65 A.L.R.2d 225 (Originally published in 1959)

American Law Reports | The ALR databases are made current by the weekly addition of relevant new cases.

ALR2d
W. J. Dunn

What constitutes false, misleading, or deceptive advertising or promotional practices subject to action by Federal Trade Commission

TABLE OF CONTENTS

ARTICLE OUTLINE

INDEX

Table of Cases, Laws, and Rules

Supreme Court

First Circuit

Second Circuit

Third Circuit

Fourth Circuit

Fifth Circuit

Sixth Circuit

Seventh Circuit

Eighth Circuit

Ninth Circuit

Tenth Circuit

District of Columbia Circuit

I. Introduction

§ 1. Background, scope, and related matters

The power to regulate advertising and promotional practices in interstate commerce generally is derived from the Federal Trade Commission Act, originally enacted in 1914,[1] which directs the Federal Trade Commission to prevent persons subject to the act from using "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."[2]

The regulatory power of the commission may be exercised whenever it "shall have reason to believe" that someone is engaged in practices forbidden by the act and that a preceeding by the commission "would be to the interest of the public." Relevant parts of the enabling provision of the Federal Trade Commission Act are shown below.[3]

While the Federal Trade Commission has been given specific authority over advertising practices with regard to certain commodities,[4] it has also been excluded by statute from acting in regard to others.

Thus the jurisdiction of the Federal Trade Commission over deceptive or misleading practices by meat packers was expressly removed by the Packers and Stockyards Act of 1921,[5] which provided that so long as that act remained in effect the Federal Trade Commission should have no power or jurisdiction over matters made subject to the jurisdiction of the Secretary of Agriculture except when the Secretary might request investigations and reports by the commission.[6] The act makes it unlawful for any packer to engage in or use any "unfair, unjustly discriminatory, or deceptive practice or device in commerce," and vests in the Secretary of Agriculture jurisdiction to deal with violations thereof and to require a packer to cease and desist therefrom.[7] The Secretary of Agriculture is also given authority over use of false or deceptive names with regard to meat products.[8]

Advertising of alcoholic liquors has been made subject to regulation by the Secretary of the Treasury.[9]

Control over the advertising of insurance companies was removed from the Federal Trade Commission in all states where such advertising is regulated by state laws by the McCarran-Ferguson Act, 15 USC §§ 1011–1015, which provides that after 1948 the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law."[10]

In Federal Trade Com. v National Casualty Co. (1958) 357 US 560, 2 L ed 2d 1540, 78 S Ct 1260,[11] it was held that the Federal Trade Commission had no jurisdiction to regulate advertising by an insurance company where the advertising material was shipped in bulk by the company to its independent agents, who distributed the material locally in states which had their own legislation proscribing unfair advertising by insurance companies.

That there is, however, a field in which the Federal Trade Commission has power to regulate advertising by insurance companies is shown by American Life & Acci. Ins. Co. v Federal Trade Com. (1958, CA8) 255 F2d 289, cert den 358 US 875, 3 L ed 2d 105, 79 S Ct 115, and Automobile Owners Safety Ins. Co. v Federal Trade Com. (1958, CA8) 255 F2d 295, cert den 358 US 875, 3 L ed 2d 105, 79 S Ct 115, in both of which cases misleading form letters, the exact nature of which is not disclosed, were sent through the mails by the insurance company, and cease and desist orders by the commission against the insurance companies were upheld.

This annotation is devoted mainly to an analysis of advertising practices against which action has been taken by the Federal Trade Commission. Some other practices, which are closely related to advertising but which technically might not be included under that term, such as sales promotional schemes and verbal representations by salesmen, have also been included.

Cases involving false representations on labels, which come under the misbranding provisions of the Federal Food, Drug, and Cosmetic Act,[12] are not included in this annotation. For representative cases involving such false labeling, see Kordel v United States (1948) 335 US 345, 93 L ed 52, 69 S Ct 106, reh den 335 US 900, 93 L ed 435, 69 S Ct 298, and United States v Urbuteit (1948) 335 US 355, 93 L ed 61, 69 S Ct 112.

However, it has been held that false or misleading statements on a label may also constitute false advertising, subject to action by the Federal Trade Commission, as well as misbranding, and where action has been taken by the Federal Trade Commission such cases have been included.[13]

Many cases involving false or deceptive advertising are settled by stipulation between the Federal Trade Commission and the advertiser. Cases are included in this annotation only when such settlement efforts, if attempted, have failed, and formal cease and desist orders have been made by the commission after a hearing.

Related annotations of interest are listed below.[14]

Related Annotations are located under the Research References heading of this Annotation.

§ 2. Summary

Under the original Federal Trade Commission Act giving the Federal Trade Commission power to prevent "unfair methods of competition in commerce," the basis for jurisdiction of the commission was held to be injury to a competitor, and in the absence of such injury the commission was powerless to act.[15]

This narrow view of the purpose of the Federal Trade Commission Act was changed by the enactment of amendments contained in the Wheeler-Lea Act which made "unfair or deceptive acts or practices in commerce" also unlawful and extended the jurisdiction of the commission to all cases where an injury to the public existed, regardless of the presence of injury to a competitor.[16]

The Wheeler-Lea Act also amended the Federal Trade Commission Act so as to give specific authorization over false advertising in regard to food, drugs, devices, or cosmetics.[17]

The definition of false advertisement with regard to food, drugs, devices, and cosmetics was made broad enough to include failure to reveal material facts in some instances,[18] and provided exemption from the act in regard to drug advertisements intended only for the medical profession, under certain circumstances.[19] With regard to these commodities only, the act also provides for an injunction against advertising deemed objectionable.[20]

Misbranding and false advertising of fur products are also specifically made unlawful under the act,[21] and particularly stringent regulations in regard to the advertising of oleomargarine are imposed.[22]

In the final division of this annotation, the various types of false and deceptive advertising and promotional practices which have been considered by the Federal Trade Commission have been classified and are treated in detail.[1]

II. Factors determining commission's right to act

§ 3. Generally

[Cumulative Supplement]

Under the original Federal Trade Commission Act, prohibiting "unfair methods of competition in commerce," and authorizing action by the commission if it appeared to be "to the interest of the public," it was necessary in cases involving false or misleading advertising practices to show that such practices were likely to cause injury to the public and also to show that there was a likelihood of injury to a competitor of the misleading advertiser.[2] The fact that the public might be injured by such deceptive advertising was regarded as in itself insufficient to give the commission jurisdiction in the absence of competitors or injury to them.

This viewpoint was stressed in Federal Trade Com. v Raladam Co. (1931) 283 US 643, 75 L ed 1324, 51 S Ct 587, 79 ALR 1191, motion den (US) 76 L ed 1300, 52 S Ct 14, where the commission was held to lack jurisdiction over advertising of a product, which admittedly was potentially harmful to users, in the absence of a showing that there were other products competing therewith.

That part of the Wheeler-Lea Act amendment making unlawful "unfair or deceptive acts or practices in commerce" was intended, in part at least, to alter the emphasis on competition, and has resulted, so far as the regulation of false and misleading advertising is concerned, in placing the emphasis of the act on protection of the public.

Even under the amended act, the jurisdiction of the commission is still based on the existence of an injury to the public, since action is authorized only if it is "to the interest of the public."

A contention that the enactment of the Wheeler-Lea Act amendment, making "unfair or deceptive acts or practices in commerce" unlawful, and making other procedural changes, operated to repeal § 5 of the Federal Trade Commission Act[3] as it previously

existed, was rejected in Ritholz v March (1939) 70 App DC 283, 105 F2d 937, the court holding that both before and after the amendment the commission had precisely the same power to issue complaints, to make findings, and to render a decision.

The fact that advertising claims condemned by an order of the Federal Trade Commission were made in regard to a device intended to be attached to the exhaust mechanism of automobiles, named Vacudex, for which a patent had been issued by the United States patent office, and that the advertising claims were substantially similar to statements included in the patent application, was held in Decker v Federal Trade Com. (1949) 85 App DC 137, 176 F2d 461, cert den 338 US 878, 94 L ed 539, 70 S Ct 159, not to deprive the commission of jurisdiction or to invalidate its order, the court rejecting a contention that the advertising came within the scope of the patent and that the effect of the proceedings before the commission was to challenge the utility of the invention and thus the validity of the patent. The court stated that the patent covered the device alone, and could not be understood as embracing the methods employed in advertising or selling the patented product, and gave the owner of the patent no right to misrepresent the device. Admitting that a patent raised a presumption that the invention possessed utility, the court pointed out that the invention need not be capable of performing all the functions declared by the inventor, since the statutory requirement of utility was met if it could accomplish any of them, and noted that the commission's order did not cover all of the claims made for the invention, and held that the claims not covered by such order would have been sufficient to justify granting of the patent. Accordingly, the court concluded that proscription by the commission of certain representations of utility did not constitute an attack upon the finding of the patent office that the invention possessed some utility, since the latter finding could be accepted without rejecting the findings of the commission that in certain particulars the advertising did misrepresent the beneficial qualities of the device. In a dissenting opinion, Chief Judge Stephens pointed out that the patent granted for the term of 17 years the exclusive right "to make, use and vend the said invention," and noted that the order of the commission would render the grant of the patent in substantial part of no effect, since if the utility of the invention as portrayed in the specification which was made a part of the Letters Patent could not be advertised, the invention, as a practical matter, could not be sold, and concluded that the Federal Trade Commission had no jurisdiction in the case.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

FTC cease and desist order against manufacturer of air conditioners, which advertised that its air conditioners were unique because they had "reserve cooling power," was proper, notwithstanding manufacturer's contention that it had discontinued such advertising, where the order was reasonably limited to unsubstantiated representations and did not proscribe advertising of all performance characteristics, and where the discontinuance of such advertising was not voluntary action on part of the manufacturer, but was motivated by FTC investigation. Fedders Corp. v. F. T. C., 529 F.2d 1398, 1976-1 Trade Cas. (CCH) ¶ 60695 (2d Cir. 1976).

See Shafe v. F T C, 256 F.2d 661 (6th Cir. 1958), § 5[a].

[Top of Section]

[END OF SUPPLEMENT]

§ 4[a] Injury to competitor—Held sufficient

[Cumulative Supplement]

In cases arising when the statute barred only "unfair methods of competition in commerce," specific reference to the necessity for showing an injury to competitors has been made at times by the courts in upholding action by the Federal Trade Commission.

It is not necessary, in order to establish the harmful effects of misleading advertising upon competitors, to show specifically that losses to any particular competitor arose from the success of such misleading advertiser in capturing part of the market, since one of the objects of the Federal Trade Commission Act is to prevent potential injury by stopping unfair methods of competition in their incipiency. Federal Trade Com. v Raladam Co. (1942) 316 US 149, 86 L ed 1336, 62 S Ct 966.

The use by an underwear manufacturer of brands or labels such as "Natural Merino," "Gray Wool," "Natural Wool," "Natural Worsted," or "Australian Wool," on garments which were not all wool, some containing as little as 10 per cent wool, was held to justify an order of the Federal Trade Commission to cease using such labels unless the other fabrics going into the manufacture of the product were also included on the label, in Federal Trade Com. v Winsted Hosiery Co. (1922) 258 US 483, 66 L ed 729, 42 S Ct 384, revg (CA2 NY) 272 F 957, where it was shown that the manufacturer was in competition with others who made underwear entirely of wool and so marked it, and also with manufacturers who made underwear of cotton and wool which was marketed without any label describing the material or fibres of which it was composed, or marketed under labels bearing the words "cotton and wool" or "part wool." The court pointed out that the acts complained of represented unfair competition against the other manufacturers who labeled their products truthfully and stated that it was no answer to the proceeding that the honest manufacturers might protect their trade by also resorting to deceptive labels. In rejecting the contention that unfair competition was not involved inasmuch as such labels had long been established in the trade and were generally understood by it as indicating goods partly of cotton, so that the trade was not deceived by them, the court said: "The fact that misrepresentation and misdescription have become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent their use being an unfair method of competition. A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice. Nor does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers, as distinguished from consumers, are no longer deceived. The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product. That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competition."

Action by the Federal Trade Commission was held warranted in Federal Trade Com. v Royal Mill. Co. (1933) 288 US 212, 77 L ed 706, 53 S Ct 335, where the defendants, who mixed and blended flour purchased by them from others engaged in grinding grain, used, in their tradename under which they did business, words such as "Milling Company" or "Mills," or "Manufacturer of Flour," and distributed circulars and other printed matter which either directly asserted, or were calculated to convey the impression, that their product was composed of flour manufactured by themselves from the wheat. The court noted that the defendants were in competition with grinders of wheat and also with blenders who did not use such tradenames or the equivalent thereof, and that many consumers and dealers believed that price or quality is affected by the fact that the article sold is prepared by the original grinder of the grain, and held that unfair competition existed in that the result of the defendants' acts was that such purchasers were deceived into purchasing an article which they did not wish or intend to buy and which they might or might not buy if correctly informed as to its origin.

Unfair competition in the use of the term "California white pine," to designate a species of yellow pine, inferior to the true white pine, was held sufficiently shown in Federal Trade Com. v Algoma Lumber Co. (1934) 291 US 67, 78 L ed 655, 54 S Ct 315, to warrant an order by the Federal Trade Commission barring use of the word "white," in designating such pine, even though the name had originally been innocently used, where it appeared that in recent years the product thus described had come more and more into competition with the true white pine, and it was shown that more than half the members of the industry had disowned the misleading name by voluntary action and were trading under a new one.

The lower court was held to have erred in its conclusion that there was no substantial evidence to support an order of the Federal Trade Commission requiring the manufacturer of a fat-reducing remedy to refrain from misleading and deceptive statements in its advertising in Federal Trade Com. v Raladam Co. (1942) 316 US 149, 86 L ed 1336, 62 S Ct 966, where it was shown

that sales of the defendant's product were made at retail drugstores throughout the country, that it was distributed both to wholesalers and retailers, that the wholesalers and retailers who sold it also sold numerous other remedies for taking off fat, that the essential fat-reducing element in the defendant's product was desiccated thyroid, which was also an element in some of the other remedies offered to the public, the Supreme Court concluding from this evidence that the commission was justified in finding that numerous anti-fat remedies were offered for sale in the same market and that the defendant's product was in active competition with them for the favor of the remedy-purchasing public.[4]

The action of a manufacturer in advertising and selling a phosphate baking powder under a brand name which it had used for 60 years in the distribution of a cream of tartar baking powder, which was about twice as expensive, was held properly restrained by the Federal Trade Commission in Royal Baking Powder Co. v Federal Trade Com. (1922, CA2) 281 F 744, against the contention that misrepresentation of the quality or ingredients of one's own product could not be regarded as "an unfair method of competition" within the meaning of the Federal Trade Commission Act. The court upheld the commission's findings that such advertising and the use of the well-recognized brand name tended to obstruct the business of competitors engaged in manufacturing and selling cream of tartar baking powder at their normal prices, which were approximately double the prices asked by the manufacturer for the phosphate powder, and also tended to obstruct the business of competitors engaged in the manufacture and sale of phosphate baking powders in competition with the manufacturer's product. This result was reached even though the manufacturer had announced the change in the powder sold under the particular brand name in a "news item for trade papers."

A sufficient showing of an unfair method of competition to warrant a cease and desist order by the Federal Trade Commission was held to have been established in Lighthouse Rug Co. v Federal Trade Com. (1929, CA7) 35 F2d 163, where a rug manufacturer who used a few blind employees in making rugs by hand, but for the most part used sighted employees operating power-driven looms, had incorporated under the name of "The Light House Rug Company," and adopted as a trademark a facsimile of the symbol of the Chicago Lighthouse for the Blind which was used on its advertising literature and labels, and it was shown that the word "Light House" had acquired a secondary meaning in the trade as referring to a workshop in which goods were produced by blind people. The court held that unfair competition was sufficiently established by evidence that agents of the manufacturer, in soliciting purchases of rugs in various districts likewise supplied by institutions for the blind, repeatedly misrepresented that the rugs made by the manufacturer were made by the blind at various "lighthouses," and by evidence that such institutions for the blind, in attempting to sell their rugs, frequently lost sales because people solicited had previously purchased rugs from the defendant manufacturer upon the belief that they were the products of such charitable institutions.

The use by a manufacturer selling concentrates to bottlers of the words "Goodgrape" and "Fruit of the Vine," in advertising and on labels of its product, which was merely an imitation, was held to constitute an unfair method of competition sufficient to justify action by the commission in Federal Trade Com. v Goodgrape Co. (1930, CA6) 45 F2d 70, the court pointing out that such methods and practices were unfair to both classes of the manufacturer's competitors, those who sold genuine grape juice and those who frankly sold imitations thereof but marked their goods truthfully.

Extravagant advertising claims in regard to a bunion remedy were held properly restrained by the commission in Fairyfoot Products Co. v Federal Trade Com. (1935, CA7) 80 F2d 684, despite a contention that sales resulting from the advertising were made upon the stipulation that money would be returned if after 7 days' trial the customer was not completely satisfied, the court pointing out that the unfairness alleged in the complaint was not in any particular sale or sales, but in competition in the trade as against competitors, and noting that if without any refund offered the methods used to induce purchase of the articles were unfairly competitive, it was immaterial what the seller might propose to do in case the customer became dissatisfied.

In upholding the restraint by the commission of false and misleading advertising claims, the court in Electro Thermal Co. v Federal Trade Com. (1937, CA9) 91 F2d 477, cert den 302 US 748, 82 L ed 579, 58 S Ct 266, where the claims involved a device known as "Thermalaid," consisting of a hard rubber unit designed to be inserted in the rectum for the application of heat to the prostate gland and adjacent tissues, held that evidence that two other devices of a similar nature were being produced by other corporations for sale was sufficient to show that competition existed, and since the unfair advertising would tend to

give an advantage to such advertiser it was unnecessary to show specifically that the advertising actually diverted any business from such competitors.

A contention that an order barring the term "Aspirub" to denote a preparation for external use containing only 1.5 per cent of aspirin, and barring excessive claims regarding the preparation in advertising, was improper on the ground that it was the only medical preparation for external use containing aspirin and was, therefore, not in competition with any other product in interstate commerce, was rejected in Justin Haynes & Co. v Federal Trade Com. (1939, CA2) 105 F2d 988, cert den 308 US 616, 84 L ed 515, 60 S Ct 261, where witnesses representing other manufacturers of aspirin had testified that so far as Aspirub was recommended as a relief for aches and pains and as an alleviant for colds it was regarded as in competition with aspirin, and Aspirub had itself been advertised as a "new convenient way to use aspirin."

A contention that the Federal Trade Commission had no jurisdiction over the petitioner, who advertised as an "Institute of Engineering and Science" his correspondence school for students located in Latin-American countries, was rejected in Branch v Federal Trade Com. (1944, CA7) 141 F2d 31, the court holding that the sending from the United States of textbooks, instructions, and written examinations constituted "commerce" within the meaning of the Federal Trade Commission Act, and that the commission's action in barring unfair practices was valid, since there were many correspondence schools in this country competing with the petitioner, at least a few of which schools were engaged in competition for business in the Latin-American field.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See Shafe v. F T C, 256 F.2d 661 (6th Cir. 1958), § 5[a].

[Top of Section]

[END OF SUPPLEMENT]

§ 4[b] Injury to competitor—Held insufficient

In some cases prior to the Wheeler-Lea amendment, lack of competition has been expressly held to bar action by the commission against unfair advertising practices.

The fact that false and misleading advertisements in regard to an "obesity cure" naturally tended to increase the business of the defendant was held insufficient to warrant a cease and desist order by the Federal Trade Commission in Federal Trade Com. v Raladam Co. (1931) 283 US 643, 75 L ed 1324, 51 S Ct 587, 79 ALR 1191, motion den (US) 76 L ed 1300, 52 S Ct 14, where there was no evidence from which a conclusion could be drawn that the advertisements substantially injured or tended to injure the business of any competitor, the court pointing out that none of the supposed competitors had appeared to show what, if any, effect the misleading advertisements had or were likely to have upon his business. The court stated that it was unnecessary to show that any particular individual competitor had been harmed by the advertisements but held that in the present case there was no evidence whatsoever as to whether competitors, identified or unidentified, were injured in their business or likely to be injured, or even whether any similar remedies were sold by any competitors in the interstate market.[5] The fact that the cure, as advertised, might constitute a danger to the public was held insufficient to give the Federal Trade Commission jurisdiction.[6]

In setting aside an order of the commission requiring a furniture manufacturer, which made its furniture principally of other woods and veneered them with a thin coating of mahogany or walnut, from designating such furniture as "mahogany" or "walnut," unless the word "veneered" was also used, the court in Berkey & G. Furniture Co. v Federal Trade Com. (1930, CA6) 42 F2d 427, held that there could be no unfair competition within the meaning of the act, since all furniture of the better quality had its flat surfaces constructed of plywood, or laminated and veneered woods, and that only the cheaper and poorer grades of less valuable material were constructed of solid woods, and indicated that the superior product of the defendant could not be regarded as in competition with materials of cheaper and inferior grade.

§ 5[a] Injury to public—Held sufficient

[Cumulative Supplement]

The requirement that a proceeding by the commission shall be "to the interest of the public," although present in all cases, has been discussed and held sufficiently met to justify action in only a few, prior to the Wheeler-Lea Act amendment.

A sufficient public interest to justify an order of the Federal Trade Commission requiring a manufacturer of underwear to refrain from using the words "Merino," "Wool," or "Worsted," on underwear manufactured by it which was not all wool, unless accompanied by words designating the other materials used in the product, was found to exist in Federal Trade Com. v Winsted Hosiery Co. (1922) 258 US 483, 66 L ed 729, 42 S Ct 384, revg (CA2 NY) 272 F 957, where the court found that by means of the labels and brands part of the public was misled into selling or into buying as all wool, underwear which in fact was in large part cotton.

The public has sufficient interest to warrant action by the commission where sellers of flour mixed and blended by them use tradenames which indicate that they are engaged in actually grinding the grain into flour, where it appears that consumers and dealers are thereby deceived into purchasing in the mistaken belief that they are buying from the grinder of the grain. Federal Trade Com. v Royal Mill. Co. (1933) 288 US 212, 77 L ed 706, 53 S Ct 335.

In holding that the commission was justified in ordering the excision of the word "white" from the tradename "California white pine," where the product sold under such name was actually an inferior yellow pine, the court in Federal Trade Com. v Algoma Lumber Co. (1934) 291 US 67, 78 L ed 655, 54 S Ct 315, rejected a contention that even though retailers and consumers may have been confused as to the character of the lumber supplied they were not prejudiced because the lower price for the inferior product may have been passed on to the consumer, and added: "But saving to the consumer, though it be made out, does not obliterate the prejudice. Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else.…In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance."

In upholding action by the commission in cases arising after the Wheeler-Lea Act amendment, the courts have occasionally noted that the effect of the amendment has been to broaden the commission's power to act without being dependent upon the existence of competition.

A sufficient injury to the public was found to exist in Thomas v Federal Trade Com. (1940, CA10) 116 F2d 347, where quilts had been sold as the result of advertising allegedly offering them at half price, although the price actually quoted was the customary and regular price for the product, the court pointing out that many purchasers were misled and deceived into believing that the quilts were being offered at one-half the regular price and the public therefore had an interest in stopping such practice. The court also noted that while under the original act unfair methods of competition in commerce were declared unlawful, by the amendment of 1938 unfair or deceptive acts or practices in commerce were also declared unlawful.

It has been held that soliciting the purchase of goods by advertisement is a method of competition, and if the advertisement contains false representations, it is an unfair method of competition, regardless of whether or not the advertiser knows the representations to be false, since the purpose of the statute is protection of the public, not punishment of a wrongdoer. Gimbel Bros., Inc. v Federal Trade Com. (1941, CA2) 116 F2d 578.

Fact that re-refined oil might be equal in lubricating quality to virgin oil did not preclude requirement that label show source:

US
Mohawk Refining Corporation v. F.T.C., 263 F.2d 818 (3d Cir. 1959)
Kerran v. F.T.C., 265 F.2d 246 (10th Cir. 1959)
The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Where "vanity" publisher offered to tell writers how to publish book and "get 40% royalties," and prospective customers were sent brochures which would clarify any initial misconception concerning "royalties" by explaining that author was required to subsidize publication, sufficient public interest existed to justify enforcement of order requiring immediate disclosure in advertisements that "royalty" or similar payments did not constitute net return to author, who must pay costs of printing, promoting, selling, and distributing book. Commission could prohibit initial deception even though true facts became known to customers before they suffered loss greater than price of postage stamp. Injury to competitors in that misleading initial approach attracted business which would not otherwise have been obtained was permissible inference, and evidence of actual injury to specific competitors was not required. Although Commission's finding of public interest is subject to review, case involved neither intervention by Commission into private dispute nor deception only as to trivial matters, and Commission rather than court was better able to judge whether deception was of sufficient importance to warrant action and whether proceeding aided in attainment of higher morality in information and propaganda designed to influence public. Exposition Press, Inc. v. F. T. C., 295 F.2d 869 (2d Cir. 1961).

See P.F. Collier & Son Corp. v. F.T.C., 427 F.2d 261, 1970 Trade Cas. (CCH) ¶ 73193 (6th Cir. 1970), § 18[a].

Commission having jurisdiction of cases affecting public interest, actual deception of public or injury to competition need not be shown nor was it necessary that false advertising be directly disseminated by defendants; cease and desist order would be affirmed against manufacturer and seller of drug or medicinal product prepared from certain herbs with some glycerine and water, where advertising falsely claiming curative treatment for many diseases was disseminated in interstate commerce and where there was substantial use of the mails, both inside and outside the state. Shafe v. F T C, 256 F.2d 661 (6th Cir. 1958).

Fact that hair and scalp specialist has satisfied customers is not a defense to Federal Trade Commission action for deceptive practices. Erickson v. F.T.C., 272 F.2d 318 (7th Cir. 1959).

[Top of Section]

[END OF SUPPLEMENT]

§ 5[b] Injury to public—Held insufficient

[Cumulative Supplement]

The right of the commission to take action has been denied in some cases on the ground that the public interest was not sufficiently involved to warrant such action.

Although affirming the action of the lower court in refusing to enforce an order of the Federal Trade Commission, the court in Federal Trade Com. v Klesner (1929) 280 US 19, 74 L ed 138, 50 S Ct 1, 68 ALR 838, held that the lower court erred in considering the case on its merits but should have dismissed it on the ground that the proceeding was not one in the interest of the public, where it appeared that the controversy involved essentially a dispute between two business competitors. It was shown that the defendant rented a store to a third party who manufactured window shades under the name "Shade Shop," for the general public and on order for the defendant, and that the third party, in violation of his agreement with the defendant, moved his business a few doors away, whereupon the defendant, with the purpose and intent of injuring the third party in getting his trade, decided to conduct in the store vacated the business of making and selling window shades, and adopted the words "Shade Shop." Noting that there was no evidence that the articles supplied by the defendant were inferior to those supplied by the other party, or that the public suffered financially in any way by the defendant's use of the words "Shade Shop," the court held that the proceeding by the commission did not appear to be "to the interest of the public," pointing out that this requirement of the act was not satisfied by proof that there had been misapprehension and confusion on the part of purchasers, or even that they had been deceived.

Even though it was proved that an "obesity cure," as advertised by the defendant, was dangerous to the public, since the preparation contained an ingredient which could be used generally with safety only under medical direction and advice, the court in Federal Trade Com. v Raladam Co. (1931) 283 US 643, 75 L ed 1324, 51 S Ct 587, 79 ALR 1191, motion den (US) 76 L ed 1300, 52 S Ct 14, held that an order of the Federal Trade Commission restraining such advertising was not authorized in the absence of a showing of actual or potential injury to a competitor of the defendant in the same field. The court held that the commission was authorized to act only where there existed "unfair methods of competition," and that the further requirement that the action appear to be in the interest of the public was merely a limitation on the jurisdiction of the commission and not an extension of such jurisdiction.

In refusing to enforce an order of the Federal Trade Commission requiring a hog breeder to refrain from advertising that his hogs were a separate and distinct breed from the Chester White breed of hogs, the court in L. B. Silver Co. v Federal Trade Com. (1923, CA6 Ohio) 289 F 985, motion den 292 F 752, stated that the controversy did not vitally concern the general purchasing public but was rather a controversy between rival breeders of hogs, and noted that it was agreed that the hogs in question were superior to the Chester White breed and at least equal to the Modern Whites with which they were in competition, with the result that neither the general public consumers nor the small part of the public engaged in breeding swine could be misled to their prejudice by the claim in question, nor induced thereby to purchase an inferior hog. The court, however, upheld the commission in restraining other claims of a general nature made in regard to the hogs in question.

See also John Bene & Sons, Inc. v Federal Trade Com. (1924, CA2) 299 F 468, infra, § 24[b].

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See F.T.C. v. Simeon Management Corp., 391 F. Supp. 697, 1975-1 Trade Cas. (CCH) ¶ 60223 (N.D. Cal. 1975), judgment aff'd, 532 F.2d 708, 1976-1 Trade Cas. (CCH) ¶ 60771, 34 A.L.R. Fed. 493 (9th Cir. 1976), § 10.

[Top of Section]

[END OF SUPPLEMENT]

III. Specific provisions as to particular commodities

A. Food, drugs, devices, and cosmetics

§ 6. In general

Although the power of the Federal Trade Commission to take action against false and misleading advertisements existed under the general authorization over "unfair methods of competition" prior to the Wheeler-Lea amendment of 1938, and also over "unfair or deceptive acts or practices" after the act was amended, the Wheeler-Lea amendments in addition gave the commission specific powers over false advertising of "food, drugs, devices, or cosmetics." The relevant sections of the Federal Trade Commission Act, as amended, are shown below.[7]

Various aspects of the specific provisions relating to these commodities will be discussed in the following sections.[8]

§ 7[a] Jurisdiction of Federal Trade Commission—Generally

[Cumulative Supplement]

The fact that control over labeling and misbranding of products is included under the Federal Food, Drug, and Cosmetic Act,[9] enforced by the Department of Health, Education, and Welfare, has led to some confusion as to the authority of the Federal Trade Commission over such labeling and misbranding which also constitutes advertising.

It has been held that action by the Federal Trade Commission for a cease and desist order and proceedings under the Federal Food, Drug, and Cosmetic Act are cumulative and not exclusive. United States v Research Laboratories (1942, CA9 Wash) 126 F2d 42, cert den 317 US 656, 87 L ed 528, 63 S Ct 54; United States v 1 Dozen Bottles (1944, CA4 Md) 146 F2d 361; United States v 5 Cases of Capon Springs Water (1946, CA2 NY) 156 F2d 493.

Although remanding the case to the commission because its exclusion of certain evidence denied a fair hearing to the petitioner, the court in Fresh Grown Preserve Corp. v Federal Trade Com. (1942, CA2) 125 F2d 917, rejected a contention that the action, based on improper labeling of products as "preserves" or "pure preserves," was not within the jurisdiction of the Federal Trade Commission, but that the false labeling, if actionable at all, was subject only to proceedings under the Food and Drug Act. This contention was based on the fact that the definition of "false advertisement" in § 15(a) of the act,[10] as added in 1938, excluded labeling. The court pointed out, however, that this definition was expressly limited to that term as used in §§ 12–14 of the act,[11] and was applicable only to the additional powers conferred on the commission by those sections. The court noted that the jurisdiction of the commission to prevent unfair competition by means of false labeling and misbranding had been upheld both before and after the Wheeler-Lea Act amendment and held that the amendment did not modify the term "unfair methods of competition in commerce," but made unlawful also what were called "unfair or deceptive acts or practices in commerce," and by so doing enlarged instead of lessened the scope of the jurisdiction of the commission. In Fresh Grown Preserve Corp. v Federal Trade Com. (1943, CA2) 139 F2d 200, following a hearing at which the petitioner was given an ample opportunity to present its evidence, the order of the commission was upheld and enforced.

Similarly, a contention that an action under the Food and Drug Act, alleging false representations in a circular accompanying a drug for the treatment of arthritis, was improperly brought under that act, since the printed matter constituted advertising, was rejected in United States v Research Laboratories (1942, CA9 Wash) 126 F2d 42, cert den 317 US 656, 87 L ed 528, 63 S Ct 54, where the court held that the circular could constitute both advertising and labeling, and added: "It is immaterial, if true, that the makers and advertisers of Nue-Ovo could have been proceeded against by the Federal Trade Commission under the Federal Trade Commission Act and could have been ordered to cease and desist from publishing and distributing the circular entitled 'What is Arthritis.' The power of the District Court to condemn misbranded articles is not impaired, diminished, or in

any wise affected by the possibility that such misbranding may also be the subject of a cease and desist order or even by the fact, if it be a fact, that such an order has actually issued." To the same effect, see United States v Lee (1942, CA7 Wis) 131 F2d 464, 143 ALR 1451.

In upholding a libel action against a drug product, instituted under the Federal Food, Drug, and Cosmetic Act,[12] against a contention that since the Federal Trade Commission had been given authority by Congress to prevent false advertising, whereas such authority had been denied to the Food and Drug Administration, it should be held that the Federal Trade Commission was the only agency of government which could operate in that field, the court in United States v Various Quantities of Articles of Drug Labeled in Part: "Instant Alberty Food" (1949, DC Dist Col) 83 F Supp 882, held that either agency could act where both misbranding and false advertising were present, pointing out that the fact that the government might seize an article because it was misbranded did not prevent the Federal Trade Commission from issuing a cease and desist order with reference to false advertising concerning that article; and conversely, the issuance of a cease and desist order would not prevent the government from proceeding against the article because of the misbranding.

See also the cases involving drugs in § 22, infra.

It has been held that the Federal Trade Commission has jurisdiction over false and deceptive advertising of medicinal products, even though the product in question is sold entirely within a single state and is advertised only in newspapers of that state.

Thus, in Shafe v Federal Trade Com. (1958, CA6) 256 F2d 661, a commission order against the manufacturer of a medical compound was upheld where the commission found that advertisements of the manufacturer in Michigan newspapers were false, the court rejecting a contention that the commission lacked jurisdiction since all the advertising was in one state and sales were made only in that state, any order from out of state customers being returned unfilled. The court noted that some of the newspapers were sent by mail to subscribers both in and out of the state, and held that use of the mails to disseminate false advertising was specifically proscribed by the act. The court held further that it was not necessary that the false advertising be disseminated in commerce by the manufacturer, inasmuch as the act required only that he cause such material to be disseminated.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See F.T.C. v. Simeon Management Corp., 391 F. Supp. 697, 1975-1 Trade Cas. (CCH) ¶ 60223 (N.D. Cal. 1975), judgment aff'd, 532 F.2d 708, 1976-1 Trade Cas. (CCH) ¶ 60771, 34 A.L.R. Fed. 493 (9th Cir. 1976), § 10.

[Top of Section]

[END OF SUPPLEMENT]

§ 7[b] Jurisdiction of Federal Trade Commission—Res judicata

While both the Federal Trade Commission and the Food and Drug Administration have jurisdiction over false advertising which is a part of the labeling of food, drugs, or cosmetics, and action by one organization does not preclude action by the other, it has been held that neither may reach a different result from the other under the same facts.

An order of the Federal Trade Commission requiring a distributor of "Gizzard Capsules," a remedy for worms in poultry, to cease and desist from representing that such product was a remedy for all three kinds of worms in poultry, that it would

remove pinworms or tapeworms, unless it was also represented that the product left the head of the worm, capable of growing new segments, attached to the intestines of the fowl, which was based on the commission's finding of extravagant, deceptive, misleading, and false statements regarding the therapeutic value, efficacy, and effect of the product in advertising, was vacated in George H. Lee Co. v Federal Trade Com. (1940, CA8) 113 F2d 583, where it appeared that in a prior proceeding brought by the government as a libel against 47 packages of "Gizzard Capsules," alleging they were misbranded in violation of the Food and Drug Act,[13] an adjudication had been made in favor of the distributor. The court held that the commission was bound by the result of the first determination, since the underlying issue in both proceedings was the same, involving a determination of whether the representations made with regard to the product were false because it did not have the therapeutic qualities claimed for it. The court held that it was unable to decide whether the commission, if it had accepted as a fact that the representations alleged to be false in the libel proceeding were not false, could have found other representations in the advertising of the product which would have justified a finding of unfair competition in interstate commerce, and vacated the order without prejudice to such further proceedings as were not inconsistent with its opinion.

An action by the United States for condemnation of certain tablets shipped in interstate commerce on the ground that the labeling thereof was false, in violation of the Food, Drug, and Cosmetic Act,[14] must be dismissed where it was stipulated that the statements relied upon by the government to uphold the charge of misbranding were identical with statements approved in an earlier proceeding by the Federal Trade Commission. United States v Willard Tablet Co. (1944, CA7 Ind) 141 F2d 141, 152 ALR 1194, holding that unless the Federal Trade Commission's decision was regarded as res judicata there would be the incongruous situation of one branch of the government approving the method used while another branch sought to condemn it.

§ 8[a] Failure to reveal material facts—Generally

Statements made in an advertisement of a product may be of such a nature that a misleading implication will result unless a qualifying statement is added thereto. This situation is specifically covered in the definition of false advertising contained in the amended statute.[15]

§ 8[b] Failure to reveal material facts—Order upheld

[Cumulative Supplement]

Cease and desist orders of the Federal Trade Commission have been upheld in some instances because of failure to make known certain facts found to be necessary in the light of statements made in the advertisement.

An order restraining a distributor of medicinal preparations for relief of delayed menstruation from advertising that his preparations were harmless or safe to use, or from failing to reveal that their use might produce gastrointestinal disturbances, severe toxic and circulatory abnormalities, and, in pregnancy, violent poisonous effects, was upheld in Aronberg v Federal Trade Com. (1942, CA7) 132 F2d 165, the court pointing out that the act forbade dissemination of any misleading advertisement which failed to reveal facts material in view of the consequences of the use of a commodity.[16] The court noted that the petitioner made such claims as the following: "Perio Relief Compound contains no habitforming drugs, but is made almost solely of pure vegetable ingredients…" and "is made to quickly and harmlessly aid most abnormally suppressed functions, in cases where no organic disorder is present," and held that by these assertions it was clearly meant to suggest that no harm would or could result from the use of the preparations. It was noted that prior to the investigation the labels suggested four capsules each day, and that subsequently the directions were altered to direct that the medicine should not be continued for more than 10 days, allowing one week to elapse before resuming; and to warn users not to use the pills during pregnancy, and to cease use temporarily if they caused excessive bowel action. Experts in gynecology and obstetrics testified that the preparation, if taken in small quantities or for a short period, would probably not cause a serious result, although it might cause discomfort, but that if the medicine was taken for a period of from 4 to 10 days as prescribed, danger of a severe abnormal circulatory condition due to constriction of blood vessels would arise, resulting in severe gastrointestinal disturbances and violent poisonous effects upon the human

organic system, with even more adverse results in case of pregnancy, and that use of such preparations might cause abortion. There was also substantial agreement among the medical witnesses that in sound medical practice, doctors would prescribe emmenagogues only in exceptional cases, and then only after careful examination of the patient and under strict instruction and supervision. From this evidence the court concluded that the commission was justified in believing that where such preparations were sold indiscriminately to the public and taken without medical supervision, many users, because of alarm or desire for quick relief, were likely to take excessive or too frequent doses, thus increasing the dangerous potentialities, and that they should not be distributed without warning users of these facts.

A contention that the commission was not empowered to require petitioners to reveal the facts with respect to consequences which might result from the use of Re-Duce-Oids was rejected in American Medicinal Products v Federal Trade Com. (1943, CA9) 136 F2d 426, where the commission had found that the preparation was not a safe, competent, or effective treatment for obesity, and should only be used under competent medical supervision, that the unsupervised use of such preparation by persons not skilled in the diagnosis and treatment of thyroid conditions might result in serious and irreparable injury to health, that the preparation was definitely harmful if used by persons having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary diseases, that the use of the preparation over a long period of time might cause serious injury even to normal individuals, and barred advertising of such preparation unless these facts were disclosed, the court pointing out that the order did not require the petitioners to reveal anything but merely required them to cease from disseminating false advertisements, and noting that if the petitioners did not choose to advertise truthfully, they could, and should, discontinue advertising.

It was contended in Gelb v Federal Trade Com. (1944, CA2) 144 F2d 580, that a commission order barring advertising which represented that a hair dye called Instant Clairol was harmless or safe for use, based on findings that it contained a coal tar derivative, paratolilene diamine, which could produce a rash if the user was allergic to such drug, and might result in blindness if used for dying the eyelashes or eyebrows, was invalid since the preparation was never recommended for such use, was perfectly harmless to the normal person, and even the allergic person could not be injured if he followed the instructions printed on the package, the petitioner relying on the 1938 amendment to the Federal Trade Commission Act which directed that in determining whether any advertisement was misleading, consideration must be given to the use of the article "under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."[17] The court held that the amendment did not preclude the commission from requiring that the warning carried by the package must be suggested by the advertisement itself, noting that members of the general public who saw the advertisement might thereby be induced to ask a beauty parlor operator to use Instant Clairol on her hair and might never see the warning printed on the package. The court pointed out that the prohibition would not be infringed by an advertisement representing that Instant Clairol was harmless and safe if used in accordance with instructions contained in the package.

In Carter Products, Inc. v Federal Trade Com. (1951, CA7) 186 F2d 821, where the commission entered a cease and desist order restraining the manufacturer of Arrid, a deodorant, from advertising "that said preparation is safe or harmless to use, without disclosing it may cause irritation of sensitive skin," and there was conflicting testimony as to the effect of the preparation on the skin, the court, although apparently looking with favor upon the petitioner's contention that the use of Arrid would not produce harmful effects upon normal skin and that it should have the right to say so in its advertisements, and stating that in its opinion the commission might well have granted this request, concluded that there was substantial evidence to sustain the commission's finding and that the commission had made an allowable judgment in its choice of remedy, and upheld the commission's order in this regard.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Federal Trade Commission order properly required petitioners to disclose affirmatively that their preparation would not be effective against male pattern baldness, and failure to disclose that approximately 95 per cent of cases of baldness fall within male pattern type was plainly misleading when petitioners claimed they could treat effectively virtually all cases of baldness. Keele Hair & Scalp Specialists, Inc. v. F.T.C., 275 F.2d 18 (5th Cir. 1960).

See S. S. S. Co. v. F. T. C., 416 F.2d 226 (6th Cir. 1969), § 22.

Advertisements for weight reduction program which failed to disclose that program involved daily injections of human chorionic gonadotropin, a prescription drug not approved by the Federal Drug Administration for use in weight reduction, were false, deceptive and unfair for failure to disclose material information, even though advertisements did not state false facts. Simeon Management Corp. v. F. T. C., 579 F.2d 1137, 1978-2 Trade Cas. (CCH) ¶ 62282, 49 A.L.R. Fed. 1 (9th Cir. 1978).

Unqualified representation that Enurtone device benefited bedwetting conveyed idea that device was effective in all cases of enuresis although in fact device was of no benefit in cases caused by organic defects or diseases, and justified order requiring future advertisements to clearly state that the device does not achieve results in such cases. Feil v. F.T.C., 285 F.2d 879 (9th Cir. 1960).

See F.T.C. v. Pharmtech Research, Inc., 576 F. Supp. 294, 1983-2 Trade Cas. (CCH) ¶ 65738 (D.D.C. 1983), § 20[a].

[Top of Section]

[END OF SUPPLEMENT]

§ 8[c] Failure to reveal material facts—Order denied

[Cumulative Supplement]

The courts have held, however, that the necessity for the added revelations must be clear and apparent, and have rejected the commission's order requiring additional statements in advertising where the necessity therefor was not satisfactorily shown.

An order of the commission, based upon its finding that advertisements of a cosmetic preparation called "Mercolized Wax" made no reference to the injurious effects likely to result from indiscriminate use of the preparation, and did not refer to the directions for use inclosed in each package, which were found sufficient to apprise users of the necessary precautions, and the commission's conclusion that the advertisements were false in that they failed to reveal facts material in the light of the representations made therein, was ordered vacated in Dearborn Supply Co. v Federal Trade Com. (1944, CA7) 146 F2d 5, where the hearing had been conducted on a stipulation of facts which included various excerpts from the petitioner's advertising. Although there was no direct proof in support of the commission's finding, the commission argued that it had been led to believe, with the petitioner's knowledge, that the petitioner was making no contention but that its advertisements failed to reveal any precautionary statement, and that under such circumstances it was the duty of the petitioner to rebut the assumptions made by the commission by the introduction of petitioner's complete advertisements. Although questioning whether such assumption on the part of the commission, even though acquiesced in by the petitioner, would constitute a substitute for proof, the court held there was no acquiescence in such assumption by the petitioner, noting that all the allegations of the complaint were based solely upon the disclosures made in such advertisements and not upon what they failed to reveal. Under such circumstances the court concluded that the petitioner had a right to assume that the commission was relying solely upon the excerpts from advertisements in the stipulation of facts, and that an order based on a finding made on the commission's assumption as to matter contained in other advertisements, or not contained therein, could not be sustained.

Where all the advertising in regard to a special candy intended as an aid in weight reduction referred to a plan under which the candy must be taken to obtain the desired results, it was held in Carlay Co. v Federal Trade Com. (1946, CA7) 153 F2d

493, that it was unnecessary that the details of the plan should be contained in the advertisements, inasmuch as anyone reading the advertisements knew that eating the candy was to be accompanied by a suggested plan and that the candy and the plan together constituted the complete treatment, the court finding that when the reader obtained his candy and perused the plan which accompanied it, he learned not that the advertisement was wrong but merely that the plan coincided with what the advertising had told him, namely, when to eat the candy and what the purpose was in eating it.

Although the petitioner did not object to a commission order forbidding it to represent that its preparation, "Oxorim Tablets," would have any therapeutic effect upon the blood or the red corpuscles thereof, or that the preparation would relieve or have any beneficial effect upon the condition of lassitude, except in cases of simple iron deficiency anemia, it did object to the added requirement of the commission that its advertising also state "that the condition of lassitude is caused less frequently by simple iron deficiency anemia than by other causes and that in such cases this preparation will not be effective in relieving or correcting it," and the objection to inclusion of this clause was upheld by the court in Alberty v Federal Trade Com. (1950) 86 App DC 238, 182 F2d 36, cert den 340 US 818, 95 L ed 601, 71 S Ct 49. The court noted that the limitations imposed by the first part of the commission's order permitted the petitioner to state in its advertising that its tablets helped lassitude only if the advertisements specified lassitude due to simple iron deficiency anemia, which statement the commission had found to be true. The court stated further that it was the full truth and that nothing in the representations in such advertising or in the consequences arising from use of the products justified the further commission order that the advertiser must go further and tell the public that its product is more frequently valueless than it is valuable. In holding that the commission had no authority to require the added statement, the court said: "Even if we give effect to the broadest possible concept of the power conferred by the Congress upon the Commission, we do not think that the Commission has the power here claimed. There is a limit to the Commission's power. It is not given a general charter to police the expenditure of the public's money or generally to do whatever is considered by it to be good and beneficial. The task assigned it by Congress is specific, and it has no other authority in respect to this subject. False advertising is defined by the act as including failure to reveal facts made important, or of some consequence, because of other things claimed, and failure to reveal facts made important, or of some consequence, because of the results of the use of the product. The Commission must find either of two things before it can require the affirmative clause complained of: (1) that failure to make such statement is misleading because of the consequences from the use of the product, or (2) that failure to make such statement is misleading because of the things claimed in the advertisement. There is no such finding here.…We are concerned with the scope of the power thus sought by the Commission. If it has this power, it could, if it chose, require an advertiser of a breakfast food rich in iron to state not only that the food is good for those deficient in iron but also that iron deficiency is less frequent than other ills and that for these others the advertised food is valueless; and similarly through the long list of foods, drugs and drinks good for one or a few of the ills of men but not for all. Such power seems to us to be no less than the power to control the marketing of all such products, because, if particular advertisers, selected by the Commission, can be required not only to state accurately the limited benefits of their products but also to call attention to what the products will not do, the effect on marketing is clear enough. Such a requirement seems to us to have no relation to the prevention of falsity in advertising. It is a wholly different power." The court also held that the commission erred in requiring that the petitioner, if making any claim of therapeutic value in connection with advertising of its products, must expressly limit such claims to "claims of value made for the preparation under the principles of the homeopathic school of medicine," pointing out that the homeopathic school was one of the two generally recognized schools of medicine and, although less numerous than the allopathic school, was nonetheless well established and practiced, and concluding that failure to designate which of two established schools of medicine recognizes a product as beneficial could not be regarded as misleading or making an advertisement false.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See F.T.C. v. Simeon Management Corp., 532 F.2d 708, 1976-1 Trade Cas. (CCH) ¶ 60771, 34 A.L.R. Fed. 493 (9th Cir. 1976), § 10.

[Top of Section]

[END OF SUPPLEMENT]

§ 9. Advertisement directed to medical profession

While the statutory definition of false advertisement contains an exception with regard to advertisements of drugs which are "disseminated only to members of the medical profession,"[18] attempts to use this provision to avoid action by the Federal Trade Commission have been uniformly unsuccessful.

A contention that an action by the commission directed against advertising of a so-called "Detoxifier," which was asserted to be beneficial in a wide variety of ailments, was not "to the interest of the public," since the advertising was directed to members of the healing profession and the device was not sold to the lay public, was rejected in Irwin v Federal Trade Com. (1944, CA8) 143 F2d 316, where it was found that the distributors of the device also supplied to purchasers of their machine, advertising to be distributed by such purchasers to the public, the court pointing out that the deception of patients who presented themselves to purchasers of the machine and underwent treatment involving its use as a result of circulation by the purchasers of the deceptive and misleading literature clearly involved the public interest.

A contention that an order of the Federal Trade Commission barring certain advertising was invalid because it invaded the protection afforded by § 15(a) of the Federal Trade Commission Act,[19] providing that advertisements of a drug shall not be deemed false if distributed only to doctors, was rejected in Koch v Federal Trade Com. (1953, CA6) 206 F2d 311, the court pointing out that to come within this provision an advertisement must meet two prerequisites, (1) be disseminated only to members of the medical profession, and (2) be accompanied by truthful disclosure of the formulae showing quantitatively each ingredient of such drug, failure to meet either of which would deprive the petitioner of the benefit of the protective provision, and noting that both of the requirements were lacking, since some of the misleading advertising material was contained in pamphlets prepared for distribution to their patients by physicians using the petitioner's products, and certain of the advertisements were not accompanied by formulae showing quantitatively the ingredients of the drugs.

