazing, isn't it. This encyclopedia volume is an outright gift to you, because all you pay is the actual cost of mailing it to you. Compare your free Volume 1. Then read the volume which is our gift to you. Sent to you for only the cost of mailing the book to you, and, of course, this volume belongs to you whether or not you wish to own the rest of the set.

Please send me my gift Volume 1 of the 1943 Funk & Wagnalls New Standard Encyclopedia in the edition checked below. I enclose a 7¢ and 3¢ stamp (or 10¢ in coin) to cover mailing cost of my gift book. Please also reserve the balance of the set in my name. After I examine my gift Volume 1, I can cancel this reservation. Otherwise you may send me the rest of the set at the rate of a volume a week and I will pay the postman c. o. d. the almost incredibly low price of only 89¢ per volume for the regular edition (or \$1.39 for the DeLuxe Edition), plus small mailing cost and no more. **VOLUME 1 IS mine to keep in any case.**

Name .....

Address .....

City and State .....

Check which edition you desire

Regular

Deluxe

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Get your gift book. Seize this almost incredible opportunity which entitles you to receive, if you wish, the rest of the big 25 volume set at a price so incredibly low as to be almost a gift.

Clip out the encyclopedia gift coupon at the left, and mail to us, enclosing a 7¢ and a 3¢ stamp (or 10¢ in coin). This is to cover the cost of mailing the book to you (carton, postage, packing, etc.). The book itself is free; our gift to you to enable you to decide whether or not you want to receive the rest of the set. **PLEASE DO NOT FAIL TO CHECK AT BOTTOM OF COUPON THE EDITION YOU DESIRE.** By return mail we send you your gift Volume 1 of Funk & Wagnalls New Standard Encyclopedia in the edition you select. This book belongs to you whether or not you purchase the rest of the set. And at the same time we reserve in your name the remaining 24 volumes of the complete set, entitling you to receive the volumes as they come off the presses. You can cancel this reservation if you wish after you receive and examine your gift book, but if you decide not to cancel the reservation, you receive the remainder of the set at the rate of one book each week, paying the postman the almost credibly low price of only 89¢ for each volume in regular edition (or \$1.39 in DeLuxe Edition), plus a small mailing charge and no more.

Nor does the almost incredibly low price we have set on the remaining volumes indicate the quality of the materials and labor that went into the printing and binding of the set. We have used a high-grade book paper cover board and binding cloth. The work of binding has been done by one of the largest and best-known firms in the field.

These are first quality books. A life-time binding. Your gift book is size shown here. Lavishly gilted and embossed. Bound in an expensive leather grain material. Note especially the inviting size of your volumes. Easy to handle, easy to hold in one hand; not so bulky that the binding will break if, by accident, you drop it.

Compare your free Volume 1 with a similar volume of sets selling at even \$100 or more. Teachers, critics, scholars—everywhere—have all recognized the unique quality of the Funk & Wagnalls New Standard Encyclopedia. Covers over SIXTY THOUSAND subjects of the world's knowledge. **COMPARE THIS ALMOST INCREDIBLE COVERAGE WITH THAT OF ANY ENCYCLOPEDIA IN THE WORLD. YOU WILL FIND IT IS EQUAL TO OR SURPASSING THOSE FOR WHICH YOU ARE ASKED TO PAY A SMALL FORTUNE.**

Note this: The Funk & Wagnalls **COVERS TWELVE THOUSAND MORE SUBJECTS THAN THE MOST EXPENSIVE ENCYCLOPEDIA MONEY CAN BUY.**

Here is the unchallenged fact. The Funk & Wagnalls New Standard Encyclopedia **COVERS MORE SUBJECTS THAN ANY OTHER ENCYCLOPEDIA IN THE ENGLISH LANGUAGE—with one exception!** And that single exception with not many more subjects **COSTS YOU OVER FIVE TIMES AS MUCH PER SET.**

New 1943 edition. The most up-to-date encyclopedia in the world today; not because of any added supplements, but because of the context constantly brought up to the minute with each printing. Brought up to the minute, almost as new in its coverage of the latest evidence of history, science, biology and every other subject as your daily newspaper. Brand new.

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Your gift book, in size shown here. You will discover that each full library-size volume, 1½ inches thick, contains over 512 double columned pages. Books with over a quarter of a million words.

We have set aside 750 sets for readers of this newspaper, and now invite you to become the owner of a set, making you this extraordinary offer to enable you to become acquainted with the volumes before you decide to buy.

We want to send you Volume 1 of the set with our compliments. Merely send us 10¢ to cover our mailing cost, more in evidence of your good faith than anything else. This volume is yours to keep without any obligation on your part. If, after examining Volume 1, you want the rest of the 25 volume set, you may receive it at a ridiculously low price, through our Book A Week Plan explained later in this offer, or if you want no further books, you merely drop us a postcard saying so, and that ends the matter.

The work of revising the Funk & Wagnalls therefore can and does go on all year around, every year, keeping exact pace with each volume as it goes to press. That is a service to our customers absolutely unequalled in the world of books. No other encyclopedia on earth does it. No mere partial revisions only once a year, or revisions every five or ten years for us. Every volume as it reaches you is as up-to-date as human ingenuity can arrange. Generally speaking, your Funk & Wagnalls volumes are always ahead of any other encyclopedia in the world sold on the same date.

An invitation to readers of this newspaper from the publishers of Funk & Wagnalls New Standard Encyclopedia. Please accept with our compliments Volume 1 of the new 1947 edition now on press. This latest edition newly revised. We have allocated among the newspapers and magazines carrying our winter advertising program.

In accordance with this plan we have set aside 1500 sets for readers of this newspaper and now invite you to become the owner of a set. Making you this extraordinary offer to enable you to become acquainted with the volumes before you decide to buy. We want to send you Volume 1 of the set with our compliments. Merely send us 10¢ to cover our mailing cost, more as evidence of your good faith than anything else. This volume is yours to keep without any further obligations on your part. If after examining Volume 1, you want the rest of the 27 volume set, you may receive it at a ridiculously low price through our Book A Week plan explained later in this announcement, or if you want no further books, you merely drop us a postcard saying so and that ends the matter.

The new finer 1947 edition contains 52,000 subjects covered in separate articles. Compare this with any other encyclopedia in the world. You will find that it has at least 30% more than encyclopedias costing you seven to four times as much. Each volume is up-to-date as human ingenuity can make it. In this edition the subjects have been revised to cover events of this last year and each volume as it goes to press is brought finally up-to-the minute. Our unique Book A Week Delivery plan, bringing you the volumes as they come off the press make it the most up-to-date of encyclopedias. Better still later volumes delivered to you during this Winter and Spring will contain events which have not yet occurred.

Remember that this encyclopedia at the last actual count contained SEVERAL THOUSAND MORE ARTICLES THAN THE SET REPUTED TO BE THE LARGEST EVER PUBLISHED IN THE ENGLISH LANGUAGE, AND THAT



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**IT WILL COST YOU ONLY A FRACTION OF THE PRICE OF THE OTHER.**

Many thousand more people buy our Funk & Wagnalls each year than the others all put together, and there is a reason because it is incomparably the finest encyclopedia for home use at the lowest price.

Funk & Wagnalls contains approximately 7 million words.

Encyclopedia A \$7.00 a Volume, approximately 35 million words.

Encyclopedia B \$4.50 a Volume, approximately 24 million words.

Encyclopedia C, same volume price as Funk & Wagnalls, approximately 3,600,000 words.

By looking at Encyclopedia A, it has 5 times as many words as the Funk & Wagnalls with 12,000 less subjects and Encyclopedia B, also with about the same number of subjects as the Funk & Wagnalls contains 3 times as many words. Do you know the answer to that? Well, it is that Encyclopedia A & B are not only far too expensive for the average American citizen, but that they are not built for home use at all. If, however, you want an encyclopedia that is designated for the American home library get the Funk & Wagnalls and only the Funk & Wagnalls.

What you want is a new encyclopedia that is absolutely up to date at the time you buy it and in every article. There is a date printed in every encyclopedia set you buy. Get a set in which that date means something, otherwise you might buy a mass of outworn sometimes false and misleading information.

PAR. 5. By use of the statements and representations heretofore set forth and others similar thereto not specifically set out herein, respondents have represented directly and indirectly to purchasers and prospective purchasers of their said books that volume 1 of the 1943 edition of said encyclopedia and volume 1 of the 1947 edition of said encyclopedia is given away free and without cost to the recipient or profit to the respondents; that the remaining volumes of the 25 volume set of Funk & Wagnall's new encyclopedia are sold at a price so incredibly low as to be almost a gift; that the product has a lifetime binding; that the gift book volume 1 is the same size as shown in the pictorial representation in the sample of their advertising matter; that the volumes of said encyclopedia are lavishly gilded in gold and embossed and said volumes are bound in expensive leather grained materials; that they are easily handled and easily held in one hand and are not bulky as other encyclopedias whose binding will break if by accident once you drop them; that their free volume 1 of their encyclopedia compares favorably with similar volumes of sets of encyclopedias published by competitors selling at \$100 or more; that the Funk & Wagnall's new standard encyclopedia covers over 60,000 subjects of the world's knowledge; that this incredible coverage is comparable with that of any encyclopedia in the world; that their product is equal to, or surpasses that for which the public pays a small fortune; that their product covers 12,000 more subjects than the most

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expensive encyclopedia money can buy; that it covers 30 percent more subjects than the most expensive encyclopedia on the market; that their encyclopedia covers more subjects than any other encyclopedia in the English language with one exception, and that that exception, containing not many more subjects than their product, costs over five times as much per set; that their new 1943 edition of Funk & Wagnall's new encyclopedia is the most up-to-date encyclopedia in the world today because the context is constantly brought up to the minute with each printing and is almost as complete and new in its coverage of the latest evidence of history, science, biography and every other subject as a daily newspaper.

Respondents, by the use of the aforesaid statements and representations, have further represented, directly and indirectly, to purchasers and prospective purchasers of their said books that said work is brand new; that they have set aside 750 to 1,500 sets for readers of the newspapers in which they carry their advertisements; that volume 1 of the set is sent with their compliments and that all the recipients thereof pay is ten cents to cover mailing costs; that said volume 1 is free without any obligation on the recipient's part; that the recipient of volume 1 may receive the rest of the 25 volume set at a ridiculously low price through their book-a-week plan; that if the recipient does not want any other book all he has to do is merely drop a postcard saying so and that ends the matter; that the work of revising Funk & Wagnall's encyclopedia goes on all the year around every year, keeping exact pace with each volume as it goes to press; that this is a service to respondents' customers absolutely unequaled by any service furnished or rendered by publishers of other encyclopedias; that respondents have no mere partial revisions only once a year or revisions every 5 or 10 years; that every volume of their encyclopedia reaching the recipient is as up-to-date as human ingenuity can arrange it; that their encyclopedia is always ahead of any other encyclopedia in the world that is sold on the same date as it is sold; that volume 1 of their new 1947 edition is newly revised.