A request by the petitioner, following the upholding of an order by the commission restraining excessive advertising claims in regard to a drug produced by it, that the order be amended to preserve the right to distribute advertisements to members of the medical profession on a different basis than to the general public, was denied in Dolcin Corp. v Federal Trade Com. (1954) 94 App DC 247, 219 F2d 742, cert den 348 US 981, 99 L ed 763, 75 S Ct 571, the court holding that the provisions of the statute were necessarily implicit in every order issued under the act and that advertising to the medical profession which met the standards set by the act remained protected by it, without need of modifying the order. See also Re Dolcin Corp. (1957) 101 App DC 118, 247 F2d 524, cert den 353 US 988, 1 L ed 2d 1143, 77 S Ct 1285, in which the corporation and three of its officers were held guilty of criminal contempt for violating the court's order as a result of continued radio advertising contrary to the terms thereof.

See also Belmont Laboratories v Federal Trade Com. (1939, CA3) 103 F2d 538, infra, § 22[b].

§ 10. Injunction against advertising

This section has been superseded by the following article(s):

Superseded by Temporary relief against unfair trade practices under 15 U.S.C.A. sec. 53, 34 A.L.R. Fed. 507

B. Other specific provisions

§ 11. Fur products

[Cumulative Supplement]

The provisions of the Fur Products Labeling Act,[4] added to the Federal Trade Commission Act in August, 1951, and made effective one year later, were held applicable in De Gorter v Federal Trade Com. (1957, CA9) 244 F2d 270, to a retail fur store which made sales to persons residing outside the state, advertised in newspapers of interstate circulation, and which received from out of the state approximately one-fourth of the products sold by it. In upholding a commission order with regard to unlawful pricing practices, shown below,[5] the court noted that the word "price" did not occur in the section of the act relating to false advertising[6] but pointed out that the act provided that a fur product should be considered to be falsely or deceptively advertised if such advertising contained "any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur,"[7] and held that this was sufficiently broad to give the commission power over pricing practices, particularly in view of the fact that the commission, under the rule-making power granted by the statute, had enacted Rule 44, which contained extensive prohibitions with regard to misrepresentation of prices. The use in advertising of such phrases as "Priced Regardless of Cost!" "…styles now on Sale ½ price — present unchanged price tags remain on garment — You May Deduct One-Half!!!" were held to be deceptive where the ticketed prices on garments bore no relation to their cost but represented merely a top price fixed arbitrarily by the petitioner, and the price tags contained two additional prices, in code, at either of which the sales person was authorized to sell the article, the lower price being in some cases one-half or one-third of the marked price. Advertising of "Complete stock now on sale, half price,…" was held misleading where only selected garments were placed on sale, the court pointing out that such advertising conveyed to the reader the impression that the "entire" stock of the establishment was being liquidated, and noting that it was not necessary that the advertising be in fact misleading, if it had a tendency to mislead.

Although modifying an order of the Federal Trade Commission on other grounds, the court in Mandel Bros., Inc. v Federal Trade Com. (1958, CA7) 254 F2d 18, cert gr 358 US 812, 3 L ed 2d 55, 79 S Ct 54, upheld a cease and desist order based on the commission's finding that certain fur products sold for $244 were the same ones advertised in a newspaper as "usually $299 to $399," the net effect of which was to mislead and deceive purchasers as to the amount of savings to be realized. The court noted that the petitioner made no attempt to prove the garments in question were usually sold at the higher prices, and rejected a contention that the issue was not regular and usual price of the specific garments sold, but the regular and usual price of similar or comparable garments, pointing out that the customers would make no such distinction. In any event, the court concluded that there was no evidence that the regular and usual price of similar or comparable garments was $299 to $399.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Sales slips given by store operator engaged in fur business to its retail customers constitute invoices within meaning of Fur Products Labeling Act, the issue having been resolved by United States Supreme Court in F.T.C. v. Mandel Brothers, Inc., 359 U.S. 385, 79 S. Ct. 818, 3 L. Ed. 2d 893 (1959); Fair v. Federal Trade Commission, 272 F.2d 609 (7th Cir. 1959).

Boston newspapers containing respondent's advertisements were distributed in commerce within meaning of Fur Products Labeling Act, and record supported commission's findings that respondent deceptively advertised by (1) failing to disclose name of animal producing fur, and (2) misrepresented that fur products were reduced from regular or usual prices. However, finding of 22 misbranded furs in respondent's regular stock did not support finding that such products were advertised in commerce, since to constitute violation misbranded products must be referred to in advertisements in commerce. Violation was made out where, although two advertisements were limited in reference to properly branded furs purchased from particular collection,

third advertisement made additional reference to type of fur product not within this purchase and inspector found two improperly labeled garments of this type in stock. Morton's Inc. v. F.T.C., 286 F.2d 158 (1st Cir. 1961).

Order of FTC based upon petitioner's alleged misbranding of blankets in violation of Wool Products Labeling Act was not supported by substantial evidence and would be set aside. Two of five blankets purchased and tested by Commission contained more wool than petitioner claimed, but such understatement of amount of wool was not violation of act. Two other blankets had less wool than label indicated but such minor variations fell within section of act excusing unavoidable variations in manufacture. Although fifth blanket did make meaningful overstatement of wool content, such deficiency was not substantial evidence of misbranding where petitioner sold over 1,000,000 blankets during period it was under investigation. Marcus v. F. T. C., 354 F.2d 85 (2d Cir. 1965).

Broad order to cease and desist violations of branding, invoicing, and advertising sections of Fur Products Labeling Act was justified under evidence showing violation of all three general categories, including marketing of mink muffs without informing customers that pieces were made from bleached waste fur, failure in advertising copy to use properly fur products name guide or to identify country of origin of fur-producing animal, and more than dozen violations which retailer characterized as minor but which supported inference of laxness in conforming to requirements of act. Although price of furs contained in muffs was less than $5, Commission correctly decided that rule granting exemption from disclosure provisions of act was inapplicable because retailer had made "representations" concerning furs. Hoving Corporation v. F.T.C., 290 F.2d 803 (2d Cir. 1961).

Where store operator received in good faith from manufacturer or supplier of garments a guaranty that fur products were not misbranded, and it appeared that all the labels were those of the manufacturer or other suppliers, that the majority of the defects were not obvious and could easily have been overlooked, that their discovery required careful scrutiny by one skilled in furs and well versed in the Fur Act and the Commission's regulations, and that the one error of a missing label which could have been easily detected was merely overlooked, store operator was entitled to rely on guaranty and could not be held guilty of misbranding. Fair v. Federal Trade Commission, 272 F.2d 609 (7th Cir. 1959).

Substantial evidence supported findings that petitioner issued false invoices and advertised secondhand furs without identifying them as such; advertisements of "thousands of furs to choose from" although inventory in fact did not exceed 2,000 were deceptive and violated provisions against false advertising, as did offers of written bonded appraisals where appraisals were made to promote sales rather than to reach proper evaluation for insurance purposes, and cease and desist order, including provision prohibiting advertising of appraisals unless rendered by qualified and disinterested appraisers, was proper. Mannis v. F. T. C., 293 F.2d 774 (9th Cir. 1961).

[Top of Section]

[END OF SUPPLEMENT]

§ 12. Oleomargarine

The statute contains a special provision in regard to the advertising of oleomargarine under which it has been held that any attempt to suggest, directly or indirectly, that it is a dairy product may result in action by the Federal Trade Commission.

Under the special statutory provision relating to advertising of oleomargarine,[8] an order of the Federal Trade Commission restraining the manufacturer of "Reddi-Spred" from distributing any advertisement which represented or suggested that the oleomargarine presented for sale was a dairy product was upheld by the court in Reddi-Spred Corp. v Federal Trade Com. (1956, CA3) 229 F2d 557, although the complaint had been originally dismissed by the hearing examiner on the ground that the advertisements in question did not tend to mislead the purchasing public into the belief that Reddi-Spred was butter or any other dairy product.[9] The court concluded that the commission was not arbitrary or clearly wrong in deciding that the shrewd featuring of the word "butter" in the advertisements, coupled with skilfully worded statements which implied that because of its

butter content Reddi-Spred was substantially different from margarine, suggested that Reddi-Spred was a dairy product, and so violated the letter and spirit of the statute. The court stated that the design of the statute was to prohibit the seller of oleomargarine from using dairy terms to imply that the oleomargarine offered was a dairy product, and did not contemplate public reaction or opinion as its guide, but set up a purely factual standard. The commission's original order contained a proviso following the language of the statute, that nothing contained therein should prevent use in advertisements of the truthful statement of all the ingredients contained in said product "or of a truthful statement that said product contains butter or any other dairy product provided the percentage thereof contained is clearly and conspicuously set forth," but, at the request of the commission, the quoted portion of the proviso was stricken, the commission having concluded that it did not possess authority under the statutory provision to allow in oleomargarine advertisements such a statement in regard to butter.

A violation of the oleomargarine provision of the Federal Trade Commission Act,[10] was found in E. F. Drew & Co. v Federal Trade Com. (1956, CA2) 235 F2d 735, cert den 352 US 969, 1 L ed 2d 323, 77 S Ct 360, where the petitioner sold oleomargarine under the name "Farm Queen" to dairies and milk dealers in several states, and to aid such dealers in sales distributed through the mails and otherwise a variety of circulars, letters, and other advertisements, containing such expressions as "churned to delicate, sweet creamy goodness," "country fresh," and "the same day-to-day freshness which characterizes our other dairy products," the court holding that such expressions had long been associated with butter and that their use in connection with oleomargarine could probably be found to suggest to purchasers that the product had a composition and origin similar to butter, and that the reference to "other dairy products" clearly represented that the petitioner's oleomargarine was a dairy product. The court upheld the commission's conclusion that it was unnecessary to find that such advertising was false and misleading, since the statute provided that such advertising was misleading.

IV. Types of false, misleading, or deceptive practices

§ 13[a] Labels and brand names—Order upheld

[Cumulative Supplement]

Use of various labels or tradenames which create the impression that the product advertised is something other than it actually is, has frequently been held to constitute an unfair method of competition or a deceptive practice, warranting action by the Federal Trade Commission.

The use of the tradename "California white pine," in the sale of a superior grade of yellow pine which, even so, was inferior to true white pine, was held to constitute unfair competition in Federal Trade Com. v Algoma Lumber Co. (1934) 291 US 67, 78 L ed 655, 54 S Ct 315, and an order by the Federal Trade Commission forbidding the use of the word "white" to designate such pine was upheld, where it appeared that dealers, retailers, architects, and consumers were all misled into using such wood under the mistaken impression that they were using true white pine, even though the name had been used for more than 30 years without any fraudulent design and the particular wood in question had been designated as "California white pine" in a publication issued by the Bureau of Standards of the National Department of Commerce.

The use of the term "Philippine mahogany" in advertising and offering for sale woods which did not belong to any species of the genus Swietenia, the only true mahogany, was held to warrant a cease and desist order by the commission in Indiana Quartered Oak Co. v Federal Trade Com. (1928, CA2) 26 F2d 340, cert den 278 US 623, 73 L ed 544, 49 S Ct 25, where the court found that while the term "Philippine mahogany" had a commercial significance, its use created misunderstanding among dealers, furniture manufacturers, and the consuming public, who were led to believe that in purchasing products under such designation they were getting true mahogany. A contention that the words "Philippine mahogany" had acquired a secondary meaning was rejected by the court, which found that such understanding was limited to dealers actually selling the rough lumber. See, however, Indiana Quartered Oak Co. v Federal Trade Com. (1932, CA2) 58 F2d 182, where it was shown that in later cases involving other dealers in Philippine mahogany, the commission had determined that the use of the word mahogany was proper if modified by the word "Philippine," and the court, therefore, modified its order to permit use of the term "Philippine mahogany."

A baking powder manufacturer which, after marketing for 60 years under the name "Dr. Price's" a cream of tartar baking powder, had changed its product to a phosphate baking powder, normally selling for about one-half the price of the former product, and used on the new product labels which were virtually the same as or similar to the labels used on the original product, was held properly restrained from the use of such labels in Royal Baking Powder Co. v Federal Trade Com. (1922, CA2) 281 F 744. Although the labels originally used on the new product had a clause printed in red across the back panel which was headed "a pure phosphate powder," and gave the new ingredients, there was retained on this label the declaration in heavy type, more conspicuous than the red overprint, that the powder contained "pure grape cream of tartar, tartaric acid." New labels, intended for permanent use on the new product, retained all of the distinctive features of the old cream of tartar labels, including the name "Dr. Price's," which had been advertised for many years as denoting exclusively a cream of tartar powder and not a phosphate powder, and the labels carried the legend "makers for 60 years." The new labels were held so like those previously used, in arrangement of lettering and design, in coloration and general appearance, as to cause one to be mistaken for the other, and to confuse and mislead purchasers familiar with the former product as to the character of the new product.

Where an existing corporation known as the "Juvenile Shoe Corporation" was engaged in manufacturing and selling children's shoes exclusively, the adoption by a new corporation, engaged in the same business, of the name "Juvenile Shoe Company, Incorporated," and the use of a trademark closely resembling that of the original corporation, constituted unfair methods of competition within the meaning of the Federal Trade Commission Act, and the second corporation was properly restrained from using the word "Juvenile" in any way on its marks, labels, tags, or other devices in connection with the sale of shoes for children, and from directly or indirectly suggesting by the use of such word or label, or otherwise, that their goods were the goods of the Juvenile Shoe Corporation. Juvenile Shoe Co. v Federal Trade Com. (1923, CA9) 289 F 57, cert den 263 US 705, 68 L ed 516, 44 S Ct 34.

An order requiring a soap manufacturer to refrain from using the word "naphtha," or its equivalent, in the brand name of any soap or soap product or in the advertising thereof, if such soap product contained kerosene and the word "naphtha" was used to designate the addition of kerosene or its presence in the soap, was upheld in Procter & Gamble Co. v Federal Trade Com. (1926, CA6) 11 F2d 47, cert den 276 US 717, 718, 71 L ed 856, 47 S Ct 106, where it appeared that naphtha was more expensive than kerosene and the consuming public recognized naphtha as a more efficient cleansing agent.

In Federal Trade Com. v Balme (1928, CA2) 23 F2d 615, cert den 277 US 598, 72 L ed 1007, 48 S Ct 560, the Federal Trade Commission was held to have properly adjudged the defendant guilty of unfair competition where it appeared that he marketed a hair dye under the name "D'Oreal Henna" in deliberate imitation of a hair dye imported from France which used the name or mark "L'Oreal Henne," the defendant copying the color of the can, the arrangement of the words on the label, the woman's head on the top of the can, and the paper band around the can, so that there was confusion among the purchasing public. The court referred the case back to the commission to determine whether the defendant had complied with the commission's order by labeling his product "B. Paul's Henna" and changing the wording on the package, where it still remained similar in color and general appearance to the container used in marketing the French product.

An order requiring a manufacturer to cease using the term "Duraleather" as a tradename on imitation leather, or on its stationery or in its advertising, was upheld in Masland Duraleather Co. v Federal Trade Com. (1929, CA3) 34 F2d 733, even though the manufacturer generally included the phrase, "The Durable Leather Substitute," in much smaller letters along with its tradename, where it appeared that purchasers from the manufacturer had also used the name to designate articles manufactured by them without indicating that it was a substitute for leather, and that a manufacturer of genuine leather articles for more than 25 years had used its registered name "Duro" as a tradename for its products and that this company had successfully opposed the registration by the manufacturer of the word "Duraleather." The court held that the tradename "Duraleather" was inherently false and that it had the capacity and tendency to deceive the ultimate purchasers of goods made from the imitation leather so marked and advertised into the belief that such goods were made of genuine leather. Noting that the manufacturer, over a period of 15 years, had acquired a large trade value in the use of the name, "Duraleather," the court modified the commission's order

to permit continued use of the name for a period of 6 months, if the manufacturer adopted a new tradename, in order to show that the new name referred to goods previously sold under the old one.

An order restraining the distributor of silver jewelry from using the term "Indian" or "Indian-made," unless it also designated in its catalogs or advertising matter, or on its labels, the operations in the manufacturing process which were done by machine, was upheld in Federal Trade Com. v Maisel Trading Post, Inc. (1935, CA10) 77 F2d 246, mod on reh 79 F2d 127, motion den 84 F2d 768, where it appeared that the use of the restricted terms connoted to the general public a handmade article.

Although reversing as too broad a commission order barring use of the word "olive" in any way in connection with soap whose oil content was not entirely olive oil,[11] the court in Allen B. Wrisley Co. v Federal Trade Com. (1940, CA7) 113 F2d 437, stated that labels such as "Oliv-ilo," "Royal Olive Oil Pure," "Purito Olive Oil Castile," "Olive-Skin Pure Toilet Soap," and "Del Gloria Castile made with pure olive oil," tended to misrepresent, but concluded that the order should go no further than to forbid their use except in connection with the name of another oil or by some other word or words clearly indicating that such soap was not made wholly of olive oil, for example "part olive oil," and extended permission to the commission to present a new order consistent with the court's opinion.

In Northern Feather Works, Inc. v Federal Trade Com. (1956, CA3) 234 F2d 335, an order requiring accurate labeling of feather pillows was upheld, where an industry rule approved by the commission permitted a 15 per cent tolerance under which a pillow labeled "100 per cent down" and consisting of 85 per cent down would not be treated as mislabeled, the court concluding that the 15 per cent tolerance allowance was sufficient for those who were trying in good faith to make the labels say accurately what the content of the pillow was, even though it might be insufficient for those who were trying to make the product get just over the mark of 85 per cent. To the same effect, see Buchwalter v Federal Trade Com. (1956, CA2) 235 F2d 344, and Lazar v Federal Trade Com. (1957, CA7) 240 F2d 176. But see Burton-Dixie Corp. v Federal Trade Com. (1957, CA7) 240 F2d 166, infra, § 13[b].

The use of particular labels or tradenames has been held sufficiently false, misleading, or deceptive to warrant a cease and desist order by the Federal Trade Commission where—

—underwear which was not all wool was labeled "natural merino," "gray wool," "natural wool," "natural worsted," or "Australian wool," unless the names of the other materials or fabrics going into the product were also included on the label. Federal Trade Com. v Winsted Hosiery Co. (1922) 258 US 483, 66 L ed 729, 42 S Ct 384, revg (CA2 NY) 272 F 957.

—a manufacturer stamped on soap made in the United States "English Tub Soap" and "Hanson-Jenks, limited, London, New York," and printed on the wrapper "English Tub Soap" and "James J. Bradley and Company, sole agents U.S. and Canada," and the order barred use of the word "English" in the designation or in the advertising, branding, labeling, or description of soap unless it was manufactured in England. Federal Trade Com. v Bradley (1929, CA2) 31 F2d 569.

—it was shown that the word "Lighthouse" had acquired a secondary meaning as a workshop where blind people produced goods for sale, and the defendant had incorporated such word into its corporate name and had adopted the symbol used by such institution, using it on its literature and labels, and had falsely represented that its rugs were produced by blind people in such institutions, the order barring use of the words "Lighthouse" or "Light House," in any way. Lighthouse Rug Co. v Federal Trade Com. (1929, CA7) 35 F2d 163.

—a manufacturer was barred from the use of the words "Sani-Onyx, a Vitreous Marble," in its advertising as a trademark to designate slabs manufactured principally from silica, which slabs could be used as a building material or for table tops and counters in place of natural or quarried onyx or marble, even though retail purchasers were not likely to be misled. Marietta Mfg. Co. v Federal Trade Com. (1931, CA7) 50 F2d 641.

—a manufacturer of rugs was restrained from using the trade name, "Bagdad seamless Jacquard Wilton," to designate rugs distributed by it which did not have the weave construction commonly associated with genuine Wilton rugs. Federal Trade Com. v Artloom Corp. (1934, CA3) 69 F2d 36.

—the order restrained the defendant from using the word "Champion," to describe or advertise automotive and metal specialties, including spark plug cable sets, or using the picture of a spark plug at the bottom of which a simulation of electricity was displayed containing the word "Champion" therein, the court concluding that such usage was false, deceptive, and misleading to the retail trade in that it deceived the purchasing public into believing that the defendant's products were those of the Champion Spark Plug Company, the fact that the defendant had copyrighted the box label, "Champion Spark Plugs Set," being regarded as immaterial. Federal Trade Com. v Real Products Corp. (1937, CA2) 90 F2d 617.

—the order barred use of the name "Aspirub" for a preparation for external use containing 1.5 per cent of aspirin, and barred representations that this preparation accomplished to any substantial extent the beneficial effects of aspirin or was absorbable through the skin in an amount sufficient to produce any beneficial therapeutic effect. Justin Haynes & Co. v Federal Trade Com. (1939, CA2) 105 F2d 988, cert den 308 US 616, 84 L ed 515, 60 S Ct 261.

—the order restrained use of the term "Havana Smokers" as the name for cigars made entirely of United States tobacco, although, it appearing that the cigars had been so branded since 1902, the court modified the order to allow 2 years within which to eliminate the word "Havana." H. N. Heusner & Son v Federal Trade Com. (1939, CA3) 106 F2d 596. To the same effect, see El Moro Cigar Co. v Federal Trade Com. (1939, CA4) 107 F2d 429.

—a retail store advertised a special lot of dress goods as "woolens" although some of them were mixtures of wool and other materials, the commission finding that the term "woolens" meant a fabric composed wholly of wool to the purchasing public. Gimbel Bros., Inc. v Federal Trade Com. (1941, CA2d) 116 F2d 578.

—the order barred the petitioner from using the word "Remington" as a trademark on goods manufactured for it by other concerns, the court conluding that when the petitioner took an extensively advertised and well-known name and placed it upon its radio sets it did so because the name had, in its opinion, certain intangible qualities which would promote sales and thus give the dealers an advantage over competitors. Pep Boys-Manny, Moe & Jack v Federal Trade Com. (1941, CA3) 122 F2d 158.

—a New York corporation which compounded perfumes, using some ingredients imported from France combined with domestic alcohol, was restrained from representing, through use of the term "Paris" or such terms as "Un Air Embaume," "Rigaud," "Igora," or any other French term, as a brand or tradename, that its perfumes were made or compounded in France, although the order provided that the country of origin of various ingredients might be stated if accompanied by a statement that such products were made or compounded in the United States. Etablissements Rigaud v Federal Trade Com. (1942, CA2) 125 F2d 590.

—the order restrained the dissemination of any advertisement using the name "Anti-Fat Tablets," where the preparation in question had no therapeutic value in the treatment of obesity. Stanton v Federal Trade Com. (1942, CA10) 131 F2d 105.

—the order barred use of the tradename, "MD Medicated Douche Powder," as tending to imply that the product was indorsed by doctors. Stanley Laboratories v Federal Trade Com. (1943, CA9) 138 F2d 388.

—the order barred marking knives manufactured by the petitioner, or boxes or covers holding such knives, with the words "Scout," or "Boy Scout," or "Scouting," or any other symbol indicating possible approval of the Boy Scouts of America, even though there was evidence indicating use of the word "Scout" prior to the organization of the Boy Scouts of America as a corporation, the court noting that either the petitioner's knives would sell as well under some other name, or use of the name "Scout" gave them an advantage to the prejudice of the Boy Scouts. Adolph Kastor & Bros. v Federal Trade Com. (1943, CA2) 138 F2d 824.

—use of the term "Gordon's Detoxifier" to designate a rectal irrigator designed for cleansing the bowels and intestines was found to be false and misleading as indicating that the device would remove or destroy toxins in the human system; and use of the term "hydro-surgery," or any other term which included the word "surgery," to describe such device or the results obtained through its use, was found to falsely imply that the results obtained through the use of such device were comparable with those accomplished by surgery. Irwin v Federal Trade Com. (1944, CA8) 143 F2d 316.

—the order barred any advertising of Charles of the Ritz Rejuvenescence Cream in which the word "Rejuvenescence," or any other word of similar import was used, or any advertising which represented, directly or by inference, that the particular cosmetic preparation would rejuvenate the skin of the user or restore youth or the appearance of youth to the skin of the user, where medical testimony indicated that there was nothing known to medical science which could bring about such results, and it appeared that consumers were likely to believe advertising which indicated such results might be obtained. Charles of the Ritz Distributors Corp. v Federal Trade Com. (1944, CA2) 143 F2d 676.

—the order barred marketing of locks under the tradename, "Segal Pick-Proof," and advertising such locks as "the only lock cylinder that is impossible to pick," the commission defining picking a lock as opening it without use of the original or duplicate keys and without damage to the lock, and experts having opened the locks in question in the presence of the examiner. Segal Lock & Hardware Co. v Federal Trade Com. (1944, CA2) 143 F2d 935, cert den 323 US 791, 89 L ed 631, 65 S Ct 429, reh den 324 US 885, 89 L ed 1435, 65 S Ct 586.

—the order barred use of the tradename "Hollywood" in describing cosmetics and the legend under the name, "favorite of the stars," the ban on the use of the word "Hollywood" being applicable to any product which was not in fact manufactured in Hollywood, California, although the court permitted an amendment to the order, adding after the words "Hollywood, California," the parenthetical sentence: (The term "Hollywood, California," as used herein, means the entire city of Los Angeles, California, and those adjacent or contiguous independent municipalities which are generally regarded as comprising the Los Angeles metropolitan area, such as Culver City, Beverly Hills, Glendale and Santa Monica.) Howe v Federal Trade Com. (1945, CA9) 148 F2d 561, cert den 326 US 741, 90 L ed 442, 66 S Ct 53.

—an importer of porcelain products was restrained from using the term "Imported—Du Barry" or any word indicative of French origin, to designate products made in Japan, the court rejecting a contention that the order barred use of the company's trademark, "Du Barry," pointing out that it merely restrained the company from using the mark to represent to the public that products made in Japan were imported from elsewhere, and holding that the use of the words "Du Barry" in the advertising constituted an affirmative representation as to the nature of the product. Edward P. Paul & Co. v Federal Trade Com. (1948) 83 App DC 232, 169 F2d 294.

—the petitioner distributed a product under the name of "Gosewisch's Odorless Garlic Tablets," emphasizing in its advertising the therapeutic value of garlic and stating that one could obtain the benefit of garlic treatment by using such tablets without fear of having an offensive breath, where tests indicated that the average garlic oil content of each tablet was 1.5 millionth of a gram. Excelsior Laboratory, Inc. v Federal Trade Com. (1948, CA2) 171 F2d 484.

—the petitioner had used the name "Elgin" on its products and had manufactured electric razors marked "Underwood" and cameras marked "Remington," the court holding that even though there was insufficient evidence to show that such names were exclusively used by the Elgin Watch Company and the Remington and Underwood Typewriter Companies, the petitioner had no right to use the names in such a manner as to mislead the public into believing that the petitioner's products were produced by such corporations. Galter v Federal Trade Com. (1951, CA7) 186 F2d 810, cert den 342 US 818, 96 L ed 619, 72 S Ct 34.

—the order required a manufacturer of women's clothing to label its rayon products as rayon, thus preventing distributors from exercising a deception of which the petitioners themselves were not guilty, and the evidence indicated that rayon often could not be distinguished from silk, the court holding that specific statutory requirements for the labeling of wool products,[12] or for

affirmative disclosures in the advertising of foods, drugs, curative devices, and cosmetics,[13] did not prevent the commission from acting in the public interest in cases such as this. Mary Muffet, Inc. v Federal Trade Com. (1952, CA2) 194 F2d 504.

—the petitioner used the term "porcenamel" to describe awning products which were coated with an organic plastic resin, the court holding that the commission properly found that use of such term carried a representation that the products were coated with porcelain enamel, and that the commission had made an allowable choice of remedy in barring use of this term. Arrow Metal Products Corp. v Federal Trade Com. (1957, CA3) 249 F2d 83.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Record supported finding that wax company had falsely represented that floor wax sold under tradename of "Continental Six Month Floor Wax" would last as effective home floor covering for period of 6 months, and court would uphold without modification final order requiring that company cease and desist from representing that wax would last for 6 months or any other definite period of time in excess of period for which wax was effective, and further prohibiting company from designating or describing its product by term "six months" or any other term denoting definite period in excess of wax's effective life. Although effect of order was to force abandonment of valuable tradename backed by considerable expenditures of money and effort, court could not agree that imposition of such remedy was so harsh as to amount to abuse of discretion by Federal Trade Commission, but agreed instead with Commission's determination that remedy of using qualifying words designed to cure deception found to be implicit in tradename of product would not be feasible in this case. Continental Wax Corp. v. F. T. C., 330 F.2d 475 (2d Cir. 1964).

Finding that fabrics labeled as 100 per cent wool contained undue proportion of other materials justified order. Hunter Mills Corporation v. F.T.C., 284 F.2d 70 (2d Cir. 1960).

See Beneficial Corp. v. F.T.C., 542 F.2d 611, 1976-2 Trade Cas. (CCH) ¶ 61066, 76-2 U.S. Tax Cas. (CCH) P 9801, 38 A.F.T.R.2d 76-5744, 37 A.L.R. Fed. 62 (3d Cir. 1976), § 17[a].

Advertisements representing that bread sold under trademark "Lite Diet" was low calorie food, and would prevent consumer from gaining weight, were deceptive and misleading where bread contained no fewer calories than other bread but was merely sliced thinner, and order prohibiting use of trademark in commerce would be affirmed, where Commission also found that words "Lite Diet" were deceptive and could not be properly qualified to adequately protect consumers from deception. Bakers Franchise Corp. v. F. T. C., 302 F.2d 258 (3d Cir. 1962).

Where petitioners acquired right to use name of Massachusetts corporation which had been widely known manufacturer of watches for many years but had ceased manufacturing watches there, and purchased watch movements from Switzerland and watch cases in both Switzerland and in United States, and assembled such watches and advertised and distributed them on national scale under name of former Massachusetts watchmaker, advertising them as "25-jewel" watches when in fact they were 17-jewel watches which contained a patented lubricating device with jewel-like stones, and as "America's first watch" which embodied skills developed during company's 102-year existence, cease and desist order against misrepresenting number of jewels, against using name of Massachusetts company in advertising or in labeling to designate or describe watches without stating country of origin of each component of watches not entirely manufactured in United States, and against describing watches as American or the like, would be affirmed and enforcement granted. Waltham Precision Instrument Co. v. F.T.C., 327 F.2d 427 (7th Cir. 1964).

Where old, well-known Massachusetts company stopped making watches and clocks, and petitioners acquired its trademarks, good will, and tradename and licensed another to import clocks bearing such tradename, and licensee's advertisements were knowingly false and misleading in referring to original Massachusetts company, which in fact had nothing to do with proposed sale of clocks, and petitioners knew of misrepresentation for months but did nothing to stop it until "they figuratively felt the Federal Trade Commission breathing down their necks," court would affirm order against using name of "Waltham" in connection with sale of clocks or other products unless accompanied with warning that product was not made by Waltham Watch Company of Waltham, Massachusetts, which order also required petitioners to conspicuously disclose country of origin on both imported products and on its advertisements for such products, and to cease and desist from placing means and instrumentalities for misleading public in hands of others. Waltham Watch Co. v. F.T.C., 318 F.2d 28, 138 U.S.P.Q. 165 (7th Cir. 1963).

Use of words "Westinghouse" and display of Good Housekeeping seal of approval in advertising of fryer-cooker, together with misrepresentation that appliance regularly sold at prices far in excess of that at which it was offered, constituted enjoinable practices. Niresk Industries, Inc. v. F.T.C., 278 F.2d 337 (7th Cir. 1960).

Use of word "liver" in "Carter's Little Liver Pills" has tendency to mislead in view of misleading advertising claims to the effect that pills represent natural principle of self-treatment, contain no strong medicine, are effective to treat liver conditions and cause proper flow of liver bile and gastric juices, and therefore a petition to set aside Federal Trade Commission order requiring company to cease and desist from such advertising claims will be denied. Carter Products, Inc. v. Federal Trade Com'n, 268 F.2d 461 (9th Cir. 1959).

[Top of Section]

[END OF SUPPLEMENT]

§ 13[b] Labels and brand names—Order denied

Allegations that use of labels or tradenames was misleading or deceptive have been found insufficient to warrant a restraining action by the Federal Trade Commission in some cases.

Requiring a snuff manufacturer to refrain from using the word "Dental" and the depiction of a tooth, in the brand name or on the labels of containers in which its snuff was packed, was held unlawful in Federal Trade Com. v American Snuff Co. (1930, CA3) 38 F2d 547, where it appeared that the snuff manufactured under the brand "Dental" had at one time contained an ingredient allegedly calculated to preserve or be beneficial to the teeth and gums, and was so represented to the purchasing public, but that this ingredient had been removed in order to avoid liability for a tax on proprietary medicines, at which time the manufacturer, while continuing to use the word "Dental" and a tooth on its label, ceased using the words "Preserves the Teeth," substituting therefor "Preserves its Flavor," and asserted on the label that the product was "made of pure tobacco." The court noted that snuff of this type was generally used by rubbing it on the teeth with a stick or brush, so that the word "Dental" as used in connection with it had substantially the same relation as the word "Nasal" when applied to snuff used by inhalation through the nostrils. The court stated that there was no evidence to indicate that the similarity in label between the original dental snuff and the present product had misled or confused purchasers.

An order requiring a manufacturer who made furniture principally of other woods and caused it to be veneered with a thin coating of mahogany or walnut, and sold it under the latter names, to refrain from using the words "mahogany" or "walnut" in advertisements, catalogs, price lists, or otherwise, unless accompanied by the term "veneered," was set aside in Berkey & G. Furniture Co. v Federal Trade Com. (1930, CA6) 42 F2d 427, where the court found that the finest of modern furniture was almost invariably constructed of laminated wood, that all dealers purchasing from the defendant were aware of this practice, and that no harm could be done to the public if they assumed they were getting a solid wood, inasmuch as the solid wood was of less value than the veneered product sold by the defendant.

An order requiring a leather company selling to shoe manufacturers to cease using the tradename "Kafforkid" to designate a leather made from the skins of calves no more than 12 days old was reversed and the case remanded to the commission in Ohio Leather Co. v Federal Trade Com. (1930, CA6) 45 F2d 39, where it appeared that most of the manufacturers who allegedly were injured by such designation actually made most of their kid leather from the skins of goats, and there was insufficient evidence from which a determination could be made as to whether the public in general was misled into believing that goods manufactured from the defendant's product were actually made of kid.

In Arnold Stone Co. v Federal Trade Com. (1931, CA5) 49 F2d 1017, an order requiring a manufacturer of building materials to refrain from using such terms as "cast stone," "cut cast stone," "pink marble," and "Kre-tex stone," unless prefixed with the additional word "imitation," or "artificial," was reversed where it appeared that the product consisted of crushed stone and cement cast in molds or forms, and was sold only to architects and builders, none of whom was deceived as to the quality of the article sold, which was recognized as a manufactured article, and that similar terms were used by the defendant's competitors, the court pointing out that the addition of the qualifying words, as required by the commission's order, would convey the meaning that the product was not a genuine manufactured article. The court also noted that the possibility of deception of the public, as represented by purchasers or lessees of completed buildings, was too remote to warrant the commission's order.

An order barring use of the word "castile," in labeling or advertising soap whose oily content was not 100 per cent olive oil, was reversed in James S. Kirk & Co. v Federal Trade Com. (1932, CA7) 59 F2d 179, cert den 287 US 663, 77 L ed 572, 53 S Ct 220, the court rejecting a finding by the commission that castile soap referred only to soap which contained 100 per cent olive oil, pointing out that a publication of the United States Department of Commerce Bureau of Standards indicated that castile soap was made from various materials other than olive oil. The court also refused to uphold the commission's ban on the use of the words "olive" and "olive oil," in connection with soap having oil content of less than 100 per cent olive oil, since the complaint did not refer to the use of those words or ask any order concerning them, but extended permission to the commission to amend its original complaint if it wished to take action in regard to the use of such words where the oil content was not entirely olive oil.

An order requiring the distributor of kitchen utensils under the tradename "Silver Seal" to refrain from representing through the use of such tradename that the usefulness of such utensils was enhanced by reason of silver metal contained therein, was modified in Century Metalcraft Corp. v Federal Trade Com. (1940, CA7) 112 F2d 443, where the complaint had not alleged that the use of the tradename had such effect but had instead alleged that statements to that effect were made by representatives of the distributor in demonstrating its product. The court's modification permitted use of the tradename "Silver Seal," but forbade representing by statement or in any other manner that the usefulness or durability of the utensils was enhanced by reason of silver metal contained therein.

An order requiring a soap manufacturer to cease and desist from using the word "olive" or any derivative thereof in referring to soap whose oil or fatty content was not wholly olive oil, with an exception permitting use of the word "olive" if each other constituent oil used in the soap was also stated, was set aside in Allen B. Wrisley Co. v Federal Trade Com. (1940, CA7) 113 F2d 437, where the order was based on a finding by the commission that use of the word "olive" with regard to soap indicated to the public a soap with no fatty or oil content other than olive oil. With regard to certain brands of soap involved, such as "Palm and Olive Oil Soap," "Palm and Olive Soap," and "Oliv-Palm Complexion Soap," the court, in holding that there could not possibly be any representation that the soap was comprised of 100 per cent olive oil, said: "How a person with any intelligence could look at the label or brand upon a cake of soap or the wrapper thereof, containing the two descriptive words 'palm and olive' oil and be misled into believing that such words meant 100% olive oil, is so incredible as to be unbelievable. We suppose that by the same process of mental reaction, such witness would believe that the words 'goose grease and lard' mean 100% lard and no goose grease, or that if shown a picture of a cow and a horse, would be led to believe he had seen a picture of two horses."[14]

A commission order restraining use of the name "elasti-Glass," in advertising the petitioner's products, such as suspenders, raincoats, garters, belts, shampoo capes, watch straps, and the like, made of a plastic known as "Vinylite," was set aside in S. Buchsbaum & Co. v Federal Trade Com. (1947, CA7) 160 F2d 121, the court finding that the dictionary definition of "glass" as including "any substance that resembles glass" was broad enough to include the petitioner's product as an organic glass, as

distinguished from inorganic glass, and noting further that the commission had failed to show that the acts of the petitioner were detrimental to the public interest as required by the Federal Trade Commission Act.

Enforcement of a commission order restraining the petitioner from misrepresenting the identity of the filling material contained in its pillows was denied in Burton-Dixie Corp. v Federal Trade Com. (1957, CA7) 240 F2d 166, where the commission's examiner, by combining analyses made by an expert for the commission and an expert employed by the petitioner, had determined that pillows represented as containing all new material consisting of down had an average down content of 85.8 per cent, which was within the 15 per cent tolerance permitted by the industry rules approved by the commission, the court concluding that because of the admitted variance in tests of pillow fillings, the averaging method used by the trial examiner in concluding that no mislabeling existed was correct and that the commission had erred in setting aside the examiner's finding. The court noted that the commission's expert witness had admitted that it was quite possible that an analysis of the same pillows by another person would show a substantially higher percentage of down, even up to 90 per cent With regard to pillows labeled as containing 50 per cent crushed chicken or turkey feathers and 50 per cent crushed duck quill or goose quill feathers, the court held that there was no valid basis for the commission's determination, contrary to that of its examiner, that the label constituted a misrepresentation, where its own expert had testified that in making an analysis it was purely a matter of chance whether the analyst grabbed a lump of turkey or duck quills and that it was impossible to separate and analyze crushed feathers accurately, and in view of his further conclusion that in the minds of the general public there was not much distinction between the various types of crushed feathers. But see Northern Feather Works, Inc. v Federal Trade Com. (1956, CA3) 234 F2d 335, and related cases, supra, § 13[a].

§ 14[a] Use of qualifying words—Modified labels or names permitted

[Cumulative Supplement]

Use in a label or tradename of words which have a tendency to be misleading or deceptive has at times been permitted with the addition of qualifying words having the effect of modifying the apparent meaning.

A Federal Trade Commission order barring the use of the word "Alpacuna" to describe coats which contained alpaca, mohair, wool, and cotton, but no vicuna, on the theory that the name implied that the coats in fact contained vicuna, was reversed in Jacob Siegel Co. v Federal Trade Com. (1946) 327 US 608, 90 L ed 888, 66 S Ct 758, where it appeared that the commission had failed to consider whether the use of the tradename "Alpacuna" might be continued with the insertion of qualifying language, the court holding that this was a question initially and primarily for the commission to determine and could not be passed on by the court until such determination had been made.

An order of the Federal Trade Commission completely barring use of the words "Red Cross" on toilet tissues and paper towels manufactured by the defendant and in its advertising was held to be beyond the power of the commission in Federal Trade Com. v A. P. W. Paper Co. (1946) 328 US 193, 90 L ed 1165, 66 S Ct 932, where the use of such words by the defendant antedated the statute barring such use commercially and came within the exception to prior users permitted by the statute, even though the commission had found that use of the words was confusing to the public in that such use tended to imply that the defendant's products were sponsored or indorsed by the Red Cross, or that the Red Cross was financially interested in such products, or approved the standards under which they were manufactured, the court holding that the use permitted under the statute could not be regarded as having been completely abrogated by the enactment of the Federal Trade Commission Act. The court held, however, that the commission had the right to require the addition of language which would remove any misleading inference as to sponsorship or approval of the products by the American National Red Cross, and concluded that the case was properly remanded to the commission to determine an appropriate order.

An order requiring a manufacturer of cotton and other fabrics, other than silk, to refrain from using the word "Satinmaid," or any word embracing the word "satin," as a tradename to describe or designate a cotton fabric was modified in N. Fluegelman & Co. v Federal Trade Com. (1930, CA2) 37 F2d 59, to permit the use of such name if there was added to it wherever used

in letters equally conspicuous the words "a cotton fabric," a "cotton satin," "no silk," or equivalent modifying terms, the court rejecting the conclusion of the commission that the word "satin" referred only to a silk fabric but determining that it could also be used as referring to a type of weave, and holding that no deception would be possible if the qualifying words were used.

An order requiring a manufacturer of shellac, which was not composed entirely of genuine shellac gum dissolved in alcohol, and which was advertised and labeled as "White Shellac" and "Orange Shellac," to cease using such words and labeling in advertising his product unless the labels also indicated what other substances and ingredients were used, together with their percentages, was found in Federal Trade Com. v Cassoff (1930, CA2) 38 F2d 790, to go beyond what was necessary for the protection of the purchasing public, the court holding that it would be sufficient if the goods were labeled "Shellac Substitute" or "Imitation Shellac," accompanied by a statement that they were not 100 per cent shellac, and that it was unnecessary to require the label to state the percentages of various ingredients.

An order requiring the manufacturer of concentrates sold to bottlers to refrain from using in advertising or on its labels the name "Goodgrape," unless the product was composed in substantial part of the natural juice of grapes, was modified in Federal Trade Com. v Goodgrape Co. (1930, CA6) 45 F2d 70, to permit the use of such term if it was made prominently to appear that the product was an imitation, artificially colored and flavored, although the use of the phrase, "Fruit of the Vine," was barred.

In Federal Trade Com. v Morrissey (1931, CA7) 47 F2d 101, an order completely inhibiting use of a fruit name if the product involved was wholly artificial, containing no fruit juice whatsoever, was modified to permit use of the name of the fruit in labels or advertisements if accompanied by a statement that the product resembled in taste or color, or both, the named fruit, but contained no juice or coloring matter of such fruit.

The use in advertising of such terms as "copper-back" or similar terms, to describe mirrors having a protective coating consisting of a mixture of shellac and powdered copper, was held properly restrained by the commission in Federal Trade Com. v Hires Turner Glass Co. (1935, CA3) 81 F2d 362, where it appeared that such terms had always been used in the trade to designate a mirror with a solid sheath or film of copper deposited upon the reflecting medium by an electrolytic process, although the court modified the order so as to permit use of such designation if accompanied by qualifying terms which clearly signified that the copper backing on the mirrors was not electrolytically applied.

An order which required a retail store to refrain from using the words "wool" or "woolen" to designate any product not composed entirely of wool, with a proviso that goods composed in part of wool might be so advertised if the percentage of each constituent material was stated, was considered too broad in Gimbel Bros., Inc. v Federal Trade Com. (1941, CA2) 116 F2d 578, the court holding that the requirement of showing the percentage of each constituent material was uncalled for and modifying it to require only a statement in letters of at least equal size and conspicuousness of the names of materials other than wool in the product. It was noted that the complaint merely charged that mixed goods were represented as all wool, but there was no charge that mixed goods were being sold without describing each constituent fibre in the order of its predominance by weight.

See also Allen B. Wrisley Co. v Federal Trade Com. (1940, CA7) 113 F2d 437, supra, § 13[a].

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

"Cashmora" to describe angora-wool blend was not per se deceptive where, included on same label, was actual specification of ingredients; deception in fact must be shown by substantial evidence. Elliot Knitwear, Inc. v. Federal Trade Com'n, 266 F.2d 787 (2d Cir. 1959).

[Top of Section]

[END OF SUPPLEMENT]

§ 14[b] Use of qualifying words—Modification held insufficient

[Cumulative Supplement]

In some instances the term used has been found so misleading that explanatory words are ineffective to correct the improper implication.

A contention that the Federal Trade Commission erred in prohibiting use of the name "United States Navy Magazine," in connection with a privately owned and published magazine, on the theory that all that was reasonably necessary to correct the evil found to exist was that the qualifying words, "not owned by the Government," be prominently used in immediate connection with the name of the magazine, was rejected in United States Navy Weekly, Inc. v Federal Trade Com. (1953) 92 App DC 339, 207 F2d 17, the court holding that the commission's conclusion that qualification or explanation would not eliminate the tendency of the name to mislead and deceive was within the limits of the "latitude for judgment" possessed by the commission. A further provision of the order barring any representation that the publication was owned, edited, or published "by naval personnel" was also upheld despite a contention that the petitioner had made no such representation but instead had stated that the magazine was owned, edited, and published by "navy" personnel, the court holding that this contention was a "quibble" which could not prevail, and that the court need not concern itself with a technical distinction between the two terms, since the public would not be aware of such a distinction and would be deceived by either term.

Improper use of the word "Havana" to designate cigars made of American rather than Cuban tobacco cannot be cured by adding the words, "these cigars are made in the United States and only of domestic tobacco," since the implication in the use of the word "Havana" is totally false. H. N. Huesner & Son v Federal Trade Com. (1939, CA3) 106 F2d 596. To the same effect, see El Moro Cigar Co. v Federal Trade Com. (1939, CA4) 107 F2d 429.

See also Masland Duraleather Co. v Federal Trade Com. (1929, CA3) 34 F2d 733, supra, § 13[a].

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Finding that attention of customers in ordinary routine of purchasing paperbound books might not be attracted to the legends of abridgement or retitling, and that publisher in this respect had engaged in unfair or deceptive acts or practices, was supported by evidence and supported Commission's cease-and-desist order. Bantam Books, Inc. v. F.T.C., 275 F.2d 680 (2d Cir. 1960).

Federal Trade Commission's order that manufacturer cease and desist from representing, directly or by implication, that its combs were made of rubber or hard rubber unless they were in fact made of vulcanized hard rubber did not permit manufacturer to label as rubber-resin its combs composed of approximately 13% nitrile rubber, 85% hardening resin and small percentages of stabilizer and color. Federal Trade Commission Act, § 5(l) as amended 15 U.S.C.A. § 45(l). U. S. v. Vulcanized Rubber & Plastics Co., 288 F.2d 257 (3d Cir. 1961).

[Top of Section]

[END OF SUPPLEMENT]

§ 15[a] Name of company—Order upheld

[Cumulative Supplement]

Doing business under a name which has a tendency to create an erroneous impression as to the nature of the business carried on has been held in some cases to constitute a deceptive practice subject to corrective action by the Federal Trade Commission.

An order calling upon the defendant to cease carrying on the business of selling hosiery under a tradename or corporate name which included the word "Mills," in combination with the words "Pure Silk Hosiery," or similar words, unless the defendant actually owned or operated a factory in which hosiery sold by them was manufactured, was upheld in Federal Trade Com. v Pure Silk Hosiery Mills, Inc. (1924, CA7) 3 F2d 105, where it appeared that the defendant in its advertising used the words "mill to home" and claimed that it thus eliminated jobbers', wholesalers', and retailers' profits and was enabled to sell to consumers at greatly less than usual retail prices. The court held that the acquisition by the defendant of 240 out of 1363 shares of stock in a hosiery mill corporation did not represent a compliance with the Federal Trade Commission order.

The use of the words "Army and Navy" in a corporate name, and the use of such words in advertising goods in daily newspapers and trade journals and circulars was held properly restrained in Federal Trade Commission v Army & Navy Trading Co. (1937) 66 App DC 394, 88 F2d 776, where at the time of the commission's action the stock of goods was only about 10 per cent army and navy goods, although it had been as high as 90 per cent at the time of incorporation. The order permitted the defendant, for a period of 2 years, to use in connection with any new corporate or trade name the words "Formerly Army and Navy Trading Company," but barred use of the words "Army and Navy" in advertising except when used specifically in connection with particular merchandise actually procured from the Army or Navy. Noting that the defendant might obtain army or navy goods from a jobber or broker, or otherwise, the court modified the restriction on the use of the words "Army and Navy" in advertising to permit such use in connection with merchandise, provided such words were used in a manner exactly specifying the origin or character of that particular lot.

Petitioners, who were not wholesalers or jobbers, were held properly restrained from trading under a name including the word "Wholesale," in Macher v Federal Trade Com. (1942, CA2) 126 F2d 420, and the court also upheld a ban on the representation that the business had continued for more than 50 years where the preceding business, operated by the father of one of the petitioners, was a wholesale business which had been interrupted by a bankruptcy, the court pointing out that the petitioners were seeking the mantle of the old wholesale house as part of the same scheme of deception.

Findings by the commission that the petitioner's correspondence school, which by letters, leaflets, circulars, catalogs, and other advertising material circulated in Latin-American countries, offered courses in agriculture, architecture, engineering, medicine, law and pharmacy, and was operated under the title "Joseph G. Branch Institute of Engineering and Science," was neither a university nor an institute, had no entrance requirements, no resident students, no library, no laboratory, and no faculty, were held sufficient in Branch v Federal Trade Com. (1944, CA7) 141 F2d 31, to warrant an order by the commission that the petitioner cease and desist from using the words "Institute" or "University" in connection with its business, from representing that it was an educational institution of higher learning with the power to confer degrees, from using the words "officially recognized" in connection with the school, or otherwise representing that the school was recognized or approved as an institution of learning, or from representing that the so-called diplomas and degrees offered were accepted or recognized by any governmental agency or any reputable college or university.

An order directing the petitioner to refrain from using the words "Smithsonian Institution" in its corporate name or in any other connection, to designate a commercial enterprise which in fact was not a part of or directly connected with the Smithsonian Institution in Washington, was upheld in Parke, Austin & Lipscomb, Inc. v Federal Trade Com. (1944, CA2) 142 F2d 437, cert den 323 US 753, 89 L ed 603, 65 S Ct 86, where the petitioner, by agreement with the Smithsonian Institution, published a set of books written and edited by the scholars of the institution, which were distributed by a subsidiary corporation organized for that

express purpose and given the name of Smithsonian Institution Series, Inc., at the request of a member of the board of regents of the institution. In rejecting a contention that the ban on the use of the name was too drastic, the court noted that various salesmen had represented that they were employed by the Smithsonian Institution and implied that the books were published by it. The court noted further that various materials supplied to salesmen by the publisher, some of which were profusely illustrated with pictures of prominent members of the board of governors of the institution and described its work at length, and included a statement by the secretary of the institution describing the books being published and discussing the motives which impelled the institution to bring them out, without any mention that publication of the books was undertaken by a private organization for its own profit, tended to create the impression in the public mind that the publication was a nonprofit enterprise. The court held, therefore, that the commission was justified in banning use of the name despite the fact that the corporation had forbidden its salesmen to make misrepresentations and had used other protective devices, such as specific reference to the publisher's separate identity on the petitioner's letterheads and in the subscription agreement signed by all purchasers. The court implied that some less drastic remedy than the elimination of the words "Smithsonian Institution" from the corporate name might be adopted, but held that on the present record they could not conclude that the commission had abused its discretion.

An order requiring petitioners to desist from representing themselves as wholesale tailors or that their garments were supplied to purchasers at wholesale prices, or that they were engaged in any business other than the sale of garments at retail, was upheld in Progress Tailoring Co. v Federal Trade Com. (1946, CA7) 153 F2d 103, where the named petitioner and several subsidiary corporations wholly owned by it used the phrase "Tailoring Company" as part of their corporate names but did not sell garments at wholesale, including in the price paid by purchasers retailing costs, commissions to salesmen, and charges of a separate corporation for manufacture of the garments. Even though it was shown that the manufacturing corporation was also a wholly owned subsidiary of the named petitioner, the court held there was no reason for disregarding the actual corporate entities and treating them as one.

The use of a tradename, as a corporate title or otherwise, which tends to create an erroneous impression as to the nature of a business, has been held sufficiently misleading to warrant a cease and desist order of the Federal Trade Commission where—

—the order barred use of the words "nonplate engraving," "engraved effects," or "engraved," in the corporate name, business signs, or advertising matter used in the sale of stationery which was not produced from metal plates but from a special printing process. Federal Trade Com. v Nonplate Engraving Co. (1931, CA2) 49 F2d 766.

—a correspondence school, engaged in the sale and distribution of courses of study to prepare students for civil service examinations, was restrained from use of the term "civil service" and the word "bureau" in the name under which the business was conducted, or any other words which implied or suggested any connection with the Civil Service Commission or the United States Government. Federal Trade Com. v Civil Service Training Bureau, Inc. (1935, CA6) 79 F2d 113.

—a corporation, mining coal in a field separated by a range of mountains and 75 to 100 miles distant from an area recognized in the coal business as a separate geological and geographical area called the New River field, was restrained from using the words "New River" in its corporate name or in describing and advertising coal produced by it unless such coal originated in the territory generally known as the "New River" field or district, it appearing that coal produced from that area was of a superior quality to that produced by the defendant, and had been extensively advertised by producers therein. Federal Trade Com. v Walker's New River Min. Co. (1935, CA4) 79 F2d 457.

—an individual with no special training or facilities circulated a publication purporting to list and grade consumers' merchandise and services sold throughout the United States, operating under the tradenames of Consumers' Bureau of Standards and Consumers' Bureau, and the order required him to cease and desist from representing that his publication was compiled or offered for sale by or under the direction of any bureau or other organization engaged in research work for the benefit of consumers, or devoted to aiding consumers in making wise or economical purchases, or which by means of scientific or adequate tests of any nature designated the comparative consumer value of any merchandise or services; that the business was operated on a nonprofit basis or was national in scope, or that the petitioner had any arrangement with the Mellon Institute of Industrial

Research, Massachusetts Institute of Technology, or similar organizations, for the submission and determination of questions concerning the value of merchandise, goods, or services; or that the petitioner was qualified by any special training or experience to determine, or had any staff, equipment, or facilities for determining, the value of any merchandise or services; and from threatening or implying to any manufacturer or distributor of merchandise that a refusal to buy copies of or contribute financially to such publication or to the petitioner would result in unfavorable, disparaging, or derogatory listing of, or reference to, such manufacturer or distributor in connection with such publication. Lane v Federal Trade Com. (1942, CA9) 130 F2d 48.

—the order forbade use, in connection with offering for sale for distribution in interstate commerce of furniture, of the words "Grand Rapids" as part of a corporate name, or as a designation of furniture not in fact manufactured in Grand Rapids, Michigan. Grand Rapids Furniture Co. v Federal Trade Com. (1943, CA3) 134 F2d 332.

—the petitioner, by use of the term "laboratories" in its corporate and tradename, represented that it owned a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith, where such was not the case. Stanley Laboratories v Federal Trade Com. (1943, CA9) 138 F2d 388.

—the order forbade the petitioner to use the words "Gold Tone" in its corporate name unless it was substantially engaged in finishing photographs by the gold tone process, although the court modified the order to provide that the corporation might, in conducting its business under any permitted changed name, state that it was the same corporation which formerly did business under the name "Gold Tone Studios, Inc." Gold Tone Studios, Inc. v Federal Trade Com. (1950, CA2) 183 F2d 257.

—the order restrained using the word "Guild" in a tradename or otherwise by an individual doing business as "Weavers' Guild," where no weavers' guild existed and use of the name conveyed the impression that there was a "national" organization which could confer benefits upon purchasers of a course in reweaving. Goodman v Federal Trade Com. (1957, CA9) 244 F2d 584.

—the order restrained petitioner from using fictitiously any trade or corporate name in collecting past-due accounts, or from implying that a fictitious collection agency was an independent organization engaged in the business of collecting past-due accounts. Wm. H. Wise Co. v Federal Trade Com. (1957) 101 App DC 15, 246 F2d 702, cert den 355 US 856, 2 L ed 2d 64, 78 S Ct 84.

See also Juvenile Shoe Co. v Federal Trade Com. (1923, CA9) 289 F 57, cert den 263 US 705, 68 L ed 516, 44 S Ct 34, and Lighthouse Rug Co. v Federal Trade Com. (1929, CA7) 35 F2d 163, both supra, § 13[a].

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See U. S. Retail Credit Ass'n v. F. T. C., 300 F.2d 212 (4th Cir. 1962), § 17[a].

See Waltham Precision Instrument Co. v. F.T.C., 327 F.2d 427 (7th Cir. 1964), § 13[a].

[Top of Section]

[END OF SUPPLEMENT]

§ 15[b] Name of company—Order denied

An order requiring a manufacturer of silverware to refrain from using the word "Sheffield" in its corporate name on the ground that the name "Sheffield" had become identified in the public mind with a high quality of silverware manufactured by the Sheffield process, originated in England in 1742, was reversed in Sheffield Silver Co. v Federal Trade Com. (1938, CA2) 98 F2d 676, the court holding there was no evidence to support a finding that the purchasing public was likely to be confused. The court noted that the word "Sheffield" did not appear on the manufacturer's goods, which bore symbols known to the trade indicating the type of electroplating used thereon, and based its reversal further on the fact that sales were made only to retailers, none of whom was deceived by the name, since the only original Sheffield silver then on the market was regarded as antique or museum pieces and was sold at a corresponding value. Evidence that one retailer had advertised "Sale 500 Sample Pieces Sheffield Silverware by Sheffield Company ½ price 2.50 to 18.00 Values for 1.25 to 9.00," was held insufficient to indicate that use of the name in this case afforded an opportunity to defraud ultimate consumers, since there was no testimony that any reader of the advertisement understood that it referred to authentic Sheffield ware, and anyone with the slightest knowledge of such ware would realize that 500 "sample pieces" at the prices advertised could not be genuine old Sheffield.

§ 16[a] Use of qualifying words—Modification held adequate

The use of explanatory words to modify a corporate name which otherwise tends to be misleading has been held adequate to offset the misleading implication of such name in a few instances.

An order forbidding persons engaged in mixing and blending flour to use names including the words "Milling Company" or "Mill" or "Manufacturer of Flour," thereby creating the impression that their product was composed of flour manufactured by themselves from the wheat, was held too broad in Federal Trade Com. v Royal Mill. Co. (1933) 288 US 212, 77 L ed 706, 53 S Ct 335, the court concluding that the evil complained of could be remedied by the use with the names of a statement that the defendant was not a grinder of the grain.

An order requiring the defendant to refrain from representing in any way, through use of its corporate or trade name, that it was a manufacturer, mill operator, or mill owner, was reversed as being too broad in Federal Trade Co. v Mid West Mills, Inc. (1937, CA7) 90 F2d 723, where it appeared that the defendant, on its letterheads, garment labels, invoices, and other printed matter (except envelopes), placed directly under its corporate name the words "Jobbers and Converters." Although stating that this was insufficient to offset the impression created by the name that the defendant operated mills, the court held that the word "Mills" could be used in the corporate name if accompanied by such words as "Jobbers and Converters, Not Mill Owners or Mill Operators," and indicated that a modified order to that effect by the commission would be upheld.

An order requiring a converter of textiles to refrain from using the words "Mill" and "Manufacturing" in connection with its business was modified in Bear Mill Mfg. Co. v Federal Trade Com. (1938, CA2) 98 F2d 67, to permit continued use of the corporate name, which had existed for many years and had an excellent repute, on its stationery, folders, labels, cartons, and any advertising matter, with the addition of the words "Converters, Not Manufacturers of Textiles."

An order restraining use of the term "Educators Association" in any corporate or trade name so as to create the impression that it stood for a group of educators or teachers formed into an association, or that the business operated by them was anything other than a private business enterprise for profit, where the term used related to the distribution of a publication called the "Volume Library," was modified in Educators Asso. v Federal Trade Com. (1939, CA2) 108 F2d 470, reh den 110 F2d 72, mod and reh den 118 F2d 562, to permit use of the name if coupled with other words which did away with the tendency to create a false impression, by revealing the true character of the business conducted. (The court ordered that there be added to the tradename "Educators Association" the words "Commercial Distributors of the Volume Library." 118 F2d 562.)

§ 16[b] Use of qualifying words—Modification held inadequate

It has been held in other cases that the impression created by the misleading name could not be offset by the use of explanatory or qualifying words therewith.

An order barring the petitioner from using any name including the word "Mills" in the title was upheld in Herzfeld v Federal Trade Com. (1944, CA2) 140 F2d 207, where it appeared that the petitioner, largely engaged in importing rugs from mills controlled by it in China, also controlled a mill in the United States from which the petitioner purchased the entire output, made up to its specifications, and did business under the name "Stephen Rug Mills," which name was accompanied by a legend, in smaller letters, "Importers and Wholesalers of Floor Coverings," the court holding that it was bound by the commission's finding that the title, even with the legend, had a tendency to mislead a substantial number of dealers, or enabled dealers to mislead a substantial portion of the purchasing public, into believing that the petitioners were manufacturers of rugs.

In affirming an order forbidding a wholesale grocer doing business under the name of Atlantic Packing Company and Atlantic Packing Company, Distributors, from using any tradename containing the word "Packing" in connection with products not actually packed by it, the court in Perloff v Federal Trade Com. (1945, CA3) 150 F2d 757, held that the use of the word "Packing" created the impression that the goods were packed by the distributor, and held that the addition of the qualifying word "Distributors" was insufficient to negative this impression, noting further that the distributor used the same labels on goods which were packed by it and on goods which were purchased by it from others and merely distributed.

In Deer v Federal Trade Com. (1945, CA2) 152 F2d 65, an order requiring the petitioner, who for the past 10 or 15 years had done no manufacturing whatever, to eliminate the word "Manufacturing" from its tradename was upheld, the court concluding that it could not interfere with the commission's determination that the addition of an explanatory clause such as "Distributors Only" would be inadequate to prevent deception.

See also Federal Trade Com. v Mid West Mills, Inc. (1937, CA7) 90 F2d 723, supra, § 16[a].

§ 17[a] Nature or status of business—Order upheld

Advertising which falsely represents the type of business done or the extent of such business has on occasion been restrained by the Federal Trade Commission.

An encyclopedia publisher was properly restrained from advertising or representing that it maintained a research bureau for the purpose of answering inquiries from subscribers, and that such inquiries were referred to experts and specialists in the subject inquired about, where such inquiries were answered by a single employee in the office of the publisher, and was also properly restrained from advertising or representing that its set of books constituted a new and up-to-date encyclopedia when actually it was a reissue of one published many years before. Consolidated Book Publishers v Federal Trade Com. (1931, CA7) 53 F2d 942, cert den 286 US 553, 76 L ed 1288, 52 S Ct 579.

Where a mail-order house operated factories in which it manufactured wire fencing and some allied products, but purchased the remainder of a wide variety of goods sold by it from other factories, the use in its catalogs and advertising of such statements as "direct from factory," "direct to you," "factory prices," with reference to all goods sold was misleading and deceptive in that it tended to convince customers that they were obtaining lower prices, and was properly restrained by the commission. Brown Fence & Wire Co. v Federal Trade Com. (1933, CA6) 64 F2d 934.

An order restraining a company selling jewelry to ultimate consumers rather than for resale from designating itself in catalogs distributed mainly to industrial concerns, co-operative buying bureaus, state and local governments, and purchasing clubs, as "Wholesale Jewelers," was upheld in L. & C. Mayers Co. v Federal Trade Com. (1938, CA2) 97 F2d 365, where the commission's order was made applicable to various types of purchases, including sales to industrial concerns, public utilities, and similar organizations, of articles not for resale but for use by such organizations, where the sales were not in quantity lots, or purchases were made for the benefit of employees, whether the merchandise was shipped directly to the employee or to the organization purchasing the same, and sales to mutual buying clubs maintained by fraternities, colleges, or universities, where the merchandise purchased was not resold but was applied to the use of such organizations or their members. It was held that

the misrepresentation induced purchasers to believe that they were buying at prices at which retailers purchased, although such was not the fact, and that such false representations induced the purchase of petitioner's products in preference to the products of competitors.

An order of the commission was upheld in Benton Announcements v Federal Trade Com. (1942, CA2) 130 F2d 254, which directed the petitioner to cease and desist from using the words "engraved," "engraving," or "engravers," to describe their stationery or the process by which they produced it where, although the work produced by the petitioner could be distinguished from "engraving" as defined by the commission only by a few experts in the craft, the commission had found, on conflicting testimony, that to the ordinary buyer the word "engraved" meant stationery produced by the older process.

An order of the commission which affirmatively required the petitioner to put the word "Abridged" on the front cover and title page of reprints in immediate connection with the title and in clear type, and required all advertising of such reprints to indicate clearly that they were abridged, and if issued under a new title required that such title be immediately accompanied in equally conspicuous type by the original title, was upheld in Hillman Periodicals, Inc. v Federal Trade Com. (1949, CA2) 174 F2d 122, where the petitioner, in distributing reprints of books from which substantial parts of the original text had been deleted, used the words "unabridged" or "complete and unabridged" or "full length novel." See, however, New American Library of World Literature v Federal Trade Com. (1954, CA2) 213 F2d 143, infra, § 17[b].

§ 17[b] Nature or status of business—Order denied

[Cumulative Supplement]

An order requiring a publisher of paper-covered reprints of books previously published by others to place upon the front cover and on the title page thereof words indicating that the books were condensed or abridged, if such was the case, and if a new title was used, to place upon the front cover and on the title page such substitute title immediately accompanied by a statement revealing the original title and that it had been published previously thereunder, was held too extensive in New American Library of World Literature v Federal Trade Com. (1954, CA2) 213 F2d 143, the court stating that the situation was not one in which the need to prevent deception had been shown to require the regimentation of an industry, and that both the public interest and the legitimate interests of the publisher could be sufficiently protected by a more flexible requirement, such as that the notice of abridgment or new title should be carried on the cover in immediate connection with the title or in a position adapted readily to attract the attention of a prospective purchaser. The court noted that a different result had been reached in Hillman Periodicals, Inc. v Federal Trade Com. (1949, CA2) 174 F2d 122, supra, § 17[a], but stated that the order in the Hillman Case was not meant to set up a fixed and immutable rule for the way in which such disclosures must be made in every case in order to be adequate, although a dissenting opinion by Clark, Circuit Judge, pointed out that the effect of failure to follow the Hillman Case would result in confusion in the industry, since many paperback book publishers had entered into stipulations with the commission based on the Hillman Case.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Sufficient evidence supported finding that loan company's use of term "Instant Tax Refund" in soliciting customers constituted deceptive advertising where, inter alia, identical standards of credit worthiness were used in evaluating applicants for "Instant Tax Refund" loans as in ordinary loans and where actual entitlement to government tax refund would not necessarily insure eligibility for "Instant Tax Refund". Beneficial Corp. v. F.T.C., 542 F.2d 611, 1976-2 Trade Cas. (CCH) ¶ 61066, 76-2 U.S. Tax Cas. (CCH) P 9801, 38 A.F.T.R.2d 76-5744, 37 A.L.R. Fed. 62 (3d Cir. 1976).

Evidence warranted order requiring petitioner, essentially engaged in business of selling materials for subscribers' use in collecting unpaid accounts and of furnishing collection service to subscribers who forwarded delinquent accounts for collection, to cease and desist using words "Association" or "Credit Association" or similar terms or otherwise representing that business was an association or credit-reporting agency, and to refrain from representing that petitioner had branch offices, had been in business for period in excess of actual time in which petitioner had been so engaged, made investigations through banks, employers, or others and furnished credit reports, had professional collectors throughout United States, and that service rendered reached into areas not actually reached. U. S. Retail Credit Ass'n v. F. T. C., 300 F.2d 212 (4th Cir. 1962).

[Top of Section]

[END OF SUPPLEMENT]

§ 18[a] "Free" gifts; misrepresentations as to price—Order upheld

[Cumulative Supplement]

Misrepresentations as to the going price of articles advertised, and various schemes under which a prospective buyer is induced to believe that he is getting something for nothing, or that he has been specially selected as one to receive a particular article at a greatly reduced price, have been restrained by the Federal Trade Commission as contrary to the best interests of the public.

An order of the Federal Trade Commission prohibiting use of an entire sales scheme by the distributor of an encyclopedia was upheld in Federal Trade Com. v Standard Education Soc. (1937) 302 US 112, 82 L ed 141, 58 S Ct 113, reh den 302 US 779, 82 L ed 602, 58 S Ct 365, motion den 302 US 661, 82 L ed 511, 58 S Ct 474, where salesmen obtained an audience with prospective purchasers by representing that they had been selected by reason of their prestige and influence to receive a set of the encyclopedia free of costs for advertising purposes, after which the salesmen represented that the regular price of an extension service or supplement for the books was $69.50 and that the usual price of both books and supplements was $150 to $200, although in fact the regular, standard price of both was $69.50. The Supreme Court disagreed with the court below, which had held that it was unnecessary to order the company to cease representing falsely that the encyclopedia was being given as a gift and that purchasers were paying only for the supplement,[15] pointing out that the evidence indicated that teachers, doctors, college professors, clubwomen, and businessmen had been successfully deceived and deluded by such representations, and adding: "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of caveat emptor should not be relied upon to reward fraud and deception.… To fail to prohibit such evil practices would be to elevate deception in business and to give to it the standing and dignity of truth."

Circulating of catalogs containing advertisements which falsely represented that the advertiser, because of large purchasing power and quickmoving stock, was able to sell sugar at a price lower than its competitors, was held properly restrained by the Federal Trade Commission, in Sears, R. & Co. v Federal Trade Com. (1919, CA7 Ill) 258 F 307, 6 ALR 358, where the advertiser was actually selling sugar at a loss in conjunction with required purchases of other commodities at prices high enough to afford a satisfactory profit on the transaction as a whole, although a flat ban on the selling, or offering to sell, sugar below cost through such advertising was held not within the power of the commission unless restricted to the representations previously mentioned. The court stated that the Federal Trade Commission Act indicated no intent on the part of Congress, even if it had the power, to restrain an owner of property from selling it at any price acceptable to him or from giving it away.

An advertising campaign in which it was asserted that a new baking powder was being offered to the public at about one-half of the former price was held properly restrained by the Federal Trade Commission in Royal Baking Powder Co. v Federal Trade Com. (1922, CA2) 281 F 744, where the company, having distributed only a cream of tartar baking powder for 60 years,

was substituting therefor a phosphate baking powder, which normally sold for about one-half the price of the other, and by its advertising was creating the impression that the original more expensive baking powder was being offered at a reduced price.

Even though refusing to enforce an order condemning a hog breeder for advertising that his Ohio Improved Chesters were a separate breed of hogs,[16] the court in L. B. Silver Co. v Federal Trade Com. (1923, CA6 Ohio) 289 F 985, motion den 292 F 752, upheld an order restraining the breeder from advertising that it had Chester White pigs for sale at a lower price than the O. I. C. pigs, or at any other price, if it in fact had no Chester White pigs, as distinguished by the breeder from O. I. C. pigs, for sale at quoted prices or otherwise.

A commission order was upheld in Consolidated Book Publishers v Federal Trade Com. (1931, CA7) 53 F2d 942, cert den 286 US 553, 76 L ed 1288, 52 S Ct 579, where it restrained a book publisher from advertising or misrepresenting that any set of books offered for sale had been reserved and would be given free as a means of advertising to certain selected persons, advertising or misrepresenting that purchasers of an encyclopedia were only buying or paying for supplement and research services, and selling or offering for sale at wholesale or retail of a set of books under more than one name or with the intention that such set of books might be resold by another firm under a different name.

An order restraining certain sales practices in connection with solicitation of family pictures to be hand painted was upheld in International Art Co. v Federal Trade Com. (1940, CA7) 109 F2d 393, cert den 310 US 632, 84 L ed 1402, 60 S Ct 1078, where the salesman displayed a sample picture, asserting that it had been awarded first prize and that the company had arranged for its artist to paint such pictures for a limited number of people in each locality for exhibition purposes; that the purchaser would be given the picture for the actual cost of materials and delivery; that such pictures were expensive and usually sold for from $30 to $100; that the pictures were "oil paintings," "hand painted," and "finely finished paintings," and in instances where the "painting" to be made was of a child or baby, the salesman informed the prospect that a Chicago newspaper was preparing to hold a baby contest and that the company had made an arrangement to enter its pictures in said contest. Against such representations the commission found that the picture delivered was not like the sample displayed, the sample had never won a prize, sales were not limited to a selected few persons in any territory, the usual price charged was $7.50, that the purchaser was not given a reduced price, that the so-called "painting" was nothing more than an enlarged photograph made up by a photographer who charged 25 cents for each enlargement, that a so-called artist colored the pictures and was able to furnish 25 or 30 pictures per day, that the entire cost of a finished picture would not exceed $1.50, that such pictures were not "paintings" as that word was understood by artists or by the public, and that the newspaper in question did not have a baby contest in progress or in contemplation.

The use of a so-called "draw" by which a salesman soliciting pictures to be tinted permitted the prospect to draw a certificate entitling him to one picture for $15, or a different certificate entitling him to receive two pictures for $15, the regular price of which was $7.50, was held fraudulent and deceptive in International Art Co. v Federal Trade Com. (F) supra, although the defendant claimed that the sole purpose of the "draw" was to secure entrance into a home, to determine whether the prospect had the appearance of financial responsibility, the court pointing out that while there was no chance of gain or loss in the scheme, the prospect was made to believe there was an element of gain and that was plainly its purpose.

An order which barred advertising of an automobile finance plan as a "6 per cent plan" when in reality the interest charged under the plan, based on 6 per cent of the total deferred payment without credit for instalments as paid, amounted to about 11½ per cent simple interest per year, was upheld in General Motors Corp. v Federal Trade Com. (1940, CA2) 114 F2d 33, cert den 312 US 682, 85 L ed 1120, 61 S Ct 550, although the original advertisement stated that the plan was not 6 per cent interest, but simply a convenient multiplier which anyone could use and understand, where various other advertising by the automobile manufacturer and its dealers stressed the 6 per cent feature without explanation. The court rejected a contention that the advertisements could not mislead, pointing out that many people would have difficulty in determining the difference between a rate of 6 per cent per year and the amount payable under the plan, and added: "That, under the plan, GMAC was offering to finance instalment purchases at lower costs than before did not justify a form of advertising which has been found by the Commission, upon substantial evidence, to result in deception of the public. It may be that there was no intention to mislead and that only the careless or the incompetent could be misled. But if the Commission, having discretion to deal with these

matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, 'wayfaring men, though fools, shall not err therein,' it is not for the courts to revise their judgment." To the same effect, see Ford Motor Co. v Federal Trade Com. (1941, CA6) 120 F2d 175, cert den 314 US 668, 86 L ed 535, 62 S Ct 130.

An order which restrained a quilt manufacturer from representing as customary or regular, prices of quilts which were in excess of those at which such products were regularly sold in the normal course of business, and from representing that certain prices constituted a discount or were special or reduced, or introductory prices, or that they were applicable for a limited time only when in fact such prices were usual and customary, was upheld in Thomas v Federal Trade Com. (1940, CA10) 116 F2d 347, where the manufacturer circularized various communities, advertising a sale at one-half price for 5 days only, following up such circulars with a similar newspaper advertisement and visits by representatives who solicited orders for quilts at $18.75, representing that the regular price was $37.50. It was shown that if an offer to purchase was received by the factory after such a sale had terminated, a form letter was sent stating that the special price was no longer in effect and quoting the quilt at $37.50, but in the same letter factory irregulars were offered at two for $37.50, and there was no evidence that a quilt had ever been sold at the price of $37.50.

Advertising by a tailoring company for salesmen in which it was represented that a free suit would be given to each salesman was held a violation of the Federal Trade Commission Act in Progress Tailoring Co. v Federal Trade Com. (1946, CA7) 153 F2d 103, where a prospect responding to such advertising was told that he would receive a commission for each garment sold and if he sold enough would receive a suit for himself, the court holding that such transaction justified an order by the commission forbidding use of the term "free" to designate merchandise furnished as compensation for services rendered. See, however, Rosenblum v Federal Trade Com. (1954, CA2) 214 F2d 338, infra, § 18[b].

A commission order barring use of the words "Guaranteed for Life," "Guaranteed Life Contract," or words of similar import, in advertising a fountain pen, unless the petitioner, without additional expense to the owner, made repairs or replaced parts which might be required during the life of the owner for any cause other than wilful damage or abuse, was modified by the court in Parker Pen Co. v Federal Trade Com. (1946, CA7) 159 F2d 509, where the extensive advertising by the petitioner, while featuring the quoted words, also stated in a less prominent and finer type, the following qualifications: "Pens marked with the Blue Diamond are guaranteed for the life of the owner against everything except loss or intentional damage, subject only to a charge of 35¢ for postage, insurance and handling, provided complete pen is returned for service." Although agreeing that the commission was not arbitrary in inferring that deception might occur to an inattentive reader of such advertisements, the court concluded that the commission was overmeticulous in denying the right to use phrases such as "life guarantee" except on condition that no further charge be made for repairs, pointing out that there could be no valid objection to a guaranty that repairs would be made if needed, during the life of the buyer, at 35 cents for each repair. The court accordingly modified the order to permit petitioner to continue its advertisements provided that the words of limitation were placed close to the words, "life guarantee," and in print of the same size as the other regular printed matter in its advertisements.

In Consumers Home Equipment Co. v Federal Trade Com. (1947, CA6) 164 F2d 972, a cease and desist order was upheld where it was shown that house-to-house canvassers for a corporation distributing silverware, blankets, mattresses, and other articles of merchandise, usually bought on an instalment basis, falsely represented that the merchandise offered for sale was limited in quantity, or was offered at a special sale price which was a saving over prices charged by local retail stores, and exhibited samples of a kind and quality different from goods actually delivered.

A contention that the petitioner could not be held responsible for misrepresentations by door-to-door salesmen, claimed to be independent contractors, was held insufficient to invalidate a commission order in Consumer Sales Corp. v Federal Trade Com. (1952, CA2d) 198 F2d 404, cert den 344 US 912, 97 L ed 703, 73 S Ct 335, where the order was based on false representations by salesmen that they were engaged in making a survey for prominent soap manufacturers and that if the prospective customer would collect and send to the petitioner a certain number of box tops the salesmen were authorized to offer petitioner's merchandise at a special low price which was $20 to $50 less than the regular price, and it appeared that the petitioner furnished the salesmen with order blanks entitled "Special Offer," and self-addressed envelopes for the handling of the

box tops, although the price at which the goods were offered was the same as that for which the merchandise was customarily and regularly sold.

An order barring use of the word "free," or any similar word, in advertising to designate any book, or any other merchandise, which was not actually a gift or gratuity or not given to the recipient without requiring the purchase of other merchandise, was upheld in Book-Of-The-Month Club, Inc. v Federal Trade Com. (1953, CA2) 202 F2d 486, cert dismd 346 US 883, 98 L ed 388, 74 S Ct 144, where the advertising stated in large print that a designated book was given "free …to new members of the Book-Of-The-Month Club," and in much smaller print, a coupon was included which, when signed and sent to the club, constituted a contract between it and its new "member," which required the latter to purchase at least four books a year from the club, and it appeared that if the member failed to buy such four books the club would demand and expect to collect from him the retail price of the "free" book. See, however, Rosenblum v Federal Trade Com. (1954, CA2) 214 F2d 338, infra, § 18[b].

Even though the petitioner had instructed its salesmen to make no improper representations and required each salesman to sign a pledge that he would not represent that the encyclopedia or other books were free, that the costumer was paying only for the supplement, that the offer made was open only to a specified number of people, that only a few were chosen to receive the offer, that the regular or usual price of the books or combination of books and services was greater than the price at which it was offered, or that the publication was entirely new, an order requiring the corporation and its principal officers to cease and desist from making such representations in the sale of its encyclopedia was upheld in Standard Distributors, Inc. v Federal Trade Com. (1954, CA2) 211 F2d 7, where a small number of salesmen were found to have made such representations, the court pointing out that the misrepresentations were at least made within the apparent scope of their authority and were part of the inducement which led to sales.

A commission order restraining the manufacture of a photograph album known as "Build-a-Book" from representing that the petitioner sold only to selected persons, that the albums were given free or without cost, and that the prices at which they regularly sold the product were promotional or reduced prices, was upheld in Kalwajtys v Federal Trade Com. (1956, CA7) 237 F2d 654, 65 ALR2d 220, cert den 352 US 1025, 1 L ed 2d 597, 77 S Ct 591, where distribution was by house-to-house salesmen who were furnished names of prospects obtained from public birth records and operated under a detailed sales presentation which was given to all salesmen and which they were required to follow closely. The sales presentation included a "Door Opener," in which the salesman stated that he had a gift for selected families with a baby or a young child; an "In the Home" section in which the salesman stated the album was given as a gift for advertising purposes, and a "Certificate Opener," in which it was pointed out that the album was to be a showcase in the home and certificates were presented under which the prospect could obtain 10 portraits for $39.95, which the salesman stated covered labor and costs, whereupon the "once in a lifetime combination offer" of the photographs and album for $39.95 was made. The court rejected a contention that the order should be set aside because the representations made were true in that the prospective customers were, in fact, "selected"; that the word "few" was a relative term of great elasticity, and that the price of $39.95 was in fact promotional because it was intended to promote the sale of the albums, pointing out that a statement may be deceptive even if the constituent words are literally or technically construed so as not to constitute a misrepresentation.

Representations in advertising for salesmen to sell a course in reweaving were held sufficient to warrant a restraining order by the Federal Trade Commission in Goodman v Federal Trade Com. (1957, CA9) 244 F2d 584, where the advertisements showed pictures of three salesmen alleged to have earned nearly $1,500 in 11 days or less, presenting these as typical of "earnings with us," the court noting that the persons represented were not typical but were experienced salesmen who were also assisted by others in selling the course. Representing that sales leads were furnished to salesmen was also restrained, where it was found that this was not case, and the same was true of representations that sales agents were furnished with everything needed where, in fact, they were required to pay $5, as a returnable deposit, for the sales kit and if additional materials were needed the salesmen were required to pay for them.

See also De Gorter v Federal Trade Com. (1957, CA9) 244 F2d 270, supra, § 11.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Cease and desist order was proper where illegal trade practices shown consisted of false representations by agents, in door-to-door sales of publisher's encyclopedias, that they were conducting survey, that encyclopedia was offered free or at reduced price provided yearly supplements were purchased, that agent was connected with advertising or publicity department and was not selling anything, that encyclopedia was offered free or at reduced rate if potential customer would comment on set in a letter and authorize use of his name for advertising purposes, that theirs was special limited time offer being made only to select group and not to public at large and that general sales promotion would be conducted at later date, that annual supplement regularly sold for one figure but was being offered to prospect for a lesser amount, that certain additional books included in combination offer were being given free with purchase of encyclopedias and supplements, and that encyclopedia was nationally advertised at figure in excess of what it was being offered for sale. P. F. Collier & Son Corp. v. Federal Trade Commission., 400 U.S. 926, 91 S. Ct. 188, 27 L. Ed. 2d 186 (1970).

Commission's order enjoining paint manufacturer from advertising that for every can purchased buyer would be given "free" can of equal quality and quantity, and Commission's finding that this practice was deceptive, were neither arbitrary nor clearly wrong where (1) Commission's holding was no departure from its policy regarding use of commercially exploitable word "free," and (2) substantial evidence supported Commission's findings that manufacturer's usual and customary retail price for each can was substantially less than price designated in its advertisements, that manufacturer had no history of selling single cans of paint, that it was marketing twins, and made misrepresentations in allocating what was in fact price of 2 cans to 1 can, yet calling 1 "free." F.T.C. v. Mary Carter Paint Co., 382 U.S. 46, 86 S. Ct. 219, 15 L. Ed. 2d 128 (1965), and remanding case with directions to remand to Commission for clarification of its order as suggested by Commission in its brief.

Petitioner's unlawful practice of supplying catalog houses with fictitious prices was sufficient peg upon which to hang order against fictitious pricing throughout its business, notwithstanding facts that unlawful practice involved less than 1% of petitioner's business and was in accordance with long-established practice of catalog houses, with whom petitioner stopped doing business before Commission issued complaint, and there was no showing of past violations by petitioner. Coro, Inc. v. F.T.C., 338 F.2d 149 (1st Cir. 1964).

Cease and desist order was proper where sellers of items of general merchandise to consumers and retail stores through mail order catalog engaged in deceptive trade practices by offering merchandise for sale at "wholesale," "low wholesale," and "lowest wholesale" prices and by representing in their advertising and otherwise that they were "wholesalers," but prices charged in five of six product lines tested before trial examiner exceeded "usual and customary" prices for the merchandise, and, in two of those lines, also exceeded any bona fide wholesale price. Federated Nationwide Wholesalers Service v. F. T. C., 398 F.2d 253 (2d Cir. 1968).

Order prohibiting preticketing goods at inflated prices upheld in Heavenly Creations, Inc. v. F. T. C., 339 F.2d 7 (2d Cir. 1964).

False representation as to price at which perfume was regularly sold was subject to cease and desist order. Harsam Distributors, Inc. v. F.T.C., 263 F.2d 396, 120 U.S.P.Q. 327 (2d Cir. 1959).

No error in finding and concluding that petitioner committed unfair and deceptive acts and practices to injury of public by misrepresenting selling terms, financing, service, and guaranties for new and used television sets sold by it, and cease and desist order was entirely proper. World Wide Television Corp. v. F.T.C., 352 F.2d 303 (3d Cir. 1965).

Record supported commission's findings that petitioner had supplied its distributors and retailers with fictitious suggested list prices in excess of prices at which petitioner's appliances were usually and customarily sold in trade areas where such figures were supplied, and order to cease and desist from such unfair and deceptive acts and practices would be affirmed. Regina Corp. v. F. T. C., 322 F.2d 765 (3d Cir. 1963).

Advertisements of products, not usually sold by petitioner operating department store, deceived in comparing sale prices with "regular" or "usual" prices which were in fact prices prevailing in community and not petitioner's own normal or previous prices, and Commission properly restrained use of these words in future pricing except in truthful statement of petitioner's own recent normal prices. Although advertisements correctly indicated saving purchaser could realize, confusion could result if different merchants use same words "regular" and "usual" at different times to indicate either their own normal prices or prices of competitors. Nor is it difficult or burdensome for advertiser intending to compare his own prices with competitors' to use words which make this clear. Bankers Securities Corp. v. F. T. C., 297 F.2d 403 (3d Cir. 1961).

Preticketing by manufacturer of luggage was deceptive and subject to cease and desist order where regular and customary price was approximately $2 lower than ticketed price in retail outlets throughout the country which accounted for approximately 37.5% of manufacturer's sales. Baltimore Luggage Co. v. F. T. C., 296 F.2d 608 (4th Cir. 1961).

Catalog house, selling merchandise exclusively by mail order, engaged in unfair and deceptive practices properly subject to cease and desist order where it misrepresented regular prices and savings to purchasers of its merchandise in various advertisements involving six products, by offering products for sale and representing that such products could be purchased at price below their "regular price," since catalog house had not, prior to present sale, sold or offered items in question on a regular basis for a substantial period of time; "regular price" is price at which product is openly and actively sold by advertiser to public on regular basis for reasonably substantial period of time in recent and regular course of business. Spiegel, Inc. v. F.T.C., 411 F.2d 481 (7th Cir. 1969).

Manufacturer's attaching tags with fictitious and excessive prices to its watches had tendency to deceive public as to saving afforded by retail purchase at substantially lower price and as to value of watches, placed means of misleading public in hands of retailers and others ultimately dealing with consumers, and constituted enjoinable practice. Clinton Watch Company v. F.T.C., 291 F.2d 838 (7th Cir. 1961).

See Niresk Industries, Inc. v. F.T.C., 278 F.2d 337 (7th Cir. 1960), § 13[a].

Commission's findings that petitioners had through their salesmen falsely represented to prospective purchasers that they were engaged in conducting surveys for various purposes, that petitioners' encyclopedia was being given free to a selected number of persons for advertising purposes, that set was being given free with purchase of yearly supplements, that prospective customer had been specially selected to receive a set of books, and that price at which the books were being offered was reduced from regular price and was being offered for a limited time only, were supported by substantial evidence and constituted deceptive selling practices. Basic Books, Inc. v. Federal Trade Com'n, 276 F.2d 718 (7th Cir. 1960).

Where store operator in advertising fur products used fictitious prices by stating that prices were reduced from usual prices, and prices labeled "usual" were not those at which such merchandise was usually sold, test in determining whether store operator was engaged in fictitious pricing was understanding of consumer, who might very well believe that use of the word "usual" in this regard meant that the item had been "marked down." Fair v. Federal Trade Commission, 272 F.2d 609 (7th Cir. 1959).

Evidence supported Commission's finding that unfair and deceptive methods were employed by petitioner advertising and selling aluminum and other siding materials, and order would be enforced directing petitioner to cease and desist from certain representations, including representations as to special or reduced prices, as to bringing prospective customers to see purchaser's "model home," as to paying purchaser bonus or other compensation as result of demonstrating or advertising purchaser's house

or building, as to identity of manufacturer or source of products, as to products being applied by factory-trained personnel, as to guaranty of products, and as to use of word "lifetime" or terms of same import. Guziak v. F. T. C., 361 F.2d 700 (8th Cir. 1966).

Evidence sustained Commission's findings and determination that watch manufacturer committed unfair and deceptive practices in connection with its preticketing of its watches with purported retail prices, with its activities and practices related to such preticketing, with its guaranties and advertising thereof which did not clearly reflect or did not disclose at all that there was service charge of $1 for handling and postage even though defect to be repaired was covered by guaranty, with its advertising that watches were "shock-proof" or "shock protected" although watches cannot be completely protected from shock damage and can only be made to be "shock resistant" or "shock absorbing," and with its failure to mark plated watch bezels having appearance of gold or gold alloy in accordance with rule requiring unambiguous disclosure that case is base metal or is base metal which has been flashed or coated with thin and unsubstantial coating. Cease and desist order embracing all of manufacturer's products, whether or not related to watch industry, was within Commission's discretion, and order would be affirmed in all respects and enforcement decreed. Benrus Watch Co. v. F. T. C., 352 F.2d 313 (8th Cir. 1965).

Use of "Dollar-A-Day" as trade name and slogan by car rental agency is deceptive. Resort Car Rental System, Inc. v. F. T. C., 518 F.2d 962, 1975-1 Trade Cas. (CCH) ¶ 60332 (9th Cir. 1975).

Firearms manufacturer's failure and refusal to disseminate to its dealers price lists which did not state that prices were only suggested or approximate, was punishable. U.S. v. Browning, 518 F.2d 714, 1975-1 Trade Cas. (CCH) ¶ 60375 (10th Cir. 1975).

See Thiret v. F. T. C., 512 F.2d 176, 1975-1 Trade Cas. (CCH) ¶ 60221 (10th Cir. 1975), § 20[a].

Order directing retailer of eyeglasses to disclose credit information and forbidding advertisement of discount prices was enforced where evidence supported findings that advertised price was a "bait and switch" device since only $^{64}/_{100}$ths of one percent of sales were made at advertised price and average price was approximately five times greater than advertised price, and that retailer engaged in false advertising of discount prices and misrepresentation of credit charges and of "easy credit." Tashof v. F.T.C., 437 F.2d 707, 1971 Trade Cas. (CCH) ¶ 73417 (D.C. Cir. 1970).

Commission could determine that use of "manufacturer's list price" was deceptive if such price was not adhered to by area retailers; evidence that larger area retailers had not sold at list price was sufficient to show that such price was not "usual and customary" retail price in area; and substantial evidence supported finding that petitioner's use of list prices was false and deceptive. Giant Food, Inc. v. F.T.C., 322 F.2d 977 (D.C. Cir. 1963), affirming order prohibiting such deceptive advertising.

Order prohibiting manufacturer's false "pre-ticketing" of watches supported by substantial evidence that retail price tag placed on watches was in excess of usual and regular price at which watches were sold. Helbros Watch Co. v. F.T.C., 310 F.2d 868 (D.C. Cir. 1962) (affirming and enforcing order).

[Top of Section]

[END OF SUPPLEMENT]

§ 18[b] "Free" gifts; misrepresentations as to price—Order denied

[Cumulative Supplement]

In a few cases the courts have held that apparent misrepresentations in regard to "free" gifts, or in regard to prices at which goods were offered, were insufficient to warrant adverse action by the Federal Trade Commission.

Where the publisher of an encyclopedia, on advice of counsel, had discontinued a sales plan under which its agents were furnished subscription blanks describing an encylopedia and two loose-leaf services and stating the price of the first to be $55, and the price of the two services to be $49, and the price of all $104, with the words "special contract" added in writing and the regular prices stricken out and the figures $49 written in at the bottom, thus indicating that a purchaser would get the three things for the price of two, but had adopted another method which consisted of furnishing a salesman with similar subscription blanks but omitting the printed prices of individual items and showing only a price of $49 for all three in red ink, an order of the Federal Trade Commission forbidding the second type of selling was ordered vacated in John C. Winston Co. v Federal Trade Com. (1925, CA3) 3 F2d 961, cert den 269 US 555, 70 L ed 409, 46 S Ct 19, the court rejecting the commission's conclusion that the blank indicated that $49 was the price of the two services and that a person subscribing for them would get the encyclopedia free, inasmuch as any prospective buyer would know that he was getting three things for one price and that was the only price printed on the blank. The court stated that the sole question in such cases was whether hidden in the transaction there was an inducement, based on an untruth, that the purchaser was getting the encyclopedia for nothing, and held that such an inducement did not exist here.

An order of the commission requiring a portrait company to refrain from representing to costumers or prospects that the usual prices which it received for its portraits were greater than the prices at which they were offered to the customers, and from using any trade check or other device in such a way as to represent to customers that portraits offered had greater selling prices than the prices at which they were offered, was vacated in Chicago Portrait Co. v Federal Trade Com. (1925, CA7) 4 F2d 759, cert den 269 US 556, 70 L ed 409, 46 S Ct 19, where the misrepresentations in regard to prices had been discontinued soon after the filing of the complaint, the court holding that the drawing of the trade check, which was made before a sale was even talked about and for which nothing was paid, and which resulted in an alleged credit for every prospect, while it might have deceived a prospective purchaser in some small way, did not injure him and caused no injury to competitors, since the only evidence with regard to competitors indicated that they all used the same objectionable methods.

In a two-word opinion which read, "Motion granted," the court in Rosenblum v Federal Trade Com. (1954, CA2) 214 F2d 338, granted a joint motion of the petitioner and the Federal Trade Commission to vacate a final decree entered by the court in 1951 enforcing a commission order,[17] and to enter in lieu thereof a decree dismissing the entire proceeding. In a dissenting opinion by Clerk, Circuit Judge, it was noted that in the original order advertising of "free bonus dresses" to saleswomen upon selling from 12 to 30 dresses had been prohibited because of misuse of the word "free." The dissent pointed out that the basis upon which the commission took the present action was that it had changed its position with respect to the use, in advertising, of the word "free," and stated that the change in policy seemed rather clearly due to a change in personnel of the commission, but questioned the propriety of the court approving such change without a full hearing with an opportunity for the presentation of objections by anyone, competitor or consumer, who had been induced to rely upon the previously stated law, which had been approved by the Supreme Court in Federal Trade Com. v Standard Education Soc. (1937) 302 US 112, 82 L ed 141, 58 S Ct 113, reh den 302 US 779, 82 L ed 602, 58 S Ct 365, motion den 302 US 661, 82 L ed 511, 58 S Ct 474.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Portions of order against manufacturer's practice of preticketing price of its sunglasses would be set aside where evidence did not show actual recurrent and frequent sales within given trade area at less than preticketed price, there was no proof that dealers within same trade area were requesting and receiving different price tag for same glasses, and no effort was made to explore seasonal factors affecting price of sunglasses. Rayex Corp. v. F. T. C., 317 F.2d 290 (2d Cir. 1963).

[Top of Section]

[END OF SUPPLEMENT]

§ 19[a] Testimonials and indorsements—Order upheld

[Cumulative Supplement]

The courts have generally upheld the commission in barring use of fictitious testimonials and unauthorized indorsements.

The use of fictitious testimonials and recommendations, never written by the alleged authors thereof, and the use of authorized testimonials and recommendations in an exaggerated and garbled manner in connection with the publication of an encyclopedia were held properly barred in Federal Trade Com. v Standard Education Soc. (1937) 302 US 112, 82 L ed 141, 58 S Ct 113, reh den 302 US 779, 82 L ed 602, 58 S Ct 365, motion den 302 US 661, 82 L ed 511, 58 S Ct 474. The advertising by the publisher of a list headed "contributors and reviewers," which included names of those who had never been either contributors or reviewers with regard to the existing publication or its predecessors, was also barred, although the commission order was interpreted as not preventing the publisher from representing a person who contributed to the original publication as a contributor to the revised publication if some of the material included in the original remained in the revised work.

A manufacturer of salt blocks for livestock use was held properly restrained from using as an advertisement of its product a letter purportedly signed by a second lieutenant in the United States Army, described in the advertising as "the assistant veterinarian of the U.S. army at Camp Johnston," and from advertising on the strength of this letter that the United States Government had adopted its product and had purchased its entire southern output for use in the United States Cavalry, in Guarantee Veterinary Co. v Federal Trade Com. (1922, CA2) 285 F 853, where it appeared that at the time the letter was written the signer thereof was no longer in the Army and had never been assistant veterinarian, and the only basis for the claim that the government had adopted the manufacturer's product was the transfer to the government by a supplier for the manufacturer of a certain quantity of salt blocks held by the supplier for the account of the manufacturer and transferred by agreement when they were in danger of spoiling in the supplier's warehouse.

A commission order was upheld in Stanley Laboratories v Federal Trade Com. (1943, CA9) 138 F2d 388, where the petitioner was barred from advertising its product under the name of "MD Medicated Douche Powder," either alone or in conjunction with the picturization of a doctor, nurse, or cross, the court approving a finding that such use of the letters "MD" tended to lead the public to believe that the powder was indorsed by the medical profession or by the American National Red Cross.

A cease and desist order against advertisements of Ipana tooth paste claiming that twice as many dentists in the United States personally used Ipana as used any other dentifrice, and that more dentists recommended Ipana for their patients than any other two dentifrices combined, was upheld in Bristol-Myers Co. v Federal Trade Com. (1950, CA4) 185 F2d 58, where the statements were based on a survey conducted by the petitioner in which questionnaires were sent to 10,000 dentists out of 66,000 in the United States picked at random, to which 1,983 replies were received, indicating that 621 dentists used Ipana most often, the nearest competing products being preferred by 258 and 189 dentists, and 461 dentists indicated they most often recommended Ipana to patients, the next two competing products being preferred by 195 and 125 dentists. The court held that the sweeping statements in the advertisements were not justified by the results indicated by only 621 or 461 dentists out of the 66,000 dentists in the United States, particularly since less than 20 per cent of those questioned had taken the trouble to reply, and there was no evidence indicating that an accurate estimate of public opinion could be attained by such a sampling process or survey.

Use of testimonials which repeated claims of beneficial results from smoking Camel cigarettes, which claims were found to be false and misleading by the commission, was held properly barred in R. J. Reynolds Tobacco Co. v Federal Trade Com. (1951, CA7) 192 F2d 535, overruled in part on other grounds in Mandell Bros., Inc. v Federal Trade Com. (1958) 254 F2d 18, cert gr 358 US 812, 3 L ed 2d 55, 79 S Ct 54, although the order was modified by the court with regard to that part which barred

the petitioner from "…using in any advertising media testimonials of users or purported users of said cigarettes which contain any of the representations prohibited in the foregoing paragraph of this order *or which are not factually true in all respects,"* by eliminating the italicized portion of the order as being too broad and going beyond any concern of the commission inasmuch as the testimonial might not be "factually true in all respects" but might still be immaterial to the subject matter of the commission proceeding if it bore no relation to the public interest, the court stating that such an order would virtually make the petitioner an insurer of the truthfulness of every statement contained in a testimonial, no matter how immaterial or beside the issue in controversy it might be.

A contention that the petitioner should be permitted to continue circulating copies of a magazine article containing favorable comment with regard to its waterproofing product, "Aquella," even though some of the claims in such article were contrary to the trade practice rules for the masonry waterproofing industry, on the ground that the rules had not been adopted at the time of publication of the article, was rejected in Prima Products, Inc. v Federal Trade Com. (1954, CA2) 209 F2d 405, the court holding that the commission had power to stop further distribution of the article if the expressions used therein were open to objection under the rules subsequently adopted.