By use of the aforesaid statements and representations, respondents have further represented, directly and indirectly, that volume 1 of their 1947 edition is free to the recipient to keep without any further obligation on his part; that their new, finer 1947 edition of said encyclopedia contains 52,000 subjects covered in separate articles, that same is comparable to any other encyclopedia in the world and contains 30 percent more subjects than encyclopedias costing from seven to four times as much as respondents' encyclopedia; that in the 1947 edition of said encyclopedia the subjects have been revised

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to cover events of the past year and that each volume as it goes to press is finally brought up to the minute; that their book-a-week delivery plan makes it the most up to date of encyclopedias; that the volumes of their said 1947 edition delivered during the winter and spring of 1947 will contain events which have not yet actually occurred; that their 1947 encyclopedia by actual count, contains several thousand more articles than the set reputed to be the largest ever published in the English language and that it costs only a fraction of the price of same; that the annual sale of respondents' encyclopedia is many thousand times more than the sale of all other encyclopedias put together; that it is the finest encyclopedia for home use at the lowest price; that their new Funk & Wagnall's encyclopedia contains approximately 7 million words as compared with approximately 35 million words contained in Encyclopedia "A" selling at \$7 a volume and 24 million words as contained in Encyclopedia "B" selling for \$4.50 per volume; that Encyclopedia "C" selling at the same price per volume as respondents' work has 3,600,000 words; that by comparison Encyclopedia "A" having approximately five times as many words as respondents' product, has twelve times less subjects, and Encyclopedia "B" having about the same number of subjects as respondents' product, contains three times as many words; that Encyclopedias "A" and "B" are therefore not only far too expensive for the average American citizen but they are not built for home use at all; while respondents' product is designed for the American Home Library; that what the public wants is a new encyclopedia that is absolutely up to date at the time purchased and as to every article; that there is a date printed in every encyclopedia purchased from respondents; that the dates employed in sets sold by respondents mean something, and that otherwise the public might buy a mass of outworn and sometimes false and misleading information.

PAR. 6. In truth and in fact, neither volume 1 of the 1943 edition nor volume 1 of the 1947 edition of respondents' said encyclopedia nor any other volume thereof, is given away free and without cost to the recipient or profit to the respondents. None of the volumes of respondents' encyclopedia, including volumes other than volume 1, are sold at a price so incredibly low as to be almost a gift, but on the contrary they are sold at the usual and customary price for such volumes. The respective volumes of respondents' encyclopedia do not contain life time bindings. The volume 1 "gift book" is not the same size as indicated in the pictorial representation in respondents' advertising matter. The books are not lavishly gilded in gold and are not bound in expensive leather grained material. Other encyclo-

pedias are not bulky nor will the binding on same break if someone drops them. Volume I of respondents' encyclopedia is not superior to and does not compare favorably with similar volumes of sets of encyclopedias published by competitors selling at \$100 or more. Respondents' Funk & Wagnall's new standard encyclopedia does not cover 60,000 subjects of the world's knowledge and its coverage is not comparable with that of any other encyclopedia in the world. Respondents' product does not surpass nor in fact is it equal to that of other encyclopedias for which the public "pays a small fortune." Respondents' encyclopedia does not cover 12,000 more subjects nor 30 percent more subjects than the most expensive encyclopedia on the market. Respondents' encyclopedia does not cover more subjects than any other encyclopedia in the English language with one exception, referring to Encyclopedia "B" which does contain many more subjects than respondents' encyclopedia. Respondents' new 1943 edition of Funk & Wagnall's new encyclopedia is not the most up-to-date encyclopedia in the world. The context of same is not constantly brought up to the minute with each printing and is not as complete and new as a daily newspaper in its coverage of the latest evidence of history, science, biography and every other subject. Respondents' encyclopedia is not brand new. Respondents do not set aside 750 sets or any other number of their product for readers of the newspapers and magazines in which respondents carry their advertisements but anyone wishing to purchase their product can do so without limit.

Volume 1 of respondents' set is not given away free without any obligation of the recipient's part, and the remaining volumes of said set are not sold at a ridiculously low price through respondents' book-a-week-plan but are sold at the usual and customary prices obtained for a product of its kind. A coupon signed by an applicant for said volume 1 of respondents' encyclopedia is deceptive in that it does not clearly state and fails to reveal that the one signing same has in fact obligated himself to purchase the remaining volumes of said set.

The work of revising Funk & Wagnall's new encyclopedia by the respondents does not go on all the year round every year, keeping exact pace with each volume as it goes to press. Respondents' service to customers is not unequalled by any service furnished customers by publishers of competitive encyclopedias. In truth and in fact respondents do have volumes of their encyclopedia in which various subjects are revised only once a year, or revised every five or ten years, a great majority of subjects treated in encyclopedias, including that

of respondents, relate to events of the past and are not revised. Respondents' encyclopedia is not ahead of any other encyclopedia in the world that is sold on the same date that respondents' encyclopedia is sold. Volume I of respondents' new 1947 edition is not newly revised; 1,500 sets of respondents' new 1947 edition of their encyclopedia have not been set aside for readers of the various newspapers or magazines in which respondents carry their advertising but anyone desiring to purchase same can do so regardless of limit.

Volume 1 of respondents' new 1947 edition is not free to the recipient thereof without any further obligation on his part. In truth and in fact, the recipient of same has signed a contract for the purchase of the remaining volumes of said set or edition, and it is necessary that he advise the respondents that he does not desire them. Respondents' 1947 edition of their encyclopedia does not cover more subjects than, and is not comparable with, any other encyclopedia, and does not contain 30 percent more subjects than competitive encyclopedias selling from seven to four times as much as respondents' encyclopedia. Every volume of the respondents' encyclopedia is not up-to-date. Their 1947 edition has not been revised so as to cover events of the past year and each volume is not finally brought up to the minute as it goes to press. Respondents' book-a-week delivery plan does not make their encyclopedia the most up-to-date of all encyclopedias. Future volumes of their 1947 edition delivered during the winter and spring of 1947 will not contain events which have not yet actually occurred. Respondents' 1947 encyclopedia does not contain several thousand more articles than the set reputed to be the largest ever published in the English language and its cost is not merely or only a fraction of the price of larger sets. The sale of respondents' encyclopedia is not many times greater each year than the sale of all other competitive encyclopedias put together.

Respondents' said encyclopedia is not the finest encyclopedia for home use at the lowest price. The comparison drawn by the respondents to the effect that their encyclopedia contains 7 million words as compared with approximately 35 million contained in Encyclopedia "A" and 24 million words as contained in Encyclopedia "B" is misleading and deceptive and respondents' encyclopedia in fact does not contain more subjects than "A" and "B" Encyclopedias. Encyclopedias other than respondents, do not contain a mass of outworn and false and misleading information. Other encyclopedia publishers, competitors of respondents, do not make partial revisions once a year or revisions every five or ten years, and their works are as up-to-date as respondents' Funk & Wagnall's New Standard Encyclopedia. Funk

& Wagnall's New Standard Encyclopedia is not ahead, in information, of other encyclopedias and is not the most up-to-date encyclopedia in the world. Respondents do not maintain a huge staff of experts revising their encyclopedias.

PAR. 7. The aforesaid false and misleading representations unfairly defame and disparage competitors and their products and have had and now have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true. As a result of such erroneous and mistaken belief, so induced, many members of the purchasing public have purchased respondents' encyclopedias in preference to the encyclopedias published by competitors. Therefore, trade in said commerce is and has been unfairly diverted to respondents from sellers of other encyclopedias who do not misrepresent their said encyclopedias, to the injury of said competitors and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and the respondents' 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 27, 1947, issued and thereafter served its complaint in this proceeding on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondents' answer thereto, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final consideration by the Commission on the complaint, answer, testimony and other evidence, recommended decision of the trial examiner and exceptions thereto filed by counsel for the respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the trial examiner's recommended decision, 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, Joseph L. Morse, Mac Gache, Gertrude Morse, and Rose Gache, individuals, are copartners trading as Unicorn Press with their principal place of business located at 80 Willoughby Street, Brooklyn, New York.

PAR. 2. The respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of books, including, among others, a 25-volume set designated "Funk & Wagnalls New Standard Encyclopedia."

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

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

PAR. 4. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their product, "Funk & Wagnalls New Standard Encyclopedia," have made and disseminated between and among the various States of the United States and in the District of Columbia, among prospective purchasers, by United States mails, by newspaper advertisements, and by folders, circulars, and other advertising media, all of general circulation, false statements and representations concerning their said product and unfair and disparaging statements and representations concerning encyclopedias sold by their competitors.

Among such false and disparaging statements and representations are the following:

Many thousands more people buy our Funk & Wagnalls each year than the others all put together! And there's a reason—because it is incomparably the finest encyclopedia for home use at the lowest price.

\* \* \* covers over SIXTY THOUSAND SUBJECTS of the world's knowledge down to the present day.

Your Gift Book is Size Shown Here [with picture of a volume, the depiction measuring approximately 9 inches long and 2 inches thick].

25 VOLUMES All Exactly Like This [with depiction of volume measuring approximately 9 inches long and 2½ inches thick].

\* \* \* Encyclopedias "A" and "B" are not only far too expensive for the average American citizen, but that they are not built for home use at all! \* \* \* If, however, you want an encyclopedia that is DESIGNED FOR THE AMERICAN HOME LIBRARY—get the Funk & Wagnalls, and only the Funk & Wagnalls!

There's a date printed in every encyclopedia set you buy. Get a set in which that date means something, or else you may be buying a mass of outworn, sometimes false and misleading information.

PAR. 5. Through the use of the statement and representations hereinabove set forth and others similar thereto, the respondents have represented directly and by implication that the annual sales of their encyclopedia are many thousands more than the sale of all other encyclopedias put together; that their encyclopedia covered over 60,000 subjects; that the size of each volume of their encyclopedia was larger than it actually was; that certain encyclopedias published by competitors of the respondents are too expensive for the average American citizen and are not built for home use at all; that encyclopedias published by competitors of the respondents contain a mass of outworn and false and misleading information.

PAR. 6. The representation by the respondents that the annual sales of their encyclopedia are many thousands more than the sale of all other encyclopedias put together is admittedly a misstatement of fact. The evidence shows that the annual sales of each of two other encyclopedias have approximated those of respondents. Respondents' representation that their encyclopedia covered over 60,000 subjects is also admitted to have been erroneous, the actual count thereof being 52,571. The representation by the respondents as to the size of each volume of their encyclopedia is also admitted by the respondents to have been erroneous and exaggerated. The respondents claim, and there is no evidence to the contrary, that these three last-mentioned representations, which they admit were misstatements of facts, were made inadvertently for only a short period of time and were changed or discontinued upon discovery of the fact that they were in error.