An order restraining the petitioner from advertising that a drug compound, Mynex, used in connection with reducing, had been approved for advertising by the Canadian government was upheld in Marlene's, Inc. v Federal Trade Com. (1954, CA7) 216 F2d 556, where it appeared that advertising of products of this nature was expressly prohibited by Canadian law, even though the petitioner claimed that representations in their advertising were based on the apparent approval of advertising copy by an official of the Canadian government.

An order restraining the petitioner from representing that his correspondence course of instruction had been approved for training by the Bureau of Education of California and the United States Veterans' Administration was upheld in Goodman v Federal Trade Com. (1957, CA9) 244 F2d 584, where it was shown that a resident course conducted by the petitioner had formerly had approval of such bodies, and that the petitioner had forwarded photostats of such approval to salesmen selling the correspondence course with instructions to use such material in making sales and to inspire confidence in prospects.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

See Country Tweeds, Inc. v. F. T. C., 326 F.2d 144 (2d Cir. 1964) (misuse of results of tests made by national testing company), § 27.

Commission's cease and desist order prohibiting drug company's unauthorized use of druggists' names in advertisements of product in local newspaper, where product had been shipped to druggists without prior agreement, was supported in fact and law and would be enforced. S. & S. Pharmaceutical Co. v. F.T.C., 408 F.2d 487 (5th Cir. 1969).

Order prohibiting representations that consent decree in action for misbranding and misrepresenting curative values of vitamin-mineral supplement was indorsement of product by government, court, and Food and Drug Administration upheld, in Mytinger & Casselberry, Inc. v. F.T.C., 301 F.2d 534 (D.C. Cir. 1962), § 27.

[Top of Section]

[END OF SUPPLEMENT]

§ 19[b] Testimonials and indorsements—Order denied

The fact that testimonials or indorsements by prominent people of toilet articles were published by a manufacturer in its advertising without disclosing that substantial sums of money were paid to such persons for their indorsements was held insufficient to warrant an order requiring disclosure of the payments in using such advertising in Northam Warren Corp. v Federal Trade Com. (1932, CA2) 59 F2d 196, where the commission expressly found that the testimonials were truthful expressions of opinion, the court pointing out that there was no misrepresentation concerning the product and no unfair competition was created, and the commission, therefore, had no jurisdiction.[18]

See also R. J. Reynolds Tobacco Co. v Federal Trade Com. (1951, CA7) 192 F2d 535, overruled in part on other grounds in Mandell Bros., Inc. v Federal Trade Com. (1958) 254 F2d 18, cert gr 358 US 812, 3 L ed 2d 55, 79 S Ct 54, supra, § 19[a].

§ 20[a] Exaggerated claims with regard to product, generally—Order upheld

[Cumulative Supplement]

Extravagant claims as to the content, makeup, performance, or characteristics of a product have frequently been held sufficiently misleading to warrant action by the Federal Trade Commission.

The action of the lower court in modifying part of a cease and desist order of the Federal Trade Commission, which restrained representing that a medicinal preparation would afford any relief from severe aches, pains, etc., or have any therapeutic effect "in excess of affording temporary and partial relief of minor aches, pains, or fever," so that the order instead restrained representing "that said preparation will afford any permanent relief of aches, pains, and discomforts of neuritis, sciatica, gout, neuralgia, fibrositis, bursitis, or any other arthritic or rheumatic condition, or effect a cure of the symptoms or manifestations of any such condition," in the belief that the commission should not require use of the word "temporary,"[19] was reversed in this respect in Federal Trade Com. v Rhodes Pharmacal Co. (1954) 348 US 940, 99 L ed 736, 75 S Ct 361, modg (CA7) 208 F2d 382, the Supreme Court merely stating that the order of the commission was not ambiguous. But see D. D. D. Corp. v Federal Trade Com. (1942, CA7) 125 F2d 679, infra, § 20[b].

In Federal Trade Com. v Sewell (1957) 353 US 969, 1 L ed 2d 1133, 77 S Ct 1055, the Supreme Court in a per curiam opinion which merely cited Federal Trade Com. v Standard Education Soc. (1937) 302 US 112, 82 L ed 141, 58 S Ct 113 (reh den 302 US 779, 82 L ed 602, 58 S Ct 365, motion den 302 US 661, 82 L ed 511, 58 S Ct 474), and Federal Trade Com. v Algoma Lumber Co. (1934) 291 US 67, 78 L ed 655, 54 S Ct 315, reversed a Court of Appeals opinion which denied enforcement of a commission order relative to advertising of "Cuboids," a shoe insert, in all respects except to the extent that the order barred advertising that the device had special efficacy on the cuboid bone and on other related bones and that it was "scientific," remanding the case with directions to enforce the entire order of the commission.[20]

Where the evidence indicated no basis in fact for the claims made, a Federal Trade Commission order was upheld which required a breeder of hogs to refrain from advertising that his hogs, as a breed, were not liable to cholera and other contagious diseases, that there had been no such diseases in his locality, and that his breed of pigs possessed the power to resist disease in a greater degree than any other breed. L. B. Silver Co. v Federal Trade Com. (1923, CA6 Ohio) 289 F 985, motion den 292 F 752.

An order restraining the distributor of a product called "Koatsal," which was an oil containing colloidal graphite, from advertising or representing that the product penetrated and adhered to metal surfaces and that moving parts ride on this coating, that an automobile conditioned with Koatsal will run a greater distance without oil in the crankcase without damage than will one conditioned with ordinary oil, and that the lubricating qualities of Koatsal are any greater than the lubricating qualities of the oil which it contains, was modified by the court in Kidder Oil Co. v Federal Trade Com. (1941, CA7) 117 F2d 892, to make the order applicable only with regard to claims made in connection with the product when used as a lubricant in a motor

operated under "full-film" conditions, where evidence both by the distributor and the commission indicated that the product tended to improve the operation of a motor when used under "boundary" conditions or when a motor was operated without a full supply of oil.

An order barring the use by a hatchery operator in his advertising of the letters "R. O. P.,"[1] which had a well-defined and generally understood meaning in the chicken and egg production industry, was upheld in Bockenstette v Federal Trade Com. (1943, CA10) 134 F2d 369, the court concluding that it would be only natural for an ordinary person reading that petitioner's hens were "a choice group of individually wingbanded females from a select group of R. O. P. Rhode Island Whites," or that "individually pedigreed males from R. O. P. trap-nested dams head these matings," to conclude that the advertiser was an R. O. P. operator and that the stock was R. O. P. stock, whereas in fact such was not the case.

Advertising in regard to the capacity of radio receiving sets to receive foreign broadcasts was found to be false and misleading in Zenith Radio Corp. v Federal Trade Com. (1944, CA7) 143 F2d 29, where the material supplied to dealers contained such statements as "with Zenith, the short wave radio that gives you 'Europe, direct' you can hear all the leaders…all the daily news broadcasts," and "Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths," the court upholding the commission's finding that because of certain atmospheric conditions and electrical disturbances which the radio industry had been unable to overcome, the satisfactory reception of foreign broadcasts every day was impossible, and that the public's knowledge of the difficulties of radio reception was so limited that it could not properly evaluate the representations and would believe that by using the petitioner's radio all of these difficulties would be overcome. The court also held that featuring the number of tubes in various advertisements of radios gave the impression that more tubes meant more powerful reception, and that inclusion of such tubes as those which constituted merely tuning indicator devices, or rectifier tubes which were used primarily to convert alternating current into direct current, was misleading and subject to prohibition where such tubes did not "perform the primary function of detecting, amplifying, or receiving radio signals."

A cease and desist order based on the commission's finding that newspaper and magazine advertisements representing that use of the petitioner's device known as a "Vacu-Matic," when attached to an automobile carburetor, would result in savings of gasoline up to 30 per cent, would improve car performance, would result in more power, quicker starting, and all-round better performance, were false and misleading, was upheld in Vacu-Matic Carburetor Co. v Federal Trade Com. (1946, CA7) 157 F2d 711, cert den 331 US 806, 91 L ed 1827, 67 S Ct 1188, where expert testimony, principally by the research engineer for a leading carburetor manufacturer, indicated that use of the device would neither hinder nor help the operation of an automobile engine, although many users of the device testified to a marked increase in the saving of gasoline, and the court stated that if it was within its province to weigh and reconcile the conflicting evidence it might reach a contrary result.

An order requiring the petitioner to refrain from making certain representations as to the effectiveness of its products as waterproofing agents was upheld in all particulars in Concrete Materials Corp. v Federal Trade Com. (1951, CA7) 189 F2d 359, where the petitioner, with regard to its Iron Waterproofing and its Transparent Waterproofing, advertised that its use would "permanently stop all leaks and seepage in concrete, brick, stone and tile," and would make "surface permanently nonabsorbent," whereas expert testimony indicated that the treatment would not result in permanent waterproofing. With regard to its "Waterproofing Paste," which was advertised for new construction work and claimed to produce a "closemeshed concrete that increases strength and permanently waterproofs," the petitioner objected because the commission's verdict prohibited it from advertising this product as suitable for waterproofing without disclosing that its use would not render surfaces below grade impermeable to water under pressure, contending that it had never advertised that the product would do so. The court, however, pointing out that the choice of remedy was for the commission, held that since the petitioner had represented that the use of the product would render new construction permanently waterproof, the commission was justified in insisting that petitioner make clear that it would not be satisfactory for such purpose on surfaces below grade subject to water under pressure.

An order requiring the petitioner to refrain from representing, through use on fountain pen points of the term "14 Kt. Gold Plated" or "14 K. Gold Plate," that such points were coated or covered with an alloy of substantial thickness and not less than 14–24ths by weight of gold, when such was not the fact, was upheld in C. Howard Hunt Pen Co. v Federal Trade Com. (1952,

CA3) 197 F2d 273, where it was established by evidence that 14–24ths was the standard for use of the term "gold plated," and that a substantial thickness was not less than 7 millionths of an inch, whereas the petitioner's points varied in thickness of the plating from less than 2 millionths to 3.6 millionths of an inch, which was insufficient to make them resistant to corrosion. A further order barring the petitioner from representing that pen points were made of an alloy of gold when such points were in fact made of other materials and merely coated or covered with an alloy of gold was upheld where it appeared that the petitioner had stamped on certain of its pen points the inscription "14 K" or "14 Kt" in large type and underneath had stamped the inscription "Gold Plate" or "Gold Plated," in type so small as to be inconspicuous and almost illegible, and so placed on some points that it was hidden when the point was properly fixed in the barrel of a fountain pen. Similarly, use of the word "Iridium" or the words "Iridium Tipped" on pen points which were not in fact tipped with the element iridium, and using the word "Waltham" as an imprint or in connection with sale of any fountain pen points, were held properly barred by the commission, even though the petitioner claimed that the word "Waltham" had been placed on pen points only at the direction of a particular customer, the court pointing out that one who places in the hands of another a means of consummating a fraud or competing unfairly is himself guilty of a violation of the Federal Trade Commission Act.

An order barring the petitioner from advertising that its waterproofing material, "Aquella," when applied to below-grade masonry surfaces or structures would render them "impermeable or proof against the passage of water or moisture" or make them "waterproof" or "water tight," was upheld in Prima Products, Inc. v Federal Trade Com. (1954, CA2) 209 F2d 405, where it appeared that under the commission's trade practice rules for the masonry waterproofing industry such representations could be made only if the product would render such units impermeable to the passage of water throughout the life of such units or structures and under all conditions of water or moisture contact or exposure, and that no waterproofing product would prevent the passage of moisture by capillarity under conditions of prolonged use or unusually severe conditions of external pressure. A further provision barring advertising that "Aquella" operated on an entirely new principle, which apparently related to the method of scrubbing "Aquella" into the masonry, was also upheld where it appeared that most similar products were applied in the same fashion, and the combination of materials in "Aquella" did not constitute a new principle. A further ban on advertising that application of the product was "easy" was also upheld, the court holding that "easy" was a relative term and that it could not say that no one would be misled, even though the directions for use were comparatively simple.

An order which, among other things, barred the operator of a correspondence school from representing falsely that companies in the Diesel and tractor industries were backing the school, that graduates of the study course were in demand and that on-the-job training was available, was upheld in Tractor Training Service v Federal Trade Com. (1955, CA9) 227 F2d 420, cert den 350 US 1005, 100 L ed 867, 76 S Ct 649, reh den 351 US 934, 100 L ed 1462, 76 S Ct 786, where expert witnesses, consisting of engineering professors and representatives of the Diesel and tractor industries, including persons directly concerned with the hiring and firing of Diesel mechanics, had testified that graduates of the school were not qualified mechanics and were not in demand in the industry. In upholding a further provision of the order barring the petitioner from representing "that the earnings of individuals completing respondent's course of study are in excess of the average net earnings consistently made by individuals who have completed such course over substantial periods of time under normal conditions and circumstances," the court denied a contention that the order was vague, pointing out that it did not preclude future representations of the earning experience of graduates but merely required that they be based on fact.

A commission order requiring the petitioner to refrain from advertising or representing that a course offered by him was a complete course in reweaving, "unless and until such is in fact true," was upheld in Goodman v Federal Trade Com. (1957, CA9) 244 F2d 584, where the petitioner called his process "Nu-Weaving" and it embraced a method of repairing materials known as "end weaving," which was simpler and easier to learn than reweaving, the advertising literature distributed and other representations made frequently referring to the process as reweaving and thereby conveying the impression that the more difficult form was being taught. Prohibition of representations that the process was easy to learn and that personal instruction might be available as a regular part of the course, as well as representations in regard to the amount of earnings which would be available to those completing the course, was also upheld.

Advertisements in regard to the content, makeup, or performance of products offered for sale have been held sufficiently misleading to warrant a cease and desist order by the Federal Trade Commission where—

—a manufacturer of salt blocks for the use of livestock under the brand of "Sal-Tonik" widely distributed advertising circulars claiming that its product contained certain medicinal ingredients, including carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American worm seed, Levant worm seed, or capsicum (red pepper), when in fact analysis showed that it contained none of such ingredients. Guarantee Veterinary Co. v Federal Trade Com. (1922, CA2) 285 F 853.

—a motion-picture producer reissued old pictures under new titles and furnished advertising material to theaters which did not disclose that the pictures were reissues, although such reissues would be approved if the former title and the fact that they had previously been exhibited under such title should be clearly and definitely stated in the photoplay itself and in all advertising matters used in connection therewith. Fox Film Corp. v Federal Trade Com. (1924, CA2 NY) 296 F 353.

—the defendant was advertising and marketing a product alleged to contain radium although tests by the government Bureau of Standards indicated a complete absence of radioactivity, the order barring use of the word "radium" in connection with such product. Federal Trade Com. v Kay (1929, CA7) 35 F2d 160, cert den 281 US 764, 74 L ed 1173, 50 S Ct 463.

—the order required a manufacturer of silverware to cease using the term "sectional overlay" in advertisements or printed matter or stamping such term on its silverware to indicate reinforcement at points of wear, when only the staple pieces in each set were overlaid and the ornamental pieces were not, and it was shown that the term "sectional overlay" indicated to the public additional value and increased usefulness and permanency of the silver. National Silver Co. v Federal Trade Com. (1937, CA2) 88 F2d 425.

—a manufacturer of trays, the surface of which was made of processed paper finished so as to simulate wood, advertised its synthetic product as manufactured of hardwood and of hardwood surface, and the commission order restrained use of the words "wood," "hardwood," "walnut," or "catomo," to designate such trays, and the selling or distributing of such trays without clearly disclosing by means of legends imprinted upon the trays or upon the cartons in which they were packed that the surfaces were made of paper. Haskelite Mfg. Corp. v Federal Trade Com. (1942, CA7) 127 F2d 765.

—the order barred use of such words as "oil-painted portraits," "oil-painted," or "colored in oils," in advertising of a product which consisted generally of sepia photographs tinted or colored in varying degrees, the commission finding that the terms were not synonymous. Gold Tone Studios, Inc. v Federal Trade Com. (1950, CA2) 183 F2d 257.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

As to use of mockups in television commercials, see F.T.C. v. Colgate-Palmolive Co., 380 U.S. 374, 85 S. Ct. 1035, 13 L. Ed. 2d 904 (1965), § 27.

Order forbidding manufacturers of hearing aids to advertise that there are no buttons, wires, or cords attached thereto unless, in close connection therewith and with equal prominence, it is stated that a plastic tube runs from the device and is attached to an ear mold or nipple fitted in the ear, will be modified by dividing it so that the order prohibits advertising (1) that no buttons are attached to the hearing aids, unless it is disclosed that an ear mold or plastic tip is inserted into the ear; and (2) that no wires or cords are attached to the hearing aids, unless it is disclosed that a plastic tube runs from the device to the ear. Audivox, Inc. v. F.T.C., 275 F.2d 685 (1st Cir. 1960).

FTC finding that advertising representing baking company's bread as "an extraordinary food for producing dynamic growth in children" was misleading to children was supported by evidence which showed, inter alia, that advertisements contained numerous suggestions of causal relationship between consumption of bread and growth in children, and that advertisements were shown on daytime television programs with children constituting substantial part of viewing audience. Baking company and its advertiser were not denied adequate notice of claim against them, and FTC proceedings were not unfair, where, although FTC charged company with deception of children, FTC considered capacity of advertisements to deceive adults in finding misrepresentation as to children; however, portion of FTC cease and desist order which proscribed misrepresenting nutritional characteristics of baking company's food in any manner was too broad where actual misrepresentations concerned only certain product characteristics. ITT Continental Baking Co., Inc. v. F.T.C., 532 F.2d 207, 1976-1 Trade Cas. (CCH) ¶ 60758, 45 A.L.R. Fed. 587 (2d Cir. 1976).

See National Dynamics Corp. v. F.T.C., 492 F.2d 1333, 1974-1 Trade Cas. (CCH) ¶ 74947 (2d Cir. 1974), § 27.

Commission could properly find that advertising of filtration systems was deceptive in that it claimed device would make water "pure" and "clean" and thus might well cause public to believe, what was concededly contrary to fact, that micro-organisms in water would be removed; in that it advertised product was guaranteed for 10 years but in circulars sent to customers responding to advertisements disclosed that guaranty was conditional upon payment by customer of shipping costs and $30 service charge; and in that its assertion that device would function indefinitely was not true. Sibert v. F. T. C., 367 F.2d 364 (2d Cir. 1966).

See Continental Wax Corp. v. F. T. C., 330 F.2d 475 (2d Cir. 1964) (false representations that wax would be effective floor covering for 6 months), § 13[a].

See Country Tweeds, Inc. v. F. T. C., 326 F.2d 144 (2d Cir. 1964) (misuse of results of tests made by national testing company), § 27.

Determination that manufacturer represented that superiority of nonprescription, internal analgesic had been proven or established and that such representation was deceptive was supported by substantial evidence, where there was considerable record evidence of widespread consumer belief in analgesic's superior efficacy, although not a belief in its established superiority. American Home Products Corp. v. F.T.C., 695 F.2d 681, 1982-83 Trade Cas. (CCH) ¶ 65081 (3d Cir. 1982).

Evidence sustained commission's determination that correspondence school business aimed at procuring students for course purporting to prepare purchasers for civil service examinations was badly in need of regulatory restraint, and court would uphold order requiring school to cease and desist from representing, among other things, that examinations for particular positions were about to be given in or for particular area unless such examinations were about to be given and time remained to apply, that completion of course would enable person to pass examination for position such person selected, that persons solicited to purchase course were examined as to their qualifications for positions to be sought before being permitted to purchase course, that school would continue to train persons completing course until they were appointed to civil service position, that purchasers would be notified when or where examinations would be held, that persons completing course and passing examination were assured of obtaining position, and that representatives of school were connected with government. Rushing v. F.T.C., 320 F.2d 280 (5th Cir. 1963).

See Libbey-Owens-Ford Glass Co. v. F. T. C., 352 F.2d 415 (6th Cir. 1965), § 27.

Advertising statements that electric fence for controlling livestock would shock through weeds, green grass, brush, etc., rain or shine, and contained reliable make-and-break system without use of insulators, were false representations in violation of prior cease and desist order. U.S. v. Smith Fencer Corp., 312 F. Supp. 666, 1970 Trade Cas. (CCH) ¶ 73321 (E.D. Mich. 1970).

Evidence supported Commission's findings that advertisements of petitioner's pocket-sized portable radio transmitter misrepresented their operational range and also misrepresented that no license was needed to operate transmitter; and order to cease and desist making such misrepresentations would be enforced. Western Radio Corp. v. F.T.C., 339 F.2d 937 (7th Cir. 1964).

See National Bakers Services, Inc. v. F.T.C., 329 F.2d 365 (7th Cir. 1964), § 10.

See Waltham Precision Instrument Co. v. F.T.C., 327 F.2d 427 (7th Cir. 1964), § 13[a].

See Guziak v. F. T. C., 361 F.2d 700 (8th Cir. 1966), § 18[a].

As to advertising that watches are "shock proof" or "shock protected," and failing to adequately disclose on case that bezels having appearance of gold or gold alloy are base metal which has been flashed or coated, see Benrus Watch Co. v. F. T. C., 352 F.2d 313 (8th Cir. 1965), § 18[a].

Federal Trade Commission finding that drug manufacturer disseminated false and deceptive advertising for its non prescription internal analgesic products was proper and its cease and desist order would be enforced, where evidence indicated that manufacturer's advertisements had claimed its product was superior as to certain specific pharmaceutical attributes, but in-house study conducted by manufacturer did not support manufacturers claims as to those attributes, where evidence indicated manufacturer's advertisements referring to product's quality could be perceived by consumers as claims of product's therapeutic superiority and advertisement madedeceptive visual representation that product's therapeutic superiority had been established, where manufacturer's advertisements for product falsely represented that product's formula was unique, and where manufacturer disseminated advertisement for product implying its asprin-based products did not contain aspirin. Sterling Drug, Inc. v. F.T.C., 741 F.2d 1146, 1984-2 Trade Cas. (CCH) ¶ 66173 (9th Cir. 1984).

Multi-product order issued by Federal Trade Commission as result of retailer's false advertising claims concerning effectiveness of dishwasher would be upheld where advertising campaign cost $8,000,000, ran for four years, appeared in magazines, newspapers and on television throughout country, retailer did not dispute Commission's determination that campaign's central claim was false, Commission determined that retailer's compliance record was "a wash," and where multi-product order which required retailer to back up any future "performance claims" for "major home appliances" with "competent and reliable tests" was appropriate measure to achieve Commissioner's goal of preventing "transfers" of unfair trade practices. Sears, Roebuck and Co. v. F. T. C., 676 F.2d 385, 1982-2 Trade Cas. (CCH) ¶ 64752 (9th Cir. 1982).

Television commercials alleging to show significant reduction of pollutants in automobile exhaust achieved by use of gasoline manufactured by petitioner were false, misleading, and deceptive where automobile used in "before and after" sequences had deliberately been run on gasoline designed to cause buildup of carbon in engine, commercials did not explain that some of most serious pollutants were not visible, and use of meter alleging to show drop from 100 units to 20 units of pollution was not familiar, nor explained, to public. Standard Oil Co. of California v. F. T. C., 577 F.2d 653, 4 Media L. Rep. (BNA) 1459, 1978-2 Trade Cas. (CCH) ¶ 62145, 47 A.L.R. Fed. 375 (9th Cir. 1978).

Substantial evidence supported finding that use of petitioner's swimming aid called "Swim-Ezy" did not render all users "unsinkable," and court would affirm and enforce order against advertising that device would prevent user from sinking, would enable user to become or perform like champion swimmer, would protect user from dangers associated with swimming such as sudden cramps or other disabling pain, or could or would assist user to float or increase his buoyancy, unless petitioner also stated clearly and conspicuously in conjunction with any such representation that device is not life preserver and will not render user unsinkable and should not be used in deep water by persons who cannot swim. Case did not involve mere puffing of wares which, at worst, have no dangerous potential; but instead involved situation where consequences to sinkable users might be tragic, since if nonswimmer or poor swimmer equipped with Swim-Ezy should "swim as far as you please," as one of petitioner's advertisements invited him to do, he might never get back. Kirchner v. F.T.C., 337 F.2d 751 (9th Cir. 1964).

Cease and desist order was properly entered against defendant by Federal Trade Commission to prohibit unfair and deceptive sales practices in regard to sales of vacant lots in defendant's subdivisions, including unfair high-pressure sales tactics, false investment representations, illegal forfeiture clauses in form contracts, and false representations concerning growth in areas in which subdivisions were located. AMREP Corp. v. F.T.C., 768 F.2d 1171, 1985-2 Trade Cas. (CCH) ¶ 66713 (10th Cir. 1985).

FTC properly found that steel siding companies had engaged in unfair trade practices where, inter alia, witnesses testified that they were led to believe that they were receiving special discount prices in exchange for use of homes as "showcases" when in fact such prices were those normally charged, customers were told that they would receive substantial referral commissions to help pay for their siding but none was able to finance the purchase of his siding to any appreciable degree, petitioner's salesmen represented that installation of siding would bring significant savings in costs of heating and cooling homes but witnesses testified that they noticed little improvement, and, although customers were told that siding was unconditionally guaranteed for 30 years, they later received written guarantees from manufacturer covering only manufacturer's defects. Thiret v. F. T. C., 512 F.2d 176, 1975-1 Trade Cas. (CCH) ¶ 60221 (10th Cir. 1975).

Court would grant motion of FTC for summary judgment, notwithstanding plaintiff's challenge to relevancy of its product formula to FTC proceedings, to adequacy of protective order entered by administrative law judge in safeguarding confidentiality of formula as plaintiff's trade secret, and to propriety of FTC's intended disclosures of secret formula, since formula was relevant to underlying FTC inquiry, at least to extent it would permit FTC's expert witness to express opinion on whether plaintiff's product could perform as advertised. TK-7 Corp. v. F.T.C., 738 F. Supp. 446, 1990-1 Trade Cas. (CCH) ¶ 69045 (W.D. Okla. 1990).

See W. M. R. Watch Case Corp. v. F.T.C., 343 F.2d 302 (D.C. Cir. 1965), § 27.

Order requiring operators of employment information service to cease and desist from representing that they had knowledge of available jobs, that many jobs were available on projects listed in their publications, that persons answering advertisements or buying publications could expect to obtain employment, and that information respecting employment opportunities was furnished free upon request, was properly issued where record justified finding that it was most unlikely that employment could be obtained by purchasing petitioners' publications and making application for employment on any project listed therein. Cannon v. F.T.C., 295 F.2d 546 (D.C. Cir. 1961).

Where evidence showed that in a 21-jewel watch commonly sold by others in the trade there are no jewels that do not have either a function of bearing or a function of protection against wear from friction, and that only stones that perform these functions are properly called "jewels" in the watch industry, and in watches sold by petitioners 4 stones did not serve a mechanical function of bearing or of protection against frictional wear, statement that watches were 21-jewel watches was misleading. Tornek v. F.T.C., 276 F.2d 513 (D.C. Cir. 1960).

In action by FTC seeking to enjoin use of advertisements that dietary supplements reduced risk of cancer, advertisements were false because they misstated findings of report concerning consumption of certain fruits and vegetables and failed to disclose certain material facts; advertisements were unfair and deceptive because they played on public's fear of cancer to sell product and used findings of report to create impression product would reduce risk of cancer, despite absence of any findings concerning beneficial effects of product. F.T.C. v. Pharmtech Research, Inc., 576 F. Supp. 294, 1983-2 Trade Cas. (CCH) ¶ 65738 (D.D.C. 1983).

[Top of Section]

[END OF SUPPLEMENT]

§ 20[b] Exaggerated claims with regard to product, generally—Order denied

Allegations that claims made in advertising were so exaggerated as to warrant corrective action have been found unwarranted in some cases

Although upholding a Federal Trade Commission order barring use of the word "naphtha" in the brand name of soap where kerosene was added to the soap rather than naphtha,[2] the court in Procter & Gamble Co. v Federal Trade Com. (1926, CA6) 11 F2d 47, cert den 276 US 717, 718, 71 L ed 856, 47 S Ct 106, vacated a further order which barred the use of the word unless such soap normally contained at the time of its sale at least 1 per cent naphtha by weight. The court noted that naphtha was a very volatile matter which could escape by evaporation if the soap did not speedily reach the consumer, so that the commission order would be impossible of performance unless an unreasonably large amount of naphtha was used in the manufacture of the soap, and held that the case should be remanded to the commission so that an order could be made directed to the amount of naphtha which should be required in the soap at the time of manufacture.

In D. D. D. Corp. v Federal Trade Com. (1942, CA7) 125 F2d 679, the commission's order, which generally required the petitioner to cease and desist from representing, directly or through inference, that its preparation was a cure or remedy for any of the diseases named in the advertisements, or that it had any therapeutic value in the treatment thereof "in excess of affording temporary relief from the symptom of itching," was modified by removing the word "temporary" from the quoted part thereof, the court holding that there was no reason why the petitioner should not be permitted to represent its product as a relief for itching. To the same effect, see Carter Products, Inc. v Federal Trade Com. (1951, CA7) 186 F2d 821. But see Federal Trade Com. v Rhodes Pharmacal Co. (1954) 348 US 940, 99 L ed 736, 75 S Ct 361, modg (CA7) 208 F2d 382, supra, § 20[a].

An advertisement for automobile mufflers which referred to them as of "finest quality, metallic finish prevents rust and corrosion," has been held insufficient to warrant a commission order requiring the advertiser to cease representing, through use of the unqualified word "prevents," that the finish on its mufflers "affords permanent protection against rust or corrosion," the court in International Parts Corp. v Federal Trade Com. (1943, CA7) 133 F2d 883, pointing out that the advertiser did not represent that its mufflers would prevent rust permanently but that the word "permanently" was interpolated by the commission. The court held that the word "prevents" was a word of common understanding, and the common acceptation of the word carried no connotation of permanency, and added: "The Commission cannot interpolate into the petitioner's representations words not there, and then find the petitioner guilty of misrepresentation because the petitioner's product does not meet the Commission's revised representations."

§ 21[a] Puffing—Order upheld

Although a contention that exaggerated claims in advertising a product may be excused by the timehonored custom of "puffing" has been frequently asserted as a defense to an action by the Federal Trade Commission, it has been rejected where the exaggeration was too extreme.

The advertising of a bunion remedy was held to have gone far beyond the permissible limits of "puffing," and to warrant a cease and desist order restraining such advertising in Fairyfoot Products Co. v Federal Trade Com. (1935, CA7) 80 F2d 684, where the advertisements asserted that the treatment was approved by leading physicians and surgeons; that bunions were dissolved, pain stopped instantly, and permanent relief followed; that the foot again resumed its natural shape with its normal functions stimulated; that the bunion hump was gradually reduced, and that "Fairyfoot" gently dissolved the swelling caused by inflammation and restored the foot to its normal appearance.

Action by the commission in barring use of statements such as that one wellpoint, made by the petitioner, was "as good as any five others and never clogs," and that "contractors all over the world testified" that operating cost of the petitioner's system was 50 per cent lower than any other, both of which were parts of an advertisement originally used more than 5 years earlier by the petitioner, was upheld in Moretrench Corp. v Federal Trade Com. (1942, CA2) 127 F2d 792, the court stating that it was difficult to imagine how anyone reading such statements could have understood them as more than puffing, but concluding that the commission's action must be upheld since it had seen fit to take notice of the statements.

An order forbidding the use of certain statements in advertising Gulf livestock spray, an insecticide for use on cows, was upheld in Gulf Oil Corp. v Federal Trade Com. (1945, CA5) 150 F2d 106, where the commission had condemned as false and misleading statements in advertisements purportedly quoted from satisfied users of the spray, to the effect that "a light spraying of it gives a cow complete protection," the spray "kills blood-sucking flies, lice, ticks — repels stable and foreign flies," that "one spraying lasts all day," that one user got 175 pounds more milk a day as the result of using the spray, and that use of the spray "will assure you of healthy, contented cows and healthy cows give more milk, hence increased profits," the court pointing out that while use of the spray from 2 to 3 times daily during the summer months would make the cows more contented and healthy and more productive than would be the case where no preventive measures were used, the spray as such neither increased the milk nor insured a healthier, more contented cow. The court rejected a contention that the benefits set forth in the advertisements beyond those actually derived from use of the spray were merely trader's talk or "puffing," and hence excusable, stating that "puffing" referred generally to an expression of opinion, not made as a representation of fact, and did not authorize misrepresentation of a product or assigning to it benefits or virtues which it did not possess.

A contention that representations made by salesmen for a distributor of stainless steel cooking utensils, through pamphlets and otherwise, that the use of aluminum cooking utensils was detrimental to health and destroyed the essential values of foods cooked therein, could be excused on the basis that they were only "puffing," was rejected in Steelco Stainless Steel, Inc. v Federal Trade Com. (1951, CA7) 187 F2d 693, the court noting that the representations were made in order to induce the purchase of petitioner's products, and holding that statements made for the purpose of deceiving prospective purchasers, and particularly statements designed to consummate the sale of products by fright, could not properly be characterized as mere "puffing."

In granting a temporary injunction against advertising which made exaggerated claims for a product known as N. H. A. Complex, which by inference represented the product as a cure-all for a wide variety of ailments, the court in Federal Trade Com. v National Health Aids, Inc. (1952, DC Md) 108 F Supp 340, considered the possibility that it might be taking the advertising too seriously in view of the known tendency of advertisers to overemphasize or exaggerate the good qualities of particular products so that such claims might be regarded as a form of the customary "puff" advertising, but noted that medical testimony had indicated there was a strong possibility of much greater damage to health in inducing people to rely upon a product as a remedy for or prevention of such serious diseases as were, by suggestion at least, woven into the advertising, and concluded that the American public was entitled to be told honestly and fairly the truth with respect to either foods or drugs.

§ 21[b] Puffing—Order denied

In a few cases the defense of "puffing" has been upheld and enforcement of a commission order has been denied.

An order of the Federal Trade Commission requiring a mattress manufacturer to desist from using a label which purported to show the last stages of construction of a mattress and which indicated that the mattress, where not restrained by the mattress cover, flared out about 35 inches whereas the actual flaring of a mattress if released from the cover would be only about 6 inches, was annulled in Ostermoor & Co. v Federal Trade Com. (1927, CA2) 16 F2d 962, 51 ALR 327, the court holding that the time-honored custom of puffing, unlike the clear misrepresentation of the character of goods, did not constitute "unfair competition" and was not within the jurisdiction of the Federal Trade Commission.

Representations that the petitioner's product, an additive to motor oil, would enable a motor car to operate an "amazing distance" without oil, and that its product was a "perfect" lubrication, were held in Kidder Oil Co. v Federal Trade Com. (1941, CA7) 117 F2d 892, to be nothing more than a form of "puffing," as used by the petitioner, the court pointing out that what might be an "amazing distance" to one person might cause no surprise to another, and noting that the word "perfect" undoubtedly meant nothing more than that the product was good or of high quality.

The court in Carlay Co. v Federal Trade Com. (1946, CA7) 153 F2d 493, held that there was insufficient evidence to warrant the commission's conclusion that carrying out of a plan for weight reduction by eating special vitamin-loaded candy was not "easy,"

since the statement of practically all the witnesses indicated that the plan was easy and simple and uncomplicated, involving no drugs, and no restricted or rigorous diet, and observed further that in any case such terms as "easy" were regarded at law as mere puffing or dealer's talk upon which no charge of misrepresentation could be based.

§ 22[a] Curative value—Generally

[Cumulative Supplement]

By far the most prolific source of material for Federal Trade Commission complaints against misleading and deceptive advertising is in the field of drugs and cosmetics, where there appears to be no limit to the imagination of advertising copy writers when describing the merits of their products.

In general, the commission has permitted claims that the product advertised will provide relief for specifically described symptoms of various ailments, but it has attempted to ban any claims that such product will effect a cure—unless valid medical evidence indicates that the claim is true.

Cases involving the special statutory provisions with regard to drugs, devices, and cosmetics have been dealt with earlier in this annotation. See §§ 6- 10, supra.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Commission's order, prohibiting petitioner from disseminating advertising that its product would reduce or shrink hemorrhoids, stop itching, and relieve pain, would be modified with respect to that portion of commission's finding stating that product would not in many cases afford reduction in swelling or temporary relief from pain and itching associated with malady, found by court to be insufficiently supported by evidence in form of testimony from nine surgeons whose opinions apparently were based on patents' statements that use of product was unsuccessful, only one of such witnesses having had any experience in use of petitioner's product and study he had undertaken not being introduced into evidence. American Home Products Corp. v. F.T.C., 402 F.2d 232 (6th Cir. 1968).

[Top of Section]

[END OF SUPPLEMENT]

§ 22[b] Curative value—Order upheld

[Cumulative Supplement]

Orders of the Federal Trade Commission restraining advertising claims in regard to curative value of various preparations and devices have been upheld in a wide variety of cases.

Although a device termed "Thermalaid," being manufactured for use in connection with disorders of the prostate gland, was found to have some salutary effect and was not proceeded against as such, a cease and desist order against the use of exaggerated curative claims in advertising of the product was upheld in Electro Thermal Co. v Federal Trade Com. (1937, CA9) 91 F2d 477, cert den 302 US 748, 82 L ed 579, 58 S Ct 266, where advertising claims made in connection with the product and found to be false and misleading by the commission, included the following: "The prostate gland slows down in men past middle age

and, if unchecked, will swell until surgery is needed." "If you have a mild case, you may surprise yourself with new joy of living, new energy and enhanced power to do. If you have a fretful, serious, nagging case, by all means waste not one minute in getting Thermalaid." "Another point worthy of emphasis is the effect of an operation on sexual strength. When you lose your prostate gland you bid goodbye forever to a vital part of the procreative system. In a very real sense the saying is true that a man is no longer a man when his prostate is gone."

An order restraining extravagant advertising of Mazon, a soap and ointment for use in the treatment of skin diseases, was upheld with some modifications in Belmont Laboratories v Federal Trade Com. (1939, CA3) 103 F2d 538, the court finding that the advertisements, shown below,[3] were curative, rather than palliative in tenor, since they asserted the "elimination" rather than the alleviation of the conditions treated. The court held that the use of the word "original" to describe the treatment was misleading in that the ingredients of the compound were all common drugs used in the practice of medicine, and that the assertion that specialists used it "exclusively" was also incorrect. The court rejected a contention that the material placed in medical and nursing journals would not be misleading to the class of persons reading such journals, noting that it could not be conceded that prospective patients never read such material, and also rejected the contention that purchasers could not be influenced by the leaflet, since it was inclosed inside the package, pointing out that users might well be induced to make additional purchases after the first one as a result of the material in such leaflet. The court, however, modified the restraining order to an extent not disclosed by the opinion with regard to diseases curable through external application, which were listed as ringworm, head scalds, athlete's foot, barber's itch, and ivy poison.

An order which required a distributor of mineral water to cease and desist from "representing directly or by implication that the use of said water alone either externally or internally will cure" 52 named diseases, ranging from nephritis to chronic pneumonia and from poison ivy to sterility, was upheld in Capon Water Co. v Federal Trade Com. (1939, CA3) 107 F2d 516, where the court noted that the advertising complained of consisted of a pamphlet or brochure, which contained "first, a touching account of the lowly redskins' interest in their Cacapaon (healing) waters; second, a suggestion that they are responsible for the vigor which enabled the Father of his country to assume that role; and, third, both a summary of and quotations from the opinions of a series of physicians anent the therapeutic properties of the Capon (Anglicized) Springs. These last begin in 1870 and extend to the present. They vary in intensity of praise from the mild 'applicable' of Dr. William P. McGuire, former President of the Medical Society of Virginia, to the violent 'cures almost everything' of Dr. R. A. F. Penrose, former Professor at the University of Pennsylvania."

An order requiring the manufacturer of a laxative to refrain from using the word "pepsin" to describe any preparation not containing a sufficient quality or quantity of pepsin to possess substantial therapeutic value by reason of such pepsin content, from representing through use of the word "pepsin" that the preparation owed its laxative and cathartic properties to its pepsin contents, and from using any name to describe or refer to such preparation containing senna and cascara sagrada which name concealed or deceptively minimized the presence of such ingredients, was upheld in Dr. W. B. Caldwell, Inc. v Federal Trade Com. (1940, CA7) 111 F2d 889, where pamphlets containing representations relative to the preparation were wrapped around each bottle, and the label contained the words "Dr. Caldwell's Syrup Pepsin combined with Laxative Senna Compound," and in very small letters the words "Syrup Pepsin composed of Senna Cascara Sagrada Peppermint Oil Aromatics," and in larger letters the words "a Laxative For Constipation." It was found that pepsin had no therapeutic value as a laxative or as a relief from constipation but was used only as a vehicle for the senna and cascara sagrada, which were very powerful drugs, and that the use of the words "Syrup Pepsin" and "Syrup of Pepsin" to describe the preparation in which the active ingredients were senna and cascara sagrada was deceptive and misleading in that the purchasing public would be likely to believe that the pepsin had therapeutic value when such was not the case.

A finding by the commission that advertising of a medicinal product called "D. D. D. prescription," an external liquid application for the relief of itching, some of which is shown below,[4] contained false, deceptive, and misleading statements and representations as to its therapeutic value, was upheld in D. D. D. Corp. v Federal Trade Com. (1942, CA7) 125 F2d 679, where it was shown that the product in question acted as an anesthetic on the nerve terminals, thus preventing transmission to the brain of the unpleasant sensation caused by itch, although the medical testimony indicated that itching in itself was not a disease but

was the result or symptom of a disease. Noting that the product advertised was not a remedy or cure for any disease, but that its beneficial qualities were limited solely to the relief which it afforded to the itching skin, the court held that the use of the phrase "other externally caused" skin eruptions or afflictions implied that the diseases enumerated in connection with such phrase were externally caused when, as a matter of fact, they were usually of internal origin.

An order requiring a distributor of medicinal preparations for relief of delayed menstruation, known variously as "Triple-X Compound," "Reliable Perio Compound," "Perio Pills," and "Perio Relief Compound," to refrain from advertising, directly or by implication, that his product was an effective remedy or harmless or safe to use,[5] was upheld in Aronberg v Federal Trade Com. (1942, CA7) 132 F2d 165, the court rejecting a contention by the petitioner that his advertisements did not assert that his product was a remedy but merely that it provided relief. As indicating that the average reader, as distinguished from an "educated analytical reader," would get the impression that the advertising offered a remedy, the court noted that the petitioner's testimonial letters specifically referred to his "Perio" preparation as a "remedy"; the advertisements stated that the drugs were "for" delayed menstruation and that "full treatment" would be sent for a stipulated sum, and that his preparations "end delay" and are "absolutely guaranteed." Calling attention to the use in the advertisements of such statements as "don't be alarmed over delayed, overdue, unnaturally suppressed periods"; "thousands of women are needlessly miserable and unhappy because of abnormally delayed periods"; "for countless women such unnatural interruption is often needless," the court observed: "Any such unnatural delay undoubtedly causes some concern to any woman, and representations that the preparations will remove such alarm quite reasonably, it seems to us, imply that they will effect a remedy. The cause of the patient's concern is not so much in the discomfort suffered as in the reason for the unnatural abnormal delay. We think, therefore, that the edict that there is no need for the purchaser to worry reasonably justifies an inference that if she buys and uses the preparations, she will not only experience some relief from inconvenience and discomfort but also remove the cause. The implication is aided by the reference to the preparation as an 'aid' to abnormally suppressed functions."

An order directed against advertising claiming curative values for "Sebrone," for use in cases of dandruff, was upheld in Sebrone Co. v Federal Trade Com. (1943, CA7) 135 F2d 676, where the advertising represented that the preparation was a new discovery or a recent development of scientific research, where actually it was based on an old formula, that it was a cure or remedy for dandruff as indicated by use of such words in advertising as "stops dandruff," "ends dandruff," "defeats dandruff," and false representations that use of the product would prevent baldness. The court rejected a contention that no one could have been misled by the advertising into thinking that the preparation was intended to afford anything more than temporary relief, stating that it agreed with the commission that "it is strange indeed to find petitioners contending that the public knew 'continued treatment was necessary,' when petitioners represented that: 'Most users of Sebrone report their dandruff gone in one week or less! The treatment is…quick…Stop Dandruff *in one week* with Sebrone.'" A similar result was reached in the same case with regard to representations that Waft would have any therapeutic value in the treatment of any disease causing excessive sweating, or that it would reduce excessive sweating to normal, where it was found that the preparation, when used as a deodorant, would not destroy odors but was limited to masking such odors as might be present, and would not reduce excessive sweating to normal, its value being limited to the slight effect produced by its astringent qualities.

Advertising claims with regard to a device designated as "Gordon's Detoxifier," a rectal irrigator designed for cleansing the bowels and intestines, which represented that the device was beneficial in the treatment of more than two-score ailments ranging from appendicitis and asthma to ulcers and ulcerative colitis, and including both high and low blood pressure, were found to have been properly restrained in Irwin v Federal Trade Com. (1944, CA8) 143 F2d 316, where testimony of medical doctors, as opposed to osteopaths and chiropractors, indicated that the device was of no benefit in regard to the particular ailments but that its therapeutic value was limited to that of an ordinary enema. The court pointed out that there was no testimony which would have justified an injunctive order prohibiting use of the "detoxifier" by those possessing the qualifications required to practice the art of healing, noting that the commission had not attempted to prevent the sale of the instrument in interstate commerce, but had confined its order entirely to prohibiting the use of certain specified representations and nomenclature in their advertisements.

Although refusing to enforce an order of the commission prohibiting the advertising of certain statements regarding the effect of a cold quartz lamp, called "Life Lite," where the evidence indicated use of the lamp resulted in some beneficial effects to

the skin,[6] the court in Ultra-Violet Products v Federal Trade Com. (1944, CA9) 143 F2d 814, upheld the commission's order in regard to advertising that the lamp constituted a cure or remedy or a competent or adequate treatment for ringworm, athlete's foot, acne, eczema, psoriasis, sores or ulcers, where the evidence indicated that the lamp could be of very little benefit in the treatment of such ailments and might actually be dangerous, and advertising that the lamp possessed therapeutic value in the treatment of bronchitis, where evidence indicated that bronchitis was commonly caused by germs in the respiratory tract which could not be reached by the rays of the lamp.

Advertising which represented that use of "Gosewisch's Odorless Garlic Tablets" was an effective treatment for the effects of high blood pressure, including symptoms of dullness, tiredness, nervousness, dizziness, and involuntary naps, was held sufficient to warrant a commission order restraining any representation that the preparation possessed any therapeutic value in the treatment of high blood pressure or the symptoms thereof, or any other pathological condition, or that garlic possessed any therapeutic value in the treatment of such symptoms, in Excelsior Laboratory, Inc. v Federal Trade Commission (1948, CA2) 171 F2d 484, where the amount of garlic in the tablets was negligible and expert medical testimony indicated that while the use of garlic had once been thought to be beneficial in cases of high blood pressure, modern scientific tests had shown that such was not the case.

With some modifications and qualifications, a commission order restraining the use of certain advertising claims with regard to a deodorant cosmetic preparation called Arrid was upheld in Carter Products, Inc. v Federal Trade Com. (1951, CA7) 186 F2d 821, where the petitioner was originally ordered to cease and desist from disseminating in commerce any representation such as that Arrid "safely stops underarm perspiration…one to three days…and keeps it stopped… for one to three days," and also "if you want complete under-arm protection, you must keep the armpits dry as well as odorless. Arrid cream will do both for you, and do it safely." The petitioners argued that they made no greater claim than that the product, when used as directed, would stop the appearance of perspiration on the surface of the skin for a reasonable length of time, and this was borne out by the directions on packages and labels which advised: "Use daily if necessary," and "Use daily for constant protection," but the court pointed out that petitioners did a considerable amount of advertising over the radio and that, at the first contact between buyer and seller, the buyer had no means of knowing what was contained in the directions printed on the package, and stated that the law was violated if the first contact was secured by deception. Noting that expert testimony had indicated that Arrid did stop the appearance of perspiration on the surface of the skin for periods ranging from "three to six hours," to "four to twenty-four hours," and that such words as "stop" and "prevent" did not necessarily connote permanency, the court modified parts of the commission's order which specifically banned advertising that the preparation would stop underarm perspiration, keep armpits dry or odorless, prevent accumulation of odor-creating body secretions or excretions in the armpits, by adding to the order a proviso that nothing in the order should prevent the respondent from representing that use of its product would produce such results "when used as directed, namely 'daily' or 'as frequently as you find necessary.'"

Based on adequate medical testimony that claims made in advertising a medical preparation known as "New Peruna" or "New Peruna Tonic" were exaggerated, the court in Consolidated Royal Chemical Corp. v Federal Trade Com. (1951, CA7) 191 F2d 896, upheld a commission order which required the petitioner to refrain from representing that its preparation would build resistance to a cold, prevent a cold, shorten the duration of a cold, or have any therapeutic value in the treatment of a cold. Further provisions of the order barring advertising which represented that the preparation would have any therapeutic value in relieving the symptoms or discomforts of a cold "in excess of its expectorant qualities, which tend in a slight degree to increase the exudate from the mucous membranes," and that the preparation would assist in building up strength except to the extent that its use might increase the appetite and, by supplying some iron, "aid in a slight degree to correct iron deficiency, if taken over a long period of time," were objected to by the petitioner as being so vague as to make understanding and compliance impossible, but the court found such prohibitions quite clear and held that if the preparation would only aid "in a slight degree," the petitioner's advertising was properly limited to such a claim, adding: "While this may considerably hamper the style of petitioner's advertising department, that is the fault of petitioner's preparation and not of the Commission's order."

A commission order barring exaggerated claims with regard to Camel Cigarettes was upheld in R. J. Reynolds Tobacco Co. v Federal Trade Com. (1951, CA7) 192 F2d 535, overruled in part on other grounds in Mandell Bros., Inc. v Federal Trade

Com. (1958) 254 F2d 18, cert gr 358 US 812, 3 L ed 2d 55, 79 S Ct 54, where the representations in advertising, shown in the footnote below,[7] were general in nature, being made alike to all persons irrespective of their physical condition or the quantity of cigarettes smoked. In ordering enforcement of the commission's order barring such advertising, the court approved the commission's findings that "all such representations were false in that the tobacco constituents of 'Camel' cigarettes are like those of other leading brands of cigarettes; that the tobacco smoke of such cigarettes includes generally carbon dioxide, carbon monoxide, particles of carbon—partially oxidized tobacco products that carry over with the smoke, together with volatilized nicotine, other nitrogenous substances, aldehydes, including furfural, and formaldehyde, ammonia, water vapor and tarry and oily materials; that smoking cannot be considered under any circumstances as beneficial to any of the bodily systems; that nicotine is not a therapeutic agent for any purpose; that it is a poison and a killing poison; that nicotine stimulates the nerves of the involuntary or autonomic nervous system which in turn affects the heart; that as a result of this stimulation it also affects the adrenal glands, which increases their action and causes a rise in blood pressure and a constriction of the small tubes of the lungs; that carbon monoxide in concentrated form is deadly and, like nicotine, is absorbed by the blood, affects the red blood cells and decreases the capacity of the blood to carry oxygen; that in the process of smoking the body is also invaded by other constituent elements of a cigarette, causing local irritation of the mouth, throat and lungs."