Encyclopedias "A" and "B", which the respondents have represented as being far too expensive for the average American citizen and not built for home use at all, are identified in the record as Encyclopaedia Britannica and Encyclopedia Americana, respectively.



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The evidence shows that 90 to 95 percent of the total sales of Encyclopedia Britannica and 90 percent of the total sales of Encyclopedia Americana are to individual purchasers, with the remainder going to institutions. Respondents' representation concerning such encyclopedias are more than mere expressions of opinion; they are affirmative representations which are not factually correct and which disparage competitors' products.

There is evidence in the record that the great bulk of the text in respondents' encyclopedias and in the encyclopedias published by competitors of the respondents is fixed matter, requiring comparatively few revisions. The evidence shows that revisions are currently made by the publishers of other encyclopedias as well as by the respondents. The implied representation by the respondents that encyclopedias published by competitors contain a mass of outworn, sometimes false and misleading information is an unwarranted reflection on the quality of competitors' products.

PAR. 7. The use by the respondents of the above-described false, misleading, and disparaging statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondents' encyclopedias in reliance upon such erroneous and mistaken belief, and to unfairly divert trade to the respondents from their competitors.

PAR. 8. While the complaint contained certain charges in addition to those mentioned herein, the Commission is of the opinion, and finds, that such charges are not sustained by the evidence.

## CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto filed

by counsel for the respondents, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Joseph L. Morse, Mac Gache, Gertrude Morse, and Rose Gache, individually and trading as Unicorn Press, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their Funk & Wagnalls New Standard Encyclopedia or other reference books in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing that the number of volumes or sets of their said publication sold annually, or during any other period, is greater than it actually is.

(2) Representing, by exaggeration as to the number of subjects covered, or otherwise, that the encyclopedic coverage of their said publication is any greater, or more extensive, than it is in fact.

(3) Representing, by picturizations or otherwise, that the individual volumes of their said publication are larger than they actually are.

(4) Making or publishing false or disparaging representations concerning encyclopedias published by competitors.

*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.

#### OPINION OF THE COMMISSION

##### AYRES, *Commissioner*:

The respondents are charged with false and misleading advertising in connection with the sale of a 25-volume set of books designated "Funk & Wagnalls New Standard Encyclopedia." The trial examiner recommended an order which would require respondents to cease and desist from the use of most of the advertising representations challenged in the complaint.

The Commission has agreed with the recommendation of the trial examiner with respect to certain of the advertising representations involving exaggerations concerning their own products and disparagement of competitive products, and has entered its order in the form which it considers appropriate to prohibit representations of that nature. The Commission disagreed with certain of the recommenda-

tions of the trial examiner because the representations involved were not shown by the evidence to be false and misleading, or were not challenged in the complaint, or because they were in the nature of "puffing" rather than misrepresentations of fact. These several points are fully covered in the Commission's rulings on the exceptions to the trial examiner's recommended decisions and in its findings as to the facts. One of the points on which the Commission disagreed with the recommendation of the trial examiner, however, is of widespread general interest, and it is believed that some further explanation of the reasons for the Commission's decision may be helpful.

The trial examiner recommended that respondents be required to cease and desist from the use of the words "free," "outright gift," "without any obligation," or similar terms in connection with merchandise which is not, in fact, a gift or gratuity. The Commission disagreed with this recommendation because it is of the opinion that in the circumstances of this case the merchandise so advertised is not misrepresented.

The complaint charges that the respondents have falsely represented that Volume 1 of their encyclopedia is given away free and without cost to the recipient or profit to the respondents. This charge is based on advertising representations of which the following are typical:

Amazing new offer. Get this world-famous 512 page encyclopedia volume for only a 7¢ and a 3¢ stamp. No other charges to pay.

Your gift book. It is amazing, isn't it. This encyclopedia volume is an outright gift to you, because all you pay is the actual cost of mailing it to you. Compare your free Volume 1. Then read the volume which is our gift to you. Sent to you for only the cost of mailing the book to you, and, of course, this volume belongs to you whether or not you wish to own the rest of the set.

Respondents' advertising usually contains an order form of which the following is typical:

Please send me my gift Volume 1 of the 1943 Funk & Wagnalls New Standard Encyclopedia in the edition checked below. I enclose a 7¢ and 3¢ stamp (or 10¢ in coin) to cover mailing cost of my gift book. Please also reserve the balance of the set in my name. After I examine my gift Volume 1. I can cancel this reservation. Otherwise you may send me the rest of the set at the rate of a volume a week and I will pay the postman c. o. d. the almost incredibly low price of only 89¢ per volume for the regular edition (or \$1.39 for the DeLuxe Edition), plus small mailing cost and no more. VOLUME 1 IS mine to keep in any case.

Respondents admit, in effect, that the foregoing advertising representations and others of a similar nature were used, but contend that they accurately and fully disclose the conditions and circumstances under which the offer is made and that those conditions have been

fully adhered to. They contend that volume 1 of the encyclopedia is in fact a gift. The record discloses that the conditions stated in the advertising are followed by the respondents, and fairly represent their method of distributing the first volume of their publication.

It is apparent from the foregoing that a prospective customer desiring to receive volume I sends in an order for the entire set of books at respondents' regular price and includes with the order the equivalent of 10 cents. After the prospective customer examines volume 1, he may cancel the order for the remainder of the set and keep volume I without further cost or obligation of any sort. If, however, after receiving and examining volume 1, the prospective customer fails to cancel the order for the remainder of the set, he thereby becomes obligated to purchase the remaining 24 volumes and to pay for them at the price agreed upon in his original order.

On January 30, 1948, the Commission issued the following administrative interpretation in regard to the use of the word "free" to describe merchandise:

The use of the word "free," or words of similar import, in advertising to designate or describe merchandise sold or distributed in interstate commerce, that is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the advertiser, seller or distributor, is considered by the Commission to be a violation of the Federal Trade Commission Act.

This interpretation was based upon the experience which the Commission has had in dealing with the problem as it affects the public interest. It does not have the force of law, and was intended only to serve as a general guide for the business community and to outline the circumstances under which the use of the word "free" and words of similar import are likely to be misleading. It must be applied realistically, and hypertechnical applications designed to condemn the use of the word "free" in advertising under all conditions must be avoided.

In the circumstances of this case, volume 1 of the encyclopedia is, in fact, given without requiring the purchase of other merchandise. It is true that in ordering the first volume the prospective customer must also order a full set at the regular price, and this may be construed as an act inuring to the benefit of the respondents. But the order for the full set is subject to bona fide cancellation by the recipient of volume I without in any way obligating him to return that volume or otherwise to reimburse respondents. The recipient's action of cancelling the order for the balance of the set after receiving the free

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book can scarcely be construed as a service inuring to the benefit of the respondents, and such action effectively neutralizes any benefit which may have inured to the respondents from the original order. The payment of ten cents is represented as being sufficient to cover only the mailing costs and there is no evidence to the contrary. On the basis of this record, it appears that respondents derive no profit or benefit from this ten cents and that it goes entirely to the process of delivering the book to the prospective customer. Thus it appears that those who cancel their orders for the full set actually receive volume 1 by paying only the delivery costs, without being required to purchase other merchandise and without performing a service which inures to the benefit of the respondents.

The Commission is of the opinion, therefore, that all of the terms and conditions of its administrative interpretation have been complied with by the respondents here, and that volume 1 is, in fact, a free book and is given without cost or other obligation to prospective customers who cancel their orders for the balance of the set after receiving the first volume. Accordingly, the Commission has not entered any order against respondents on this charge of the complaint.

## Syllabus

## IN THE MATTER OF

## BENTLEY STORES CORPORATION ET AL.

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

*Docket 5689. Complaint, Aug. 12, 1949—Decision, Oct. 16, 1950*

Where a corporation and its officers, engaged, among other things, in the operation through said corporation, and as an integrated enterprise as respects purchase, shipment and resale of the clothing and shoes thus dealt in, of retail stores in New York City, Kansas City, St. Louis, Columbus, Milwaukee, and Louisville, through which a substantial part of the sales was made on credit for deferred payments—

In seeking to obtain information in order to locate delinquent debtors and facilitate collection of delinquent accounts through use of certain reply post cards, which called for the name and address of the customer and those of his employer and bank, and certain other matter—

- (a) Falsely represented through the use of the name "Rapid X Forwarding System" on certain of said cards, and such statements as "FINAL NOTICE. We have a prepaid package addressed to the party whose name appears on the attached card. On account of a difference in address and lack of identification we cannot make delivery", and "Same will be forwarded with No Charges to proper party if you will fill in and return the attached postal card", "Distribution Division, Unclaimed Package Dept." etc., that the persons to whom such cards were sent were owners of packages sent by others, which were in the hands of the senders of said cards in the usual course of business, with transportation charges prepaid by the consignors, and ready for delivery upon receipt of the reply cards filled out with the requested and needed information; and
- (b) Falsely represented directly or by implication, to the recipients of said card, through the use of said name "Rapid X Forwarding System," that the senders were in the business of transporting and delivering packages and maintaining an unclaimed package department;
- (c) Falsely represented through similar cards which bore the name "Novelty Distributors Company," together with an address, that they were engaged in the sale of novelty merchandise, including pens, that they desired to advertise said pens by furnishing one "absolutely free" to the addressee, and needed the information called for by the card in order so to do;
- (d) Falsely represented through other cards which named a debtor customer, and contained the words "Recording Service", followed by an address, and such statements as "The above party has made application. Such verification you give us will be held in strictest confidence . . ." and called for the name and address of the person concerned, along with other information, that the subject of the card had applied for employment and that they maintained an employment bureau;

The facts being they were not engaged in any such businesses or activities as thus represented; in reply to those answering the post cards first above described, they sent to the addressee as his "unclaimed package", a pen;

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and the use of said cards, with their false and misleading representation, constituted merely a scheme and attempt to obtain information by subterfuge, the principal purpose of which was to locate a delinquent debtor and facilitate the collection of the delinquency;

With effect of misleading and deceiving persons to whom said cards were sent into the erroneous belief that such representations and designations were true, and, by reason thereof, into transmitting information which they would otherwise not supply; and with tendency and capacity 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.

As respects the voluntary cessation by respondents of the practices above described, in 1942, it appeared that such cessation was neither permanent nor complete, or in good faith, as evidenced by respondents' resumption of the same course of conduct in 1948 in different form or by different means, but with the same effect and purpose; and the public interest required that such continuing, though interrupted, course of conduct be stopped.

In said proceeding in which it appeared that while respondent W, who as office manager and bookkeeper for respondent corporation, registered under New York law, in her name as fictitious names, the names hereinbefore set out, and permitted their use, even though, insofar as the evidence disclosed, she had nothing to do with the use of the cards concerned, cease and desist order entered in the case also required that she desist from using or permitting the use of the said names.

Before *Mr. Frank Hier*, trial examiner.

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

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

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Bentley Stores Corp., a corporation, and William S. Schneer, Harry H. Fisher, William S. Feldman, and Gus G. Fisher, individually and as officers of Bentley Stores Corp., and Franklin Jewelry Co., Inc., a corporation, and Gus G. Fisher, George Kantor and William S. Schneer, individually and as officers of Franklin Jewelry Co., Inc., and Florence Weinberg, individually and as an employee of Bentley Stores Corp., and trading as Rapid X Forwarding System, Novelty Distributors and Recording Service, 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, Bentley Stores Corp., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 21 East Fortieth Street, New York, N. Y. Respondents William S. Schneer, Harry H. Fisher, William S. Feldman, and Gus G. Fisher are officers of Bentley Stores Corp. with their office and principal place of business located at 21 East Fortieth Street, New York, N. Y.

Respondent, Franklin Jewelry Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 21 East Fortieth Street, New York, N. Y.

Respondents, Gus G. Fisher, George Kantor, and William S. Schneer, are officers of Franklin Jewelry Co., Inc., with their office and principal place of business located at 21 East Fortieth Street, New York, N. Y.

Respondent, Florence Weinberg, is an employee of the Bentley Stores Corp. with her office and place of business located at 21 East Fortieth Street, New York, N. Y.

PAR. 2. Respondent, Bentley Stores Corp., is engaged in the operation of clothing stores located in the city of New York and other stores located in other cities in the various States of the United States. In the course of its business Bentley Stores Corp. causes its goods and merchandise to be moved in commerce between and among the various States of the United States. Respondents, William S. Schneer, Harry H. Fisher, William S. Feldman, and Gus G. Fisher, as officers of said corporate respondent, formulate and direct its sales, advertising, credit and collection policies and respondent, Florence Weinberg, office manager of said corporate respondent, Bentley Stores Corp., is actively engaged in the collection of accounts for said corporation.

Franklin Jewelry Co., Inc., is a corporation which owns and operates credit jewelry stores in several cities and States of the United States. In the course of its business Franklin Jewelry Co., Inc., causes its goods and merchandise to be moved in commerce between and among the various States of the United States. Respondents, Gus G. Fisher, George Kantor, and William S. Schneer are officers of said Franklin Jewelry Co., Inc., and formulate and direct the operations and business policies of said corporate respondent. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged and more specifically set out.



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PAR. 3. In the course and conduct of their business, Bentley Stores Corp. and Franklin Jewelry Co., Inc., sell their merchandise for cash and also on a credit basis. When sales are made on credit they each secure information from the purchaser as to the purchaser's place of employment, resident address, and names and addresses of references. In the course and conduct of their businesses as aforesaid, respondents frequently desire to obtain information as to the current addresses and employments of persons to whom respondents have sold merchandise on credit and who are delinquent in their payments. In order to obtain such information they use the following methods. Respondent, Florence Weinberg, has caused to be registered as her trade names Rapid X Forwarding System, Novelty Distributors Co. and Recording Service and all of the respondents have caused to be mailed to the debtor or his reference post cards exemplified by exhibits A and B. The use of said letters and cards involves their transmission by United States mails from the places of mailing to places in other States of the United States and in the District of Columbia. Respondent, Bentley Stores Corp. and its officers and Florence Weinberg, have also used the card exemplified by exhibit C attached hereto in the same manner and for the same purposes as the exhibits A and B were used. When the return part of the cards (exhibits A, B, and C) are received by Florence Weinberg at the place of business of Bentley Stores Corp. in New York, they are sent to the various stores from which the purchases were made, many located in States other than the State of New York.

PAR. 4. Through the use of the statements appearing on exhibit A, respondents have represented, directly and by implication, to the addressee thereof, that they have a "prepaid package" for the addressee and that the information is desired in order to send the package to the addressee. In truth and in fact, none of the respondents has or has had a "prepaid package" or any other kind of package for the addressee.

Through the use of the name Novelty Distributors Co. and the post card exemplified by exhibit B, respondents have represented that they are engaged in the sale of novelty merchandise including pens and that they desire to advertise said pens by furnishing one to the addressee of the card and need the information called for by the card in order to send the pen to the addressee. In truth and in fact, respondents are not engaged and have not been engaged in the distribution of novelties nor in the sale of pens in the manner set out and described on said card.

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Through the use of the name, Recording Service, and the card exemplified by exhibit C, respondents have represented directly and by implication to the addressee thereof that the person who is the subject of the card has applied for employment or that respondents maintain an employment bureau. In truth and in fact, respondents have never maintained any employment bureau nor has the person about whom information is requested applied to respondents for a position.

All of said cards are used by respondents solely for the purpose of obtaining information to be used by respondents in collecting their accounts and the whole scheme is merely an attempt to obtain information by subterfuge.

PAR. 5. The use of the false and misleading statements, representations and designations as set forth above and in the attached exhibits A, B, and C, has and has had the tendency and capacity to and has misled and deceived many persons to whom the said letters and cards were sent into the erroneous and mistaken belief that the statements and representations contained therein were true and by reason thereof to give and furnish respondents information which they would not have otherwise supplied.

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 in violation of the Federal Trade Commission Act.

## EXHIBIT A

Return Postcard Bearing the Following Legend

## FINAL NOTICE

We have a prepaid package addressed to the party whose name appears on the attached card. On account of a difference in address and lack of identification we cannot make delivery.

Same will be forwarded with No Charges to proper party if you will fill in and return the attached postal card.

RAPID X FORWARDING  
SYSTEM

Distribution Division  
Unclaimed Package Dept.  
589 Eighth Avenue  
New York, N. Y.

---

No postage necessary on the attached  
reply card. Please answer promptly.

Complaint

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(Reverse of Card)

Bring or mail this  
Card to us promptly

Read Message Inside

**FINAL NOTICE****RAPID X FORWARDING SYSTEM**

589 Eighth Avenue

New York, N. Y.

Package Reference

Date \_\_\_\_\_

No.

Unclaimed Package  
Department**NAME AND ADDRESS SHOWN ON PACKAGE****IMPORTANT:** This prepaid package will be delivered **ONLY** to **OWNER** named above as identified below.**FILL IN ALL SPACES BELOW**Name  
Residence  
City  
Employer  
Address  
Bank  
Address

No postage or addressing necessary

(Return address—Rapid X Forwarding System, 589 8th Avenue, NYC).

**EXHIBIT B**

Return Postcard Bearing the Following Legend

**"IT PAYS TO ADVERTISE"****NOVELTY  
DISTRIBUTORS CO.**

S. E. Cor. 6th &amp; Olive Sts.

St. Louis, Mo.

**We are distributing a limited number of PENS absolutely FREE OF CHARGE providing you are now employed, and will show the PEN when you receive it, to your fellow employees and friends.****This offer applies only to the person whom this card is addressed, and is NOT TRANSFERABLE.**No personal requests granted. All pens sent by **MAIL ONLY**.**NO OBLIGATION**Nothing to **BUY**—Nothing to **SELL**. Fill out attached card and drop in nearest mail box.**NO POSTAGE NECESSARY.**

(Return address—Novelty Distributors Co., 6th &amp; Olive Sts., St. Louis, Mo.)



## Findings

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## DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 16, 1950, the initial decision in the instant matter of Trial Examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION

By FRANK HIER, Trial Examiner

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 12, 1949, issued and subsequently served its complaint in this proceeding on Bentley Stores Corp., a corporation: William S. Schneer, Harry H. Fisher, William S. Feldman and Gus G. Fisher, individually and officers of Bentley Stores Corp.; Franklin Jewelry Co., Inc., a corporation; Gus G. Fisher, George Kantor and William S. Schneer, individually and officers of Franklin Jewelry Co., Inc.; and Florence Weinberg, individually and as an employee of Bentley Stores Corp., and trading as Rapid X Forwarding System, Novelty Distributors and Recording Service, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, no answers having been filed by respondents, two hearings were held, at the first of which counsel for all respondents appeared and dictated answers for all respondents on the transcript of the hearing. Testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner, theretofore duly designated by the Commission, 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 consideration by said trial examiner on the complaint, answer thereto, testimony and other evidence and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bentley Stores Corp. is a corporation organized and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located

at 21 East Fortieth Street, New York, N. Y. Respondent William S. Schneer is president, respondents Harry H. Fisher and William S. Feldman are vice presidents, and respondent Gus G. Fisher is secretary-treasurer, respectively, of respondent Bentley Stores Corp.

Respondent Franklin Jewelry Corp., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 21 East Fortieth Street, New York, N. Y. Respondent Gus G. Fisher is president, respondents George Kantor and Harry H. Fisher are vice presidents, and respondent William S. Schneer is secretary and treasurer, respectively, of respondent Frankling Jewelry Co., Inc.

Respondent Florence Weinberg is office manager and bookkeeper for respondent Bentley Stores Corp.

PAR. 2. Respondent Bentley Stores Corp. is engaged in the operation of retail stores located in New York City, N. Y.; Kansas City and St. Louis, Mo.; Columbus, Ohio; Milwaukee, Wis.; and Louisville, Ky., selling men's and women's clothing and shoes.

Respondent Franklin Jewelry Co., Inc., is engaged in the resale at retail of jewelry through stores located in Atlanta, Ga., and Norfolk, Va. Control, direction and management of both are exercised by the officers named in paragraph 1 from the headquarters of the corporations at 21 East Fortieth Street, New York City, but separate offices and separate records are maintained for each corporation. All purchases are made from, all sales policies determined at, all orders issued from these headquarters. There is a constant movement across State lines of merchandise purchased from these headquarters and shipped by vendors directly to the various stores operated by respondents. There is also a consistent reshipment from store to store of some of such merchandise on orders from respondents' New York headquarters. Respondents maintain a constant course of trade in such goods and property in commerce between and among the various States of the United States. The course and conduct of their business involves communication and intercourse of a commercial and business nature between respondents and their suppliers and their stores. Respondents' operations in the purchase, shipment, and resale of clothing and shoes is thus completely integrated in respondent Bentley Stores Corp. and their operations in the purchase, shipment and resale of jewelry is thus completely integrated in respondent Franklin Jewelry Co., Inc. The stock of both of these respondent corporations is not publicly owned but is closely held by the officers and directors of each and their families.

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Respondents William S. Schneer, Harry H. Fisher, William S. Feldman, and Gus G. Fisher and their relations own two-thirds of the stock of respondent Bentley Stores Corp. and, with the exception of William S. Feldman, 75 percent of the stock of Franklin Jewelry Co., Inc.

PAR. 3. A substantial part of the sales made by the stores of respondents Bentley Stores Corp. and Franklin Jewelry Co., Inc., is made on credit for deferred payments. The purchaser must supply not only his name and address but also the place of employment, kind of employment, and the names and addresses of references. In the course and conduct of their businesses as described, respondents frequently desire to obtain information as to the current addresses and employment of customers who have bought on credit or are delinquent in their deferred payments. For this purpose respondents have used reply post cards substantially as follows:

Return Postcard Bearing the Following Legend

**FINAL NOTICE**

We have a prepaid package addressed to the party whose name appears on the attached card. On account of a difference in address and lack of identification we cannot make delivery.