An order requiring the petitioner to refrain from advertising which included false and deceptive statements with regard to the therapeutic value of their medicinal preparations was upheld in Koch v Federal Trade Com. (1953, CA6) 206 F2d 311, where the commission found that the petitioner represented directly or by implication "that their product 'Glyoxylide' is an adequate treatment for any type or stage of cancer, leprosy, malaria, coronary occlusion or thrombosis, multiple sclerosis, arteriosclerosis, angioneourotic oedema, obliterative endarteritis, asthma, hay fever, dementia praecox, epilepsy, psoriasis, poliomyelitis, tuberculosis, syphilis, arthritis, and osteomyelitis, any type of allergy or infection, abscess of the prostate gland, septicaemia, and insanity; that the product 'B-Q' constitutes an adequate treatment for all infections and their sequelae, including gonorrhea, salpingitis, sinusitis, meningitis, infantile paralysis, septicaemia, streptococcus sore throat, pneumonia, undulant fever, malaria, coronary thrombosis, the allergies, diabetes, cancer, arthritis, and the degenerative diseases; that the preparation 'Malonide Ketene Solution' constitutes an adequate treatment for the allergic diseases, infections, diabetes, cancer, double pneumonia, osteomyelitis, and postoperative meningitis, and that through the use of the term 'for allergy, cancer, infection' to describe and refer to properties of the aforementioned products, they have represented such products to be of therapeutic value in the treatment of all infections, cancer and allergies." There was sufficient evidence by physicians that the products had no therapeutic value, and it appeared that the advertisements were sent both to members of the medical profession and to lay persons. The court held that the petitioner was making representations constituting a positive declaration that the drug had the therapeutic values attributed to them in the advertisements by distribution of a pamphlet entitled "Chemistry's Victory Over Disease," in which it was stated: "Cancer has been the challenge to medicine ever since the dawn of history. Here is a cure." The court held further that there were misleading statements apart from claims for therapeutic value in the distribution of case histories under such headings as "Cancer of Larynx" and "Cancer of Breast," where the evidence indicated that the diagnosis of cancer was insufficient or that the cure might have resulted from other treatment.

Advertising of a medicinal preparation known as Imdrin, which represented that it was an "Amazing New Discovery of Rheumatism, Arthritis," and that people who had "suffered and hoped for twenty years, were able to live free of pain," and in at least one instance that it was "the brand-new safe and reliable way to cure pain," was held in Rhodes Pharmacal Co. v Federal Trade Com. (1953, CA7) 208 F2d 382, mod on other grounds 348 US 940, 99 L ed 736, 75 S Ct 361, to warrant an order by the commission restraining the petitioner from representing in its advertising that the taking of Imdrin was an adequate, effective, or reliable treatment for neuritis, sciatica, and related ailments, that it would cure such ailments, that it was a new discovery of scientific research, that persons afflicted with such ailments so severely that they interfered with normal habits of life would be enabled, by taking Imdrin, to resume normal life, and that the taking of Imdrin would have any therapeutic effect upon the functioning of the enzyme system of the blood or bones. The court noted that the commission had found "arthritis" and "rheumatism" were general terms used interchangeably to refer to a large number of diseases or pathological conditions including, among others, neuritis, sciatica, neuralgia, gout, rheumatic fever, and infectious arthritis, not all of which responded to the same treatment, and that effective treatment must be predicated upon individual diagnosis, and that the commission had made the further finding that delay of needed treatment might result in irreparable crippling, especially in those forms of arthritis

and rheumatism known to be caused by specific infections. The commission had also found that various ingredients present in the drug were in such minute quantities as to have no significant therapeutic value in any way.

An order which barred the petitioner from advertising that use of "Dolcin" tablets, the active ingredient of which was aspirin, was effective in the treatment or cure of arthritic or rheumatic conditions, or related ailments, was upheld in Dolcin Corp. v Federal Trade Com. (1955) 94 App DC 247, 219 F2d 742, cert den 348 US 981, 99 L ed 763, 75 S Ct 571, but that part of the order which barred advertising that the preparation would "afford any relief of severe aches, pains,…or have any therapeutic effect…in excess of affording temporary relief of minor aches, pains, or fever," was modified so as to bar advertising "that said preparation will afford significant relief of severe aches, pains…or have any therapeutic effect…in excess of affording relief of aches, pains, or fever within the foregoing limits," the court noting that the commission had stated that the petitioner, in complying with the order as written, was not required to use the word "temporary," but could comply by merely avoiding use of such phrases as "prolonged relief," and holding that this created an undesirable ambiguity which could be corrected by the modification. See also Re Dolcin Corp. (1957) 101 App DC 118, 247 F2d 524, cert den 353 US 988, 1 L ed 2d 1143, 77 S Ct 1285, in which the corporation and three of its officers were held guilty of criminal contempt for violating the court's order as a result of continued radio advertising contrary to the terms thereof.

A cease and desist order, based on exaggerated claims of therapeutic value, has been upheld where—

—a manufacturer falsely advertised in magazines that "Kruschen Salts" was a cure or remedy for obesity and that it would in itself reduce excessive fat, and that "Radox Bath Salts" had therapeutic value when used in a bath, that it released great quantities of oxygen when so used and produced the effect of treatment at world-famous spas, and that it stimulated or energized the body. E. Griffiths Hughes, Inc. v Federal Trade Com. (1935, CA2) 77 F2d 886, cert den 296 US 617, 80 L ed 438, 56 S Ct 137.

—a product known as Aspirub, which contained only 1.5 per cent of aspirin, was advertised as providing through external applications the beneficial therapeutic results of aspirin, the court concluding that advertisements of the product were grossly exaggerated and misleading in view of expert testimony that the insignificant amount of aspirin in the compound would provide little or no therapeutic value for the various claims and ailments which it was represented to relieve. Justin Haynes & Co. v Federal Trade Com. (1939, CA2) 105 F2d 988, cert den 308 US 616, 84 L ed 515, 60 S Ct 261.

—the distributor of a medicinal preparation known as Glantex advertised that it was a quick acting remedy, which afforded relief to those suffering from prostatitis, cystitis, urethritis, catarrhal conditions of the urinary tract, sugar diabetes, dropsy, iliocolitis, acute indigestion, ptomaine poisoning, gastritis, malaria, and all forms of bowel trouble, and the commission, on the evidence of reputable doctors, determined that the preparation was not a safe or competent remedy or treatment for any of the diseases set forth, and its order directed the distributor to refrain from representing that his preparation possessed any therapeutic value besides its laxative qualities. Neff v Federal Trade Com. (1941, CA4) 117 F2d 495.

—the order barred the petitioner from representing that Alberty's Food Regular and Alberty's Food Instant (new style) rendered milk more readily digestible, constituted a competent remedy, cure, or treatment for cancer or ulcer, or had any therapeutic or medicinal value; that Alberty's Laxative Blend had any therapeutic value or affected the muscles of the intestines, other than that the senna contained in the preparation was a cathartic; that Alberty's Phosphate Pellets and Alberty's No. 3 Tablets had any therapeutic value; that Cheno Combination Tablets contained any ingredient which would have influence on fat metabolism or would cause any weight reduction other than reduction due to the laxative properties thereof; that Cheno Tea contained any weight reduction ingredient or that said preparation had any effect other than that of a mild laxative, the commission having found that all such representations were false, deceptive, and misleading. Alberty v Federal Trade Com. (1941, CA9) 118 F2d 669, cert den 314 US 630, 86 L ed 506, 62 S Ct 62.

—the petitioner advertised its product, Uvursin, as an effective treatment for diabetes, typical representations, found by the commission to be false, being that it "is a mild and innocuous oral treatment for diabetes mellitus," that it is an efficacious treatment, that diabetic gangrene "yields to Uvursin," and that the product "is being recognized as the preferred treatment in

diabetes mellitus," where medical testimony indicated that the effect of the herbs used in the preparation was illusory, since, by increasing the flow of urine they diluted its sugar content, but left the actual condition of the patient as it was before. John J. Fulton Co. v Federal Trade Com. (1942, CA9) 130 F2d 85, cert den 317 US 679, 87 L ed 544, 63 S Ct 158.

—the preparation in question was advertised as a cure or remedy for obesity whereas in fact it was not such a cure and could be harmful, even to normal individuals, if used other than under competent medical supervision. American Medicinal Products v Federal Trade Com. (1943, CA9) 136 F2d 426.

—the order barred advertising in connection with the sale or distribution of "granular parkelp" or "parkelp tablets," which represented that the preparation had any therapeutic value in excess of that afforded by the iodine content thereof, or contained iron, copper, calcium, phosphorus, sodium, potassium, magnesium, sulphur, or other minerals in quantities sufficient to have therapeutic value, or contained minerals which are not present in land foods, or that the average diet is deficient in the minerals necessary for proper functioning of the human body, where the commission had found that all such representations were false. Philip R. Park v Federal Trade Com. (1943, CA9) 136 F2d 428.

—it was found that use in advertising of such phrases as "dependable," "insure—personal hygiene," "dependable safeguard," and "effective, reliable antiseptic powder," with reference to MD Medicated Douche Powder had a tendency to cause prospective purchasers to believe that the preparation was a preventive against conception and a germicide which would combat any form of bacteria, whereas the preparation was not such a preventive, and was not an adequate prophylactic. Stanley Laboratories v Federal Trade Com. (1943, CA9) 138 F2d 388.

—the petitioner advertised its preparations as valuable in the treatment of functional sterility in women whereas the preparations possessed no therapeutic value for such purpose. Warner's Renowned Remedies Co. v Federal Trade Com. (1944) 78 App DC 286, 140 F2d 18, cert den 322 US 754, 88 L ed 1583, 64 S Ct 1267.

—an advertiser was barred from representing that the effect produced upon the color of the hair by use of a particular shampoo and tint was permanent, the commission having found that while the preparation imparted a permanent coloration to the hair to which it was applied, it had "no effect upon new hair," and so constituted a false representation, the court pointing out, however, that the restraint put upon the distributor could be of little practical importance since it did not preclude advertising that the preparation colored permanently the hair to which it was applied. Gelb v Federal Trade Com. (1944, CA2) 144 F2d 580.

—the order forbade advertising that the petitioner's product had value in the treatment of arthritis, neuritis, rheumatism, or similar diseases, although two osteopathic physicians testified that they had treated hundreds of patients with this product and it had effected cures of arthritis, and that its curative properties were due mainly to its olibanum content, where other medical testimony indicated that the product contained at most a trace of olibanum and that its ingredients, including olibanum, had no value in relation to arthritis, neuritis, or rheumatism. J. E. Todd, Inc. v Federal Trade Com. (1944) 79 App DC 288, 145 F2d 858.

—the order barred petitioner from advertising that olive oil would of itself make people healthy, or tend to prevent appendicitis, gallstones, and bladder infections; or that it had vitamins A, E, and F in substantial quantities, where it appeared that its content of vitamins A and E was negligible and expert testimony indicated there was no such thing as vitamin F; or that it would cure skin irritations, neuralgia, and rheumatism, or stimulate the complexion and "tone up" the organs, although the court modified the order to permit the assertion that olive oil possessed "a possible slight value as a laxative." Lekas & Drivas, Inc. v Federal Trade Com. (1944, CA2) 145 F2d 976.

—the order directed the discontinuance of adertising which declared that petitioner's tablets, called "Kelp-A-Malt" would overcome weakness, emaciation, thinness and underweight; would acquire for the user "a well-proportioned body" and a "shapely" figure; would restore health, strength, and figure to those who are "tired" and "run down"; had therapeutic value in cases of "acid stomach," "gas," or "indigestion," the commission finding that the tablets possessed none of the curative powers described in the advertisement, and properly rejecting offered evidence to the effect that the tablets were a "dietary supplement,"

since the petitioner had not advertised its tablets as useful adjuncts to a proper diet. Associated Laboratories v Federal Trade Com. (1945, CA2) 150 F2d 629.

—advertisements for Ipana tooth paste represented that it possessed therapeutic and prophylactic qualities in that when used with massage it stimulated circulation and imparted health to the gums and prevented "Pink Tooth Brush," and aided in the treatment of its causes, where expert testimony, even though not based on clinical experience with Ipana, indicated that it was immaterial to the health of gums whether one's diet was soft or coarse and that the modern American diet provided sufficient gum stimulation; the term "massage," as used by dentists, meant a careful downward stroking or squeezing pressure applied to a quarter inch of the gum margin and teeth, whereas "massage," as used in the advertisements, meant to the general public a horizontal, vertical, or rotary scrubbing of the teeth and gums with the brush, or a similar rubbing with the finger, and that such massage does not stimulate circulation in the gums, impart firmness thereto, or prevent gum trouble in general; and that Ipana tooth paste was a cleansing agent only, without therapeutic value, and possessed prophylactic value only in so far as it cleansed. Bristol-Myers Co. v Federal Trade Com. (1950, CA4) 185 F2d 58.

—it was found that the petitioner had at least indirectly represented its product to be an abortifacient in its advertising, and there was sufficient evidence to support the finding that borderline anemia would not in itself cause delayed menstruation, nor would the petitioner's product be immediately effective to overcome other minor functional disorders. Savitch v Federal Trade Com. (1955, CA2) 218 F2d 817.

—far-reaching claims were made in advertisements for "Dolcin" tablets, which contained 2.8 grains of calcium succinate and 3.7 grains of acetylsalicylic acid (aspirin), the latter having been found to be the only active ingredient, and the advertising barred included representations that the preparation constituted an adequate treatment for any variety of arthritic or rheumatic conditions, or was an effective treatment for "growing pains" in children, or would prevent rheumatic fever, or could safely be taken over prolonged periods of time or by persons adversely affected by aspirin, or that the preparation was inexpensive, unless and until the retail selling price, without prescription, should be less than that of aspirin. Dolcin Corp. v Federal Trade Com. (1955) 94 App DC 247, 219 F2d 742, cert den 348 US 981, 99 L ed 763, 75 S Ct 571. See also Re Dolcin Corp. (1957) 101 App DC 118, 247 F2d 524, cert den 353 US 988, 1 L ed 2d 1143, 77 S Ct 1285, in which the corporation and three of its officers were held guilty of criminal contempt for violating the court's order as a result of continued radio advertising contrary to the terms thereof.

—a drug or medicinal product known as O-Jib-Wa Bitters prepared from certain herbs with some glycerine and water, to which a small amount of sodium benzoate was added as a preservative, was extensively advertised as a curative treatment for arthritis, rheumatism, neuritis, sciatica, and various other ailments, which advertisements were found to be false. Shafe v Federal Trade Com. (1958, CA6) 256 F2d 661.

See also Fairyfoot Products Co. v Federal Trade Com. (1935, CA7) 80 F2d 684, supra, § 21[a], and Federal Trade Com. v National Health Aids, Inc. (1952, DC Md) 108 F Supp 340, supra, § 10.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Where claims included in circulars advertising custom-made shoes could be read as unqualified assertions of therapeutic worth, and evidence supported finding that shoes had no therapeutic or corrective qualities with respect to any disease but would relieve pain or discomfort produced by ill-fitting shoes, especially when worn by persons having certain foot disorders, order prohibiting manufacturer and seller from claiming that shoes had any therapeutic qualities with regard to certain named disorders would be upheld. Murray Space Shoe Corp. v. F. T. C., 304 F.2d 270 (2d Cir. 1962).

Substantial evidence supported cease-and-desist order requiring petitioners to disclose that their hair preparations will only be effective in baldness not of the male pattern variety, and also to disclose that nearly all cases of baldness fall within male pattern category. Ward Laboratories, Inc. v. Federal Trade Com'n, 276 F.2d 952 (2d Cir. 1960).

For what constitutes violation of cease and desist order, see U.S. v. J. B. Williams Co., Inc., 354 F. Supp. 521, 1973-1 Trade Cas. (CCH) ¶ 74330 (S.D. N.Y. 1973), judgment aff'd in part, rev'd in part on other grounds, 498 F.2d 414, 1974-1 Trade Cas. (CCH) ¶ 75041, 24 A.L.R. Fed. 471 (2d Cir. 1974) (rejected by, U. S. v. Reader's Digest Ass'n, Inc., 662 F.2d 955, 7 Media L. Rep. (BNA) 1921, 1981-2 Trade Cas. (CCH) ¶ 64247, 32 Fed. R. Serv. 2d 694 (3d Cir. 1981)).

Findings of Federal Trade Commission that petitioners in their advertisements and in their treatments falsely represented that their salesmen were trained in dermatology or some other branch of medicine, by describing salesmen with no medical training as trichologists, and that petitioners fraudulently represented that their preparation and treatment would cure male pattern baldness without exception, were supported by substantial evidence, as was Commission's finding that petitioners' preparations, whether used singly or in combination, and regardless of method of treatment followed, will have no effect on male pattern baldness. Keele Hair & Scalp Specialists, Inc. v. F.T.C., 275 F.2d 18 (5th Cir. 1960).

Order requiring manufacturer of tonic and its advertiser to cease and desist from false and misleading advertisements was supported by substantial evidence where Commission found such advertisements created for listeners false impression that tiredness and lack of pep or energy symptoms experienced by many people were result of iron deficiency or iron deficiency anemia and would be cured or alleviated by tonic which contained iron, vitamins and various herbs, where only a small minority of people suffered such symptoms which, in most cases, were attributable to other ailments, the treatment of which the tonic was not a remedy; Commission's order properly required that defendants' representations be accompanied by affirmative disclosure that great majority of persons experiencing tiredness symptoms would derive no benefit from such preparation and that the presence of such deficiency could not be self-diagnosed, and prohibited defendants from representing that the tonic would be of benefit to any particular population group; truth of such representations would be a defense in any future enforcement proceedings. S. S. S. Co. v. F. T. C., 416 F.2d 226 (6th Cir. 1969).

FTC was well supported in its determination that the implication of advertising was that throat lozenge would cure existing sore throats, including "strep" throat, where it appeared that (1) regardless of whether lozenge could kill germs on surface of throat, they would not kill such bacteria in a manner that was medically significant; (2) the lozenge could not effectively attack viruses which causes a viral sore throat; and (3) the lozenge did not cure or help to cure an existing throat infection. Doherty, Clifford, Steers & Shenfield, Inc. v. F. T. C., 392 F.2d 921 (6th Cir. 1968).

Substantial evidence supported conclusion and findings that advertising of "Geritol" tablets and liquid, containing ingredients for relief of iron deficiency anemia, was false and misleading, and, except for one provision, order requiring that advertising be expressly limited to those persons whose symptoms are due to iron deficiency, and further requiring that advertisements affirmatively disclose that great majority of persons experiencing these symptoms do not do so because of iron deficiency and that for them Geritol will be of no benefit, would be enforced. J. B. Williams Co. v. F. T. C., 381 F.2d 884 (6th Cir. 1967).

See Shafe v. F T C, 256 F.2d 661 (6th Cir. 1958), § 5[a].

Where hair and scalp specialist who referred to himself as trichologist represented in his advertisements that he could without qualification, through the use of his preparations and method of treatment, prevent or overcome baldness, cause hair to grow thicker, cause new hair to grow, cause fuzz to develop into longer and stronger hair, and permanently eliminate dandruff, itching and irritation of the scalp, and the uncontradicted medical evidence of record showed that neither his preparations nor any others would accomplish these results, party was engaged in unfair and deceptive practices in commerce and order prohibiting him from making such representations in connection with advertising his preparations or any other preparations for the use in the treatment of hair and scalp conditions was not too broad. Erickson v. F.T.C., 272 F.2d 318 (7th Cir. 1959).

Commission's findings that petitioner's "Magic Couch," containing section which oscillates central portion of user's body in "effortless exercise," could not and would not perform in accordance with claims made in advertisements as to its usefulness in reducing weight and firming or toning muscles, and that it had no value or usefulness in accomplishing such results, was amply supported by evidence and cease and desist order would be affirmed. Stauffer Laboratories, Inc. v. F.T.C., 343 F.2d 75 (9th Cir. 1965).

See Feil v. F.T.C., 285 F.2d 879 (9th Cir. 1960), § 8[b].

See Carter Products, Inc. v. Federal Trade Com'n, 268 F.2d 461 (9th Cir. 1959), § 13[a].

Substantial evidence supported commission's conclusion that manufacturer of mouthwash had misrepresented efficacy of mouthwash in helping to prevent colds or sore throats or to lessen their severity where, inter alia, ingredients in mouthwash were not sufficient to provide therapeutic effect, gargling would not permit ingredients to reach critical areas of body in medically significant concentration, and, even if they could reach, active ingredients could not penetrate tissue cells and interfere with activities of cold virus, and clinical study purporting to show preventive or therapeutic effects was justifiably found to be unreliable: cease and desist order against such advertising was upheld, together with order requiring corrective advertising, though commission's requirement that such corrective advertising be prefaced by "contrary to prior advertising" would be deleted. Warner-Lambert Co. v. F.T.C., 562 F.2d 749, 2 Media L. Rep. (BNA) 2303, 1977-2 Trade Cas. (CCH) ¶ 61563, 1977-2 Trade Cas. (CCH) ¶ 61646, 46 A.L.R. Fed. 873 (D.C. Cir. 1977).

See Mytinger & Casselberry, Inc. v. F.T.C., 301 F.2d 534 (D.C. Cir. 1962), § 27.

[Top of Section]

[END OF SUPPLEMENT]

§ 22[c] Curative value—Order denied

[Cumulative Supplement]

In a few instances, advertising claims of curative value, alleged to have been exaggerated, have been upheld by the courts, and enforcement of an order against such advertising has been denied.

A commission order prohibiting advertising of certain claims regarding the effect of a cold quartz lamp, called "Life Lite," while being upheld for the most part,[8] was refused enforcement in Ultra-Violet Products v Federal Trade Com. (1944, CA9) 143 F2d 814, to the extent that the order prohibited advertising that the lamp "affords benefits to the skin or to the general health of the user comparable to those afforded by natural sunlight," where there was evidence by the commission's experts that the rays of the lamp produced in the fat-like sterols beneath the surface of the skin vitamin D which was carried through the body to the bones and aided in the cure of rickets as also do the sun's rays, and it was further held that this same evidence invalidated the commission's ban on advertising "that said lamp builds up in the body resistance to disease." The court also concluded that the last part of the prohibition against advertising that the lamp "normalizes the chemistry of the body, improves metabolism, or builds new tissues, except in so far as its use may result in the production of vitamin D," should be modified to read, "except in so far as such effects are related to the production of vitamin D resulting from the use of the lamp," pointing out that the testimony indicated that the rays did produce vitamin D, so that there was no ground for the doubtful word "may" in the order.

Part of an order prohibiting certain false advertising in regard to a hair shampoo was refused enforcement in Gelb v Federal Trade Com. (1944, CA2) 144 F2d 580, where the advertising represented that use of the preparation would "recondition the

hair," the evidence indicating that use of the shampoo released a fatty deposit of oleic acid as free oil, which imparted a lustre and softness to the hair, thereby leaving it glossy, which result corresponded with "reconditioning" as defined by expert witnesses.

A commission order directing the petitioner to cease disseminating advertisements which represented that excessive weight might be removed from the human body through the use of petitioner's product[9] and weight-reducing plan without restricting the diet, and that the removal of excess weight through use of the product and plan was "easy," and requiring that any advertisements must disclose that the product and plan include adherence to "a restricted diet" and that such adherence was essential to a reduction, was set aside in Carlay Co. v Federal Trade Com. (1946, CA7) 153 F2d 493, where the plan advocated eating one or two pieces of the candy before a meal to deter one from overeating rich, fattening foods, high in calories, and it was admitted that the product was a wholesome nutritious candy with added vitamins not found in ordinary candy, which were included to supply the lack of such vitamins resulting from intake of fewer calories at mealtime. The court stated that it was undisputed that eating sweet stuff before a meal curbed the desire for food so that, as a result, one eating the candy ate less than he otherwise would, but noted that the plan did not require desistance from eating any particular food, the whole idea being that by eating the candy, the desire for food was reduced and there followed, quite naturally, smaller intake of fats and starches, and held that this could not be regarded as involving adherence to a restricted diet, and that the plan could therefore be regarded as easy.

An order of the commission requiring the petitioner to refrain from disseminating any advertisement which represented that a medicinal product called Kleerex would cause pimples to disappear or constituted an effective treatment for pimples, was modified in such a manner as to constitute virtually a reversal in Folds v Federal Trade Com. (1951, CA7) 187 F2d 658, where the petitioner had advertised that the use of the product "dries up pimples overnight," and that users "report that they had a red sore pimply face one night and surprised their friends next day with a clear complexion," although directions on the package advised using it every night. The trial examiner found that Kleerex would, if used as directed over a period of time, dry up and remove pimples, but would not do so overnight; that the commission's charge that petitioner's implied representation that Kleerex was an effective treatment for pimples was misleading, deceptive, and false, was not sustained by the record, and recommended an order be entered against advertising that Kleerex would remove pimples overnight, but otherwise recommended that the complaint be dismissed. The commission, however, refusing to follow the recommendation of its trial examiner, entered the order previously referred to, although finding that the ingredients of Kleerex were mildly astringent, antiseptic, antipruritic, and analgesic in nature; that they had a tendency to dry up surface lesions, to decrease the number of organisms on the surface of the skin, and to relieve pain and itching; that use of the product would mask small pimples from view, and made no finding that use of Kleerex was injurious to the skin or to the person using it. In modifying the commission's order by eliminating the ban on advertising "that said product will cause pimples to disappear or constitute an effective treatment for pimples," and inserting in lieu thereof, "that application of Kleerex will cause pimples to disappear overnight or that the user thereof will have a clear complexion the day following its use at night," the court upheld the recommendation made by the trial examiner, and added: "It is difficult to understand why the commission did not follow his recommendation, instead of making a mountain out of a pimple as they have attempted to do in this case."

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Finding that Federal Trade Commission failed to make a showing on its application for a temporary injunction that it had reason to believe that public would be misled by advertising as to results of a medical study of aspirin and other proprietary analgesic compounds made under a Federal Trade Commission grant was not clearly erroneous. Federal Trade Commission Act, §§ 12, 13(a), 15 U.S.C.A. §§ 52, 53(a). F. T. C. v. Sterling Drug, Inc., 317 F.2d 669 (2d Cir. 1963).

There was no substantial evidence to support commission's findings that products for treatment of hemorrhoids would not afford temporary relief from pain and itching connected with hemorrhoids in many cases, nor that such products would not help to reduce swelling associated with hemorrhoids and caused by edema, infection, or inflammation, except to extent that such swelling is in varicose vein itself, notwithstanding expert medical testimony that such products would not shrink or reduce hemorrhoids, would not avoid need for surgery, and would not afford any relief or have any therapeutic effect upon hemorrhoids, where commission defined "hemorrhoid" as dilated or varicose vein, but where term "hemorrhoid" should have been defined as average person would understand term as including not only varicose vein itself but also tissue contiguous to vein. Grove Laboratories v. F. T. C., 418 F.2d 489 (5th Cir. 1969).

[Top of Section]

[END OF SUPPLEMENT]

§ 23. Source of products

[Cumulative Supplement]

Advertising or labeling which creates an erroneous impression as to the origin of the product advertised has occasionally been found by the commission to be misleading or deceptive, and cease and desist orders in such cases have been upheld by the courts.

False representations in advertisements circulated throughout the country to the effect that the defendant sent a special representative to Japan who personally went into the tea gardens of that country and supervised the picking of teas for the defendant, and falsely stating that the defendant purchased all of its coffees direct from the best plantations in the world, were held to warrant a cease and desist order by the Federal Trade Commission in Sears, R. & Co. v Federal Trade Com. (1919, CA7 Ill) 258 F 307, 6 ALR 358.

A cease and desist order was upheld in Federal Trade Com. v Bradley (1929, CA2) 31 F2d 569, where a soap manufacturer used such words as "English" and "Hanson-Jenks, Limited, London, New York," in connection with the advertising of domestic soap, thus creating the impression that it was imported.

Representations in advertising that "Radox bath salts" were imported from England were properly restrained by the commissioner where it appeared that the product was prepared and packaged in this country. E. Griffiths Hughes, Inc. v Federal Trade Com. (1935, CA2) 77 F2d 886, cert den 296 US 617, 80 L ed 438, 56 S Ct 137.

Unfair methods of competition were found to exist in Fioret Sales Co. v Federal Trade Com. (1938, CA2) 100 F2d 358, where a perfume distributor imported from France concentrates or compounds, which were not sold commercially until they were blended with varying percentages of domestic alcohol, and advertised its products as "imported perfumes," packaging them in bottles with a label printed in French, although there also appeared on the bottles the legend "Bottled in U.S.A." The court held that the imported concentrate was not a perfume and did not become so until blended with the alcohol, perfume to the consuming public being the complete liquid, and that the misleading advertising, together with the French label, gave the impression that the entire product was imported in bulk, even though bottled in this country. The court pointed out that the unfair practice might be avoided by a legend stating that the contents of the package or bottle were diluted and bottled in the United States. An order of the commission in a similar case was affirmed in Parfums Corday, Inc. v Federal Trade Com. (1941, CA2) 120 F2d 808, on the opinion in the Fioret Case (F) supra.

A similar result was reached in Houbigant v Federal Trade Com. (1944, CA2) 139 F2d 1019, cert den 323 US 763, 89 L ed 611, 65 S Ct 116, where the order barred use on the petitioner's products of the words "Paris" or "Paris, France," or other terms indicative of foreign origin, and also barred use of the terms "Houbigant," "Cheramy," or any other French or foreign words as

tradenames for toilet preparations compounded in the United States, without also stating that such products were compounded in the United States.

An order requiring the petitioner to mark any sunglasses or spectacles sold by him with their foreign origin was enforced in Segal v Federal Trade Com. (1944, CA2) 142 F2d 255, where it appeared that the lenses used in such product were imported from Japan and cut and fitted into frames by the petitioner, the court holding that the commission had found by sufficient evidence that a substantial number of buyers supposed that unmarked goods were home-produced goods, and that the buyers had a preference for such goods, the sale of unmarked foreign goods therefore constituting a misrepresentation which the commission was authorized to stop.

Misrepresentations in regard to the role of the Smithsonian Institution in the publishing of a set of books written and edited by scholars of the institution, and published by a subsidiary corporation of the petitioner under an agreement by which a 10 per cent royalty was paid to the Smithsonian Institution, were held sufficient to warrant a cease and desist order by the Federal Trade Commission in Parke, Austin & Lipscomb, Inc. v Federal Trade Com. (1944, CA2) 142 F2d 437, cert den 323 US 753, 89 L ed 603, 65 S Ct 86, where, contrary to the policy of the publisher, its salesmen were found to have made misleading statements and representations which caused prospective purchasers to believe that the books were published and sold by the Smithsonian Institution of Washington, that the salesmen were in the employ of the Institution, that the entire selling price accrued to it, and that only a relatively small selected group of persons were being offered an opportunity to purchase the books. The court noted that by agreement between the publisher and the Institution the names of purchasers were forwarded to the Institution, which enrolled the purchaser on its records and issued a certificate stating that he had been made a "patron" in recognition of his contribution to the Institution's program of diffusing knowledge among men, and held that while there was nothing unlawful or unfair about this practice, the petitioner's salesmen were properly found by the commission to have made wrongful use of such certificates by exhibiting them to prospective purchasers in such a manner as to induce the impression that the salesmen were representatives of the Institution rather than of a commercial publishing house and by falsely giving the impression that the individuals being interviewed had been singled out by the Institution for the honor of being made patrons.

An order requiring petitioner, an importer and manufacturer of porcelain products sold principally to retail stores, to cease and desist from using the legend "Imported—Du Barry" or any other legend or words indicative of French origin, to designate products made in whole or in substantial part in Japan, without disclosing the Japanese origin, and from representing that products made in part in Japan were of French or British origin, was upheld in Edward P. Paul & Co. v Federal Trade Com. (1948) 83 App DC 232, 169 F2d 294, where the conclusion that the advertising was misleading was based on the following expressions used in catalogs distributed entirely to retailers: "Imported 'Du Barry' Porcelain," "Imported Hand Decorated 'Du Barry' Porcelain," and "'Du Barry' Porcelain Table Lamps are nationally famous as reproductions of rare original French and English 'old pieces'." A strong dissenting opinion by Justice Clark termed the finding of the Federal Trade Commission "not only arbitrary and capricious in the extreme but also absurd and ridiculous," pointing out that there was no evidence denying that the articles advertised were imported, or that they were marketed under a well-recognized trade name "Du Barry," or that they were copies of well-recognized French and English masterpieces, and questioning the "momentous conclusion" of the commission that the term "Imported Du Barry" indicated origin from either France or Great Britain.

An order requiring the petitioner to refrain from offering for sale or selling imitation pearls "without affirmatively and clearly disclosing thereon, or in immediate connection therewith the country of origin of such imported imitation pearls," was upheld in L. Heller & Son, Inc. v Federal Trade Com. (1951, CA7) 191 F2d 954, the court stating that it was immaterial that the pearls were made into necklaces by the addition of strings and clasps in this country, since it was the imitation pearls that gave value to the product, and the purchasing public, in the absence of identification of foreign origin on the products, understood and believed that such necklaces were products of domestic manufacture. The court rejected a contention that Congress, by the enactment of the Tariff Act of 1930, as amended in 1938,[10] requiring every article of foreign origin to be marked so as to indicate to the ultimate purchaser in the United States the country of origin, and authorizing the Secretary of the Treasury to regulate such marking, had withdrawn from the commission jurisdiction or authority to regulate such marking, pointing out that

there was no repugnancy between the two acts and nothing in the Tariff Act disclosed an intention to diminish the authority or the power of the commission to prevent deceptive trade practices.

It was held in American Tack Co. v Federal Trade Com. (1954, CA2) 211 F2d 239, that a cease and desist order requiring disclosure of the country of origin (Germany) would be upheld where it applied not only to the products complained of, "solid head nickel plated thumbtacks," but also to "other similar products."

Although upholding an order of the commission which restrained a corporation engaged in compounding perfumes, using some imported ingredients, from implying that its products were made in France by using terms such as "Paris," "Un Air Embaume," "Rigaud," "Igora," or any other French term as a brand or tradename for its perfumes, unless stating in immediate conjunction therewith that such products were made or compounded in the United States, the court in Etablissements Rigaud v Federal Trade Com. (1942, CA2) 125 F2d 590, refused enforcement of another part of the order restraining the use of any French or other foreign terms or words to designate or describe or refer to perfumes made or compounded in the United States unless the English translation or equivalent thereof appeared as conspicuously and in immediate conjunction therewith, holding that no reason had been shown for proscribing the use of all French words when designating perfumes or for the "rather fantastic requirement" that the price of retention must be an accompanying English translation. The court noted that while the corporation was domestic some of its officers and five of its directors resided in Paris and to a considerable extent directed the business policy of the company.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Substantial evidence supported commission's findings that use on hat made from Philippine hemp braid imported from Japan of terms "Milan," "Genuine Milan," or "Genuine Imported Milan," tended to mislead consumer into believing he was obtaining hat made of wheat straw, and commission's order should be affirmed to extent it restricted use of such terms to hats manufactured out of wheat straw. However, in view of evidence that term "Milan" had acquired secondary meaning indicative of class of hats characterized by distinctive weave or braid which included hemp variety, case would be returned to commission to determine whether label on hemp hats bearing qualifications of term "Milan" would be likely to deceive or whether absolute proscription against use of any variation of term was required. Korber Hats, Inc. v. F.T.C., 311 F.2d 358 (1st Cir. 1962).

Labeling perfume as "Perfume Essence—Compounded in France" was improper where only essence was imported and combined with alcohol in this country. Harsam Distributors, Inc. v. F.T.C., 263 F.2d 396, 120 U.S.P.Q. 327 (2d Cir. 1959).

Order requiring distributor of re-refined oil to label it as such was proper notwithstanding showing that oil was equal in lubricating quality to virgin oil. Mohawk Refining Corporation v. F.T.C., 263 F.2d 818 (3d Cir. 1959).

Fact that re-refined oil was labeled "Reprocessed" as required by state law did not preclude commission from requiring more precise description. Royal Oil Corporation v. F.T.C., 262 F.2d 741 (4th Cir. 1959).

See Waltham Precision Instrument Co. v. F.T.C., 327 F.2d 427 (7th Cir. 1964), § 13[a].

See Guziak v. F. T. C., 361 F.2d 700 (8th Cir. 1966), § 18[a].

Order requiring distributor of re-refined oil to label it as such was proper notwithstanding showing that oil was equal in lubricating quality to virgin oil. Kerran v. F.T.C., 265 F.2d 246 (10th Cir. 1959).

Order requiring disclosure on packaging or display card of foreign origin of imported watchbands, upheld as being neither vague nor unrelated to charges of failure to disclose origin, in Brite Mfg. Co. v. F.T.C., 347 F.2d 477 (D.C. Cir. 1965).

See W. M. R. Watch Case Corp. v. F.T.C., 343 F.2d 302 (D.C. Cir. 1965), § 27.

[Top of Section]

[END OF SUPPLEMENT]

§ 24[a] Disparaging statements about competitors—Order upheld

[Cumulative Supplement]

Although the Federal Trade Commission Act makes no specific mention of disparaging remarks about competing products, the commission on occasion has held that such remarks may constitute an unfair method of competition, and its orders to refrain from such activities have been upheld.

Circulation by the defendant of catalogs containing advertisements representing that defendant's competitors did not deal justly, fairly, and honestly with their customers was held to warrant a cease and desist order by the Federal Trade Commission in Sears, R. & Co. v Federal Trade Com. (1919, CA7 Ill) 258 F 307, 6 ALR 358.

An order directing a chamber of commerce, which operated a grain exchange, to refrain from publishing or circulating among customers of a rival grain exchange, operating on a co-operative basis with patronage refunds, any false or misleading statements concerning the standing, business, or business methods of the co-operative exchange, was upheld in Chamber of Commerce of Minneapolis v Federal Trade Com. (1926, CA8) 13 F2d 673, the court rejecting a contention that such an order constituted an interference with the liberty of the press or that it would be enjoining a libel, and holding that such publication could be regarded as part of a conspiracy to restrain competition in interstate commerce.

An order requiring a distributor of stainless steel cooking utensils to refrain from representing that food prepared or kept in aluminum utensils is detrimental to the user thereof, representing that preparation of food in aluminum utensils causes the formation of poisons, and representing that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases, was upheld in Perma-Maid Co. v Federal Trade Com. (1941, CA6) 121 F2d 282, where it was shown that various sales agents of the manufacturer, upon their own initiative, had made false, misleading, and unfairly disparaging statements with regard to the use of aluminum in kitchen utensils, some of which are shown in the footnote below,[11] even though the company claimed to have forbidden such statements by its agents.

A similar result was reached in Steelco Stainless Steel, Inc. v Federal Trade Com. (1951, CA7) 187 F2d 693, where it was shown the through various pamphlets distributed to the petitioner's salesmen representations were made that consumption of food prepared or kept in aluminum utensils would cause cancer, stomach trouble, anemia, blood poisoning, and various other ailments detrimental to the health of the user, that the preparation of food in such utensils would cause formation of poisons, and that minerals and vitamins essential to health were lost by cooking therein, where it was found that such representations were false in that cooking in aluminum utensils did not have such effect, the court pointing out that while it might be true that there was nothing in such pamphlets or literature directly suggestive of disparagement of competitive products, use of such pamphlets indicated that the salesmen were authorized to sell petitioner's products on other than a truthful and honest basis. See, however, Scientific Mfg. Co. v Federal Trade Com. (1941, CA3) 124 F2d 640, infra, § 25.

A finding that certain statements by a manufacturer in its advertising were false and warranted a cease and desist order was upheld in Moretrench Corp. v Federal Trade Com. (1942, CA2) 127 F2d 792, where the manufacturer, in advertising a wellpoint, used to drain wet places preparatory to building or engineering operations, put out an advertising pamphlet in which it compared

its product with that of its competitors. A table in the pamphlet, purporting to show the unobstructed water-passing screen area of various wellpoints, in which the petitioner's product was credited with 350 inches, and the nearest competitors' with 85 and 40 inches, was found untrue and ordered discontinued on the ground that an improper measurement had been used with regard to the area of the competitors' products. Since it was conceded that a special valve used on the petitioner's product tended to prevent "backwash," the commission agreed that the petitioner should be allowed to proclaim the advantages of its own construction, but since there was a difference of opinion in the trade as to the value of preventing backwash, it was held that the petitioner should be barred from "disparaging" its competitors' wellpoints because they did not prevent backwash.

See also P. Lorillard Co. v Federal Trade Com. (1950, CA4) 186 F2d 52, infra, § 26.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Where television commercial showed that "ordinary" aerated shaving creams dried out while petitioner's "Rise" stayed moist and creamy and guarded against "razor scratch," but "ordinary lather" shown was not lather at all but mockup made from water and foaming agent which did not contain ingredients used to keep shaving creams from breaking down, and several competing products did not in fact dry out any more than "Rise" dried out and others did not dry out in 1 minute as did mockup in commercial, demonstration was false and misleading and deceived viewer by ascribing false attributes to lathers in competition with "Rise," and commission would be upheld on merits in ordering petitioner to cease and desist from such advertising. But order open to interpretation that actual products must be used in advertisements, and drawn at time when commission was unyielding in its hostility to use of mockups, should be redrawn, since props and mockups may be used in demonstrations which compensate fairly for technical limitations of television and communicate fairly to viewer actual qualities and characteristics of objects which are simulated. Carter Products, Inc. v. F.T.C., 323 F.2d 523 (5th Cir. 1963).

See Libbey-Owens-Ford Glass Co. v. F. T. C., 352 F.2d 415 (6th Cir. 1965), § 27.

See Holland Furnace Co. v. F. T. C., 295 F.2d 302 (7th Cir. 1961), § 27.

[Top of Section]

[END OF SUPPLEMENT]

§ 24[b] Disparaging statements about competitors—Order denied

Where disparaging statements about a competitor's goods are shown to be true, or the product disparaged is shown to be unworthy of protection, commission orders to refrain from such methods have been refused enforcement.

Enforcement has been refused of a Federal Trade Commission order requiring a manufacturer of an antiseptic solution to refrain from publishing or circulating allegedly false or deceptive statements about a competing product, which statements were based on chemical analyses made of the product by the defendant, where it appeared from evidence presented that the competing product in question was misbranded and that the public was by its label requested to use it for purposes for which it was medically unfit. John Bene & Sons, Inc. v Federal Trade Com. (1924, CA2) 299 F 468, where it was held that the public had no interest in the protection of such an article and, therefore, the proceeding by the commission was unauthorized, since it was not "to the interest of the public."

Evidence that employees of a manufacturer of a patented article had called on a competitor, posing as customers, and obtained certain information which was freely given to any customer, and that salesmen for the manufacturer had occasionally made disparaging remarks about the competitor's product, was held insufficient to justify a commission order to restrain from espionage and from circulating or publishing false or misleading statements with regard to the competitor in Philip Carey Mfg. Co. v Federal Trade Com. (1928, CA6) 29 F2d 49, where it appeared that the manufacturer in obtaining information from the competitor was checking to determine whether there was any infringement upon its patents, and the disparaging remarks by the approximately 600 salesmen occurred no more than 12 times over a period of years, and some of the alleged disparaging remarks were shown to have been true.

An order barring the distributor of an automobile muffler from representing that the use of a muffler having seams which were spot-welded, locked, or crimped resulted in greater danger of carbon monoxide gas poisoning than the use of a muffler having continuous electric-welded seams, which was based on an advertisement which read, "to protect yourself against leaking carbon monoxide gas, be sure your muffler is made with continuous electric-welded seams throughout, not locked, crimped or spot-welded," was vacated in International Parts Corp. v Federal Trade Com. (1943, CA7) 133 F2d 883, where the only evidence in the record indicated that the electricwelded seams were less likely to leak than any other.

§ 25. Expressions of opinion

It has generally been held that expressions of opinion, as distinguished from statements of fact, may not be made the basis for a cease and desist order of the Federal Trade Commission.

A Federal Trade Commission order requiring a breeder of hogs to refrain from advertising that Ohio Improved Chesters or Famous O. I. C.'s, were a breed of hogs separate and distinct from the Chester White breed, was held invalid in L. B. Silver Co. v Federal Trade Com. (1923, CA6 Ohio) 289 F 985, motion den 292 F 752, where the evidence indicated a conflict among experts of equal standing as to whether the hogs in question constituted a new breed, and indicated in any event that they constituted a new "strain," the court concluding that under the circumstances the assertion of an honest opinion upon this subject, either by way of advertisement or otherwise, by any one breeder did not constitute an unfair method of competition, particularly where the facts upon which such opinion was based were generally known to that part of the public concerned in the controversy.

In Scientific Mfg. Co. v Federal Trade Com. (1941, CA3) 124 F2d 640, the commission was held to lack power to restrain publication and distribution of pamphlets which contained disparaging and false statements with regard to the effect of aluminum metal upon food, where the statements made represented the honest belief of the publisher of such pamphlets, even though the pamphlets were distributed to competitors of those in the aluminum utensil business, the court holding that the commission's intervention was limited to acts or practices in the trade affected by the statements, and that in any case serious questions with regard to abridgment of the rights to freedom of speech and of press would exist if the Federal Trade Commission Act should be interpreted as giving the commission the right to suppress publications of this sort. The court pointed out that, even though the amendment of 1938 gave the commission the right to act in the public interest without regard to competition, its action must be limited to acts or practices in a particular trade, since if the amendment were given any broader scope the act would relate to far more than trade practices, and the commission would become the absolute arbiter of the truth of all printed matter moving in interstate commerce, even where scholars in the particular field of knowledge were in wide disagreement, since the findings of the commission as to facts, if supported by testimony, are conclusive.[12]

Although finding that there was sufficient other evidence to warrant upholding an order of the Federal Trade Commission restraining certain advertising by the petitioner, the court in Koch v Federal Trade Com. (1953, CA6) 206 F2d 311, stated that no action against the petitioner could be based on a book written by him and included among the exhibits, entitled "The Chemistry of Immunity," which explained his theories and contained a number of case histories, since the book set forth primarily matters of opinion, pointing out that if the statute were construed so as to prohibit dissemination of such a book it would violate the First Amendment to the Constitution of the United States. The court held, therefore, that such a book could not be regarded as an advertisement covered by the Federal Trade Commission Act, and made a similar conclusion with reference to an address

by the petitioner before the College of Physicians and Surgeons of Quebec, stating that if the record had contained only these two exhibits the commission would not have jurisdiction in the proceeding.

But an order restraining such expressions will be upheld if it appears that the statements objected to are presented as presently existing facts rather than as opinions.

In upholding an order of the commission restraining an electronics school from representing directly or by implication that there were possibilities or opportunities for employment of students or graduates of the school's course in the television field until substantial numbers of such students or graduates had been, or could be, employed directly in such field, and from representing that there were now, or in the near future would be, opportunities for the employment of students or graduates of the course in the television field until the commercial development of television was sufficiently advanced to assure immediate availability of such opportunities, which order was based on the school's advertising, excerpts from which are shown below,[13] the court in De Forest's Training, Inc. v Federal Trade Com. (1943, CA7) 134 F2d 819, rejected a contention that the representations in the advertising were matters of opinion, not intended as statements of existing facts, but as a prophecy of things to come, and, therefore should not be condemned if made in good faith, and held that the question involved was rather one of fact, as evident from the statements that the beginning of a new American industry "is already with us," television "is developing rapidly," the success of the young man depends on whether he makes himself ready for television "now," and that men who want steady, big-paying jobs "are needed" in the fast-growing television industry.

§ 26. Improper use of truth

[Cumulative Supplement]

Advertisements, even though technically true, have been held misleading and subject to restraint if they have a tendency to mislead the casual reader.

A finding by the Federal Trade Commission that advertising of a liquid preparation as being effective "for quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes, etc.," constituted a representation that the product was a remedy for the diseases or ailments thus named was upheld by the court in D. D. D. Corp. v Federal Trade Com. (1942, CA7) 125 F2d 679. Although finding some merit in the petitioner's contention that the quoted statement, and similar statements in other advertising, if carefully analyzed, could be regarded as referring only to itching without an implication that the product was a remedy or relief for such diseases, the court said: "The weakness of this position, however, lies in the fact that such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. we agree with the Commission that this statement is deceptive and calculated to be deceiving to a substantial portion of the public."

An order directing a cigarette manufacturer to cease and desist from advertising that "Old Gold cigarettes or the smoke therefrom contains less nicotine, or less tars and resins, or is less irritating to the throat than the cigarettes or the smoke therefrom of any of the six other leading brands of cigarettes;…" was upheld in P. Lorillard Co. v Federal Trade Com. (1950, CA4) 186 F2d 52, where laboratory tests introduced in evidence showed that the difference in content of nicotine, tars, and resins of various brands of cigarettes was insignificant and could result in no difference in the physiological effect upon the smoker, and varied even within different brands. The company contended that its advertising merely reflected what had been truthfully stated in an article in the Reader's Digest, but the court pointed out that an examination of the advertisements showed a perversion of the meaning of the Reader's Digest article "which does little credit to the company's advertising department," and resulted in the use of the truth in such a way as to cause the reader to believe the exact opposite of what was intended by the writer of the article. The article pointed out that the differences between cigarette brands were, practically speaking, small so that no single brand was superior to its competitors sufficiently to justify its selection on the ground that it might be less harmful, and a table listing various brands was printed for the express purpose of showing the insignificance of the difference in the nicotine and tar content of the smoke from various brands of cigarettes, which table showed that the Old Gold cigarettes examined

contained less nicotine, tars, and resins than the others examined, although the difference was so small as to be entirely without meaning so far as effect upon the smoker was concerned. On the basis of this difference the company proceeded to advertise extensively in newspapers and over the radio that the Reader's Digest had had experiments conducted and had found that Old Gold cigarettes were lowest in nicotine and lowest in irritating tars and resins, just as though a substantial difference in such content had been found. A typical advertisement is shown below.[14] Pointing out that, in determining whether or not advertising is false or misleading within the meaning of the statute, regard must be had to the effect which it might reasonably be expected to have upon the general public, the court added: "The fault with this advertising was not that it did not print all that the Reader's Digest article said, but that it printed a small part thereof in such a way as to create an entirely false and misleading impression, not only as to what was said in the article, but also as to the quality of the company's cigarettes. Almost anyone reading the advertisements or listening to the radio broadcasts would have gained the very definite impression that Old Gold cigarettes were less irritating to the throat and less harmful than other leading brands of cigarettes because they contained substantially less nicotine, tars and resins, and that the Reader's Digest had established this fact in impartial laboratory tests; and few would have troubled to look up the Reader's Digest to see what it really had said. The truth was exactly the opposite. There was no substantial difference in Old Gold cigarettes and the other leading brands with respect to their content of nicotine, tars and resins and this was what the Reader's Digest article plainly said.…To tell less than the whole truth is a well known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished."