Same will be forwarded with No Charges to proper party if you will fill in and return the attached postal card.

**RAPID X FORWARDING  
SYSTEM**

Distribution Division

Unclaimed Package Dept.

589 Eighth Avenue

New York, N. Y.

---

No postage necessary on the attached  
reply card. Please answer promptly.

---

(Reverse of Card)

Read Message Inside

Bring or mail this  
Card to us promptly

**FINAL NOTICE**

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## Findings

## RAPID X FORWARDING SYSTEM

589 Eighth Avenue

New York, N. Y.

Package Reference

Date -----

No.

Unclaimed Package  
Department

## NAME AND ADDRESS SHOWN ON PACKAGE

**IMPORTANT:** This prepaid package will be delivered **ONLY** to **OWNER** named above as identified below.

## FILL IN ALL SPACES BELOW

Name  
Residence  
City

Employer  
Address  
Bank  
Address

No postage or addressing necessary

(Return address—Rapid X Forwarding System, 589 8th Avenue, NYC)

Return Postcard Bearing the Following Legend:

"IT PAYS TO ADVERTISE"

NOVELTY  
DISTRIBUTORS CO.  
S. E. Cor. 6th & Olive Sts.  
St. Louis, Mo.

We are distributing a limited number of **PENS** absolutely **FREE OF CHARGE** providing you are now employed, and will show the **PEN** when you receive it, to your fellow employees and friends.

This offer applies only to the person whom this card is addressed, and is **NOT TRANSFERABLE**.

No personal requests granted. All pens sent by **MAIL ONLY**.

**NO OBLIGATION.**

Nothing to **BUY** . . . Nothing to **SELL**. Fill out attached card and drop in nearest mail box.

**NO POSTAGE NECESSARY**

(Return address—Novelty Distributors Co., 6th & Olive Sts., St. Louis, Mo.)





## DETACH BEFORE MAILING

(Return address—Recording Service, 21 E. 40th Street, New York, N. Y.)

Five thousand each of the reply postal cards under the names Rapid X Forwarding System and Novelty Distributors Co. were purchased in 1942 by respondent Bentley Stores Corp. and, according to respondents, were used for about 6 months, their use then being voluntarily discontinued.

One thousand of the third card, captioned Recording Service, was purchased and used in 1948 by respondent Bentley Stores Corp., its use being discontinued after an interview visit to respondents' New York City offices by an investigator for the Federal Trade Commission.

There is no positive or substantial evidence that any of these cards were used by or for the benefit of respondent Franklin Jewelry Co., Inc., or its officers, as such.

There is no evidence that respondent Florence Weinberg has anything to do with the use of these cards. However, the names Rapid X Forwarding System, Novelty Distributors Co., and Recording Service were registered by her in her name under New York law requiring the registration of fictitious or trade names.

PAR. 4. Respondents Bentley Stores Corp. and its officers caused these cards to be addressed to the debtors, or to the references which the debtor gave at the time he applied for credit, and transmitted by United States mails from respondents' headquarters in New York City, or from the stores of Bentley Stores Corp., to the addressees located in various States of the United States. The return postal card was, in turn, mailed by the addressees to Rapid X Forwarding System, Novelty Distributors Co., or Recording Service at addresses of Bentley Stores Corp. or its stores.

PAR. 5. By means of the postal card sent out under the name of Rapid X Forwarding System, respondents Bentley Stores Corporation, its officers and employees, have falsely represented, directly and by implication, to the persons to whom they were sent, that such persons are owners of packages sent by persons other than the above-named respondents, that such packages are in the hands of the above-named respondents in the usual course of business, that the shipments involved transportation charges which have been prepaid by the consignors, and that delivery could not be made to the addressees of said cards by reason of differences in address and lack of identification, and that upon the receipt of the reply cards, properly filled out with the information requested, the packages would be forwarded.

PAR. 6. Through the use of the name "Rapid X Forwarding System," respondents Bentley Stores Corp., its officers and employees, have represented, directly and by implication, to the recipients of said cards that they are in the business of transporting and delivering packages, and maintain an unclaimed package department.

PAR. 7. Said representations are false, deceptive and misleading. In truth and in fact, respondents sending out this card were not and are not engaged in the transportation and delivery of packages or merchandise, the persons to whom the card was sent were not consignees of packages in the hands of respondents in the usual course of their business nor did respondents have on hand for delivery any package consigned to them for delivery, nor did respondents maintain at any time an unclaimed package department. Respondents did, on receipt of the reply card, send a pen to the addressee as his "unclaimed package," but delivery thereof could have been made without receipt of the reply card or the information placed thereon. The entire scheme was merely an attempt to obtain information by subterfuge, the principal purpose of which was to locate a delinquent debtor and facilitate the collection of the delinquency.

PAR. 8. By means of the card bearing the name Novelty Distributors Co., respondents Bentley Stores Corp., its officers and employees, falsely represented, directly and by implication, that they were engaged in the sale of novelty merchandise, including pens, that they desired to advertise said pens by furnishing one "Absolutely Free" to the addressee of the card and needed the information called for by the card in order to send the pen to addressee.

PAR. 9. These representations were false, deceptive, and misleading. Respondents who sent out this card were not and are not engaged in the sale of novelties or pens nor in the promotion or advertising of the same by "free" gifts, nor was the information at all necessary for respondents to forward the pens. This practice was also an attempt to obtain information by subterfuge, the principal purpose of which was to locate a delinquent debtor and facilitate the collection of the delinquency.

PAR. 10. By means of the card entitled Recording Service, respondents Bentley Stores Corp., its officers and employees, have represented by implication to the addressee thereof that the person who is the subject of the card had applied for employment and that such respondents maintain an employment bureau.

PAR. 11. Such representation is false and misleading. Respondents who sent out these cards do not and have not maintained an employment bureau. The person whose name appeared on the card was a

customer and debtor of such respondents and was not an applicant for employment. The use of this card was an attempt to secure information by subterfuge, one of the principal purposes of which was to facilitate collection of delinquent accounts.

PAR. 12. The use, as hereinabove set forth, of the foregoing false, deceptive, and misleading statements, representations and designations has had the tendency and capacity to and has misled and deceived persons to whom the said cards were sent into the erroneous and mistaken belief that said statements, representations and designations were true and correct, and by reason thereof to give and transmit information which they would otherwise not supply.

#### CONCLUSION

The aforesaid acts and practices of respondents Bentley Stores Corp., its named officers and employees, 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.

Respondents' voluntary cessation of the practices, hereinabove described, in 1942 was neither permanent nor complete and was not in good faith, as evidenced by their resumption of the same course of conduct in 1948 in different form or by different means, the effect and purpose thereof, however, being the same, as set forth more fully in ruling on respondents' motion to dismiss, filed herewith. The public interest requires that this continuing though interrupted course of conduct be stopped.

#### ORDER

*It is ordered*, That respondents Bentley Stores Corp., a corporation, its officers, employees and representatives, and William S. Schneer, Harry H. Fisher, William S. Feldman, and Gus T. Fisher, individually, and their respective agents and employees, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in Federal Trade Commission Act, of double reply postal cards, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the name "Rapid X Forwarding System," or any other word or words of similar import, to designate, describe or refer to respondents' business; or otherwise representing, directly or by implication, that respondents are connected with or in the business of

Order

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transporting or delivering goods to the proper recipients thereof, or that they maintain an unclaimed package department.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondents' post cards or other material are, or may be, consignees of goods or packages, prepaid or otherwise, in the hands of respondents, or that the information sought through such means is for the purpose of enabling respondents to make delivery of goods or packages to such persons.

3. Using the name "Novelty Distributors Company," or any other name of similar import, to designate, describe or refer to respondents' business, or otherwise representing, directly or by implication, that respondents are engaged in the business of selling, advertising, or promoting pens.

4. Using post cards or other material which represents, directly or by implication, that such cards or other material are for the purpose of introducing pens or any other merchandise to the public.

5. Using the name "Recording Service," or any other name of similar import, to designate, describe or refer to respondents' business, or otherwise representing, directly or by implication, that respondents are engaged in operating an employment service or bureau, or that specified or named customers or delinquent debtors of respondents have made application to respondents unless it is clearly stated what application has been made for and unless such application has, in fact, been made and has not been acted upon.

6. Using post cards or other material which represents, directly or by implication, that respondents' business is other than that of the retailing of clothing and shoes.

*It is further ordered,* That respondent Florence Weinberg, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of double reply post cards, or any other printed material of a substantially similar nature, do forthwith cease and desist from using or permitting the use of the names Rapid X Forwarding System, Novelty Distributors Co., and Recording Service, registered in her name as fictitious names under New York law, in the course and conduct of business by Bentley Stores Corp., its officers, directors, employees, or representatives.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed without prejudice as to respondent Franklin Jewelry Co., Inc., and as to respondent George Kantor, individually and as vice president thereof.

Order

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the corporate respondent Bentley Stores Corp. and the individual respondents William S. Schneer, Harry H. Fisher, William S. Feldman, Gus G. Fisher, and Florence Weinberg 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 the order to cease and desist [as required by said declaratory decision and order of October 16, 1950].