A deceptive practice, warranting a restraining order by the Federal Trade Commission, was found to exist in Independent Directory Corp. v Federal Trade Com. (1951, CA2) 188 F2d 468, where the petitioner, in soliciting advertising by mail for directories published by it, sent prospective customers one of the petitioner's order blanks to which was pasted one of the prospect's advertisements clipped from some directory or other publication with which the petitioner had no connection, the printed matter on the order blank including statements that the submitted advertisement was from another publication, that the solicitor was an independent directory publication, and that it had nothing to do with any telephone company, many of the clipped advertisements having been taken from the "yellow pages" in local telephone directories. The court rejected a contention that the plan was not deceptive, since no one who read the order blank would be misled, holding that it was reasonably to be expected that a busy businessman might glance at any previously published advertisement of his business and take it for granted that the publisher of it had submitted a proof for a renewal, and noted that such a misconception might be more probable in the case of a careless businessman, who was also entitled to protection from deception.

The court in Rhodes Pharmacal Co. v Federal Trade Com. (1953, CA7) 208 F2d 382, mod on other grounds 348 US 940, 99 L ed 736, 75 S Ct 361, where extravagant advertising claims of beneficial results from the use of Imdrin were made, rejected a contention that since the petitioner never used the word "cure" in their advertisements[15] their product was offered to the public only as a relief from pain, noting that while it was apparent that the petitioner made an effort to avoid use of the word "cure," other advertising often included descriptions of situations which to potential users might well imply a cure, such as: "Imdrin… brings marvelous freedom from pain," and "For them (users of Imdrin) the aching joints and muscles are a thing of the past," which would lead such persons to believe or hope that Imdrin would effect a cure of their previously existing condition. The court added: "Again petitioners asserted in their ads, 'Amazing New Discovery for Rheumatism, Arthritis.' They did not confine themselves to asserting that Imdrin was for relief of pains or aches from rheumatism or arthritis. In several instances the courts have held that a representation that a preparation is to be used 'for' a disease is equivalent to labeling it a cure or remedy for such disease."

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Lingerie manufacturer's promotional literature and sales manuals, designed to recruit distributors of its products, were deceptive where the falsely represented that ascension up the marketing ladder was rapid, that all had the potential of making large profits and that supply of available participants was inexhaustable. Ger-Ro-Mar, Inc. v. F. T. C., 518 F.2d 33, 1975-1 Trade Cas. (CCH) ¶ 60368 (2d Cir. 1975).

See Bakers Franchise Corp. v. F. T. C., 302 F.2d 258 (3d Cir. 1962), § 13[a].

See Bankers Securities Corp. v. F. T. C., 297 F.2d 403 (3d Cir. 1961) (misleading use of words "regular" and "usual" in advertisements comparing prices), § 18[a].

See F.T.C. v. National Com'n on Egg Nutrition, 517 F.2d 485, 1975-1 Trade Cas. (CCH) ¶ 60320 (7th Cir. 1975), § 10.

Advertising that moving parts of watches were guaranteed for life without clearly disclosing that service charge for repairs and adjustments was made constituted unfair and deceptive trade practice. Clinton Watch Company v. F.T.C., 291 F.2d 838 (7th Cir. 1961).

Cigarette advertising claim that brand delivered "one mg. tar", although literally true, was inherently deceptive, in that consumers relied on tar ratings to make comparative assessments of health effects of cigarettes, brand delivered disproportionately more tar than other similarly rated cigarettes, and disclaimers explaining difference would prove ineffective. F.T.C. v. Brown & Williamson Tobacco Corp., 778 F.2d 35, 1985-2 Trade Cas. (CCH) ¶ 66883 (D.C. Cir. 1985).

See F.T.C. v. Pharmtech Research, Inc., 576 F. Supp. 294, 1983-2 Trade Cas. (CCH) ¶ 65738 (D.D.C. 1983), § 20[a].

[Top of Section]

[END OF SUPPLEMENT]

§ 27. Miscellaneous

[Cumulative Supplement]

A correspondence school, offering courses of study for civil service examinations, was properly restrained from designating any course offered by any term other than by such a term as might correspond to some classification used by the United States Civil Service Commission, and from using any advertising which represented or implied that government jobs were offered or were to be had or that the advertisement was that of the United States government or a representative thereof, or from representing that the school could assist its students in getting government positions other than by assisting them in preparing for examinations. Federal Trade Com. v Civil Service Training Bureau, Inc. (1935, CA6) 79 F2d 113.

In Gimbel Bros., Inc. v Federal Trade Com. (1941, CA2) 116 F2d 578, it was held unnecessary to decide whether a single instance of false advertising could be a "method" of unfair competition, the court holding that an advertisement, published twice, on different dates, soliciting numerous readers to make individual purchases of small portions of more than 7,000 yards of goods offered for sale, could not be considered as a single act.

It has been indicated, however, that a single act may be a violation of the statute. Fox Film Corp. v Federal Trade Com. (1924, CA2 NY) 296 F 353; Philip Carey Mfg. Co. v Federal Trade Com. (1928, CA6) 29 F2d 49.

The following additional authority is relevant to the issues discussed in this section:

CUMULATIVE SUPPLEMENT

Cases:

Undisclosed use of plexiglass to which sand had been applied, in television shaving-cream commercial in which sand was shaved off while viewers were told that such plexiglass was sandpaper, was material deceptive practice. Commission's order forbidding test, experiment, or demonstration which was represented as actual proof of claim for product, but which was not in fact genuine test, experiment, or demonstration being conducted as represented because of undisclosed substitution of mockup or prop instead of product or substance represented to be used therein, was not invalid as incapable of practical interpretation, especially in view of Commission's rules obliging it to give definitive advice as to whether proposed action would constitute compliance with order. Such order, for example, would not prohibit use of mashed potatoes as substitute for ice cream where mockup or prop was not used to give viewer object proof of claims made, but would forbid commercial in which undisclosed potato prop was substituted for ice cream and viewer was invited to see for himself truth of claims about ice cream's rich texture and full color, and perhaps to compare it to rival product. F.T.C. v. Colgate-Palmolive Co., 380 U.S. 374, 85 S. Ct. 1035, 13 L. Ed. 2d 904 (1965) (wherein Commission's order was set aside as ambiguous).

Earlier appeal in (CA1) Colgate-Palmolive Co. v. F.T.C., 310 F.2d 89 (1st Cir. 1962), sustained Commission's conclusion that qualities of shaving cream were misrepresented but set aside Commission's order as too broad and directed that new order be prepared. See also Carter Products, Inc. v. F.T.C., 323 F.2d 523 (5th Cir. 1963), § 24[a].

Cease and desist order entered against manufacturer of battery additive would be sustained to extent that it prevented misleading claims concerning potential earnings of distributors of additive and misleading claims as to performance of product; but redrafting would be required of order preventing representation as to amount of money potential distributors could earn where language of order was unclear. National Dynamics Corp. v. F.T.C., 492 F.2d 1333, 1974-1 Trade Cas. (CCH) ¶ 74947 (2d Cir. 1974).

Record supported conclusion that manufacturer of ladies' cashmere coats, by altering and distributing report of tests made at its request by national testing company, had misrepresented quality of its cashmere by making representations about it which were not supported by test results. However, paragraph of Federal Trade Commission's order directing manufacturer to refrain from misrepresenting "in any manner" quality of its fabrics was too broad and sweeping and would be eliminated, where manufacturer had voluntarily ceased advertising practice which prompted order before Commission filed its complaint. Country Tweeds, Inc. v. F. T. C., 326 F.2d 144 (2d Cir. 1964) (enforcing order as modified).

See Exposition Press, Inc. v. F. T. C., 295 F.2d 869 (2d Cir. 1961), enjoining deceptive use of term "royalties" in advertisements of vanity publisher which did not disclose that author must pay costs of publication, § 5[a].

In action by United States against magazine publisher for multiple violations of Federal Trade Commission consent order which required publisher to cease and desist from using or distributing simulated checks, currency, new car certificates, or using or distributing any confusingly simulated item of value, government was properly not required to prove that challenged material actually deceived or confused consumers. U. S. v. Reader's Digest Ass'n, Inc., 662 F.2d 955, 7 Media L. Rep. (BNA) 1921, 1981-2 Trade Cas. (CCH) ¶ 64247, 32 Fed. R. Serv. 2d 694 (3d Cir. 1981).

Defendant's use of items labeled "TRAVEL CHECK" and "CASH-CONVERTIBLE BOND" in 12-page sweepstakes pamphlet used as promotional device for selling and distribution of magazines, books and other products was prohibited by prior consent order in which defendant agreed to refrain from using or distributing simulated checks or currency since they had many of same characteristics as original advertising items on which order was based, including scroll-like border, official-looking background and notation that they were non-negotiable, all of which were intended to make items look like financial instruments. U. S. v. Reader's Digest Ass'n, Inc., 464 F. Supp. 1037, 1979-1 Trade Cas. (CCH) ¶ 62685 (D. Del. 1978).

Evidence supported Federal Trade Commission (FTC) conclusions that marketer of electronic muscle stimulation abdominal belt deliberately made false and misleading claims about weight loss and exercise, the violations were serious, marketer's conduct was transferable to other products, and a fencing-in provision to prevent violations with respect to all claims and all products was reasonably related to the violation, whether or not the FTC could consider prior violations; marketer's campaign resulted in the sale of approximately 747,000 units with gross sales, including accessories, exceeding $19 million, marketer used a compare and save strategy knowing that infomercials for competing products claimed loss of weight, development of well-defined abdominal muscles, and an effective alternative to regular exercise, and marketer stipulated that its product could not provide those benefits. Federal Trade Commission Act, §§ 5(a)(1), 12(b), 15 U.S.C.A. §§ 45(a)(1), 52(b). Telebrands Corp. v. F.T.C., 457 F.3d 354, 2006-2 Trade Cas. (CCH) ¶ 75371 (4th Cir. 2006).

"Bait and switch" tactics used by defendant in selling swimming pools justified cease and desist order plus fines for flouting the order. U.S. v. Bostic, 336 F. Supp. 1312, 1972 Trade Cas. (CCH) ¶ 73799 (D.S.C. 1971), judgment aff'd, 473 F.2d 1388, 1972 Trade Cas. (CCH) ¶ 74189 (4th Cir. 1972), judgment summarily aff'd, 473 F.2d 1388 (4th Cir. 1972).

Two individuals conducting mortgage loan business were found to have engaged in deceptive advertising where advertisements contained specified loan repayment schedules, representing that loan applicant could arrange loan on repayment schedules advertised, but where favorable terms that were advertised were available only to borrowers who qualified for such loans, and few applicants qualified, loans were rarely made at advertised repayment schedules, and most repayment schedules were substantially higher than those advertised. Cotherman v. F.T.C., 417 F.2d 587 (5th Cir. 1969).

Commission's finding that Geritol advertisements created false and misleading impression on public by taking common or universal symptoms and representing these symptoms as generally reliable indications of iron deficiency or iron deficiency anemia, held supported by substantial evidence. J. B. Williams Co. v. F. T. C., 381 F.2d 884 (6th Cir. 1967).

Evidence supported Commission's findings that television commercials of glass manufacturer-supplier and General Motors Corporation contained false representations that plate glass in side and rear windows of GM cars was of same grade and quality as glass used in windshields and that sheet glass used in side and rear windows of non-GM cars was of same grade and quality as sheet glass used in home windows, and that commercials in both cases contained false demonstrations achieved through use of undisclosed "mockups" or "props" in that, among other things, commercials exaggerated distortion in sheet glass by using various techniques including applying streaks of vaseline to glass being photographed, while commercial purporting to show superiority of plate glass used in GM cars was in fact taken through open window instead of through plate glass window as viewer was led to believe. Cease and desist orders against both companies would be affirmed, except that certain language in order against GM was too vague and indefinite to warrant enforcement and would be stricken from order. Libbey-Owens-Ford Glass Co. v. F. T. C., 352 F.2d 415 (6th Cir. 1965).

Trial court properly granted preliminary injunction in favor of Federal Trade Commission, enjoining travel agency from using promotion of $29 airfare certificate to Hawaii, requiring that consumers book hotel accommodations through agency, in which actual airfare was hidden by calculating it into price of hotel accommodations, on ground that Federal Trade Commission was likely to succeed on merits of claim, where it was quite reasonable for consumers to believe that either their airfare was free or that it cost only $29, and one of agency's own witnesses testified that she believed that she had gotten airfare for $29 so there was evidence that some customers misunderstood thrust of promotion, where language in agency's airfare certificate stating that prices did not reflect actual hotel rates only amounted to ambiguity in price of hotel accommodations, not in travel packages, and it was obvious that numerous consumers purchased agency's packages thinking that they were paying merely $29 for airfare or that airfare was free, and where agency had taken number of steps to enhance credibility of its advertisements, and advertisements and promotional materials were written so as to overcome any reservations consumers might have. F.T.C. v. World Travel Vacation Brokers, Inc., 861 F.2d 1020, 1988-2 Trade Cas. (CCH) ¶ 68333, 12 Fed. R. Serv. 3d 1034 (7th Cir. 1988).

Deceptive advertising found where company's advertisements guaranteed merchandise without condition or limitation, but actual guaranties for merchandise were subject to limitations and conditions not revealed in advertising. Montgomery Ward & Co. v. F.T.C., 379 F.2d 666 (7th Cir. 1967).

Evidence supported findings that furnace manufacturer had represented that its salesmen or house-to-house canvassers were representatives of government agencies, gas or utility companies, or were heating engineers; misrepresented condition of competitors' furnaces, or claimed that competitors were out of business, or parts unobtainable; dismantled furnaces without permission of owners, misrepresented condition of dismantled furnaces, refused to reassemble furnaces upon request, and required owners to sign releases as condition precedent to reassembling dismantled furnaces. Hence cease and desist order requiring that future representations have basis in fact was properly issued. Holland Furnace Co. v. F. T. C., 295 F.2d 302 (7th Cir. 1961).

Where illustration in advertisement accurately showed style of actual garments offered for sale but in fact pictured a letout mink jacket, admittedly a higher-quality fur garment than the split-skin mink jackets which were advertised, and only a fur expert could detect the difference from studying the illustration, such advertising constituted ground for issuance of a cease-and-desist order, prospective in effect, to protect the public. Fair v. Federal Trade Commission, 272 F.2d 609 (7th Cir. 1959).

As to failure to disclose or to adequately disclose that there was a $1 service charge for postage and handling upon watches sent in to manufacturer for repair even though defect was covered by guaranty, see Benrus Watch Co. v. F. T. C., 352 F.2d 313 (8th Cir. 1965), § 18[a].

Company soliciting, through salesmen, subscriptions to certain magazines, usually by agreement with publishers, enjoined from (1) accepting subscriptions for publications they had no authority to solicit, (2) requiring subscribers to unauthorized magazines to select substitute from list of authorized magazines, (3) making substitutions without consent of subscribers, and (4) representing that authorized publications were either same in content or similar to unauthorized when in fact publications were different in content, form, coverage, or other material respects. National Trade Publications Service, Inc. v. F. T. C., 300 F.2d 790 (8th Cir. 1962).

In action against land sales companies which had engaged in large-scale advertising and promotional campaign to sell rural land in Texas, Federal Trade Commission properly applied new standard for determining whether companies' actions were deceptive, under which Commission would find deception if there was a representation, omission, or practice that was likely to mislead consumer acting reasonably in the circumstances, to the consumer's detriment; sufficient evidence supported commission's finding that companies had violated Federal Trade Commission Act by making oral representations that land was a risk-free investment, by inaccurately representing land as being suitable for residential use, and by failing to disclose material facts relating to value of land. Southwest Sunsites, Inc. v. F.T.C., 785 F.2d 1431, 1986-1 Trade Cas. (CCH) ¶ 67021 (9th Cir. 1986).

Substantial evidence supported Federal Trade Commission's order that (1) required encyclopedia publishing company to disclose, in its recruitment advertising for door-to-door salespeople, nature of job offered and basis for compensation, (2) prohibited company from distributing any promotional materials or advertisements that solicited response from prospective customers unless materials clearly stated that person responding may be contacted by encyclopedia sales representative, (3) required each salesperson to present to everyone he visited at home 3 X 5 card stating that purpose of visit was to sell encyclopedias, and (4) prohibited company from using inflated "retail" prices for individual items as basis for comparing "combination" prices and from offering "free" merchandise which in fact was not free by imposing certain requirements on way prices could be presented where evidence indicated that company (1) used many deceptive recruiting techniques such as "blind" advertisements, ads misrepresenting employment positions as nonselling, and ads listing "management trainee" positions that did not exist, (2) employed fraudulent reference to develop sales leads including false surveys, promotions, and contests whose only purpose were to ensnare potential customers and (3) instructed its door-to-door salespeople to use deception in gaining entrance into homes, to misrepresent prices, and to produce false and misleading endorsement letters. Grolier Inc. v. F.T.C., 699 F.2d 983, 1982-83 Trade Cas. (CCH) ¶ 65213 (9th Cir. 1983).

Federal Trade Commission properly prohibited microwave manufacturer from advertising results of survey unless respondents were "census or representative sample of population referred to in advertisement" where advertiser's survey population was neither census nor representative sample and where survey of "independent microwave oven service technicians" only included service agencies authorized to do manufacturer's warranty work. Litton Industries, Inc. v. F.T.C., 676 F.2d 364, 1982-2 Trade Cas. (CCH) ¶ 64751 (9th Cir. 1982).

Evidence supported commission's findings that communications from stamp dealer to prospective customers were false and misleading where dealer, doing business almost exclusively by mail, sent unsolicited books of stamps to prospective customers with invoices requesting payment therefor and followed up such shipments by sending out inquiries and notices that misrepresented and had capacity to misrepresent that money was due, that some agreement obligated prospect to pay for or return stamps, and that if one or the other was not done, matter would be referred to attorneys. Portwood v. F. T. C., 418 F.2d 419 (10th Cir. 1969).

Evidence supported commission's conclusion that advertisement claiming that tests had shown manufacturer's cars to get better gas mileage than other type of car were deceptive where mileage superiority existed only with respect to manufacturer's six cylinder engine and not its eight cylinder engine and, though ad referred to manufacturer's "small cars", consumers might have thought small cars included compacts equipped with eight cylinder engines. Chrysler Corp. v. F.T.C., 561 F.2d 357, 1977-1 Trade Cas. (CCH) ¶ 61510 (D.C. Cir. 1977).

Cease and desist order based on Commission's findings that watchcase importers had failed to disclose true metallic content of certain parts made of base metal which had been treated to simulate precious metals or stainless steel, failed to disclose foreign origin of parts, and misrepresented that watches were "water-resistant," would not be denied enforcement merely because conduct in question had been voluntarily abandoned well before Commission filed complaint. Appraisal of danger that deception may recur if not forbidden is initially for Commission, and if that danger is sufficient there is no bar to enforcement merely because questioned conduct has ceased at least temporarily under weight of Commission's hand. W. M. R. Watch Case Corp. v. F.T.C., 343 F.2d 302 (D.C. Cir. 1965).

Where suit against petitioner marketing multivitamin and mineral food supplement known as "Nutrilite" for misbranding product and using misleading sales literature had been settled by consent decree which prohibited representations that Nutrilite cured some 54 diseases and conditions and set forth certain allowable claims which might be made and stated that future promotional literature could be submitted to Food and Drug Administration for inspection and comment, Federal Trade Commission order which prohibited representing that decree was anything other than injunction prohibiting and limiting advertising practices would be enforced, where ample evidence supported findings that petitioners had been misrepresenting that decree was indorsement of Nutrilite by government, court, and FDA; that allowable claims set forth in decree referred only to Nutrilite and to no other vitamin-mineral supplement; and that no other seller of such products had right to submit promotional literature to FDA for inspection and comment. Mytinger & Casselberry, Inc. v. F.T.C., 301 F.2d 534 (D.C. Cir. 1962).

Abnormal use or misuse of product, which constitutes defense to manufacturer's products liability, is to be distinguished from use for proper purpose but in careless manner, which is properly described as contributory negligence and is not defense in products liability cases. Treadway v. Uniroyal Tire Co., 1988 OK 37, 766 P.2d 938, Prod. Liab. Rep. (CCH) ¶ 11753 (Okla. 1988).

[Top of Section]

[END OF SUPPLEMENT]

RESEARCH REFERENCES

A.L.R. Library

- Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commissions, Discounts, or the Like, 83 A.L.R.6th 419
- Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer—Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute, 67 A.L.R.6th 209
- Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer—Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies, 66 A.L.R.6th 351
- Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts—Pyramid or Ponzi or Referral Sales Schemes, 48 A.L.R.6th 511
- Defamation of Manufacturer, Regarding Product, Other than Through Statement Charging Breach or Nonperformance of Contract, 104 A.L.R.5th 523
- Products Liability: Statements in Advertisements as Affecting Liability of Manufacturers or Sellers for Injury Caused by Product Other than Tobacco, 93 A.L.R.5th 103
- State Regulation of Telephone "Slamming", 92 A.L.R.5th 1
- Who is a "consumer" entitled to protection of state deceptive trade practice and consumer protection acts, 63 A.L.R.5th 1
- Products liability: cigarettes and other tobacco products, 36 A.L.R.5th 541
- Coverage of leases under state consumer protection statutes, 89 A.L.R.4th 854
- Coverage of insurance transactions under state consumer protection statutes, 77 A.L.R.4th 991
- Actionable nature of advertising impugning quality or worth of merchandise or products, 42 A.L.R.4th 318
- Bank's liability to real-property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan, 37 A.L.R.4th 773
- When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts, 18 A.L.R.4th 1340
- Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice, 7 A.L.R.4th 1257
- Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods, 7 A.L.R.4th 792
- Reward for disproving commercial claim, 96 A.L.R.3d 907
- Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury, 94 A.L.R.3d 1080
- Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug, 94 A.L.R.3d 748
- Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts, 90 A.L.R.3d 1350
- Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449
- Scope and exemptions of state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 399
- Unfair competition by imitation in sign or design of business place, 86 A.L.R.3d 884

Jurisdiction of Federal District Court to entertain attacks on Federal Trade Commission's actions, 16 A.L.R. Fed. 361

Trial Strategy

Cigarette Manufacturer's Liability for Mesothelioma Caused by Asbestos Fibers in Cigarette Filters, 39 Am. Jur. Proof of Facts 3d 181

Forms

8 Am. Jur. Legal Forms 2d, Food § 120:52
17 Am. Jur. Legal Forms 2d, Trademarks and Tradenames § 247:43
17 Am. Jur. Legal Forms 2d, Trademarks and Tradenames § 247:64

Law Reviews and Other Periodicals

Comment, Illusion or Deception: The Use of "Props" and "Mock-ups" in Television Advertising. 72 Yale LJ 145 (1962)

Footnotes

1 15 USC §§ 41 et seq.

2 15 USC § 45(a)(6).

The phrase, "unfair or deceptive acts or practices in commerce," was added in 1938 by the Wheeler-Lea Act. 52 Stat 111, ch 49.

3 15 USC § 45. Unfair methods of competition unlawful; prevention by Commission—(a) Declaration of unlawfulness; power to prohibit unfair practices.

(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.…

(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons, partnerships, or corporations subject to the Packers

and Stockyards Act, 1921, except as provided in section 227 (b) of Title 7, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Proceeding by Commission; modifying and setting aside orders.

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint.

4 See §§ 6- 12, infra.

In addition to the specific authorization over advertising of foods, drugs, devices, cosmetics, and fur products, the misbranding of wool products is specifically made an unfair method of competition under the Federal Trade Commission Act. See 15 USC § 68a.

5 7 USC §§ 191 et seq.

6 7 USC § 227.

7 7 USC §§ 192, 193.

8 21 USC § 75.

9 27 USC § 205(f).

10 15 USC §§ 1012(b).

11 The Supreme Court in this case affirmed similar decisions in American Hospital & Life Ins. Co. v Federal Trade Com. (1957, CA5) 243 F2d 719, and National Casualty Co. v Federal Trade Com. (1957, CA6) 245 F2d 883.

12 21 USC §§ 301 et seq.

13 See §§ 13- 14, infra.

14 Validity and construction of statute creating Federal Trade Commission, 6 A.L.R. 366, supplemented 11 A.L.R. 797, 18 A.L.R. 549, 30 A.L.R. 1129, 32 A.L.R. 792, 51 A.L.R. 331, 68 A.L.R. 847, and 79 A.L.R. 1200. Cases stated in these annotations which are also within the scope of the present discussion have been repeated herein.

Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale, 57 A.L.R. 686.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 A.L.R. 1004.

Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself, 143 A.L.R. 1453.

Decision or ruling by Federal Trade Commission as res judicata, 152 A.L.R. 1198.

Trade practice which involves element of chance as regards return to purchaser or consumer as unfair competition, 78 L ed 820.

Order of Federal Trade Commission as res judicata—federal cases, 97 L ed 436.

15 See § 4, infra.

16 See § 5, infra.

17 See 15 USC §§ 52 et seq.

See §§ 6- 10, infra.

18 See § 8, infra.

19 See § 9, infra.

20 See § 10, infra.

21 See 15 USC § 69a.

See § 11, infra.

22 See § 12, infra.

1 See §§ 13- 27, infra.

2 See § 4, infra.

3 15 USC § 45.

4 See also Federal Trade Com. v Raladam Co. (1931) 283 US 643, 75 L ed 1324, 51 S Ct 587, 79 ALR 1191, motion den (US) 76 L ed 1300, 52 S Ct 14, an earlier case denying enforcement because of the failure to present evidence of competition, infra, § 4[b].

5 See also Federal Trade Com. v Raladam Co. (1942) 316 US 149, 86 L ed 1336, 62 S Ct 966, supra, § 4[a], where enforcement was granted upon sufficient evidence as to competition being presented.

6 See the same case in § 5[b], infra.

7 15 USC § 52. Dissemination of false advertisements—(a) Unlawfulness.

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

(b) Unfair or deceptive act or practice.

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 45 of this title.

15 USC § 55. Additional definitions.

For the purposes of sections 52–54 of this title —

(a) False advertisement.

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

8 See §§ 7- 10, infra.

9 21 USC §§ 301 et seq.

10 15 USC § 55(a).

See footnote 7 in § 6, supra.

11 15 USC §§ 52–54.

12 21 USC §§ 301 et seq.

13 21 USC §§ 301 et seq., formerly 21 USC § 10.

14 21 USC §§ 301 et seq.

15 15 USC § 55(a).

See footnote 7 in § 6, supra.

16 15 USC §§ 52, 55.

17 15 USC § 55(a).

18 15 USC § 55(a).

See footnote 7 in § 6, supra.

19 15 USC § 55(a).

4 15 USC §§ 69–69j.

5 The order restrained the petitioner from representing directly or by implication: "(a) That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business; (b) That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold; (c) That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact; (d) That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means."

6 15 USC § 69c. False advertising and invoicing

(a) For the purposes of section 69–69j of this title, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e (c) of this title;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

7 15 USC § 69c(a)(5).

8 15 USC § 55(a)(2). In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

9 A typical advertisement stated in part:

"Sorry * * *

We must call it 'Margarine' (that's the law)

But this product is so wonderfully different—that it really should have a name all its own

That's why we named it Reddi-Spred Brand A *Premium* Oleomargarine containing not only Vegetable Fats but also Real Fresh Butter (List of all ingredients in small letters) Butter Makes Better It Taste

Yes, it's the Butter that makes it taste Better * * * that's why we say, Don't Confuse 'Ordinary Margarine' with Reddi-Spred."

10 15 USC § 55(a)(2).

11 See the same case in § 13[b], infra.

12 15 USC §§ 68 et seq.

13 15 USC §§ 52, 55(a).

14 As to use of the word "olive" without the name of any other oil in connection with soap which contained other oils, see the same case in § 13[a], supra.

15 In this connection the lower court said: "We cannot take seriously the suggestion that a man who is buying a set of books and a ten years 'extension service' will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second…Such trivial niceties are too impalpable for practical affairs, they are will-o'-the-wisps which divert attention from substantial evils." Federal Trade Com. v Standard Education Soc. (1936, CA2) 86 F2d 692.

16 See the same case in § 25, infra.

17 Rosenblum v Federal Trade Com. (1951, CA2) 192 F2d 392, cert den 343 US 905, 96 L ed 1323, 72 S Ct 635.

18 For a criticism of this case as weakening the power of the commission to regulate testimonial advertising, see 17 George Washington L Rev 340.

19 Rhodes Pharmacal Co. v Federal Trade Com. (1953, CA7) 208 F2d 382.

20 The commission order, denied enforcement by the Court of Appeals, but ordered enforced by the Supreme Court, included restraint of advertising which represented that wearing the device would assist in balancing the feet or body or would cause better posture or poise, that the device was of therapeutic value for aching or painful feet or would result in more normal foot action or better foot health, that its use would decrease fatigue "except to the extent that respondents' device may in instances reduce or relieve the discomfort associated with sprained or tired feet." Sewell v Federal Trade Com. (1956, CA9) 240 F2d 228.

1 R. O. P. was defined in the opinion as follows: "R. O. P. is an abbreviation of U. S. Record of Performance. It represents a program of the National Poultry Improvement Plan for the improvement of poultry produced in hatcheries. It is administered through state agencies by the Bureau of Animal Industry of the U. S. Department of Agriculture. Members of the Association are called R. O. P. operators and chickens produced and maintained by such an operator under the rules and regulations of the Association are R. O. P. stock. They cease to be R. O. P. stock when they leave the pens of an R. O. P. operator or when he quits the Association."

2 See the same case in § 13[a], supra.

3 In circulars addressed to members of the medical profession: "Mazon—an ethical preparation compounded under the personal supervision of its originator—is the *original* treatment of its character for: eczema, psoriasis, head scalds, ivy poison, ring-worm, athlete's foot, barber's itch, and other skin disorders."

"The colloidal nature of the base of Mazon and its strong penetrating characteristics, together with its healing and soothing ingredients, afford quick and *permanent* elimination of Eczema and *other* skin disorders."

"No other treatment for *permanent cure* has ever been discovered.…Some of the best-known skin specialists…are using it *exclusively* and praise it highly."

In a professional journal having wide circulation among graduate nurses: "Thousands of physicians have clinically proved the effectiveness of Mazon treatment, and are prescribing it daily to permanently eliminate:" (diseases substantially similar to those listed above).

In leaflets (somewhat less boastful) contained in each individual package of its product: "The therapeutic value and distinctive characteristics of Mazon were immediately recognized by physicians, who by personal clinical tests and observations, proved to their own satisfaction the unusual effectiveness of Mazon in the treatment and *elimination* of symptoms associated with certain types of: eczema, psoriasis, alopecia, dandruff, ringworm, ivy poison, athlete's foot and *other* skin irritations."

4 "Stop Itching Torture This Quick Way. For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes and other externally caused skin eruptions, use cooling antiseptic, liquid D. D. D. Prescription. Original formula of Doctor Dennis…"

"Itch Stopped in a Hurry by D. D. D. Are you tormented with the itching tortures of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D. D. D. Prescription."

"It's time to realize the D. D. D. Prescription will Stop the misery of an Itching Skin in a Jiffy! Try it for hives, eczema, winter rash and other externally caused Skin Itching."

5 As to failure to reveal possible adverse effects from use of the product, see the same case in § 8[b], supra.

6 See the same case in § 22[c], infra.

7 "…the smoking of Camel cigarettes, during, after, or between meals, irrespective of what, where or when one eats, is good for, advantageous to and aids digestion, in that it renews and encourages the flow of digestive fluids and increases the alkalinity of the digestive tract; that the smoking of such cigarettes relieves fatigue and creates, restores, renews and releases a new flow of body energy giving needed bodily strength and vigor, and that this is 'a basic discovery of a famous research laboratory and throws new light on the subject of cigarette smoking'; that the 'wind' and physical condition of athletes will not be affected or impaired in any way by the smoking of as many Camel cigarettes as they desire; that Camel cigarettes, unlike other brands of cigarettes, are always gentle to and never harm or irritate even a sensitive throat, nor leave an after taste; that the smoking of such cigarettes is soothing, restful and comforting to the nerves, and protects one against becoming 'jittery' or 'unsure' when subjected to intense nerve strain; that one with healthy nerves may smoke as many Camel cigarettes as he or she likes without the risk of keyed-up, jangled or frazzled nerves, and that Camels are in these respects different from all other brands of cigarettes; and that the smoke of Camel cigarettes contains less nicotine than does the smoke of any of the four other largest selling brands of cigarettes."

8 See the same case in § 22[b], supra.

9 With regard to the product, the court said: "Petitioners manufacture and sell caramel candy containing corn syrup, condensed milk, sugar, hydrogenated cocoanut oil, soybean flour, maltose, defatted wheat germ, powdered egg yolk, powdered carrots, dextrose, vitamin A from liver oil, vitamin B1 from thiamin, vitamin D from ergosterol, salt and artificial flavors."

10 52 Stat 1077, 19 USC § 1304.

11 "(1) Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the Governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of aluminum is used for the purpose of cooking and storing foods throughout the United States.

"(2) The metal is soft and forms various poisons with the foods with which it is in contact.

"(3) There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.…

"(6) Boil some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: Aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.…"

12 Dissemination of such statements by manufacturers of competing products, however, has been restrained by the commission. See Perma-Maid Co. v Federal Trade Com. (1941, CA6) 121 F2d 282, and Steelco Stainless Steel, Inc. v Federal Trade Com. (1951, CA7) 187 F2d 693, both supra, § 24[a].

13 "Today, the whole brilliant story of Radio's early growth, development and opportunities may repeat itself in Television." "The beginning of a new American industry is already with us." "Television, a new branch of the Electronic field, is developing rapidly." "All of the present activity in Television…combine to spell one word in the mind of the forward-looking, ambitious man, and that is — Opportunity!" "…to the young man seeking to fit himself into this exciting new picture of modern opportunity, *everything* may depend on one factor. That is — whether he has the ambition and foresight to seize this fine chance; whether he *makes himself ready* for Television now, before its pioneering opportunities pass on into history." "After a man is trained the DeForest way, he is ready to enter the Electronic Industry and really 'go places'." "Ambitious men who want steady, big-paying jobs *are needed* in the fast-growing Television, Radio, and Sound Picture Industry."

14 "OLD GOLDS FOUND LOWEST IN NICOTINE OLD GOLDS FOUND LOWEST IN THROAT-IRRITATING TARS AND RESINS

"See Impartial Test by Reader's Digest July Issue.

"See How Your Brand Compares with Old Gold.

"Reader's Digest assigned a scientific testing laboratory to find out about cigarettes. They tested seven leading cigarettes and Reader's Digest published the results.

"The cigarette whose smoke was lowest in nicotine was Old Gold. The cigarette with the least throat-irritating tars and resins was Old Gold."

15 The one radio advertisement which stated that Imdrin was a "safe and reliable way to cure pain," was quoted elsewhere as a "safe and reliable way to curb pain."

End of Document

History (2)

Annotation History (2)

1. What constitutes false, misleading, or deceptive advertising or promotional practices subject to action by Federal Trade Commission
65 A.L.R.2d 225 , 1959

(10) Superseded by

2. Temporary relief against unfair trade practices under 15 U.S.C.A. sec. 53
34 A.L.R. Fed. 507 , 1977

Citing References (75)

Title	Date	Type	Depth
1. **Com. ex rel. Zimmerman v. Nickel** 1983 WL 286, *10 , Pa.Com.Pl. Defendants have demurred to plaintiff's complaint in equity. The complaint requests a permanent injunction to restrain defendants from unfair methods of competition and unfair acts...	Jan. 24, 1983	Case	
2. **Garage Ruben, Inc. v. Tribunal Superior** 101 D.P.R. 236, 245 , P.R. Peticiónde Certiorari para revisar una Resolución de Héctor A. Colón Cruz, J. (San Juan) modificando y confirmando una resolución del Director de la Administración de Servicios al...	Feb. 27, 1973	Case	
3. **What Constitutes False Advertising of Vitamins under FTC Act Provisions on "Health Claims" Federal Trade Commission Act, 15 U.S.C.A. ss41 to 58** 3 A.L.R. Fed. 3d Art. 9 The Federal Trade Commission (FTC) regulates the advertising of health claims of vitamins under the Federal Trade Commission Act (15 U.S.C.A. §§ 41 to 58). Section 5 (15 U.S.C.A. §...	2015	ALR	—
4. **Application of Federal Trade Commission Act (15 U.S.C.A. ss41 et seq.) to Web Sites and Their Operators** 70 A.L.R. Fed. 2d 1 The Federal Trade Commission Act, 15 U.S.C.A. §§ 41 et seq., prohibits unfair methods of competition, unfair or deceptive acts or practices, and false or deceptive advertising to...	2012	ALR	—
5. **What Constitutes Substantial Injury to Consumers for Purposes of Unfair Business Practices under Federal Trade Commission Act, s5(n), 15 U.S.C.A. s45(n)** 48 A.L.R. Fed. 2d 421 The Federal Trade Commission Act provides, in 15 U.S.C.A. § 45(n), that the Federal Trade Commission (FTC) may not declare an act or practice to be an unfair trade practice unless...	2010	ALR	—
6. **What constitutes "false advertising' of drugs or devices within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52)** 49 A.L.R. Fed. 16 This annotation collects and analyzes the federal cases and representative decisions of the Federal Trade Commission which have discussed what constitutes false advertising of a...	1980	ALR	—
7. **Jurisdiction of Federal District Court to entertain attacks on Federal Trade Commission's actions** 16 A.L.R. Fed. 361 This annotation collects the cases dealing with the question of whether and under what circumstances a Federal District Court has jurisdiction to hear and determine a suit...	1973	ALR	—
8. **Validity, construction, and application of sec. 5(l) of Federal Trade Commission Act (15 U.S.C.A. sec. 45(l)), providing for imposition of civil penalty for violation of FTC cease and desist order** 24 A.L.R. Fed. 539 This annotation collects and analyzes those federal court decisions that construe or apply, or determine the validity of, the provisions of 15 U.S.C.A. § 45(l) relating to the...	1975	ALR	—

Title	Date	Type	Depth
9. Use of fictitious collection agency to coerce payment as unfair or deceptive practice prohibited by sec. 5 of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)(1)) 25 A.L.R. Fed. 390 This annotation collects and analyzes the federal court cases and representative Federal Trade Commission decisions which have determined whether a misrepresentation as to the...	1975	ALR	—
10. Advertising "free trial' of merchandise as deceptive act or practice or unfair method of competition violative of sec. 5(a)(1) of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)(1)) 26 A.L.R. Fed. 795 This annotation collects and analyzes the cases determining whether or under what circumstances an advertisement offering a "free trial" of merchandise constitutes an unfair method...	1976	ALR	—
11. Commercial tax preparer's advertising as unfair or deceptive act or practice under sec. 5 of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)) 37 A.L.R. Fed. 81 Commercial tax services are free to advertise if they so desire. It appears that anyone, regardless of his qualifications, may undertake to prepare others' tax returns for...	1978	ALR	—
12. Validity, construction, and application of 39 U.S.C.A. sec. 3009, making it an unfair trade practice to mail unordered merchandise 39 A.L.R. Fed. 674 This annotation collects and analyzes the federal cases determining the validity of, and construing and applying, 39 U.S.C.A. § 3009, making it an unfair trade practice to mail...	1978	ALR	—
13. Propriety of Federal Trade Commission order under 15 U.S.C.A. sec. 45 applying to all products sold by party, or to all products in broad category, where Commission has found false advertising of only one product or group of products sold by party 45 A.L.R. Fed. 612 This annotation collects and analyzes the federal cases which have determined the propriety of a Federal Trade Commission order under § 5 of the Federal Trade Commission Act (15...	1979	ALR	—
14. Power of Federal Trade Commission to issue order requiring corrective advertising 46 A.L.R. Fed. 905 This annotation collects and analyzes the federal cases, and orders of the Federal Trade Commission in contested cases, which have taken a position on the power of the Commission...	1980	ALR	—
15. Advertising agency as subject to FTC order under 15 U.S.C.A. sec. 45 for false or deceptive representations in its advertisements for client's product 47 A.L.R. Fed. 393 This annotation collects and analyzes the federal court cases and representative Federal Trade Commission decisions which discuss the question whether, and under what...	1980	ALR	—
16. What constitutes "false advertising' of food products or cosmetics within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52) 50 A.L.R. Fed. 16 This annotation collects and analyzes the federal cases and representative decisions of the Federal Trade Commission which have discussed what constitutes false advertising of a...	1980	ALR	—

Title	Date	Type	Depth
17. Federal regulation of competitive practices in liquor industry under sec. 5 of Federal Alcohol Administration Act (27 U.S.C.A. sec. 205) 58 A.L.R. Fed. 797 This annotation collects and analyzes the federal and state cases in which the courts have explicitly construed, applied, or determined the validity of § 5 of the Federal Alcohol...	1982	ALR	—
18. Federal Regulation of Telephone "Slamming" 174 A.L.R. Fed. 439 "Slamming" is a term used to describe the unauthorized switching of a customer's long–distance telephone service carrier by a long–distance service provider or by a contractor,...	2001	ALR	—
19. Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commissions, Discounts, or the Like 83 A.L.R.6th 419 With the objective of fostering fair competition in business, some states have prohibited price discrimination among similarly situated customers. To establish that this unfair...	2013	ALR	—
20. Defamation of Manufacturer, Regarding Product, Other than Through Statement Charging Breach or Nonperformance of Contract 104 A.L.R.5th 523 A statement which ascribes to another conduct, character, or a condition that would adversely affect his or her fitness for the proper conduct of one's lawful business, trade, or...	2002	ALR	—
21. State Regulation of Telephone "Slamming" 92 A.L.R.5th 1 "Slamming" is a term used to describe the unauthorized switching of a customer's long–distance telephone service carrier by a long–distance service provider or by a contractor,...	2001	ALR	—
22. Products Liability: Statements in Advertisements as Affecting Liability of Manufacturers or Sellers for Injury Caused by Product Other than Tobacco 93 A.L.R.5th 103 Advertisements can have an effect on products liability actions in a variety of ways. What the manufacturer or seller of a product has said or left unsaid in advertising the...	2001	ALR	—
23. Coverage of leases under state consumer protection statutes 89 A.L.R.4th 854 This annotation collects and discusses the cases which have faced the issue whether state consumer protection statutes apply to lease transactions. This annotation does not address...	1991	ALR	—
24. Actionable nature of advertising impugning quality or worth of merchandise or products 42 A.L.R.4th 318 This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided whether, or under what circumstances, compensatory damages are...	1985	ALR	—
25. When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts 18 A.L.R.4th 1340 The purpose of this annotation is to collect and discuss the state and federal cases in which the courts have discussed or decided at what point the statute of limitations begins...	1982	ALR	—

Title	Date	Type	Depth
26. Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods 7 A.L.R.4th 792 This annotation collects and analyzes the reported state and federal cases in which the courts have passed upon the validity of, or have interpreted or applied, a state or local...	1981	ALR	—
27. Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice 7 A.L.R.4th 1257 This annotation collects and discusses the state cases in which the courts have considered whether nondelivery of goods by a seller on the promised date of delivery constitutes an...	1981	ALR	—
28. Bank's liability to real-property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan 37 A.L.R.4th 773 The purpose of this annotation is to collect and analyze those state and federal cases in which the courts ruled upon a bank's liability to a real-property purchaser for negligent...	1985	ALR	—
29. Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like 41 A.L.R.4th 675 This annotation collects and analyzes those state and federal cases in which the courts have determined the validity of, or have construed and applied, state statutory provisions...	1985	ALR	—
30. Practices forbidden by state deceptive trade practice and consumer protection acts 89 A.L.R.3d 449 This annotation collects and discusses the cases in which the courts have considered questions as to the acts or practices that are prohibited by state deceptive trade practice and...	1979	ALR	—
31. Fraud in connection with franchise or distributorship relationship 64 A.L.R.3d 6 This annotation collects the cases in which a franchisee or distributor has alleged that a franchisor or manufacturer has engaged in conduct constituting common-law fraud at some...	1975	ALR	—
32. Validity, construction, and effect of state franchising statute 67 A.L.R.3d 1299 This annotation collects the cases discussing the validity, construction, and effect of state enactments designed to regulate the relationship between franchisors and franchisees....	1975	ALR	—
33. Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug 94 A.L.R.3d 748 This annotation collects and analyzes the cases in which the courts have discussed the civil liability of a manufacturer, seller, or druggist of a prescription medicine or vaccine...	1979	ALR	—
34. Unfair competition by imitation in sign or design of business place 86 A.L.R.3d 884 This annotation collects and analyzes the cases in which the courts have explicitly discussed whether, or under what circumstances, one's use of a particular sign or design for his...	1978	ALR	—

Title	Date	Type	Depth
35. Scope and exemptions of state deceptive trade practice and consumer protection acts 89 A.L.R.3d 399 This annotation collects and discusses the cases dealing with the scope of state deceptive trade practice and consumer protection statutes. This annotation is specifically...	1979	ALR	—
36. Advertisement addressed to public relating to sale or purchase of goods at specified price as an offer the acceptance of which will consummate a contract 43 A.L.R.3d 1102 This annotation collects those cases which have passed on the question whether an advertisement which is addressed to the public, and relates to the sale or purchase of goods at a...	1972	ALR	—
37. Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury 94 A.L.R.3d 1080 This annotation collects and analyzes the cases in which the courts have discussed the civil liability of a manufacturer of a prescription drug for allegedly product-caused injury,...	1979	ALR	—
38. Validity of pyramid distribution plan 54 A.L.R.3d 217 This annotation collects the cases considering the validity of so-called pyramid distribution or marketing plans. For purposes of exhaustive collection, the scope of this...	1974	ALR	—
39. Validity and construction of statute or ordinance prohibiting promotional games in connection with sale of gasoline 57 A.L.R.3d 1288 This annotation collects the cases in which the courts have construed, or passed upon the validity of, a statute or ordinance prohibiting promotional games in connection with the...	1974	ALR	—
40. Validity and construction of state statutes forbidding area price discrimination 67 A.L.R.3d 26 This annotation collects the cases involving the validity and construction of statutes which prohibit price discrimination in the sale or purchase of goods between one area and...	1975	ALR	—
41. Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes 83 A.L.R.3d 963 Ordinarily, the determination of what business expenses are to be incurred by a public utility in its operations is a matter left within the discretion of the utility's management....	1978	ALR	—
42. Trade dress simulation of cosmetic products as unfair competition 86 A.L.R.3d 505 This annotation collects and analyzes the cases in which the courts have explicitly discussed whether, or under what circumstances, one's use of a particular trade dress for...	1978	ALR	—
43. Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts 90 A.L.R.3d 1350 This annotation collects and discusses the cases in which the courts have considered the reasonableness of offers of settlement that were made to parties who allegedly suffered...	1979	ALR	—

Title	Date	Type	Depth
44. Reward for disproving commercial claim 96 A.L.R.3d 907 This annotation collects and analyzes the cases in which the courts have determined the right to recovery of a reward offered by a businessman to anyone who could disprove a...	1980	ALR	—
45. Enforceability of transaction entered into pursuant to referral sales arrangement 14 A.L.R.3d 1420 This annotation discusses the cases which have passed upon the validity and effect of a sales device under which purchases are induced on the representation that the cost to the...	1967	ALR	—
46. Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices 50 A.L.R.3d 1008 One of the devices used in taking advantage of consumers is the "bait-and-switch" or "disparagement" advertising or sales practices. This usually involves advertising in such an...	1973	ALR	—
47. Validity and construction of statute creating Federal Trade Commission 79 A.L.R. 1200 The reported case for this annotation is Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S. Ct. 587, 75 L. Ed. 1324, 79 A.L.R. 1191 (1931).	1932	ALR	—
48. Provision of Federal Food, Drug, and Cosmetic Act authorizing the establishment of definitions and standards of food 158 A.L.R. 842 The reported case for this annotation is Federal Security Adm'r v. Quaker Oats Co., 318 U.S. 218, 63 S. Ct. 589, 87 L. Ed. 724, 158 A.L.R. 832 (1943).	1945	ALR	—
49. Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements 89 A.L.R. 1004 The reported case for this annotation is Bryan v. Cohen, 108 Fla. 421, 149 So. 211, 89 A.L.R. 1001 (1933).	1934	ALR	—
50. Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself 143 A.L.R. 1453 The reported case for this annotation is U.S. v. Lee, 131 F.2d 464, 143 A.L.R. 1451 (C.C.A. 7th Cir. 1942).	1943	ALR	—
51. American Law of Torts s 31:2, § 31:2. Advertising; franchise litigation Advertising and advertisements. Advertising has become a critical factor in business, commercial, industrial, and manufacturing endeavors. As such, it has given rise to a series of...	2025	Other Secondary Source	—
52. American Law of Torts s 32:151, § 32:151. Generally; Federal Trade Commission A large number of federal and state statutes cover many aspects of consumer protection and fraud prevention. These statutes are broad and supplement the common-law doctrines of...	2025	Other Secondary Source	—
53. 65 Causes of Action 2d 205, Cause of Action by Consumers Against Manufacturers and/or Sellers of Energy Drinks Under State Consumer Protection Statutes This article discusses the availability of a cause of action by consumers against manufacturers and/or sellers of energy drinks under state consumer protection statutes. Consumer...	2025	Other Secondary Source	—