IN THE MATTER OF  
WAYNE HATCHERY 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 5715. Complaint, Dec. 2, 1949—Decision, Oct. 16, 1950*

Where a corporation and its president who formulated, directed and controlled its practices and policies, engaged in the operation of a hatchery and in the interstate sale and distribution of baby chicks and chickens, including so-called "started pullets" i. e., pullets four weeks old or older; in advertising through folders, price lists, circulars, pamphlets and other advertising media—

(a) Represented that customers placing orders with them for baby chicks would receive "free", without cost, a 24-piece Stainless Steel TABLEWARE SET x x x EXTRA HEAVY x x x \$9.95 VALUE";

The facts being that the customer was required to purchase baby chicks in the amount of \$25 or more to become eligible to receive said set; it had no such value, and the alleged price or value thereof was included in and covered by the amount paid by the customer for the chicks ordered; and in many instances they failed to make delivery of the so-called "free" tableware to purchasers who had ordered and paid for baby chicks in said amount or more;

(b) Represented, generally without reservation, that they would replace free of charge any chicks that were dead or in bad condition upon arrival, and any chicks lost within thirty days after delivery to the purchaser;

The facts being they failed and refused, in numerous instances, to replace chicks lost during shipment or those which died within thirty days after delivery; and failed to make refunds of purchase money in cases where they did not replace lost chicks, or otherwise to adjust claims made against them;

(c) Made said 30-day replacement guarantee without qualification in various conspicuous pieces of advertising material, and in other and less conspicuous advertising undertook to limit said guarantee to the replacement of one-half of the chicks dying within 30 days, or to replacement of the loss at one-half the price, and to except from their replacement guarantee losses "caused by neglect, lack of care or accidents which are not the fault of the chicks", and also to except therefrom "cockerels or bargain chicks";

(d) Represented that the prices quoted by them were wholesale and represented a saving to purchasers of 20 to 30 percent from regular retail prices; that they would pay all shipping charges where payment in full was made by the customer 10 days before shipment; and that when a customer sent his check in payment for chicks to be delivered at a later date, they would protect him against "price raise or decline";

The facts being that they were not wholesalers, but sold only at retail and their prices were not lower than those charged by other hatcheries; they made it a practice to charge and collect from customers C. O. D. and shipping charges

on prepaid orders, and also to bill customers for increases in price occurring subsequent to placing of the order ;

- (e) Falsely represented that they would ship only chicks of the sex, breed, grade, and number ordered, and would include extra chicks in orders shipped by them ; and
- (f) Falsely represented that they owned, operated and had built up through 26 years of fair dealing and integrity one of the largest, oldest and best known chicken hatcheries in the United States ;

The facts being that whatever success and goodwill they had achieved dated back to the establishment of the predecessor business more than thirty years ago by a well-known expert in the hatchery business, who maintained his stock in a high degree of excellence, whose dealings were characterized by integrity and fairness and who earned an enviable reputation for his business and built up and maintained a valuable goodwill thereby ; the business herein concerned was not conducted upon the same high plane but by reason of the methods and representations employed had numerous complaints lodged against it by its customers and those of the original hatchery ; neither said corporation and individual nor any of those associated with them had ever had any experience with said business ; and they sought through their advertising and in the operation of said hatchery to obtain, and did obtain, business by boldly capitalizing upon the business integrity, established reputation and long experience enjoyed by the former owners and operators ;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce it to purchase substantial quantities of said products :

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

Before *Mr. Frank Hier*, trial examiner.

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

#### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Wayne Hatchery, a corporation, and Martin Beldner, individually and as an officer of Wayne Hatchery, 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 Wayne Hatchery, is a corporation organized and existing under and by virtue of the laws of the State of



Illinois with its plant and principal place of business located at Wayne City, Ill., and an office therefor located at 4 North Eighth Street, St. Louis, Mo. Respondent, Martin Beldner, with his office located at 4 North Eighth Street, St. Louis, Mo., is president of the corporate respondent and acting in such capacity formulates, directs and controls the practices and policies of corporate respondent, including the advertising representations made and employed by said respondent corporation as hereinafter related.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the business of operating a hatchery and in the sale and distribution of baby chicks and chickens, including so-called "started pullets," that is, pullets four weeks old or older. Respondents cause their said baby chicks and chickens when sold by them to be transported from their aforesaid places of business in the State of Illinois and Missouri to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said baby chicks and chickens in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said baby chicks and chickens in commerce as "commerce" is defined in the Federal Trade Commission Act, respondents have circulated and are now circulating among prospective purchasers throughout the United States by United States mails, by folders, price lists, circulars, pamphlets, and other advertising media, many statements and representations concerning their said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

**FREE—BABY CHICK CATALOG**

From one of America's largest and oldest hatcheries. No obligation—absolutely free! Just fill in the attached postage paid post card and mail today!

Learn all about this wonderful

**FREE GIFT OFFER**

with each purchase of baby chicks

24-Piece Stainless Steel

**TABLE WARE SET**

**PLASTIC HANDLE \* EXTRA HEAVY**

Made by America's largest cutlery manufacturer

\$9.95

VALUE

Limited

Quantity

**OFFER LIMITED—ACT NOW!**

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## Complaint

Please send me your Free Catalog giving wholesale Price List of Chicks. Also your wonderful FREE GIFT OFFER.

ACT  
TODAY  
send for  
your free  
catalog

I understand I am under  
NO OBLIGATION

WAYNE  
HATCHERY  
Wayne City,  
Illinois

Name

Address

City

State

In celebration of our 25th Birthday we offer you FREE with chick orders if you act promptly this sensational beautiful 24-piece TABLEWARE SET \* \* \*

Through the statements and representations set forth above, respondents represent and have represented that customers placing orders with them for baby chicks will receive "Free," without cost to them, a 24-piece stainless steel tableware set of extra heavy quality, and that said tableware was of the reasonable value of \$9.95.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' 24-piece stainless steel tableware set is not given "free" or without cost, or as a gratuity to any customer making a purchase of respondents' "baby chicks," but on the contrary the customer is required to purchase baby chicks in the amount of \$25 or more, and to pay for the same in advance in order to become eligible to receive a set of the said stainless steel tableware. Said set of tableware does not have a value of \$9.95 nor any value even approximating such an amount, and the alleged price or value of the said tableware set is included in and covered by the amount paid by the customer for baby chicks ordered by him. Further, in many instances, respondents do not make and have not made delivery of the so-called "free" tableware to some purchasers who have ordered and paid for baby chicks in the amount of \$25 or more.

PAR. 4. Among and typical, but not all inclusive, of other statements and representations disseminated by respondents in the manner alleged in Paragraph Three hereof for the purpose of inducing the purchase of respondents' said baby chicks and chickens in commerce are the following:

We include extra chicks in each order \* \* \*  
100% live delivery.

Free replacement of chicks that die within 30 days.

## Complaint

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## GET THIRTY DAYS OF FREEDOM

That's right—get 30 days of freedom from worry about the loss of your baby chicks. Our chicks are guaranteed to live for 30 days. If they die we replace them.

We guarantee that all chicks will reach you 100 percent alive, and in good condition. If any chicks are dead, or in bad condition upon arrival, all you need to do is to have your Express delivery agent sign a statement of the loss and mail it to us. We will replace the chicks immediately or at a later date, free of charge.

Wholesale prices on baby chicks now available to you \* \* \*

Wholesale Prices DIRECT TO YOU. Save 20 to 30% on cost of chicks. We can now sell you these same HIGH QUALITY CHICKS. At the same low wholesale prices that we sell to Feed Stores, Wholesale Chick Buyers, Broiler Plants and Hatcheries. This large saving is important to you \* \* \*

If payment in full is sent 10 days before shipment, we will pay all shipping charges. If we ship C. O. D. you pay charges.

Order now for delivery next spring and we will protect you against any price increase.

As one of our older customers we are sending you this urgent letter along with a sample copy of our spring price list so that you will have an opportunity to send in your order before our general spring mailing goes out to our entire list. \* \* \* Get your order in TODAY. You are protected against any price raise or decline, although we are pretty sure the price on chicks will go up. Send your check along with your order, and save the extra shipping charges, as well as the savings on special discounts.

Chicks to be exactly as represented and described.

We \* \* \* will assure you of delivery on the date promised of the breed and grade of chicks you want.

PAR. 5. Through the statements and representations set forth in paragraph 4 hereof, and others similar thereto but not specifically set out herein, respondents represent and have represented, generally without reservation, that they will replace free of charge any chicks that are dead or in bad condition upon arrival, and will replace free of cost any chicks that are lost within 30 days after delivery of a shipment to the purchaser; that the prices quoted are wholesale prices and represent a saving to purchasers of 20 to 30 percent from regular retail prices; that respondents will pay all shipping charges where payment in full is made by the customer 10 days before shipment; that when a customer sends his check in payment for chicks to be delivered at a later date, respondents will protect the customer against price increases and against price decline; and that respondents will ship only chicks of the sex, breed, grade, and the number ordered.

The foregoing statements and representations are likewise grossly exaggerated, false and misleading. In truth and in fact, the respondents, in numerous instances, have failed and refused to comply with

their sales guarantee to replace chicks lost during shipment or those dying within 30 days after delivery. Respondents have failed to make refunds of purchase money in cases where they have not replaced lost chicks and have failed otherwise to adjust claims made against them. Respondents herein, in order to effect the sale of their baby chicks, have made the 30-day replacement guarantee without qualification in various conspicuous pieces of advertising material, and in other and less conspicuous advertising respondents have undertaken to limit the 30-day guarantee to the replacement of one-half of the chicks dying within 30 days, or to replacement of the loss at one-half the price, and to except from their replacement guarantee losses "caused by neglect, lack of care or accidents which are not the fault of the chicks." Respondents have further undertaken to except from their 30-day guarantee "cockerels or bargain chicks."

Respondents are not wholesalers but sell only at retail, and the prices charged by them to customers are retail prices and are not lower than those charged by other hatcheries. Customers do not save from 20 to 30 percent from retail prices by buying from respondents.

Respondents have made it a practice to charge and collect from customers c. o. d. and shipping charges on orders that were prepaid.

Respondents have further made it a practice to bill customers for increases in price occurring subsequent to the placing of the order. In various instances chicks were shipped c. o. d. and the purchaser was required to pay such charges and shipping charges when payment in full had been made 10 days or more prior to the date of shipment.

Respondents, on various occasions, have failed to ship the breed of chicks specified in the order and have substituted chicks of an inferior grade or different variety. The respondents have failed to deliver chicks of the sex specified in the order and have failed to deliver the number specified and paid for, and do not include and have not included extra chicks in orders shipped by them. Respondents have substituted numbers of cheaper cockerels in shipments where pullets only have been ordered.

PAR. 6. In the dissemination of other advertising material in the manner and by the means alleged in paragraph 3 hereof for the purpose of inducing the purchase of their said baby chicks and chickens in commerce, respondents have made various false and misleading statements regarding the size and character of the business conducted by them, their reputation in the hatchery industry, and their experience in such industry. Typical of such representations, but not all inclusive, are the following:

## Complaint

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25 years of service—Quality—that has stood the test of time

\* \* \* \* \*  
 To-day, as one of the leading hatcheries of Illinois, with a total hatching capacity of 750,000 eggs a month, with more than 500 hatching flocks consisting of more than 100,000 hens, we feel that we have reason to be proud of the progress we have made since early days.

\* \* \* \* \*  
 IN CELEBRATION OF OUR 25TH BIRTHDAY. We Offer You FREE with chick orders \* \* \* Beautiful 24-piece TABLEWARE SET.

\* \* \* \* \*  
 For 26 years we have been one of the biggest suppliers of Wholesale Chicks in the country. \* \* \*

\* \* \* \* \*  
 To-day we are proud of the fact that we are recognized amongst Hatcheries, Wholesalers, Broiler Plants and thousands upon thousands of poultry raisers as one of the foremost hatcheries in the country. \* \* \*

\* \* \* \* \*  
 Through the last 26 years we have spent thousands upon thousands of dollars in breeding programs \* \* \*

\* \* \* \* \*  
 Wayne Hatchery has spent thousands upon thousands of dollars during the last 26 years improving its flocks.

\* \* \* \* \*  
 Twenty-five years of service to the poultry raisers of America is our record, a record we are very proud of.