Title	Date	Type	Depth
54. 68 Causes of Action 2d 467, Cause of Action for False Advertising of Vitamins and Other Dietary Supplements Under Federal Trade Commission Act This article discusses the governmental cause of action, as well as defenses and crossclaims available to private litigants, under the Federal Trade Commission Act provisions...	2025	Other Secondary Source	—
55. Consumer Law Sales Practices and Credit Regulation s 45, § 45. Deception standard The rationale for making false and deceptive advertising illegal is that it violates the prohibition in the Federal Trade Commission Act against unfair methods of competition and...	2024	Other Secondary Source	—
56. Federal Control of Business s 30, § 30. Federal Trade Commission Act The core and focal point of action in the regulation of competition is the Federal Trade Commission Act. It was enacted in 1914 with the concepts of investigation, publicity and...	2023	Other Secondary Source	—
57. Law of Distressed Real Estate s 52:45, § 52:45. Federal Trade Commission Act (FTCA) Law of Distressed Real Estate The Federal Trade Commission (FTC) is an independent administrative agency which was organized in 1915 pursuant to the Federal Trade Commission Act of 1914 (38 Stat. 717, as...	2024	Other Secondary Source	—
58. West's A.L.R. Digest 29TK161, # 161. Representations, assertions, and descriptions in general West's A.L.R. Digest	2024	Other Secondary Source	—
59. West's A.L.R. Digest 29TK163, # 163. Advertising, marketing, and promotion West's A.L.R. Digest	2024	Other Secondary Source	—
60. West's A.L.R. Digest 29TK369, # 369. Weight and sufficiency West's A.L.R. Digest	2024	Other Secondary Source	—
61. West's A.L.R. Digest 29TK374, # 374. --Representations, advertisements, and labels, remedial orders relating to West's A.L.R. Digest	2024	Other Secondary Source	—
62. West's A.L.R. Digest 29TK503, # 503. Weight and sufficiency West's A.L.R. Digest	2024	Other Secondary Source	—
63. 18 Am. Jur. Proof of Facts 2d 265, Unfair Competition—Appropriation of Competitor's Advertising Matter, Methods, or Slogan Am. Jur. Proof of Facts 2d Among fraudulent trade practices that constitute actionable unfair competition are those where the defendant, in marketing his goods, expressly or impliedly represents that the...	2024	Other Secondary Source	—
64. 37 Am. Jur. Proof of Facts 3d 259, Liability For Airing False or Misleading Television Infomercials Am. Jur. Proof of Facts 3d A person who is elderly, impotent, or overweight might hurry to tune in to a half-hour television program devoted to a product which purports to reverse the aging process, cure...	2024	Other Secondary Source	—

Title	Date	Type	Depth
65. 127 Am. Jur. Trials 487, Litigation Concerning Unsubstantiated Health Claims Regarding Food and Beverages Am. Jur. Trials Today's consumers are more concerned about buying and eating healthier foods. They examine food labels more carefully, looking for the nutritional content and value of the...	2025	Other Secondary Source	—
66. 128 Am. Jur. Trials 111, Litigation Concerning Dietary Supplements Am. Jur. Trials There is a high consumer demand today for alternative natural treatments for traditional ailments. Ever increasing in popularity are herbal remedies and dietary supplements. The...	2025	Other Secondary Source	—
67. Fla. Jur. 2d Trademarks, Tradenames, and Unfair Competition s 22, § 22. Elements and types of unfair competition Fla. Jur. 2d Trademarks, Tradenames, and Unfair Competition The elements of unfair competition under Florida common law are (1) deceptive or fraudulent conduct of a competitor, and (2) a likelihood of consumer confusion. Other elements have...	2025	Other Secondary Source	—
68. N.Y. Jur. 2d Advertising s 21, § 21. Criminal liability for false or fraudulent advertising, generally N.Y. Jur. 2d Advertising A person is guilty of false advertising when, with intent to promote the sale or to increase the consumption of property or services, that person makes or causes to be made a false...	2025	Other Secondary Source	—
69. N.Y. Jur. 2d Criminal Law: Substantive Principles and Offenses s 1232, § 1232. Offense of false advertising, generally N.Y. Jur. 2d Criminal Law: Substantive Principles and Offenses False advertising is against the public policy of New York. A person commits the offense of false advertising when, with intent to promote the sale or to increase the consumption...	2025	Other Secondary Source	—
70. S.C. Jur. Advertising s 8, § 8. Unfair trade practices S.C. Jur. Advertising Section 39-5-20(a) of the Code of Laws of South Carolina prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce and...	2025	Other Secondary Source	—
71. IS IT REALLY A #AD? AN INCREASE IN RISING INFLUENCERS POSTING FAKE SPONSORED CONTENT 39 Cardozo Arts & Ent. L.J. 763 , 792+	2021	Law Review	—
72. THE FEDERAL TRADE COMMISSION AND FALSE ADVERTISING 64 Colum. L. Rev. 439 , 499 "Promise, large promise, is the soul of an advertisement." It has been the attempt to keep that promise within some reasonable bounds that has concerned the Federal Trade...	1964	Law Review	—
73. COURTS UPHOLD FTC ORDERS REQUIRING PROCESSORS OF RE-REFINED AND RECLAIMED OIL TO DISCLOSE FACT OF PRIOR USE REGARDLESS OF QUALITY OF PRODUCT 59 Colum. L. Rev. 1233 , 1236 Petitioners, three oil processors, removed the impurities from used lubricating oil, two by completely re-refining the oil and the third by removing only the solid impurities. The...	1959	Law Review	—

Title	Date	Type	Depth
74. **A POTHOLE ON THE ROAD TO RECOVERY: RELIANCE AND PRIVATE CLASS ACTIONS UNDER PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW** 107 Dick. L. Rev. 1 , 43 Imagine this: as an attorney with clients all over the country, you spend a great deal of time on airplanes flying back and forth across the United States. To alleviate your...	2002	Law Review	—
75. **PATIENTS WITHOUT BORDERS: THE EMERGING GLOBAL MARKET FOR PATIENTS AND THE EVOLUTION OF MODERN HEALTH CARE** 83 Ind. L.J. 71 , 132 A growing number of patients are leaving the United States for medical care. They are traveling to developing countries like India and Thailand for a variety of sophisticated...	2008	Law Review	—

Table of Authorities (367)