\* \* \* \* \*  
 We have found out through 26 years of experience that it costs a lot more to hatch second grade chicks \* \* \*

\* \* \* \* \*  
 To-day we are recognized as one of the largest producers of high quality chicks in the United States \* \* \*

## EXTRA WAYNE'S BIG NEWS EXTRA

26th Year—Wayne City, Illinois 1949—26th Year

By means of the statements and representations set forth above respondents represent and have represented that they own, operate, and have built up through 26 years of fair dealing and integrity one of the largest chicken hatcheries in the United States; that their long and useful experience in the hatchery business has built up for them a valuable asset of good will among chicken raisers all over the country and that to-day, by reason of their efforts and long experience and the time and money they have expended on the business, they now enjoy the distinction of being one of the largest, oldest and best known hatcheries in the United States.

The foregoing statements and representations are grossly exaggerated, false, and misleading. Respondents are not experienced in the hatchery business, and neither they nor anyone financially interested in the business conducted by them, now or heretofore, has had 25 years of service or experience either in the poultry or hatchery business, nor any experience remotely approximating such length of time. Wayne

Hatchery, as operated by respondents, is not one of America's largest and oldest hatcheries and the hatchery capacity claimed by respondents is greatly exaggerated and is materially exceeded by many hatcheries throughout the United States, nor do respondents even comprise one of the leading hatcheries in the State of Illinois.

The facts are that whatever success and good will have been achieved and employed by Wayne Hatchery date back to and spring directly from the establishment of the business more than 30 years ago by a well-known expert in the hatchery business, who maintained his breeding and laying stock in a high degree of excellence, and who by reason of the integrity and fair dealing which characterized his dealings with the public, earned an enviable reputation for the business conducted by him and built up and maintained valuable good will thereby. Following the death of the former owner and operator of Wayne Hatchery about 1941, respondents and certain other individuals financially interested with them purchased Wayne Hatchery from the decedent's estate about the year 1942, and thereafter organized the respondent corporation for the purpose of operating the property. Neither respondents nor any of those associated with them at the time of said purchase and corporate organization had ever been in the chicken or hatchery business or had any experience in or with such business, directly or indirectly. The hatchery business, as operated by respondents has not been conducted upon the same high plane as established and maintained by the former owners and operators of Wayne Hatchery. On the contrary, the methods and representations employed by respondents in the operation of the business have resulted in the lodging of numerous complaints against them by their customers and the former customers of the original Wayne Hatchery. Respondents by their advertising and in their operation of Wayne Hatchery have sought to obtain and have obtained business by boldly capitalizing upon the business integrity and established reputation and the long experience in business enjoyed by former owners and operators from whom respondents acquired the business and good will of Wayne Hatchery.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to their baby chicks has had and now has and tends to and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and induce a substantial portion of the purchasing public because of

such erroneous and mistaken belief so engendered to purchase substantial quantities of respondents' said products.

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

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

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on December 2, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Wayne Hatchery, a corporation, and Martin Beldner, individually and as an officer of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint a trial examiner of the Commission was designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and on March 22, 1950, a hearing was convened in St. Louis, Mo., for this purpose. At this hearing respondents tendered an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, no answer having previously been filed by them. Said answer was accepted by the trial examiner. Thereafter this proceeding regularly came on for final hearing before the Commission upon the complaint and answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Wayne Hatchery is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its plant and principal place of business located at Wayne City, Ill., and an office therefor located at 4 North Eighth Street, St. Louis, Mo. Respondent Martin Beldner, with his office located at 4 North Eighth Street, St. Louis, Mo., is president of the corporate respondent and, acting in such capacity, formulates, directs and controls the practices and policies of corporate respondent, including the advertising representations made and employed by said respondent corporation as hereinafter related.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the business of operating a hatchery and in the sale and distribution of baby chicks and chickens, including so-called "started pullets," that is, pullets 4 weeks old or older. Respondents cause their said baby chicks and chickens when sold by them to be transported from their aforesaid places of business in the States of Illinois and Missouri to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said baby chicks and chickens in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said baby chicks and chickens in commerce as "commerce" is defined in the Federal Trade Commission Act, respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mails, by folders, price lists, circulars, pamphlets, and other advertising media, many statements and representations concerning their said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

**FREE—BABY CHICK CATALOG**

From one of America's largest and oldest hatcheries. No obligation—absolutely free! Just fill in the attached postage paid post card and mail today!

Learn all about this wonderful

**FREE GIFT OFFER**

with each purchase of baby chicks

24-Piece Stainless Steel

**TABLE WARE SET**

**PLASTIC HANDLE \* EXTRA HEAVY**

\$9.95

Made by America's largest cutlery manufacturer

**VALUE**

Limited

Quantity

**OFFER LIMITED—ACT NOW!**

Please send me your Free Catalog giving wholesale Price List of Chicks. Also your wonderful **FREE GIFT OFFER.**

**ACT**

I understand I am under

**TODAY**

**NO OBLIGATION**

Send for  
your free  
catalog

Name

Address



WAYNE  
HATCHERY  
Wayne City,  
Illinois

City

State

In celebration of our 25th Birthday we offer you FREE with chick orders if you act promptly this sensational beautiful 24-piece TABLEWARE SET \* \* \*

Through the statements and representations set forth above, respondents represent and have represented that customers placing orders with them for baby chicks will receive "Free," without cost to them, a 24-piece stainless steel tableware set of extra heavy quality, and that said tableware is of the reasonable value of \$9.95.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' 24-piece stainless steel tableware set is not given "free" or without cost, or as a gratuity to any customer making a purchase of respondents' "baby chicks," but on the contrary the customer is required to purchase baby chicks in the amount of \$25 or more, and to pay for the same in advance in order to become eligible to receive a set of the said stainless steel tableware. Said set of tableware does not have a value of \$9.95 nor any value even approximating such an amount, and the alleged price or value of the said tableware set is included in and covered by the amount paid by the customer for baby chicks ordered by him. Further, in many instances, respondents do not make and have not made delivery of the so-called "free" tableware to some purchasers who have ordered and paid for baby chicks in the amount of \$25 or more.

PAR. 4. Among and typical, but not all inclusive, of other statements and representations disseminated by respondents in the manner set forth in Paragraph 3 hereof for the purpose of inducing the purchaser of respondents' said baby chicks and chickens in commerce are the following:

We include extra chicks in each order \* \* \*  
100% live delivery.

Free replacement of chicks that die within 30 days.

GET THIRTY DAYS OF FREEDOM That's right—get 30 days of freedom from worry about the loss of your baby chicks. Our chicks are guaranteed to live for 30 days. If they die we replace them.

We guarantee that all chicks will reach you 100 percent alive, and in good condition. If any chicks are dead, or in bad condition upon arrival, all you need to do is to have your Express delivery agent sign a statement of the loss and mail it to us. We will replace the chicks immediately or at a later date, free of charge.

Wholesale prices on baby chicks now available to you \* \* \*

Wholesale Prices DIRECT TO YOU Save 20 to 30% on cost of chicks. We can now sell you these same HIGH QUALITY CHICKS At the same low wholesale prices that we sell to Feed Stores, Wholesale Chick Buyers, Broiler Plants and Hatcheries. This large saving is important to you \* \* \*

If payment in full is sent 10 days before shipment, we will pay all shipping charges. If we ship C. O. D. you pay charges.

Order now for delivery next spring and we will protect you against any price increase.

As one of our older customers we are sending you this urgent letter along with a sample copy of our spring price list so that you will have an opportunity to send in your order before our general spring mailing goes out to our entire list. \* \* \* Get your order in TODAY. You are protected against any price raise or decline, although we are pretty sure the price on chicks will go up. Send your check along with your order and save the extra shipping charges, as well as the savings on special discounts.

Chicks to be exactly as represented and described.

We \* \* \* will assure you of delivery on the date promised of the breed and grade of chicks you want.

PAR. 5. Through the statements and representations set forth in paragraph 4 hereof, and others similar thereto but not specifically set out herein, respondents represent and have represented, generally without reservation, that they will replace free of charge any chicks that are dead or in bad condition upon arrival, and will replace free of cost any chicks that are lost within 30 days after delivery of a shipment to the purchaser; that the prices quoted are wholesale prices and represent a saving to purchasers of 20 to 30 percent from regular retail prices; that respondents will pay all shipping charges where payment in full is made by the customer 10 days before shipment; that when a customer sends his check in payment for chicks to be delivered at a later date, respondents will protect the customer against price increases and against price decline; and that respondents will ship only chicks of the sex, breed, grade, and the number ordered.

The foregoing statements and representations are likewise grossly exaggerated, false, and misleading. In truth and in fact the respondents, in numerous instances, have failed and refused to comply with their sales guarantee to replace chicks lost during shipment or those dying within 30 days after delivery. Respondents have failed to make refunds of purchase money in cases where they have not replaced lost chicks and have failed otherwise to adjust claims made against them. Respondents herein, in order to effect the sale of their baby chicks, have made the 30-day replacement guarantee without qualification in various conspicuous pieces of advertising material, and in other and less conspicuous advertising respondents have undertaken to limit the 30-day guarantee to the replacement of one-half of

the chicks dying within 30 days, or to replacement of the loss at one-half the price, and to except from their replacement guarantee losses "caused by neglect, lack of care or accidents which are not the fault of the chicks." Respondents have further undertaken to except from their 30-day guarantee "cockerels or bargain chicks."

Respondents are not wholesalers but sell only at retail, and the prices charged by them to customers are retail prices and are not lower than those charged by other hatcheries. Customers do not save from 20 to 30 percent from retail prices by buying from respondents.

Respondents have made it a practice to charge and collect from customers c. o. d. and shipping charges on orders that were prepaid.

Respondents have further made it a practice to bill customers for increases in price occurring subsequently to the placing of the order. In various instances chicks were shipped c. o. d. and the purchaser was required to pay such charges and shipping charges when payment in full has been made 10 days or more prior to the date of shipment.

Respondents, on various occasions, have failed to ship the breed of chicks specified in the order and have substituted chicks of an inferior grade or different variety. The respondents have failed to deliver chicks of the sex specified in the order and have failed to deliver the number specified and paid for, and do not include and have not included extra chicks in orders shipped by them. Respondents have substituted numbers of cheaper cockerel in shipments where pullets only have been ordered.

PAR. 6. In the dissemination of other advertising material in the manner and by the means set forth in paragraph 3 hereof, for the purpose of inducing the purchase of their said baby chicks and chickens in commerce, respondents have made various false and misleading statements regarding the size and character of the business conducted by them, their reputation in the hatchery industry and their experience in such industry. Typical of such representations, but not all inclusive, are the following:

25 years of service—Quality—that has stood the test of time

\* \* \* \* \*

To-day, as one of the leading hatcheries of Illinois, with a total hatching capacity of 750,000 eggs a month, with more than 500 hatching flocks consisting of more than 100,000 hens, we feel that we have reason to be proud of the progress we have made since early days.

IN CELEBRATION OF OUR 25TH BIRTHDAY We Offer You Free with chick orders \* \* \* Beautiful 24-piece TABLEWARE SET.

For 26 years we have been one of the biggest suppliers of *Wholesale Chicks* in the country. \* \* \*

To-day we are proud of the fact that we are recognized amongst Hatcheries, Wholesalers, Broiler Plants and thousands upon thousands of poultry raisers as one of the foremost hatcheries in the country. \* \* \*

\* \* \* Through the last 26 years we have spent thousands upon thousands of dollars in breeding programs \* \* \*

Wayne Hatchery has spent thousands upon thousands of dollars during the last 26 years improving its flocks.

Twenty-five years of service to the poultry raisers of America is our record, a record we are very proud of.

We have found out through 26 years of experience that it costs a lot more to hatch second grade chicks \* \* \*

To-day we are recognized as one of the largest producers of high quality chicks in the United States \* \* \*

EXTRA WAYNE'S BIG NEWS EXTRA

26th Year—Wayne City, Illinois 1949—26th Year

By means of the statements and representations set forth above respondents represent and have represented that they own, operate, and have built up through 26 years of fair dealing and integrity one of the largest chicken hatcheries in the United States; that their long and useful experience in the hatchery business has built up for them a valuable asset of good will among chicken raisers all over the country and that to-day, by reason of their efforts and long experience and the time and money they have expended on the business, they now enjoy the distinction of being one of the largest, oldest, and best known hatcheries in the United States.

The foregoing statements and representations are grossly exaggerated, false, and misleading. Respondents are not experienced in the hatchery business, and neither they nor anyone financially interested in the business conducted by them, now or heretofore, has had 25 years of service or experience either in the poultry or hatchery business, nor any experience remotely approximating such length of time. Wayne Hatchery, as operated by respondents, is not one of America's largest and oldest hatcheries, and the hatchery capacity claimed by respondents is greatly exaggerated and is materially exceeded by many hatcheries throughout the United States; nor do respondents even comprise one of the leading hatcheries in the State of Illinois.

The facts are that whatever success and good will have been achieved and employed by Wayne Hatchery date back to and spring directly from the establishment of the business more than 30 years ago by a well-known expert in the hatchery business, who maintained his breeding and laying stock in a high degree of excellence, and who by reason of the integrity and fair dealing which characterized his

dealings with the public, earned an enviable reputation for the business conducted by him and built up and maintained valuable good will thereby. Following the death of the former owner and operator of Wayne Hatchery about 1941, respondents and certain other individuals financially interested with them purchased Wayne Hatchery from the decedent's estate about the year 1942, and thereafter organized the respondent corporation for the purpose of operating the property. Neither respondents nor any of those associated with them at the time of said purchase and corporate organization had ever been in the chicken or hatchery business or had any experience in or with such business, directly or indirectly. The hatchery business, as operated by respondents has not been conducted upon the same high plane as established and maintained by the former owners and operators of Wayne Hatchery. On the contrary, the methods and representations employed by respondents in the operation of the business have resulted in the lodging of numerous complaints against them by their customers and the former customers of the original Wayne Hatchery. Respondents by their advertising and in their operation of Wayne Hatchery have sought to obtain and have obtained business by boldly capitalizing upon the business integrity and established reputation and the long experience in business enjoyed by former owners and operators from whom respondents acquired the business and good will of Wayne Hatchery.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid has had and now has the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief so engendered to purchase substantial quantities of respondents' said products.

#### CONCLUSION

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

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the

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

*It is ordered*, That the respondents, Wayne Hatchery, a corporation, its officers, agents, representatives, and employees, and Martin Beldner, individually and as an officer of respondent corporation, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of baby chicks, chickens, or other poultry, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) By the use of the term "free" or "free gift offer," or any other term of similar import or meaning, or otherwise, that tableware, or any other merchandise, is given free, or without cost, or as a gratuity to customers, unless such tableware, or other merchandise, is in truth and in fact a gift or gratuity and the recipient thereof is not required to purchase any other merchandise or perform any service inuring directly or indirectly to the benefit of the respondents.

(2) That tableware, or any other merchandise, offered as an inducement for the purchase of baby chicks, or other poultry, has a value in excess of the usual or customary price thereof.

(3) That tableware, or any other merchandise, will be delivered with each purchase of baby chicks, or other poultry, unless such tableware, or other merchandise, will in fact be delivered upon full compliance by the purchaser with the terms and conditions of the offer.

(4) That chicks which are dead or in bad condition upon arrival at purchasers' destination, or chicks which are lost within 30 days, or within any other period of time, after delivery to purchasers will be replaced, unless such chicks will in fact be replaced by respondents without cost to the purchasers.

(5) That their baby chicks are "guaranteed" to be alive on delivery, or to live any length of time thereafter, unless and until the nature and extent of the "guarantee" and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(6) That the established or regular retail prices at which their baby chicks, or other poultry, are sold or offered for sale are wholesale prices, or that purchasers will save 20 to 30 percent, or any other amount, from retail prices by buying from respondents.

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(7) That the terms or conditions of sale are other than what they are in fact.

(8) That customers will be protected against price changes when in fact price changes occurring subsequently to the placing of orders are reflected in the prices charged.

(9) That only chicks, or other poultry, of the sex, breed, grade, or in the number ordered will be shipped, unless and until such representations are in fact true.

(10) That they have been engaged in the chicken or hatchery business for any period of time greater than is actually the fact.

(11) That they owned, operated, or had any connection with, or that they were in any manner responsible for the reputation and good will of, the Wayne Hatchery prior to the time they acquired same from the estate of the former owner.

(12) That their hatchery is one of America's largest or oldest hatcheries.

(13) That the hatching capacity of their hatchery is larger than is actually the fact.

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

## Syllabus

IN THE MATTER OF  
CORADIO, INC., ET AL.

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

*Docket 5717. Complaint, Dec. 5, 1949—Decision, Oct. 16, 1950*

There is a preference on the part of dealers and of a substantial portion of the purchasing public for dealing directly with and buying directly from manufacturers, by virtue of the belief that through such purchases they obtain advantages in price and in other respects.

Where a corporation, its president who owned its stock and directed and controlled its practices and policies, and its general agent and corporate representative, engaged in the interstate sale and distribution of "Coradio" coin-operated radios for use in hotels, tourist cabins, motor courts, hospitals, boarding houses, and similar places through said general agent, under contracts entered into by him for the sale of said radios, to purchasers or "distributors" in the territory assigned them, with a view to their resale or operation in hotels, etc., as above set out; in advertising their said coin-operated radios among prospective purchasers, including prospective sales agents, in trade journals, and through advertising media of general circulation, directly and by implication—

(a) Represented that any one investing money in their said radio could fully protect such property against loss by fire, theft, or damage through being able to obtain readily in most, if not all, sections of the country, insurance against such loss at a low rate;

The facts being it is not easy or even possible in most, if not all sections of the country, to obtain such insurance at all; and even when such type policy is written, a high rate of premium is invariably charged;

(b) Falsely represented that they owned, operated, and controlled a plant or factory where they manufactured said radios and component parts thereof, including the "Coradio National Slug Rejector Unit";

The facts being that the radios sold by them were bought, fully assembled from a separate and distinct corporate entity; and the slug-rejector mechanism was patented and manufactured by a St. Louis concern; and

(c) Represented that they unconditionally guaranteed the entire radio set, including all parts, for 1 year, and guaranteed the tubes unconditionally for 90 days;

The facts being that in a printed statement attached to the radio, they limited their guarantee to repairing or replacing defective parts transmitted to them, charges prepaid, and returned likewise at the expense of the purchasers; undertook therein further to limit and qualify their guarantee by stipulating that it did not apply to any instrument which had been altered or repaired in any way that "in the opinion" of said corporation, affected its reliability or detracted from its performance, and did not apply to any instrument which, in their opinion, had been subjected to misuse through



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negligence or otherwise; and failed to make said terms known to purchasers until the sets were bought and paid for; and

Where said corporation and individuals, through their sales agents—

- (d) Falsely represented orally and otherwise to prospective salesmen, distributors, or agents in various states that they would be allotted exclusive sales territories; when in fact it was their practice to allot the same territory or parts thereof to more than one agent at the same time, with resulting confusion and loss of business; and
- (e) Falsely represented as aforesaid that such salesmen, distributors or agents would be furnished with an ample supply of advertising folders, order blanks, and lease blanks, and general sales assistance, and that they would be furnished with a list of prospective buyers who were anxious for someone to call and take their orders;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce a substantial number of the public to purchase substantial quantities of their said coin-operated radios:

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

Before *Mr. Frank Hier*, trial examiner.

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

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Coradio, Inc., a corporation, Louis Brown and Lew N. Lewis, individually, and as officers of Coradio, Inc., and Sydney Gold, individually, and as General Agent for Coradio, 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. Respondent Coradio, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 212 Broadway, New York, N. Y. Respondent Coradio, Inc., was formerly located and did business at the respective addresses, 60 East Forty-second Street, New York, N. Y., and 108 West Thirty-first Street, New York, N. Y.

Individual respondents Louis Brown, residing at 420 East Forty-second Street, New York, N. Y., and Lew N. Lewis, residing at 15

Sickles Street, New York, N. Y., are, respectively, president, and secretary and treasurer of corporate respondent Coradio, Inc., and acting in such respective capacities said respondents formulate, direct, and control the practices and policies of corporate respondent, including the advertising and other representations used and business practices employed by corporate respondent, as hereinafter related. Respondents Louis Brown and Lew N. Lewis own the entire capital stock of corporate respondent, Coradio, Inc.

Individual respondent Sydney Gold is, and acts as, general agent and company representative for corporate respondent Coradio, Inc., with full authority to contract and to act for and in the name of said corporate respondent.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of coin-operated radios designated by them as "Coradio," for use in hotels, tourist cabins, motor courts, hospitals, boarding houses, and similar places.

Respondents cause their said coin-operated radios, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said coin-operated radios in commerce between and among the various States of the United States.

PAR. 3. Respondents' general plan of operation in effecting the sale of their said coin-operated radios was and is as follows:

In magazines or other advertising media of general circulation, respondents advertise to attract and contact persons who may wish to purchase their said coin-operated radios with a view to reselling them or operating them in hotels, tourist cabins, motor courts, hospitals, boarding houses, and similar places. The purchaser, designated as "Distributor," contracts to pay for the radio units or sets received by him from respondents, designated as "Suppliers," on presentation of sight draft with railroad or other bill of lading attached or cash on delivery by express or motor transport to be selected by the "Supplier." Each so-called "Distributor" is allotted a particular territory by respondents which is described in detail, and the "Distributor" must confine his sales activities to the precise territory allotted to him. The so-called "Distributor" when selected and appointed has the right to resell the instrument purchased by him at a price fixed and defined by respondents, or he may operate the radios himself, as above described.