Treatment	Referenced Title	Type	Depth	Page Number
—	1. **Actionable nature of advertising impugning quality or worth of merchandise or products** Actionable nature of advertising impugning quality or worth of merchandise or products 1985 WL 287613, 1985 This annotation collects and analyzes the state and federal cases in which the courts have discussed or decided whether, or under what circumstances, compensatory damages are...	Secondary Source	—	225
—	2. **Adolph Kastor & Bros. v. Federal Trade Commission** 138 F.2d 824, C.C.A.2, 1943 On petition to review an order of the Federal Trade Commission. Petition by Adolph Kastor & Brothers, Inc., to review an order of the Federal Trade Commission directing the...	Case	—	225+
—	3. **Advertisement addressed to public relating to sale or purchase of goods at specified price as an offer the acceptance of which will consummate a contract** Advertisement addressed to public relating to sale or purchase of goods at specified price as an offer the acceptance of which will consummate a contr... 1972 WL 31919, 1972 This annotation collects those cases which have passed on the question whether an advertisement which is addressed to the public, and relates to the sale or purchase of goods at a...	Secondary Source	—	225
—	4. **Advertising "free trial' of merchandise as deceptive act or practice or unfair method of competition violative of sec. 5(a)(1) of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)(1))** Advertising "free trial' of merchandise as deceptive act or practice or unfair method of competition violative of sec. 5(a)(1) of Federal Trade Commis... 1976 WL 38398, 1976 This annotation collects and analyzes the cases determining whether or under what circumstances an advertisement offering a "free trial" of merchandise constitutes an unfair method...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**5. Advertising agency as subject to FTC order under 15 U.S.C.A. sec. 45 for false or deceptive representations in its advertisements for client's product** Advertising agency as subject to FTC order under 15 U.S.C.A. sec. 45 for false or deceptive representations in its advertisements for client's product 1980 WL 131082, 1980 This annotation collects and analyzes the federal court cases and representative Federal Trade Commission decisions which discuss the question whether, and under what...	Secondary Source	—	225
—	**6. Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes** Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes 1978 WL 43006, 1978 Ordinarily, the determination of what business expenses are to be incurred by a public utility in its operations is a matter left within the discretion of the utility's management....	Secondary Source	—	225
—	**7. Alberty v. F.T.C.** 182 F.2d 36, D.C.Cir., 1950 Petition by Ada J. Alberty, and others, against the Federal Trade Commission to review Commission's cease and desist order directed to petitioners in regard to advertisements of...	Case	—	225+
—	**8. Alberty v. Federal Trade Commission** 118 F.2d 669, C.C.A.9, 1941 Petition to Review an Order of the Federal Trade Commission. Petition by Adah Alberty against the Federal Trade Commission to set aside a cease and desist order of the Commission....	Case	—	225+
—	**9. Allen B. Wrisley Co. v. Federal Trade Commission** 113 F.2d 437, C.C.A.7, 1940 Petition for Review of Order of Federal Trade Commission. Petition by the Allen B. Wrisley Company and others to review an order of the Federal Trade Commission directing...	Case	—	225+
—	**10. American Home Products Corp. v. F.T.C.** 695 F.2d 681, 3rd Cir., 1982 Petition was filed seeking review of an order of the Federal Trade Commission which required that manufacturer cease and desist various deceptive advertisements for a number of its...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**11. American Home Products Corp. v. F.T.C.** 402 F.2d 232, 6th Cir., 1968 Petition to review order of Federal Trade Commission prohibiting petitioner from disseminating certain advertisements in connection with its product for treatment of hemorrhoids. ...	Case	—	225+
—	**12. American Hospital & L. Ins. Co. v. Federal Trade Com'n** 243 F.2d 719, 5th Cir., 1957 Petition by an insurance company against a Federal Trade Commission for review of a cease and desist order regulating company's advertising. The Court of Appeals, Jones, Circuit...	Case	—	225+
—	**13. American Life & Acc Ins Co v. F T C** 255 F.2d 289, 8th Cir., 1958 Proceeding on petition by health and accident insurance company to review order of Federal Trade Commissioner requiring company to cease and desist from certain unfair and...	Case	—	225+
—	**14. American Medicinal Products v. Federal Trade Commission** 136 F.2d 426, C.C.A.9, 1943 Petition to Review an Order of the Federal Trade Commission. Petition by American Medicinal Products, Inc., and another, against the Federal Trade Commission, to review an order of...	Case	—	225+
—	**15. American Tack Co. v. Federal Trade Commission** 211 F.2d 239, 2nd Cir., 1954 Petition for review of order of the Federal Trade Commission. The Court of Appeals held that cease and desist order which required disclosure of country of origin not only as to...	Case	—	225+
—	**16. AMREP Corp. v. F.T.C.** 768 F.2d 1171, 10th Cir., 1985 Petition was filed seeking review of a cease and desist order entered against petitioner by the Federal Trade Commission. The Court of Appeals, William E. Doyle, Circuit Judge,...	Case	—	225+
—	**17. Application of Federal Trade Commission Act (15 U.S.C.A. ss41 et seq.) to Web Sites and Their Operators** Application of Federal Trade Commission Act (15 U.S.C.A. ss41 et seq.) to Web Sites and Their Operators 2012 WL 5687076, 2012 The Federal Trade Commission Act, 15 U.S.C.A. §§ 41 et seq., prohibits unfair methods of competition, unfair or deceptive acts or practices, and false or deceptive advertising to...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**18. Arnold Stone Co. v. Federal Trade Commission** 49 F.2d 1017, C.C.A.5, 1931 Petition to Review Order of Federal Trade Commission Sitting at Washington, D.C. Petition by the Arnold Stone Company, Incorporated, to review an order of the Federal Trade...	Case	—	225+
—	**19. Aronberg v. Federal Trade Commission** 132 F.2d 165, C.C.A.7, 1942 The term 'relief' is not of definite connotation nor entirely free from ambiguity; in a common sense, it connotes permanent removal of 'organic' or 'functional disturbance' as...	Case	—	225+
—	**20. Arrow Metal Products Corp v. F T C** 249 F.2d 83, 3rd Cir., 1957 Petitioners sought reversal of a cease and desist order issued against them by the Federal Trade Commission. The Court of Appeals held that evidence sustained findings of Federal...	Case	—	225+
—	**21. Associated Laboratories v. Federal Trade Commission** 150 F.2d 629, C.C.A.2, 1945 Petition by Associated Laboratories, Inc., to review a cease and desist order of the Federal Trade Commission enjoining petitioner from certain forms of advertising. Order...	Case	—	225+
—	**22. Audivox, Inc. v. F.T.C.** 275 F.2d 685, 1st Cir., 1960 Petitioners filed a petition to review and set aside an order of the Federal Trade Commission. The Court of Appeals, Aldrich, Circuit Judge, held that order forbidding...	Case	—	225+
—	**23. Automobile Owners Safety Ins Co v. F T C** 255 F.2d 295, 8th Cir., 1958 Proceeding on petition to review decision of Federal Trade Commission ordering insurer to cease and desist from certain deceptive advertising practices. The Court of Appeals,...	Case	—	225+
—	**24. Bakers Franchise Corp. v. F. T. C.** 302 F.2d 258, 3rd Cir., 1962 Proceeding on petition to review an order of the Federal Trade Commission. The Court of Appeals, Goodrich, Circuit Judge, held that advertisement representing that bread sold under...	Case	—	225+
—	**25. Baltimore Luggage Co. v. F. T. C.** 296 F.2d 608, 4th Cir., 1961 Proceeding on petition for review of an order of the Federal Trade Commission requiring manufacturer to cease and desist from acts and practices found by the Commission to amount...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**26. Bank's liability to real-property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan** Bank's liability to real-property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan 1985 WL 287316, 1985 The purpose of this annotation is to collect and analyze those state and federal cases in which the courts ruled upon a bank's liability to a real-property purchaser for negligent...	Secondary Source	—	225
—	**27. Bankers Securities Corp. v. F. T. C.** 297 F.2d 403, 3rd Cir., 1961 Proceeding to review Federal Trade Commission order. The Court of Appeals, Hastie, Circuit Judge, held that evidence supported finding that store's advertisement comparing its...	Case	—	225+
—	**28. Bantam Books, Inc. v. F.T.C.** 275 F.2d 680, 2nd Cir., 1960 Proceeding on petition to review order of Federal Trade Commission requiring paper-bound book publisher to cease and desist from offering abridged or retitled books for sale unless...	Case	—	225+
—	**29. Basic Books, Inc. v. Federal Trade Com'n** 276 F.2d 718, 7th Cir., 1960 Proceeding on petition to review order of Federal Trade Commission requiring petitioner to cease and desist certain allegedly deceptive trade practices. The Court of Appeals,...	Case	—	225+
—	**30. Bear Mill Mfg. Co. v. Federal Trade Commission** 98 F.2d 67, C.C.A.2, 1938 Appeal from Federal Trade Commission. Petition by Bear Mill Manufacturing Company, Inc., to review an order of the Federal Trade Commission directing petitioner to cease and desist...	Case	—	225+
—	**31. Belmont Laboratories v. Federal Trade Commission** 103 F.2d 538, C.C.A.3, 1939 On Petition for Review from the Order of Federal Trade Commission. Proceeding by the Federal Trade Commission against Belmont Laboratories, Inc. On petition for review from an...	Case	—	225+
—	**32. Beneficial Corp. v. F.T.C.** 542 F.2d 611, 3rd Cir., 1976 Finance company, which also engaged in preparation of income tax returns, sought review of order of the Federal Trade Commission. The Court of Appeals, Gibbons, Circuit Judge, held...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**33. Benrus Watch Co. v. F. T. C.** 352 F.2d 313, 8th Cir., 1965 Petitions were filed for judicial review of a final order of the Federal Trade Commission commanding petitioners, including watch manufacturer, to cease and desist from certain...	Case	—	225+
—	**34. Benton Announcements v. Federal Trade Commission** 130 F.2d 254, C.C.A.2, 1942 On Petition to Review an Order of the Federal Trade Commission. Petition by Benton Announcements, Inc., to review an order of the Federal Trade Commission directing petitioner to...	Case	—	225+
—	**35. Berkey & Gay Furniture Co. v. Federal Trade Commission** 42 F.2d 427, C.C.A.6, 1930 Petitions to Review Orders of Federal Trade Commission. Petitions by the Berkey & Gay Furniture Company and others to review orders of the Federal Trade Commission requiring...	Case	—	225+
—	**36. Bockenstette v. Federal Trade Commission** 134 F.2d 369, C.C.A.10, 1943 R.O.P. is an abbreviation of U.S. Record of Performance and represents program of the National Poultry Improvement Plan administered through state agencies by Bureau of Animal...	Case	—	225+
—	**37. Book-of-the-Month Club, Inc. v. Federal Trade Commission** 202 F.2d 486, 2nd Cir., 1953 Petition to review order of Federal Trade Commission directing petitioners to cease and desist from using word ‘free’ or any other word or words of similar import in advertising to...	Case	—	225+
—	**38. Branch v. F.T.C.** 141 F.2d 31, C.C.A.7 (Ill.), 1944 ‘Merchandise‘ means the object of commerce; whatever is usually bought or sold in trade. Petition for Review of Order of the Federal Trade Commission. Petition by Joseph G. Branch,...	Case	—	225+
—	**39. Bristol-Myers Co. v. Federal Trade Commission** 185 F.2d 58, 4th Cir., 1950 Petition by Briston-Myers Company for review of an order of the Federal Trade Commission directed against the petitioner. The Court of Appeals, Soper, Circuit Judge, held that...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**40. Brite Mfg. Co. v. F.T.C.** 347 F.2d 477, D.C.Cir., 1965 Proceeding on petition for review of Federal Trade Commission cease and desist order. The Court of Appeals held that order requiring importers to cease and desist from offering...	Case	—	225+
—	**41. Brown Fence & Wire Co. v. Federal Trade Commission** 64 F.2d 934, C.C.A.6, 1933 Petition by the Brown Fence & Wire Company to review a cease and desist order of the Federal Trade Commission. Order sustained.	Case	—	225+
—	**42. Buchwalter v. Federal Trade Commission** 235 F.2d 344, 2nd Cir., 1956 Manufacturers of pillows filed petitions to review and set aside orders of the Federal Trade Commission ordering manufacturers to cease and desist mislabeling contents of feather...	Case	—	225+
—	**43. Burton-Dixie Corporation v. Federal Trade Com'n** 240 F.2d 166, 7th Cir., 1957 Proceedings brought for review of an order of the Federal Trade Commission requiring pillow manufacturer to cease and desist from misrepresenting identity of type of filling...	Case	—	225+
—	**44. C. Howard Hunt Pen Co. v. Federal Trade Commission** 197 F.2d 273, 3rd Cir., 1952 Petition by the C. Howard Hunt Pen Company, a corporation, to review an order of the Federal Trade Commission with respect to the fountain pen points of the petitioner. The United...	Case	—	225+
—	**45. Cannon v. F.T.C.** 295 F.2d 546, D.C.Cir., 1961 Petition for review of an order of the Federal Trade Commission. The Court of Appeals held that the evidence justified a Federal Trade Commission finding that it was most unlikely...	Case	—	225+
—	**46. Capon Water Co. v. Federal Trade Commission** 107 F.2d 516, C.C.A.3, 1939 Petition by the Capon Water Company and others to review and vacate a cease and desist order made by the Federal Trade Commission. Ordered affirmed.	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**47. Carlay Co. v. Federal Trade Commission** 153 F.2d 493, C.C.A.7, 1946 On Petition for Review of Order of the Federal Trade Commission. Proceeding by the Carlay Company and others to review a cease and desist order of the Federal Trade Commission....	Case	—	225+
—	**48. Carter Products v. Federal Trade Commission** 186 F.2d 821, 7th Cir., 1951 Carter Products, Inc., and others, petitioners, brought a petition for review of a cease and desist order of the Federal Trade Commission, respondent. The Court of Appeals, Duffy,...	Case	—	225+
—	**49. Carter Products, Inc. v. F.T.C.** 323 F.2d 523, 5th Cir., 1963 Petition for review of an order of the Federal Trade Commission directing a manufacturer and advertising agency to cease and desist from certain television advertising. The Court...	Case	—	225+
—	**50. Carter Products, Inc. v. Federal Trade Com'n** 268 F.2d 461, 9th Cir., 1959 Proceeding on petition to review and set aside Federal Trade Commission order requiring laxative pill producer to cease and desist from certain advertising claims. The Court of...	Case	—	225+
—	**51. Century Metalcraft Corporation v. Federal Trade Commission** 112 F.2d 443, C.C.A.7, 1940 Petition to Review and Order of Federal Trade Commission. Petition by the Century Metalcraft Corporation to review and set aside an order of the Federal Trade Commission. Modified...	Case	—	225+
—	**52. Chamber of Commerce of Minneapolis v. Federal Trade Commission** 13 F.2d 673, C.C.A.8, 1926 On petition to Review Order of Federal Trade Commission. Original proceeding by the Chamber of Commerce of Minneapolis and others to review a cease and desist order of the Federal...	Case	—	225+
—	**53. Charles of the Ritz Distributors Corporation v. Federal Trade Commission** 143 F.2d 676, C.C.A.2, 1944 Uncontradicted testimony of experts, having general medical and pharmacological knowledge in the field, that there was nothing known to medical science which could restore the...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**54. Chicago Portrait Co. v. Federal Trade Commission** 4 F.2d 759, C.C.A.7, 1924 Alschuler, Circuit Judge, dissenting. Petition for Review of an Order of the Federal Trade Commission. Petition by the Chicago Portrait Company for review of an order of the...	Case	—	225+
—	**55. Chrysler Corp. v. F.T.C.** 561 F.2d 357, D.C.Cir., 1977 On petition for review of Federal Trade Commission order requiring automobile manufacturer to cease and desist from false and deceptive advertising, the Court of Appeals, McGowan,...	Case	—	225+
—	**56. Clinton Watch Company v. F.T.C.** 291 F.2d 838, 7th Cir., 1961 Proceeding on petition to review a cease and desist order of the Federal Trade Commission. The Court of Appeals, Grubb, District Judge, held that there was no abuse of discretion...	Case	—	225+
—	**57. Colgate-Palmolive Co. v. F.T.C.** 310 F.2d 89, 1st Cir., 1962 Petitions to review and set aside a cease and desist order of the Federal Trade Commission respecting T.V. commercials advertising the 'moisturizing' qualities of a shaving cream...	Case	—	225+
—	**58. Commercial tax preparer's advertising as unfair or deceptive act or practice under sec. 5 of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a))** Commercial tax preparer's advertising as unfair or deceptive act or practice under sec. 5 of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)) 1978 WL 42900, 1978 Commercial tax services are free to advertise if they so desire. It appears that anyone, regardless of his qualifications, may undertake to prepare others' tax returns for...	Secondary Source	—	225
—	**59. Concrete Materials Corp. v. Federal Trade Commission** 189 F.2d 359, 7th Cir., 1951 Concrete Materials Corporation, petitioner, filed a petition for review of an order of the Federal Trade Commission requiring that petitioner cease and desist making certain...	Case	—	225+
—	**60. Consolidated Book Publishers v. Federal Trade Commission** 53 F.2d 942, C.C.A.7, 1931 Petition to set aside Order of Federal Trade Commission. Original proceeding by the Consolidated Book Publishers, Inc., to set aside an order of the Federal Trade Commission to...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**61. Consolidated Royal Chemical Corp. v. Federal Trade Commission** 191 F.2d 896, 7th Cir., 1951 The Consolidated Royal Chemical Corp., trading under its own name and also, under the name of Consolidated Drug Trade Products, brought a petition for review of an order of the...	Case	—	225+
—	**62. Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale** Constitutionality of requirement of disclosure by label of materials or ingredients of articles sold or offered for sale 1928 WL 58224, 1928 The reported case for this annotation is State v. W.S. Buck Mercantile Co., 38 Wyo. 47, 264 P. 1023, 57 A.L.R. 675 (1928).	Secondary Source	—	225
—	**63. Consumer Sales Corp. v. Federal Trade Commission** 198 F.2d 404, 2nd Cir., 1952 Petition by the Consumer Sales Corporation, Julius J. Blumenfeld and Myron J. Colin, to review and set aside a cease and desist order issued by the Federal Trade Commission on June...	Case	—	225+
—	**64. Consumers Home Equipment Co. v. Federal Trade Commission** 164 F.2d 972, C.C.A.6, 1947 On Petitions to Review a Cease and Desist order of the Federal Trade Commission. Petitions by the Consumers Home Equipment Company and others, and by Harry H. Chereton, to review a...	Case	—	225+
—	**65. Continental Wax Corp. v. F. T. C.** 330 F.2d 475, 2nd Cir., 1964 Proceeding on petition to review and set aside Federal Trade Commission order restraining petitioners from further deceptively advertising their floor wax and restraining them from...	Case	—	225+
—	**66. Coro, Inc. v. F.T.C.** 338 F.2d 149, 1st Cir.(Mass.), 1964 Proceeding to review order of Federal Trade Commission which required corporation and its president to cease and desist from certain trade practices. The Court of Appeals,...	Case	—	225+
—	**67. Cotherman v. F.T.C.** 417 F.2d 587, 5th Cir., 1969 Proceeding on petition for review of order of federal trade commission. The Court of Appeals, Wisdom, Circuit Judge, held that where commission, in issuing order directing...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**68. Country Tweeds, Inc. v. F. T. C.** 326 F.2d 144, 2nd Cir., 1964 Petition to review an order of the Federal Trade Commission directing petitioners to cease and desist from certain deceptive advertising practices. The Court of Appeals, Waterman,...	Case	—	225+
—	**69. Coverage of insurance transactions under state consumer protection statutes** Coverage of insurance transactions under state consumer protection statutes 1990 WL 675167, 1990 This annotation collects and analyzes those cases in which courts have discussed and determined whether a general state consumer protection statute provides a cause of action for...	Secondary Source	—	225
—	**70. Coverage of leases under state consumer protection statutes** Coverage of leases under state consumer protection statutes 1991 WL 741658, 1991 This annotation collects and discusses the cases which have faced the issue whether state consumer protection statutes apply to lease transactions. This annotation does not address...	Secondary Source	—	225
—	**71. D.D.D. Corporation v. Federal Trade Commission** 125 F.2d 679, C.C.A.7, 1942 MINTON, Circuit Judge, dissenting. Petition for Review of Order of the Federal Trade Commission. Petition by D.D.D. Corporation against the Federal Trade Commission for review of a...	Case	—	225+
—	**72. De Forest's Training v. Federal Trade Commission** 134 F.2d 819, C.C.A.7, 1943 Petition for Review of Order of the Federal Trade Commission. Petition by DeForest's Training, Inc., to review and set aside a cease and desist order of the Federal Trade...	Case	—	225+
—	**73. De Gorter v. Federal Trade Commission** 244 F.2d 270, 9th Cir., 1957 Petition to review an order of the Federal Trade Commission directing defendants to cease and desist from misbranding fur products, falsely and deceptively invoicing fur products,...	Case	—	225+
—	**74. Dearborn Supply Co. v. Federal Trade Commission** 146 F.2d 5, C.C.A.7, 1944 Petition for Review of Order of the Federal Trade Commission. Proceedings on petition of Dearborn Supply Company for review of an order of the Federal Trade Commission directing...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**75. Decision or ruling by Federal Trade Commission as res judicata** Decision or ruling by Federal Trade Commission as res judicata 1944 WL 66195, 1944 The reported case for this annotation is U.S. v. Willard Tablet Co., 141 F.2d 141, 152 A.L.R. 1194 (C.C.A. 7th Cir. 1944).	Secondary Source	—	225
—	**76. Decker v. Federal Trade Commission** 176 F.2d 461, D.C.Cir., 1949 Petition by Ammiel F. Decker and Mabel P. Decker, individuals trading and doing business as Decker Products Company, for review of a cease and desist order entered by the Federal...	Case	—	225+
—	**77. Deer v. Federal Trade Commission** 152 F.2d 65, C.C.A.2, 1945 Petition to Review an Order of the Federal Trade Commission. Petition by Charles Deer and another, individuals trading as Savoy Manufacturing Company, to review an order of the...	Case	—	225+
—	**78. Defamation of Manufacturer, Regarding Product, Other than Through Statement Charging Breach or Nonperformance of Contract** Defamation of Manufacturer, Regarding Product, Other than Through Statement Charging Breach or Nonperformance of Contract 2002 WL 31697079, 2002 A statement which ascribes to another conduct, character, or a condition that would adversely affect his or her fitness for the proper conduct of one's lawful business, trade, or...	Secondary Source	—	225
—	**79. Doherty, Clifford, Steers & Shenfield, Inc. v. F. T. C.** 392 F.2d 921, 6th Cir., 1968 Petition by pharmaceutical company and its advertising agency to review order of the Federal Trade Commission with regard to advertising of throat lozenges manufactured by...	Case	—	225+
—	**80. Dolcin Corp. v. F.T.C.** 219 F.2d 742, D.C.Cir., 1954 Proceedings on petition of drug manufacturers for review of order of Federal Trade Commission requiring petitioners to cease and desist from improper advertising. The Court of...	Case	—	225+
—	**81. Dr. W.B. Caldwell, Inc., v. Federal Trade Commission** 111 F.2d 889, C.C.A.7, 1940 Petition to Review Order of the Federal Trade Commission. Petition by Dr. W. B. Caldwell, Inc., to review the proceedings and to set aside a cease and desist order of the Federal...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**82. E. F. Drew & Co. v. Federal Trade Commission** 235 F.2d 735, 2nd Cir., 1956 Proceeding upon petition for review of Federal Trade Commission's order directing oleomargarine manufacturer to cease and desist from using certain phrases in the advertising of...	Case	—	225+
—	**83. E. Griffiths Hughes, Inc., v. Federal Trade Commission** 77 F.2d 886, C.C.A.2, 1935 Appeal from the Federal Trade Commission. Petition by E. Griffiths Hughes, Inc., to review an order of the Federal Trade Commission directing that petitioner cease and desist from...	Case	—	225+
—	**84. Educators Ass'n v. F T C** 118 F.2d 562, C.C.A.2, 1941 CLARK, Circuit Judge, dissenting. Petition to Review an Order of the Federal Trade Commission. On petition for rehearing. Petition denied. For prior opinions, see 108 F.2d 470, and...	Case	—	225+
—	**85. Educators Ass'n v. Federal Trade Commission** 108 F.2d 470, C.C.A.2, 1939 Petition to Review an Order of the Federal Trade Commission. Petition by the Educators Association, Incorporated, and others, to review an order of the Federal Trade Commission...	Case	—	225+
—	**86. Edward P. Paul & Co. v. F.T.C.** 169 F.2d 294, App.D.C., 1948 On Petition to Review of an Order of the Federal Trade Commission. Proceeding by Edward P. Paul & Company, Inc., against the Federal Trade Commission to review a cease and desist...	Case	—	225+
—	**87. El Moro Cigar Co. v. Federal Trade Commission** 107 F.2d 429, C.C.A.4, 1939 On Petition for Review of an Order of the Federal Trade Commission. Petition by the El Moro Cigar Company, petitioner, to review and to set aside or modify portion of an order...	Case	—	225+
—	**88. Electro Thermal Co. v. Federal Trade Commissioner** 91 F.2d 477, C.C.A.9, 1937 Upon Petition to Review Order of Federal Trade Commission. Petition by the Electro Thermal Company to set aside an order of the Federal Trade Commission requiring petitioner to...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**89. Elliot Knitwear, Inc. v. Federal Trade Com'n** 266 F.2d 787, 2nd Cir., 1959 Petition to review and set aside an order of the Federal Trade Commission, 1957-58 Trade Reg.Rep. para. 27,199, April 25, 1958, directing petitioners to cease and desist from using...	Case	—	225+
—	**90. Enforceability of transaction entered into pursuant to referral sales arrangement** Enforceability of transaction entered into pursuant to referral sales arrangement 1967 WL 15693, 1967 This annotation discusses the cases which have passed upon the validity and effect of a sales device under which purchases are induced on the representation that the cost to the...	Secondary Source	—	225
—	**91. Erickson v. F.T.C.** 272 F.2d 318, 7th Cir., 1959 Proceeding on petition by party doing business as hair and scalp specialist for review of order of Federal Trade Commission directing party to cease and desist from making certain...	Case	—	225+
—	**92. Etablissements Rigaud, Inc., v. Federal Trade Commission** 125 F.2d 590, C.C.A.2, 1942 Appeal from an Order of the Federal Trade Commission. Petition by Etablissements Rigaud, Inc., and E. Fougera & Company, Inc., to set aside an order of the Federal Trade Commission...	Case	—	225+
—	**93. Excelsior Laboratory v. Federal Trade Commission** 171 F.2d 484, 2nd Cir., 1948 Appeal from Federal Trade Commission Petition by Excelsior Laboratory, Inc., petitioner, to review an order of the Federal Trade Commission, respondent, ordering petitioner to...	Case	—	225+
—	**94. Exposition Press, Inc. v. F. T. C.** 295 F.2d 869, 2nd Cir., 1961 Proceeding on petition for review of an order of the Federal Trade Commission requiring the petitioners to cease and desist from deceptive advertising practices. The Court of...	Case	—	225+
—	**95. F T C v. Rhodes Pharmacal Co** 75 S.Ct. 361, U.S., 1955 Former decision, 348 U.S. 812, 75 S.Ct. 29. Facts and opinion, 191 F.2d 744; 208 F.2d 382.	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**96.** **F. T. C. v. Sterling Drug, Inc.** 317 F.2d 669, 2nd Cir.(N.Y.), 1963 Proceeding on motion by the Federal Trade Commission to temporarily enjoin an aspirin manufacturer and advertising agencies employed by it from disseminating certain allegedly...	Case	—	225+
—	**97.** **F.T.C. v. Army & Navy Trading Co.** 88 F.2d 776, App.D.C., 1937 On Application for Enforcement of an Order of the Federal Trade Commission. Proceeding by the Federal Trade Commission against the Army and Navy Trading Company to enforce an order...	Case	—	225+
—	**98.** **F.T.C. v. Brown & Williamson Tobacco Corp.** 778 F.2d 35, D.C.Cir., 1985 Federal Trade Commission sought to enjoin cigarette manufacturer from advertising its cigarettes as “1 mg tar” and “99% tar free.” The United States District Court for the...	Case	—	225+
—	**99.** **F.T.C. v. Colgate-Palmolive Co.** 85 S.Ct. 1035, U.S.Mass., 1965 Proceeding on petitions to review an order of the federal trade commission. The United States Court of Appeals for the First Circuit, 326 F.2d 517, set aside the order of the...	Case	—	225+
—	**100.** **F.T.C. v. Klesner** 50 S.Ct. 1, U.S.Dist.Col., 1929 On Certiorari to the Court of Appeals of the District of Columbia. Petition by Federal Trade Commission against Alfred Klesner, doing business under the name of Shade Shop, etc....	Case	—	225+
—	**101.** **F.T.C. v. Mandel Brothers, Inc.** 79 S.Ct. 818, U.S., 1959 Proceeding on a complaint charging retail department store with violation of Fur Products Labeling Act. The Federal Trade Commission found that there had been violations and...	Case	—	225+
—	**102.** **F.T.C. v. Mary Carter Paint Co.** 86 S.Ct. 219, U.S., 1965 Proceeding to review Federal Trade Commission order. The United States Court of Appeals for the Fifth Circuit, 333 F.2d 654, set aside the order, and certiorari was granted. The...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**103. F.T.C. v. National Com'n on Egg Nutrition** 517 F.2d 485, 7th Cir.(Ill.), 1975 Federal Trade Commission sought temporary injunction against continued publishing and broadcasting, by private not-for-profit corporation composed of egg producer associations, of...	Case	—	225+
—	**104. F.T.C. v. Pharmtech Research, Inc.** 576 F.Supp. 294, D.D.C., 1983 The Federal Trade Commission challenged certain advertisements disseminated by company manufacturing dietary supplement on grounds that they were false, misleading and deceptive...	Case	—	225+
—	**105. F.T.C. v. Simeon Management Corp.** 532 F.2d 708, 9th Cir.(Cal.), 1976 The Federal Trade Commission sought a preliminary injunction restraining operators of weight reduction clinics from advertising as long as they used a drug, human chorionic...	Case	—	225+
—	**106. F.T.C. v. Simeon Management Corp.** 391 F.Supp. 697, N.D.Cal., 1975 The Federal Trade Commission sought a preliminary injunction restraining operators of weight reduction clinics from advertising their obesity and weight control treatments as long...	Case	—	225+
—	**107. F.T.C. v. World Travel Vacation Brokers, Inc.** 861 F.2d 1020, 7th Cir.(Ill.), 1988 The Federal Trade Commission filed a complaint alleging that a travel agency and its principals engaged in deceptive trade practices. The United States District Court for the...	Case	—	225+
—	**108. Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice** Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice 1981 WL 167446, 1981 This annotation collects and discusses the state cases in which the courts have considered whether nondelivery of goods by a seller on the promised date of delivery constitutes an...	Secondary Source	—	225
—	**109. Fair v. Federal Trade Commission** 272 F.2d 609, 7th Cir., 1959 Proceeding by Federal Trade Commission against store operator, which was allegedly engaged in the fur business, for violating Federal Trade Commission Act, Fur Products Labeling...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**110.** **Fairyfoot Products Co. v. Federal Trade Commission** 80 F.2d 684, C.C.A.7, 1935 Petition for Review of Order of the Federal Trade Commission. Petition by the Fairyfoot Products Company against the Federal Trade Commission to review a cease and desist order of...	Case	—	225+
—	**111.** **Fedders Corp. v. F. T. C.** 529 F.2d 1398, 2nd Cir., 1976 Petition was filed to review cease and desist order issued by Federal Trade Commission against air conditioner manufacturer, which claimed that the order applied to unsubstantiated...	Case	—	225+
—	**112.** **Federal regulation of competitive practices in liquor industry under sec. 5 of Federal Alcohol Administration Act (27 U.S.C.A. sec. 205)** Federal regulation of competitive practices in liquor industry under sec. 5 of Federal Alcohol Administration Act (27 U.S.C.A. sec. 205) 1982 WL 198711, 1982 This annotation collects and analyzes the federal and state cases in which the courts have explicitly construed, applied, or determined the validity of § 5 of the Federal Alcohol...	Secondary Source	—	225
—	**113.** **Federal Regulation of Telephone "Slamming"** Federal Regulation of Telephone "Slamming" 2001 WL 1529765, 2001 "Slamming" is a term used to describe the unauthorized switching of a customer's long–distance telephone service carrier by a long–distance service provider or by a contractor,...	Secondary Source	—	225
—	**114.** **Federal Trade Com'n v. National Casualty Co.** 78 S.Ct. 1260, U.S., 1958 Proceeding on petitions to review orders of Federal Trade Commission requiring insurance companies to cease and desist from engaging in acts and practices in the conduct of...	Case	—	225+
—	**115.** **Federal Trade Commission v. A.P.W. Paper Co.** 66 S.Ct. 932, U.S., 1946 Petitions by A.P.W. Paper Company, Inc., to review an order of the Federal Trade Commission directing the petitioner to cease and desist from using the words 'Red Cross' and using...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**116. Federal Trade Commission v. Algoma Lumber Co.** 54 S.Ct. 315, U.S., 1934 Proceeding by the Federal Trade Commission against the Algoma Lumber Company and others. Orders of the Commission, restraining unfair competition in interstate commerce, were...	Case	—	225+
—	**117. Federal Trade Commission v. American Snuff Co.** 38 F.2d 547, C.C.A.3, 1930 Petition by Federal Trade Commission against the American Snuff Company for enforcement of an order of the Commission. Order of Commission held unlawful.	Case	—	225+
—	**118. Federal Trade Commission v. Artloom Corporation** 69 F.2d 36, C.C.A.3, 1934 Application by the Federal Trade Commission for enforcement of an order that the Artloom Corporation, trading as the Artloom Rug Mills, cease and desist from misbranding rugs...	Case	—	225+
—	**119. Federal Trade Commission v. Balme** 23 F.2d 615, C.C.A.2, 1928 Petition to Enforce Order of the Federal Trade Commission. Petition by the Federal Trade Commission for the enforcement of an order entered against Paul Balme, trading under the...	Case	—	225+
—	**120. Federal Trade Commission v. Bradley** 31 F.2d 569, C.C.A.2, 1929 Appeal from the United States Federal Trade Commission. Proceeding by the Federal Trade Commission against James J. Bradley, doing business under the trade-name and style of James...	Case	—	225+
—	**121. Federal Trade Commission v. Cassoff** 38 F.2d 790, C.C.A.2, 1930 Appeal from the Federal Trade Commission. Application by the Federal Trade Commission to enforce its order against L. F. Cassoff, as individual doing business under the names and...	Case	—	225+
—	**122. Federal Trade Commission v. Civil Service Training Bureau** 79 F.2d 113, C.C.A.6, 1935 Application for Enforcement of an Order of the Federal Trade Commission. Proceeding by the Federal Trade Commission against the Civil Service Training Bureau, Inc. On application...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**123. Federal Trade Commission v. Good-Grape Co.** 45 F.2d 70, C.C.A.6, 1930 Original proceeding by the Federal Trade Commission against the Good Grape Company to enforce a modified order of the Commission requiring respondent to cease and desist from...	Case	—	225+
—	**124. Federal Trade Commission v. Hires Turner Glass Co.** 81 F.2d 362, C.C.A.3, 1935 Upon Petition for Modification of Judgment. Proceeding by the Federal Trade Commission against the Hires Turner Glass Company for the enforcement of an order which directed the...	Case	—	225+
—	**125. Federal Trade Commission v. Kay** 35 F.2d 160, C.C.A.7, 1929 Application for enforcement of an order of the Federal Trade Commission. Petition by the Federal Trade Commission for a decree for enforcement of its cease and desist order against...	Case	—	225+
—	**126. Federal Trade Commission v. Maisel Trading Post** 79 F.2d 127, C.C.A.10, 1935 Application for the Enforcement of an Order of the Federal Trade Commission. On rehearing. Former judgment modified. For former opinion, see 77 F. (2d) 246.	Case	—	225+
—	**127. Federal Trade Commission v. Maisel Trading Post** 77 F.2d 246, C.C.A.10, 1935 Application for the Enforcement of an Order of the Federal Trade Commission. Application by the Federal Trade Commission for the enforcement of an order of the Commission directing...	Case	—	225+
—	**128. Federal Trade Commission v. Mid West Mills** 90 F.2d 723, C.C.A.7, 1937 On Application for Enforcement of an Order of the Federal Trade Commission. Application by the Federal Trade Commission for enforcement of its order directing the Mid West Mills,...	Case	—	225+
—	**129. Federal Trade Commission v. Morrissey** 47 F.2d 101, C.C.A.7, 1931 Application for the Enforcement of an Order of the Federal Trade Commission. Petition by the Federal Trade Commission for a decree affirming an order directed to Charles T....	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**130. Federal Trade Commission v. Motion Picture Advertising Service Co.** 73 S.Ct. 361, U.S., 1953 Proceedings on complaint charging an advertising film distributor with unfair competition. The Federal Trade Commission entered a cease and desist order which was reversed by the...	Case	—	225+
—	**131. Federal Trade Commission v. National Health Aids** 108 F.Supp. 340, D.Md., 1952 Proceeding for preliminary injunction to restrain dissemination of allegedly false advertisements pending proceeding by Federal Trade Commission. The District Court, Chesnut, J.,...	Case	—	225+
—	**132. Federal Trade Commission v. Non-Plate Engraving Co.** 49 F.2d 766, C.C.A.2, 1931 This is a petition by the Federal Trade Commission for the enforcement of an order issued by it under section 5 of the Federal Trade Commission Act (15 U.S.C. § 45 (15 USCA § 45)))....	Case	—	225+
—	**133. Federal Trade Commission v. Pure Silk Hosiery Mills** 3 F.2d 105, C.C.A.7, 1924 Trade-marks and trade-names and unfair competition 80 1/212, New, vol. 8A Key-No. Series-Corporation held not to have complied with order prohibiting use of word 'mills' until it...	Case	—	225+
—	**134. Federal Trade Commission v. R.F. Keppel & Bro.** 54 S.Ct. 423, U.S., 1934 Petition by R. F. Keppel & Brother, Incorporated, to review an order of the Federal Trade Commission forbidding certain practices of the petitioner as an unfair method of...	Case	—	225
—	**135. Federal Trade Commission v. Raladam Co.** 62 S.Ct. 966, U.S., 1942 On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit. Petition by the Raladam Company to review and set aside a cease and desist order of the...	Case	—	225+
—	**136. Federal Trade Commission v. Raladam Co.** 51 S.Ct. 587, U.S., 1931 On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit. Proceedings by the Federal Trade Commission against the Raladam Company. An order of the...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**137. Federal Trade Commission v. Real Products Corporation** 90 F.2d 617, C.C.A.2, 1937 Appeal for the Federal Trade Commission. Application by the Federal Trade Commission seeking the enforcement of an order issued by it against the Real Products Corporation and...	Case	—	225+
—	**138. Federal Trade Commission v. Royal Milling Co.** 53 S.Ct. 335, U.S., 1933 On writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit. Proceeding by the Federal Trade Commission against the Royal Milling Company and others....	Case	—	225+
—	**139. Federal Trade Commission v. Sewell** 77 S.Ct. 1055, U.S., 1957 Facts and opinion, 9 Cir., 240 F.2d 228.	Case	—	225+
—	**140. Federal Trade Commission v. Standard Education Soc.** 58 S.Ct. 113, U.S., 1937 On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit. Proceeding by the Federal Trade Commission against the Standard Education Society and...	Case	—	225+
—	**141. Federal Trade Commission v. Standard Education Soc.** 86 F.2d 692, C.C.A.2, 1936 Appeal from the Federal Trade Commission. Proceeding by the Federal Trade Commission against the Standard Education Society and others for an order to enforce an order of the...	Case	—	225+
—	**142. Federal Trade Commission v. Walker's New River Mining Co.** 79 F.2d 457, C.C.A.4, 1935 On Application for Enforcement of an Order of the Federal Trade Commission. Proceeding on the application of the Federal Trade Commission for enforcement of an order that the...	Case	—	225+
—	**143. Federal Trade Commission v. Winsted Hosiery Co.** 42 S.Ct. 384, U.S.N.Y., 1922 On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit. Complaint by the Federal Trade Commission against Winsted Hosiery Company. An order by...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**144. Federated Nationwide Wholesalers Service v. F. T. C.** 398 F.2d 253, 2nd Cir., 1968 Petition to review and set aside a cease and desist order issued by Federal Trade Commission upon findings that defendants had engaged in certain unfair and deceptive trade...	Case	—	225+
—	**145. Feil v. F.T.C.** 285 F.2d 879, 9th Cir., 1960 Proceeding to review Federal Trade Commission's order. The Court of Appeals, Yankwich, District Judge, held that order requiring advertisements to exclude from bed-wetting cases...	Case	—	225+
—	**146. Fioret Sales Co. v. Federal Trade Commission** 100 F.2d 358, C.C.A.2, 1938 Appeal from the Federal Trade Commission. Petition by Fioret Sales Company, Inc., and others to review and set aside an order of the Federal Trade Commission directing petitioners...	Case	—	225+
—	**147. Folds v. Federal Trade Commission** 187 F.2d 658, 7th Cir., 1951 Petition by Jessie D. Folds, and others, against the Federal Trade Commission for review of an order to cease and desist entered by the Federal Trade Commission. The Court of...	Case	—	225+
—	**148. Ford Motor Co. v. Federal Trade Commission** 120 F.2d 175, C.C.A.6, 1941 On Petition to Review and Set Aside an Order of the Federal Trade Commission. Proceeding by the Ford Motor Company against the Federal Trade Commission to review and set aside an...	Case	—	225+
—	**149. Fox Film Corporation v. Federal Trade Commission** 296 F. 353, C.C.A.2 (N.Y.), 1924 Petition to Review Order of the Federal Trade Commission. Petition by the Fox Film Corporation to review an order of the Federal Trade Commission directing the petitioner to...	Case	—	225+
—	**150. Fraud in connection with franchise or distributorship relationship** Fraud in connection with franchise or distributorship relationship 1975 WL 37305, 1975 This annotation collects the cases in which a franchisee or distributor has alleged that a franchisor or manufacturer has engaged in conduct constituting common-law fraud at some...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**151. Fresh Grown Preserve Corporation v. Federal Trade Commission** 139 F.2d 200, C.C.A.2, 1943 Proceedings on the petition of the Fresh Grown Preserve Corporation and others to review a cease and desist order of the Federal Trade Commission regarding the labeling and...	Case	—	225+
—	**152. Fresh Grown Preserve Corporation v. Federal Trade Commission** 125 F.2d 917, C.C.A.2, 1942 Petition to set aside a cease and desist order of the Federal Trade Commission. Proceeding on petition of the Fresh Grown Preserve Corporation and others to review a cease and...	Case	—	225+
—	**153. Galter v. Federal Trade Commission** 186 F.2d 810, 7th Cir., 1951 Petition by Jack Galter and others, to review decision of the Federal Trade Commission which entered a cease and desist order against petitioners pursuant to a complaint charging...	Case	—	225+
—	**154. Gelb v. Federal Trade Commission** 144 F.2d 580, C.C.A.2, 1944 CLARK, Circuit Judge, dissenting in part. Petition to Review an Order of the Federal Trade Commission. Petition of Joan Clair Gelb, now known as Joan C. Vaughan, and others, to...	Case	—	225+
—	**155. General Motors Corporation v. Federal Trade Commission** 114 F.2d 33, C.C.A.2, 1940 Petition to Review an Order of the Federal Trade Commission. Petition by the General Motors Corporation, the General Motors Sales Corporation, and the General Motors Acceptance...	Case	—	225+
—	**156. George H. Lee Co. v. Federal Trade Commission** 113 F.2d 583, C.C.A.8, 1940 Petition to review order of Federal Trade Commission. Petition by the George H. Lee Company for review of an order of the Federal Trade Commission requiring petitioner to cease and...	Case	—	225+
—	**157. Ger-Ro-Mar, Inc. v. F. T. C.** 518 F.2d 33, 2nd Cir., 1975 Lingerie manufacturer filed petition to review a cease and desist order of the Federal Trade Commission directed against the manufacturer's merchandising program and advertising. ...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**158. Giant Food, Inc. v. F.T.C.** 322 F.2d 977, D.C.Cir., 1963 Proceeding before Federal Trade Commission. The Commission ordered a retailer to cease and desist from a certain advertising practice, and the retailer petitioned for review. The...	Case	—	225+
—	**159. Gimbel Bros. v. Federal Trade Commission** 116 F.2d 578, C.C.A.2, 1941 Proceeding by Gimbel Bros, Inc., to review an order of the Federal Trade Commission. Order affirmed as modified.	Case	—	225+
—	**160. Gold Tone Studios v. Federal Trade Commission** 183 F.2d 257, 2nd Cir., 1950 Petition by Gold Tone Studies, Inc., and others against the Federal Trade Commission to review and set aside an order of the Commission requiring petitioners, among other things,...	Case	—	225+
—	**161. Goodman v. Federal Trade Commission** 244 F.2d 584, 9th Cir., 1957 Petition to review a cease and desist order of the Federal Trade Commission. The Court of Appeals, Yankwich, District Judge, held, inter alia, that on petition to review the...	Case	—	225+
—	**162. Grand Rapids Furniture Co. v. Federal Trade Commission** 134 F.2d 332, C.C.A.3, 1943 Appeal from Federal Trade Commission. Petition by the Grand Rapids Furniture Co., Inc., to review a cease and desist order of the Federal Trade Commission. Order affirmed.	Case	—	225+
—	**163. Grolier Inc. v. F.T.C.** 699 F.2d 983, 9th Cir., 1983 Company engaged in door-to-door and mail order sale of encyclopedias and related reference publications sought review of a cease and desist order entered against it by the Federal...	Case	—	225+
—	**164. Grove Laboratories v. F. T. C.** 418 F.2d 489, 5th Cir., 1969 Petition to review order of Federal Trade Commission prohibiting petitioner from disseminating certain advertisements in connection with products for treatment of hemorrhoids. The...	Case	—	225+
—	**165. Guarantee Veterinary Co. v. Federal Trade Commission** 285 F. 853, C.C.A.2, 1922 Petition to Review Order of the Federal Trade Commission. Proceeding under the Federal Trade Commission against the Guarantee Veterinary Company and George L. Owens. On...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**166.** **Gulf Oil Corp. v. Federal Trade Commission** 150 F.2d 106, C.C.A.5, 1945 Petition to Review an Order of the Federal Trade Commission. Petition by the Gulf Oil Corporation to review an order of the Federal Trade Commission forbidding the use of certain...	Case	—	225+
—	**167.** **Guziak v. F. T. C.** 361 F.2d 700, 8th Cir., 1966 Proceeding on petition seeking review of cease and desist order issued by Federal Trade Commission. The Court of Appeals, Stephenson, District Judge, held that mere fact that...	Case	—	225+
—	**168.** **H.N. Heusner & Son v. Federal Trade Commission** 106 F.2d 596, C.C.A.3, 1939 Proceeding by H. N. Heusner & Son against the Federal Trade Commission to review and modify an order of the Commission. Order modified and enforced as modified.	Case	—	225+
—	**169.** **Harsam Distributors, Inc. v. F.T.C.** 263 F.2d 396, 2nd Cir., 1959 Petition to review and set aside an order of Federal Trade Commission that petitioners cease and desist from engaging in unfair and deceptive acts and practices and unfair methods...	Case	—	225+
—	**170.** **Harsh v. Illinois Terminal Railroad Company.** 75 S.Ct. 362, U.S.Ill., 1955 Former decision, 348 U.S. 809, 75 S.Ct. 35. Facts and opinion, 351 Ill.App. 272, 114 N.E.2d 901.	Case	—	225
—	**171.** **Haskelite Mfg. Corporation v. Federal Trade Commission** 127 F.2d 765, C.C.A.7, 1942 Petition for Review of Order of Federal Trade Commission. Proceeding by Haskelite Manufacturing Corporation against the Federal Trade Commission to review a cease and desist order...	Case	—	225+
—	**172.** **Heavenly Creations, Inc. v. F. T. C.** 339 F.2d 7, 2nd Cir., 1964 Petitions to review order of Federal Trade Commission requiring vendors to cease and desist from violating Federal Trade Commission Act and Textile Fiber Products Identification...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**173. Helbros Watch Co. v. F.T.C.** 310 F.2d 868, D.C.Cir., 1962 Proceeding upon petition by a watch manufacturer and others to review and modify Federal Trade Commission's order requiring manufacturer and others to refrain from representing...	Case	—	225+
—	**174. Herzfeld v. Federal Trade Commission** 140 F.2d 207, C.C.A.2, 1944 On petition to review an order of the Federal Trade Commission. Petition by Nathan E. Herzfeld and others to review an order of the Federal Trade Commission forbidding the...	Case	—	225+
—	**175. Hillman Periodicals v. Federal Trade Commission** 174 F.2d 122, 2nd Cir., 1949 Appeal from Federal Trade Commission. Petition by Hillman Periodicals, Inc., Alex L. Hillman, Phil Keenan, Morris B. Levine, individually and as officers of Hillman Periodicals,...	Case	—	225+
—	**176. Holland Furnace Co. v. F. T. C.** 295 F.2d 302, 7th Cir., 1961 Petition for review of a Federal Trade Commission order. The Court of Appeals, Duffy, Circuit Judge, held, inter alia, that evidence warranted Federal Trade Commission findings...	Case	—	225+
—	**177. Houbigant, Inc, v. F T C** 139 F.2d 1019, C.C.A.2, 1944 Proceeding on petition of Houbigant, Inc., and others, to review a cease and desist order of the Federal Trade Commission regarding labeling and the use of certain foreign words in...	Case	—	225+
—	**178. Hoving Corporation v. F.T.C.** 290 F.2d 803, 2nd Cir., 1961 Petition for review and to set aside a cease and desist order entered by the Federal Trade Commission which found that the petitioner had violated the Fur Products Labeling Act and...	Case	—	225+
—	**179. Howe v. Federal Trade Commission** 148 F.2d 561, C.C.A.9, 1945 Upon Petition to Review and Set Aside an Order of the Federal Trade Commission. Proceeding by Phil Howe and others, co-partners trading as Howe & Company, against the Federal Trade...	Case	—	225+
—	**180. Hunter Mills Corporation v. F.T.C.** 284 F.2d 70, 2nd Cir., 1960 Proceeding on petition under Federal Trade Commission Act to set aside order of commission entered pursuant to findings of violations of Wool Products Labeling Act. The Court of...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**181. In re Dolcin Corp.** 247 F.2d 524, D.C.Cir., 1956 Proceeding on an order to show cause why defendants should not be held in criminal contempt for violation of a court decree. The Court of Appeals held that evidence established...	Case	—	225+
—	**182. Independent Directory Corp. v. Federal Trade Commission** 188 F.2d 468, 2nd Cir., 1951 The Independent Directory Corporation, an Illinois corporation, and the Independent Directory Corporation, a New York corporation, and William Oleck and Maury Oleck, individually...	Case	—	225+
—	**183. Indiana Quartered Oak Co. v. Federal Trade Commission** 58 F.2d 182, C.C.A.2, 1932 On motion to modify an order and decree to cease and desist entered herein [26 F.(2d) 340]. Motion granted.	Case	—	225+
—	**184. Indiana Quartered Oak Co. v. Federal Trade Commission** 26 F.2d 340, C.C.A.2, 1928 Petition to Review Order of Federal Trade Commission. Petition by the Indiana Quartered Oak Company to review an order of the Federal Trade Commission requiring petitioner to...	Case	—	225+
—	**185. International Art Co. v. Federal Trade Commission** 109 F.2d 393, C.C.A.7, 1940 Petition for Review of Order of the Federal Trade Commission. Petition by the International Art Company and others against the Federal Trade Commission to set aside a cease and...	Case	—	225+
—	**186. International Parts Corporation v. Federal Trade Commission** 133 F.2d 883, C.C.A.7, 1943 Petition for review of order of the Federal Trade Commission. Petition by the International Parts Corporation for review of an order of the Federal Trade Commission directing...	Case	—	225+
—	**187. Irwin v. Federal Trade Commission** 143 F.2d 316, C.C.A.8, 1944 On Petition to Review Order of Federal Trade Commission. Proceeding by Milton Irwin, Dr. Walter G. Berg, and Dr. David W. Miles, doing business as Associated Laboratories, against...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**188.** ITT Continental Baking Co., Inc. v. F.T.C. 532 F.2d 207, 2nd Cir., 1976 Proceeding was brought for review of Federal Trade Commission order requiring baking company and its advertising agency to cease and desist from deceptively advertising food...	Case	—	225+
—	**189.** J. B. Williams Co. v. F. T. C. 381 F.2d 884, 6th Cir., 1967 Petition to review an order of the Federal Trade Commission. The Court of Appeals, Celebrezze, Circuit Judge, held that order that manufacturer of medication intended to cure...	Case	—	225+
—	**190.** J.E. Todd, Inc., v. F.T.C. 145 F.2d 858, App.D.C., 1944 Petition for Review of Order of Federal Trade Commission. Proceeding by J. E. Todd, Inc., against the Federal Trade Commission to review a cease and desist order of the commission....	Case	—	225+
—	**191.** Jacob Siegel Co. v. Federal Trade Commission 66 S.Ct. 758, U.S., 1946 Proceeding by Jacob Siegel Company against the Federal Trade Commission to review an order of the commission directing petitioner to cease and desist from the use of the name...	Case	—	225+
—	**192.** James S. Kirk & Co. v. Federal Trade Commission 59 F.2d 179, C.C.A.7, 1932 Petition for Review of Order of Federal Trade Commission. Proceedings by the Federal Trade Commission against James S. Kirk & Company. On petition by James S. Kirk & Company to...	Case	—	225+
—	**193.** John Bene & Sons v. Federal Trade Commission 299 F. 468, C.C.A.2 (N.Y.), 1924 Petition to Review Order of the Federal Trade Commission. Petition by John Bene & Sons, Inc., to review an order of the Federal Trade Commission, entered December 27, 1922. ...	Case	—	225+
—	**194.** John C. Winston Co. v. Federal Trade Commission 3 F.2d 961, C.C.A.3, 1925 1. Trade-marks and trade-names and unfair competition 80 1/212, New, vol. 8A Key-No. Series-Order of Trade Commission to cease practice which had been abandoned before...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**195.** **John J. Fulton Co. v. Federal Trade Commission** 130 F.2d 85, C.C.A.9, 1942 Upon Petition to Review an Order of the Federal Trade Commission. Petition by John J. Fulton Company to review an order of the Federal Trade Commission that petitioner desist from...	Case	—	225+
—	**196.** **Jurisdiction of Federal District Court to entertain attacks on Federal Trade Commission's actions** Jurisdiction of Federal District Court to entertain attacks on Federal Trade Commission's actions 1973 WL 33697, 1973 This annotation collects the cases dealing with the question of whether and under what circumstances a Federal District Court has jurisdiction to hear and determine a suit...	Secondary Source	—	225
—	**197.** **Justin Haynes & Co. v. Federal Trade Commission** 105 F.2d 988, C.C.A.2, 1939 Appeal from the Federal Trade Commission. Petition by Justin Haynes & Co., Inc., to review and set aside an order of the Federal Trade Commission directed against the petitioner. ...	Case	—	225+
—	**198.** **Juvenile Shoe Co v. Federal Trade Commission** 289 F. 57, C.C.A.9, 1923 Petition to Review Order of Federal Trade Commission. Proceeding by the Juvenile Shoe Company, Inc., against the Federal Trade Commission, to review an order of the Commission...	Case	—	225+
—	**199.** **Kalwajtys v. Federal Trade Commission** 237 F.2d 654, 7th Cir., 1956 Petition to review and set aside an order of the Federal Trade Commission requiring petitioners to cease and desist from representing to prospective buyers of photograph albums and...	Case	—	225+
—	**200.** **Keele Hair & Scalp Specialists, Inc. v. F.T.C.** 275 F.2d 18, 5th Cir., 1960 Proceeding on petition for review of an order of the Federal Trade Commission sitting at Washington, D.C. The Court of Appeals, Wisdom, Circuit Judge, held that substantial...	Case	—	225+
—	**201.** **Kerran v. F.T.C.** 265 F.2d 246, 10th Cir., 1959 Partners filed a petition for review of an order of the Federal Trade Commission requiring partners to cease and desist from selling re-refined lubricating oil without a clear and...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**202. Kidder Oil Co. v. Federal Trade Commission** 117 F.2d 892, C.C.A.7, 1941 Petition for Review of Order of the Federal Trade Commission. Petition by the Kidder Oil Company to review a case and desist order of the Federal Trade Commission. Order modified...	Case	—	225+
—	**203. Kirchner v. F.T.C.** 337 F.2d 751, 9th Cir., 1964 Proceeding on petition to review a cease and desist order of the Federal Trade Commission. The Court of Appeals, Madden, Judge of the Court of Claims, held that evidence supported...	Case	—	225+
—	**204. Koch v. Federal Trade Commission** 206 F.2d 311, 6th Cir., 1953 Proceeding upon petition to review cease and desist order of Federal Trade Commission, ordering petitioners, who were engaged in manufacture, and in sale and distribution in...	Case	—	225+
—	**205. Korber Hats, Inc. v. F.T.C.** 311 F.2d 358, 1st Cir.(Mass.), 1962 Proceeding on petition to review a cease and desist order of Federal Trade Commission. The Court of Appeals, Hartigan, Circuit Judge, held that substantial evidence supported the...	Case	—	225+
—	**206. Kordel v. U.S.** 69 S.Ct. 106, U.S.Ill., 1948 Lelord Kordel was convicted of violations of the Federal Food, Drug and Cosmetic Act, and he appealed. Judgment of conviction, 66 F.Supp. 538, was affirmed by the Circuit Court of...	Case	—	225+
—	**207. L. & C. Mayers Co. v. Federal Trade Commission** 97 F.2d 365, C.C.A.2, 1938 Petition to Review and Set Aside an Order of the Federal Trade Commission. Proceeding by L. & C. Mayers Company, Incorporated, to review and set aside an order of the Federal Trade...	Case	—	225+
—	**208. L. Heller & Son v. Federal Trade Commission** 191 F.2d 954, 7th Cir., 1951 L. Heller & Son, Inc., filed a petition against the Federal Trade Commission to review and set aside orders of the Commission requiring petitioners to cease and desist from...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**209. L.B. Silver Co. v. Federal Trade Commission of America** 289 F. 985, C.C.A.6, 1923 Denison, Circuit Judge, dissenting in part. Complaint by the Federal Trade Commission of America against the L. B. Silver Company, charging the respondent with using unfair...	Case	—	225+
—	**210. Lane v. Federal Trade Commission** 130 F.2d 48, C.C.A.9, 1942 Petition to Review an Order of the Federal Trade Commission. Petition by Albert Lane to review an order of the Federal Trade Commission that petitioner, doing business as Consumers...	Case	—	225+
—	**211. Lazar v. Federal Trade Commission** 240 F.2d 176, 7th Cir., 1957 Proceedings on petition for review of cease and desist order of the Federal Trade Commission. The Court of Appeals, Major, Circuit Judge, held that under Trade Practice Rule,...	Case	—	225+
—	**212. Lekas & Drivas v. Federal Trade Commission** 145 F.2d 976, C.C.A.2, 1944 On Petition to Review an order of the Federal Trade Commission. Petition by Lekas & Drivas, Inc., to review an order of the Federal Trade Commission to cease and desist from...	Case	—	225+
—	**213. Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug** Liability of manufacturer or seller for injury or death allegedly caused by failure to warn regarding danger in use of vaccine or prescription drug 1979 WL 52377, 1979 This annotation collects and analyzes the cases in which the courts have discussed the civil liability of a manufacturer, seller, or druggist of a prescription medicine or vaccine...	Secondary Source	—	225
—	**214. Libbey-Owens-Ford Glass Co. v. F. T. C.** 352 F.2d 415, 6th Cir., 1965 Proceeding on petitions to review Federal Trade Commission's cease and desist orders issued upon complaint charging automobile manufacturer and automobile glass manufacturer with...	Case	—	225+
—	**215. Lighthouse Rug Co. v. Federal Trade Commission** 35 F.2d 163, C.C.A.7, 1929 Petition by the Lighthouse Rug Company for review of an order of Federal Trade Commission. Decree in accordance with the commission's order.	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**216. Litton Industries, Inc. v. F.T.C.** 676 F.2d 364, 9th Cir., 1982 Advertiser sought review of final order of Federal Trade Commission holding that certain microwave oven advertisements violated section of Federal Trade Commission Act and ordered...	Case	—	225+
—	**217. Macher v. Federal Trade Commission** 126 F.2d 420, C.C.A.2, 1942 On Petition for Review of an Order of the Federal Trade Commission. Petition by Caroline R. Macher and Robert J. Macher for review of an order of the Federal Trade Commission that...	Case	—	225+
—	**218. Mandel Bros, Inc v. F T C** 254 F.2d 18, 7th Cir., 1958 Petition seeking to set aside a cease and desist order entered by the Federal Trade Commission under the Fur Products Labeling Act. The United States Court of Appeals, Parkinson,...	Case	—	225+
—	**219. Mannis v. F. T. C.** 293 F.2d 774, 9th Cir., 1961 Proceeding on fur retailer's petition to review a cease and desist order of the Federal Trade Commission. The Court of Appeals, Barnes, Circuit Judge, held that where the Federal...	Case	—	225+
—	**220. Marcus v. F. T. C.** 354 F.2d 85, 2nd Cir., 1965 Petition by blanket manufacturer to review Federal Trade Commission cease and desist order based on findings of violation of Wool Products Labeling Act and Federal Trade Commission...	Case	—	225+
—	**221. Marietta Mfg. Co. v. Federal Trade Commission** 50 F.2d 641, C.C.A.7, 1931 Petition for Review of Order of Federal Trade Commission. Petition by the Marietta Manufacturing Company to review an order of the Federal Trade Commission. Petition denied.	Case	—	225+
—	**222. Marlene's, Inc. v. Federal Trade Commission** 216 F.2d 556, 7th Cir., 1954 Proceeding for review of an order of the Federal Trade Commission directing petitioners to cease and desist from certain unlawful advertising practices. The Court of Appeals,...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**223.** **Mary Muffet, Inc. v. Federal Trade Commission** 194 F.2d 504, 2nd Cir., 1952 Petition by Mary Muffet, Inc., and others for review of an order of the Federal Trade Commission directing the petitioners to cease and desist from advertising, offering for sale,...	Case	—	225+
—	**224.** **Masland Duraleather Co. v. Federal Trade Commission** 34 F.2d 733, C.C.A.3, 1929 Petition to Review Order of Federal Trade Commission. Petition by the Masland Duraleather Company and another to review an order of the Federal Trade Commission. Order modified...	Case	—	225+
—	**225.** **Mohawk Refining Corporation v. F.T.C.** 263 F.2d 818, 3rd Cir., 1959 Proceedings on petition for review of an order of the Federal Trade Commission requiring petitioners to cease and desist from advertising, offering for sale or selling re-refined...	Case	—	225+
—	**226.** **Montgomery Ward & Co. v. F.T.C.** 379 F.2d 666, 7th Cir.(Ill.), 1967 Proceeding on petition to review an order of the Federal Trade Commission. The Court of Appeals, Hastings, Chief Judge, held that Federal Trade Commission determination that...	Case	—	225+
—	**227.** **Moretrench Corporation v. Federal Trade Commission** 127 F.2d 792, C.C.A.2, 1942 On petition to Review an Order of the Federal Trade Commission. Proceeding upon petition by Moretrench Corporation to review an order of the Federal Trade Commission directing the...	Case	—	225+
—	**228.** **Morton's Inc. v. F.T.C.** 286 F.2d 158, 1st Cir., 1961 Proceeding on petition for review of an order of the Federal Trade Commission directing respondents to cease and desist from certain practices found violative of Fur Products...	Case	—	225+
—	**229.** **Murray Space Shoe Corp. v. F. T. C.** 304 F.2d 270, 2nd Cir., 1962 The petitioners sought to set aside an order of the Federal Trade Commission requiring the petitioners to cease and desist from certain advertising practices found false and...	Case	—	225+
—	**230.** **Mytinger & Casselberry, Inc. v. F.T.C.** 301 F.2d 534, D.C.Cir., 1962 Petition to review an order of the Federal Trade Commission. The United States Court of Appeals for the District of Columbia Circuit, Fahy, Circuit Judge, held that an exclusive...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**231. N. Fluegelman & Co. v. Federal Trade Commission** 37 F.2d 59, C.C.A.2, 1930 Appeal from the Federal Trade Commission. Petition by N. Fluegelman & Co., Inc., to review an order of the Federal Trade Commission entered against the petitioner, ordering it to...	Case	—	225+
—	**232. National Bakers Services, Inc. v. F.T.C.** 329 F.2d 365, 7th Cir.(Ill.), 1964 Proceeding on petition to review Federal Trade Commission order. The Court of Appeals, Duffy, Circuit Judge, held that evidence supported findings that petitioner, in its...	Case	—	225+
—	**233. National Casualty Company v. Federal Trade Com'n** 245 F.2d 883, 6th Cir., 1957 Petition to review an order of Federal Trade Commission requiring insurance company to cease and desist from engaging in acts and practices in the conduct of its insurance business...	Case	—	225+
—	**234. National Dynamics Corp. v. F.T.C.** 492 F.2d 1333, 2nd Cir., 1974 Petition to review an order of the Federal Trade Commission requiring the manufacturer of a battery additive to cease and desist from deceptive advertising. The Court of Appeals...	Case	—	225+
—	**235. National Silver Co. v. Federal Trade Commission** 88 F.2d 425, C.C.A.2, 1937 Appeal from the Federal Trade Commission. Proceeding on the petition of the National Silver Company, a corporation, to review a cease and desist order of the Federal Trade...	Case	—	225+
—	**236. National Trade Publications Service, Inc. v. F. T. C.** 300 F.2d 790, 8th Cir., 1962 Proceeding on petition to review an order of the Federal Trade Commission directing petitioners to cease and desist from certain practices. The Court of Appeals, Matthes, Circuit...	Case	—	225+
—	**237. Neff v. Federal Trade Commission** 117 F.2d 495, C.C.A.4, 1941 On Petition for Review of an order of the Federal Trade Commission. Petition by George G. Neff, an individual doing business under the trade-name of Prostex Company, to review a...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**238.** New American Library of World Literature v. F T C 213 F.2d 143, 2nd Cir., 1954 Proceeding on petition to review an order of the Federal Trade Commission directing publishers of paper-back reprints to cease and desist from offering books for sale without...	Case	—	225+
—	**239.** Niresk Industries, Inc. v. F.T.C. 278 F.2d 337, 7th Cir., 1960 Proceeding on petition for review of cease and desist order entered entered against mail order distributor of electric cookerfryer and officer of distributor by Federal Trade...	Case	—	225+
—	**240.** Northam Warren Corporation v. Federal Trade Commission 59 F.2d 196, C.C.A.2, 1932 Appeal from the Federal Trade Commission. Petition by the Northam Warren Corporation to review an order of the Federal Trade Commission directing the petitioner to cease and desist...	Case	—	225+
—	**241.** Northern Feather Works v. Federal Trade Com'n 234 F.2d 335, 3rd Cir., 1956 Proceeding on petition to set aside order of Federal Trade Commission. The Court of Appeals, Goodrich, Circuit Judge, held that finding as to public interest is not a prerequisite...	Case	—	225+
—	**242.** Ohio Leather Co. v. Federal Trade Commission 45 F.2d 39, C.C.A.6, 1930 Petition by the Ohio Leather Company against Federal Trade Commission to review and vacate an order made by the Commission, and the Commission filed an answer in the nature of a...	Case	—	225+
—	**243.** Ostermoor & Co. v. Federal Trade Commission 16 F.2d 962, C.C.A.2, 1927 Petition to Review Order of the Federal Trade Commission. Petition by Ostermoor & Co., Inc., to review a case and desist order of the Federal Trade Commission. Order of...	Case	—	225+
—	**244.** P. F. Collier & Son Corp. v. Federal Trade Commission. 91 S.Ct. 188, U.S., 1970 Facts and opinion, 427 F.2d 261.	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**245. P. Lorillard Co. v. Federal Trade Commission** 186 F.2d 52, 4th Cir., 1950 Proceeding by P. Lorillard Company, a corporation, against the Federal Trade Commission, to review an order of the Commission directing the petitioner to cease and desist from...	Case	—	225+
—	**246. P.F. Collier & Son Corp. v. F.T.C.** 427 F.2d 261, 6th Cir., 1970 Petition to review order of Federal Trade Commission requiring corporations to cease and desist from unfair and deceptive trade practices allegedly employed in door-to-door sales...	Case	—	225+
—	**247. Parfums Corday v. Federal Trade Commission** 120 F.2d 808, C.C.A.2, 1941 Order affirmed on opinion in Fioret Sales Co., Inc. v. Federal Trade Commission, 2 Cir., 100 F.2d 358.	Case	—	225+
—	**248. Parke, Austin & Lipscomb v. Federal Trade Commission** 142 F.2d 437, C.C.A.2, 1944 Petition for Review and Modification of an Order by the Federal Trade Commission. Petition by Parke, Austin & Lipscomb, Incorporated, Smithsonian Institution Series, Incorporated,...	Case	—	225+
—	**249. Parker Pen Co. v. Federal Trade Commission** 159 F.2d 509, C.C.A.7, 1946 Petition for Review of Order of the Federal Trade Commission. Proceeding by Parker Pen Company against Federal Trade Commission to review an order of such commission. Order...	Case	—	225+
—	**250. Pep Boys-Manny, Moe & Jack, Inc. v. Federal Trade Commission** 122 F.2d 158, C.C.A.3, 1941 On Petition to Review and Set Aside an Order of the Federal Trade Commission. Petition by Pep Boys — Manny, Moe and Jack, Incorporated, against the Federal Trade Commission, to...	Case	—	225+
—	**251. Perloff v. Federal Trade Commission** 150 F.2d 757, C.C.A.3, 1945 Petition to Review Order of Federal Trade Commission. Petition by Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individuals and copartners, trading as Atlantic...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**252. Perma-Maid Co. v. Federal Trade Commission** 121 F.2d 282, C.C.A.6, 1941 Petition to Review an Order of the Federal Trade Commission. Petition by the Perma-Maid Company, Incorporated, to review an order of the Federal Trade Commission, directing the...	Case	—	225+
—	**253. Philip Carey Mfg. Co. v. Federal Trade Commission** 29 F.2d 49, C.C.A.6, 1928 Knappen, Circuit Judge, dissenting. Petition to Review an Order of the Federal Trade Commission. Petition by the Philip Carey Manufacturing Company and another to review an order...	Case	—	225+
—	**254. Philip R. Park, Inc., v. Federal Trade Commission** 136 F.2d 428, C.C.A.9, 1943 Petition to Review an Order of the Federal Trade Commission. Petition by Philip R. Park, Incorporated, against the Federal Trade Commission to review a cease and desist order of...	Case	—	225+
—	**255. Portwood v. F. T. C.** 418 F.2d 419, 10th Cir., 1969 Proceeding on petition to set aside order of Federal Trade Commission. The Court of Appeals, Holloway, Circuit Judge, held that order requiring stamp business, which had made...	Case	—	225+
—	**256. Power of Federal Trade Commission to issue order requiring corrective advertising** Power of Federal Trade Commission to issue order requiring corrective advertising 1980 WL 130754, 1980 This annotation collects and analyzes the federal cases, and orders of the Federal Trade Commission in contested cases, which have taken a position on the power of the Commission...	Secondary Source	—	225
—	**257. Practices forbidden by state deceptive trade practice and consumer protection acts** Practices forbidden by state deceptive trade practice and consumer protection acts 1979 WL 52175, 1979 This annotation collects and discusses the cases in which the courts have considered questions as to the acts or practices that are prohibited by state deceptive trade practice and...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**258. Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts--Pyramid or Ponzi or Referral Sales Schemes** Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts--Pyramid or Ponzi or Referral Sales Schemes 2009 WL 3153083, 2009 States have enacted deceptive trade practice and consumer protection acts prohibiting pyramid, Ponzi, or referral sales schemes. In Dolin v. Contemporary Financial Solutions, Inc.,...	Secondary Source	—	225
—	**259. Prima Products v. Federal Trade Commission** 209 F.2d 405, 2nd Cir., 1954 Proceeding on petition for review of order of Federal Trade Commission requiring seller to cease and desist from circulating certain advertising matter. The Court of Appeals,...	Case	—	225+
—	**260. Procter & Gamble Co. v. Federal Trade Commission** 11 F.2d 47, C.C.A.6, 1926 Petition to Review an Order of the Federal Trade Commission. Petition by the Procter & Gamble Company and the Procter & Gamble Distributing Company to review proceedings and two...	Case	—	225+
—	**261. Products liability: cigarettes and other tobacco products** Products liability: cigarettes and other tobacco products 1996 WL 568343, 1996 The potential liability of a tobacco product manufacturer has evolved over the years from cases primarily involving foreign substances in the product, to complicated, protracted...	Secondary Source	—	225
—	**262. Products Liability: Statements in Advertisements as Affecting Liability of Manufacturers or Sellers for Injury Caused by Product Other than Tobacco** Products Liability: Statements in Advertisements as Affecting Liability of Manufacturers or Sellers for Injury Caused by Product Other than Tobacco 2001 WL 1359505, 2001 Advertisements can have an effect on products liability actions in a variety of ways. What the manufacturer or seller of a product has said or left unsaid in advertising the...	Secondary Source	—	225
—	**263. Progress Tailoring Co. v. Federal Trade Commission** 153 F.2d 103, C.C.A.7, 1946 Petition for Review of Order of the Federal Trade Commission. Petition by Progress Tailoring Company and others to review a cease and desist order of the Federal Trade Commission,...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**264. Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury** Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury 1979 WL 52284, 1979 This annotation collects and analyzes the cases in which the courts have discussed the civil liability of a manufacturer of a prescription drug for allegedly product-caused injury,...	Secondary Source	—	225
—	**265. Propriety of Federal Trade Commission order under 15 U.S.C.A. sec. 45 applying to all products sold by party, or to all products in broad category, where Commission has found false advertising of only one product or group of products sold by party** Propriety of Federal Trade Commission order under 15 U.S.C.A. sec. 45 applying to all products sold by party, or to all products in broad category, wh... 1979 WL 52158, 1979 This annotation collects and analyzes the federal cases which have determined the propriety of a Federal Trade Commission order under § 5 of the Federal Trade Commission Act (15...	Secondary Source	—	225
—	**266. Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached to product itself** Provisions of statutes against misbranding or false labeling of food, drug, or cosmetic products, as applicable to literature other than that attached... 1943 WL 71210, 1943 The reported case for this annotation is U.S. v. Lee, 131 F.2d 464, 143 A.L.R. 1451 (C.C.A. 7th Cir. 1942).	Secondary Source	—	225
—	**267. R.J. Reynolds Tobacco Co. v. Federal Trade Commission** 192 F.2d 535, 7th Cir., 1951 The R. J. Reynolds Tobacco Company, petitioner, filed a petition for review of an order of the Federal Trade Commission, respondent, requiring the petitioner to cease and desist...	Case	—	225+
—	**268. Rayex Corp. v. F. T. C.** 317 F.2d 290, 2nd Cir., 1963 Petition to review an order of the Federal Trade Commission finding that petitioners had engaged in certain unfair and deceptive practices. The Court of Appeals, Moore, Circuit...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**269.** **Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts** Reasonableness of offer of settlement under deceptive trade practice and consumer protection acts 1979 WL 52193, 1979 This annotation collects and discusses the cases in which the courts have considered the reasonableness of offers of settlement that were made to parties who allegedly suffered...	Secondary Source	—	225
—	**270.** **Reddi-Spred Corporation v. Federal Trade Commission** 229 F.2d 557, 3rd Cir.(Pa.), 1956 Proceeding upon petition for review of Federal Trade Commission's order calling upon petitioner to cease and desist from disseminating or causing to be disseminated by mails or...	Case	—	225+
—	**271.** **Regina Corp. v. F. T. C.** 322 F.2d 765, 3rd Cir.(Del.), 1963 Proceeding on petition to review an order of the Federal Trade Commission. The Court of Appeals, Kalodner, Circuit Judge, held that evidence in the proceeding before the...	Case	—	225+
—	**272.** **Resort Car Rental System, Inc. v. F. T. C.** 518 F.2d 962, 9th Cir., 1975 Automobile rental agencies and an officer of those agencies, in his corporate capacity and as an individual, sought review of Federal Trade Commission's cease and desist order. ...	Case	—	225+
—	**273.** **Reward for disproving commercial claim** Reward for disproving commercial claim 1980 WL 131048, 1980 This annotation collects and analyzes the cases in which the courts have determined the right to recovery of a reward offered by a businessman to anyone who could disprove a...	Secondary Source	—	225
—	**274.** **Rhodes Pharmacal Co. v. Federal Trade Commission** 208 F.2d 382, 7th Cir., 1953 Drug company and others filed a petition for review of an order of the Federal Trade Commission requiring drug company and others to cease and desist from making certain claims and...	Case	—	225+
—	**275.** **Ritholz v. March** 105 F.2d 937, App.D.C., 1939 Appeal from the District Court of the United States for the District of Columbia. Suit by Benjamin D. Ritholz and others against Charles H. March and others, to enjoin the Federal...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**276.** **Rosenblum v. F T C** 214 F.2d 338, 2nd Cir., 1954 Joint motion of petitioners and Federal Trade Commission seeking vacation of final decree, which enforced Commission order directing vendors and distributors of merchandise, books...	Case	—	225+
—	**277.** **Rosenblum v. F.T.C.** 192 F.2d 392, 2nd Cir., 1951 From an order of the Federal Trade Commission requiring the petitioners to cease and desist from using word 'free' in connection with certain advertising, Joseph Rosenblum and...	Case	—	225+
—	**278.** **Royal Baking Powder Co. v. Federal Trade Commission** 281 F. 744, C.C.A.2 (N.Y.), 1922 Petition to Review Order of the Federal Trade Commission. Petition by the Royal Baking Powder Company to revise an order of the Federal Trade Commission. Order affirmed.	Case	—	225+
—	**279.** **Royal Oil Corporation v. F.T.C.** 262 F.2d 741, 4th Cir., 1959 Proceeding upon petition for review of Federal Trade Commission's order forbidding petitioner to advertise or offer for sale used motor oil, from which impurities had been removed,...	Case	—	225+
—	**280.** **Rushing v. F.T.C.** 320 F.2d 280, 5th Cir.(La.), 1963 Proceeding on petition to review Federal Trade Commission order directing correspondence school to cease certain representations. The Court of Appeals, Lewis, Circuit Judge of the...	Case	—	225+
—	**281.** **S. & S. Pharmaceutical Co. v. F.T.C.** 408 F.2d 487, 5th Cir., 1969 Proceeding on petition for review of Federal Trade Commission's order prohibiting pharmaceutical company from sending its products to a retailer without previous written...	Case	—	225+
—	**282.** **S. Buchsbaum & Co. v. Federal Trade Commission** 160 F.2d 121, C.C.A.7, 1947 On Petition for Review of an Order to Cease and Desist Entered by the Federal Trade Commission. Petition by S. Buchsbaum & Company against the Federal Trade Commission for review...	Case	—	225+
—	**283.** **S. S. S. Co. v. F. T. C.** 416 F.2d 226, 6th Cir., 1969 Petition to review order of the Federal Trade Commission. The Court of Appeals, Weick, Circuit Judge, held that in review of evidence establishing that only a small minority of...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**284.** **Savitch v. Federal Trade Commission** 218 F.2d 817, 2nd Cir., 1955 Proceeding on petition to review decision of Federal Trade Commission, John W. Gwynne, C., which found petitioners guilty of violation of Federal Trade Commission Act in...	Case	—	225+
—	**285.** **Scientific Mfg. Co. v. Federal Trade Commission** 124 F.2d 640, C.C.A.3, 1941 Petition to Review and Set Aside Order of Federal Trade Commission. Petition by the Scientific Manufacturing Company, Incorporated, and another to review and set aside a cease and...	Case	—	225+
—	**286.** **Scope and exemptions of state deceptive trade practice and consumer protection acts** Scope and exemptions of state deceptive trade practice and consumer protection acts 1979 WL 52426, 1979 This annotation collects and discusses the cases dealing with the scope of state deceptive trade practice and consumer protection statutes. This annotation is specifically...	Secondary Source	—	225
—	**287.** **Sears, Roebuck & Co. v. F.T.C.** 258 F. 307, C.C.A.7 (Ill.), 1919 Alschuler, Circuit Judge, dissenting in part. Original Petition to Review Order of Federal Trade Commission. Original petition by Sears, Roebuck & Co. against the Federal Trade...	Case	—	225+
—	**288.** **Sears, Roebuck and Co. v. F. T. C.** 676 F.2d 385, 9th Cir., 1982 Manufacturer sought review of order of the Federal Trade Commission. The Court of Appeals, Reinhardt, Circuit Judge, held that: (1) cease and desist order directed towards the...	Case	—	225+
—	**289.** **Sebrone Co. v. Federal Trade Commission** 135 F.2d 676, C.C.A.7, 1943 Petition for Review of Order of the Federal Trade Commission. Petition by the Sebrone Company, formerly known as Seboreen Laboratories, Inc., and others against the Federal Trade...	Case	—	225+
—	**290.** **Segal Lock & Hardware Co. v. Federal Trade Commission** 143 F.2d 935, C.C.A.2, 1944 On Petition to Review an Order of the Federal Trade Commission.	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**291.** **Segal v. Federal Trade Commission** 142 F.2d 255, C.C.A.2, 1944 On Petition to Review an Order of the Federal Trade Commission. Proceedings by Lucian V. Segal, petitioner, against Federal Trade Commission, respondent, on petition to review...	Case	—	225+
—	**292.** **Sewell v. Federal Trade Commission** 240 F.2d 228, 9th Cir., 1956 Proceeding on petition to review order of Federal Trade Commission prohibiting manufacturer of shoe insert sold in interstate commerce from alleged illegal advertising of the...	Case	—	225+
—	**293.** **Shafe v. F T C** 256 F.2d 661, 6th Cir., 1958 Petition to review an order of the Federal Trade Commission requiring petitioners to cease and desist from disseminating false advertisements in commerce and through the United...	Case	—	225+
—	**294.** **Sheffield Silver Co. v. Federal Trade Commission** 98 F.2d 676, C.C.A.2, 1938 Appeal from Federal Trade Commission. Petition by the Sheffield Silver Company, Inc., to vacate an order of the Federal Trade Commission, directing the petitioner to cease and...	Case	—	225+
—	**295.** **Sibert v. F. T. C.** 367 F.2d 364, 2nd Cir., 1966 Proceeding on petition by individual and corporations to set aside a cease and desist order of the Federal Trade Commission against deceptive advertising practices. The Court of...	Case	—	225+
—	**296.** **Simeon Management Corp. v. F. T. C.** 579 F.2d 1137, 9th Cir., 1978 Operators of weight loss clinics sought to have cease and desist order of the Federal Trade Commission set aside. The Court of Appeals, Burns, United States District Judge for the...	Case	—	225+
—	**297.** **Southwest Sunsites, Inc. v. F.T.C.** 785 F.2d 1431, 9th Cir., 1986 Land sales companies, general manager and shareholder petitioned for judicial review of cease and desist order issued by Federal Trade Commission finding that their representations...	Case	—	225+
—	**298.** **Spiegel, Inc. v. F.T.C.** 411 F.2d 481, 7th Cir.(Ill.), 1969 In proceeding on petition for review of a cease and desist order of the Federal Trade Commission, the Court of Appeals, Duffy, Senior Circuit Judge, held that evidence sustained...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**299. Standard Distributors v. Federal Trade Commission** 211 F.2d 7, 2nd Cir., 1954 Corporation, which sold encyclopedias, and its president filed a petition to review a cease and desist order of the Federal Trade Commission, which found that corporation and its...	Case	—	225+
—	**300. Standard Oil Co. of California v. F. T. C.** 577 F.2d 653, 9th Cir., 1978 Oil company and its advertising agency challenged a decision and a cease and desist order issued by the Federal Trade Commission. Commission found that oil company and agency had...	Case	—	225+
—	**301. Stanley Laboratories v. Federal Trade Commission** 138 F.2d 388, C.C.A.9, 1943 Upon Petition to Review an Order of the Federal Trade Commission. Original proceeding by Stanley Laboratories, Inc., and another upon a petition to review and set aside an order to...	Case	—	225+
—	**302. Stanton v. Federal Trade Commission** 131 F.2d 105, C.C.A.10, 1942 On Petition for Review of an Order of the Federal Trade Commission. Proceeding by Clara Stanton, individually and trading as Clara Stanton, Druggist to Women, for review of an...	Case	—	225+
—	**303. State Regulation of Telephone "Slamming"** State Regulation of Telephone "Slamming" 2001 WL 1219077, 2001 "Slamming" is a term used to describe the unauthorized switching of a customer's long–distance telephone service carrier by a long–distance service provider or by a contractor,...	Secondary Source	—	225
—	**304. Statements in advertisements as affecting manufacturer's or seller's liability for injury caused by product sold** Statements in advertisements as affecting manufacturer's or seller's liability for injury caused by product sold 1961 WL 12825, 1961 This article has been superseded by the following article(s): Superseded by 93 A.L.R.5th 103	Secondary Source	—	225
—	**305. Stauffer Laboratories, Inc. v. F.T.C.** 343 F.2d 75, 9th Cir., 1965 Petition to review cease and desist order issued by Federal Trade Commission directed to petitioner-corporation and its principal officer pursuant to complaint charging petitioner...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**306. Steelco Stainless Steel v. Federal Trade Commission** 187 F.2d 693, 7th Cir., 1951 Petition by the Steelco Stainless Steel, Inc., and Clyde C. Carr, against the Federal Trade Commission to review and set aside a cease and desist order issued by the Federal Trade...	Case	—	225+
—	**307. Sterling Drug, Inc. v. F.T.C.** 741 F.2d 1146, 9th Cir., 1984 Drug manufacturer sought review of FTC orders dealing with advertising. The Court of Appeals, Hug, Circuit Judge, held that: (1) evidence sustained FTC finding that...	Case	—	225+
—	**308. Tashof v. F.T.C.** 437 F.2d 707, D.C.Cir., 1970 Petition for review of order of the Federal Trade Commission directing retailer to disclose certain credit information and forbidding retailer to advertise discount prices for...	Case	—	225+
—	**309. Telebrands Corp. v. F.T.C.** 457 F.3d 354, 4th Cir., 2006 COMMERCIAL LAW - Advertising. Federal Trade Commission could prevent abdominal belt marketer from making misleading claims as to any product.	Case	—	225+
—	**310. Temporary relief against unfair trade practices under 15 U.S.C.A. sec. 53** Temporary relief against unfair trade practices under 15 U.S.C.A. sec. 53 1977 WL 45646, 1977 This annotation collects and analyzes cases construing § 13 of the Federal Trade Commission Act (15 U.S.C.A. § 53) which permits the Federal Trade Commission (referred to...	Secondary Source	—	225+
—	**311. Thiret v. F. T. C.** 512 F.2d 176, 10th Cir., 1975 Petitions were filed seeking review of order of Federal Trade Commission requiring that petitioners, who were engaged in business of installing and selling steel siding, cease and...	Case	—	225+
—	**312. Thomas v. Federal Trade Commission** 116 F.2d 347, C.C.A.10, 1940 Petition to Review an Order of the Federal Trade Commission. Proceeding by Chester L. Thomas, individually, and trading as Thomas Quilt Factories against the Federal Trade...	Case	—	225+
—	**313. TK-7 Corp. v. F.T.C.** 738 F.Supp. 446, W.D.Okla., 1990 Manufacturer of fuel additive sought injunctive and declaratory relief, challenging required disclosure of chemical formula for its additive in Federal Trade Commission (FTC)...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**314. Tornek v. F.T.C.** 276 F.2d 513, D.C.Cir., 1960 Proceeding on petition to review an order of the Federal Trade Commission holding, inter alia, that petitioner made unfair and deceptive representations to the effect that a watch...	Case	—	225+
—	**315. Tractor Training Service v. Federal Trade Commission** 227 F.2d 420, 9th Cir., 1955 Petition by corporations selling courses of study and instruction on subject of diesel engines and tractor equipment to review cease and desist order of Federal Trade Commission...	Case	—	225+
—	**316. Trade dress simulation of cosmetic products as unfair competition** Trade dress simulation of cosmetic products as unfair competition 1978 WL 43062, 1978 This annotation collects and analyzes the cases in which the courts have explicitly discussed whether, or under what circumstances, one's use of a particular trade dress for...	Secondary Source	—	225
—	**317. Treadway v. Uniroyal Tire Co.** 766 P.2d 938, Okla., 1988 Service station attendant brought products liability action against tire manufacturer for injuries he sustained when tire burst while he was attempting to inflate it. The...	Case	—	225+
—	**318. U. S. Retail Credit Ass'n v. F. T. C.** 300 F.2d 212, 4th Cir., 1962 Petition for review of cease and desist order issued by Federal Trade Commission against representations by collection agency concerning nature of its organization and service. ...	Case	—	225+
—	**319. U. S. v. Lee** 131 F.2d 464, C.C.A.7 (Wis.), 1942 'Accompany' means to go along with, to go with or attend as a companion or associate, and to occur in association with. Appeal from the District Court of the United States for the...	Case	—	225+
—	**320. U. S. v. Reader's Digest Ass'n, Inc.** 662 F.2d 955, 3rd Cir.(Del.), 1981 Government brought action against a magazine publisher seeking injunctive relief and recovery of civil penalties for alleged violation of Federal Trade Commission's consent order. ...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**321. U. S. v. Reader's Digest Ass'n, Inc.** 464 F.Supp. 1037, D.Del., 1978 United States sued magazine publisher seeking injunctive relief and civil penalties under Federal Trade Commission Act for alleged violations of consent cease and desist order...	Case	—	225+
—	**322. U. S. v. Research Laboratories** 126 F.2d 42, C.C.A.9 (Wash.), 1942 Appeal from the District Court of the United States for the Western District of Washington, Southern Division; Lloyd L. Black, Judge. Libel by the United States of America for...	Case	—	225+
—	**323. U. S. v. Various Quantities of Articles of Drug Labeled in Part: "Instant Alberty Food * * *"** 83 F.Supp. 882, D.D.C, 1949 Libel by the United States of America against various quantities of articles of drug labeled in part 'Instant Alberty Food * * * ', and other labels, on ground that the articles...	Case	—	225+
—	**324. U. S. v. Vulcanized Rubber & Plastics Co.** 288 F.2d 257, 3rd Cir.(Pa.), 1961 Action for violation of cease and desist order of Federal Trade Commission and for recovery of civil penalties. The United States District Court for the Eastern District of...	Case	—	225+
—	**325. U.S. Navy Weekly, Inc. v. F.T.C.** 207 F.2d 17, D.C.Cir., 1953 Proceeding upon petition for review of cease and desist order of Federal Trade Commission. The Court of Appeals, Miller, Circuit Judge, held that petitioner's use of trade name...	Case	—	225+
—	**326. U.S. v. 1 Dozen Bottles, etc., Each Containing an Article Labeled in Part Boncquet Tablets** 146 F.2d 361, C.C.A.4 (Md.), 1944 Appeal from the District Court of the United States for the District of Maryland, at Baltimore; William C. Coleman, Judge. Libel by the United States of America against 1 dozen...	Case	—	225+
—	**327. U.S. v. Bostic** 336 F.Supp. 1312, D.S.C., 1971 Action for violations of Federal Trade Commission's cease and desist order prohibiting defendant from using “bait and switch” methods in selling products. The District Court,...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**328. U.S. v. Browning** 518 F.2d 714, 10th Cir.(Utah), 1975 The United States brought an action against a manufacturer of arms and ammunition, seeking to recover penalties for the manufacturer's failure to obey a consent decree requiring...	Case	—	225+
—	**329. U.S. v. Five Cases, Each Containing One Demijohn Five-Gallon Size, of Capon Springs Water** 156 F.2d 493, C.C.A.2 (N.Y.), 1946 Appeal from District Court of the United States for the Southern District of New York. Libel under the Food, Drug, and Cosmetic Act, § 1 et seq., 21 U.S.C.A. § 301 et seq., by the...	Case	—	225+
—	**330. U.S. v. J. B. Williams Co., Inc.** 354 F.Supp. 521, S.D.N.Y., 1973 Action by Government for civil penalties for alleged violations of FTC cease and desist order. On government's motion for summary judgment, the District Court, Motley, J., held...	Case	—	225+
—	**331. U.S. v. Smith Fencer Corp.** 312 F.Supp. 666, E.D.Mich., 1970 Civil action by United States to recover penalties for alleged violation of cease and desist order, issued by Federal Trade Commission, which prohibited certain advertising...	Case	—	225+
—	**332. U.S. v. Urbuteit** 69 S.Ct. 112, U.S.Fla., 1948 Mr. Justice BLACK, Mr. Justice FRANKFURTER, Mr. Justice MURPHY, and Mr. Justice JACKSON, dissenting. On Writ of Certiorari to the United States Court of Appeals for the Fifth...	Case	—	225+
—	**333. U.S. v. Willard Tablet Co.** 141 F.2d 141, C.C.A.7 (Ind.), 1944 Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division; Robert C. Baltzell, Judge. Proceeding by the United States of...	Case	—	225+
—	**334. Ultra-Violet Products v. Federal Trade Commission** 143 F.2d 814, C.C.A.9, 1944 MATHEWS, Circuit Judge, dissenting in part. Upon Petition to Review and Set Aside an Order of the Federal Trade Commission. Petition by Ultra-Violet Products Company, Inc., to...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**335. Unfair competition by imitation in sign or design of business place** Unfair competition by imitation in sign or design of business place 1978 WL 43069, 1978 This annotation collects and analyzes the cases in which the courts have explicitly discussed whether, or under what circumstances, one's use of a particular sign or design for his...	Secondary Source	—	225
—	**336. Use of fictitious collection agency to coerce payment as unfair or deceptive practice prohibited by sec. 5 of Federal Trade Commission Act (15 U.S.C.A. sec. 45(a)(1))** Use of fictitious collection agency to coerce payment as unfair or deceptive practice prohibited by sec. 5 of Federal Trade Commission Act (15 U.S.C.A... 1975 WL 37031, 1975 This annotation collects and analyzes the federal court cases and representative Federal Trade Commission decisions which have determined whether a misrepresentation as to the...	Secondary Source	—	225
—	**337. Vacu-Matic Carburetor Co. v. Federal Trade Commission** 157 F.2d 711, C.C.A.7, 1946 On Petition for Review of Order of the Federal Trade Commission. Petition of the Vacu-Matic Carburetor Company, petitioner, against the Federal Trade Commission, respondent, to...	Case	—	225+
—	**338. Validity and construction of state statutes forbidding area price discrimination** Validity and construction of state statutes forbidding area price discrimination 1975 WL 37221, 1975 This annotation collects the cases involving the validity and construction of statutes which prohibit price discrimination in the sale or purchase of goods between one area and...	Secondary Source	—	225
—	**339. Validity and construction of statute creating Federal Trade Commission** Validity and construction of statute creating Federal Trade Commission 1932 WL 68344, 1932 The reported case for this annotation is Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S. Ct. 587, 75 L. Ed. 1324, 79 A.L.R. 1191 (1931).	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**340. Validity and construction of statute creating Federal Trade Commission** Validity and construction of statute creating Federal Trade Commission 1920 WL 47152, 1920 The reported case for this annotation is Sears, Roebuck & Co. v. F.T.C., 258 F. 307, 6 A.L.R. 358 (C.C.A. 7th Cir. 1919). This annotation is supplemented by 11 A.L.R. 797, 18...	Secondary Source	—	225
—	**341. Validity and construction of statute or ordinance prohibiting promotional games in connection with sale of gasoline** Validity and construction of statute or ordinance prohibiting promotional games in connection with sale of gasoline 1974 WL 35279, 1974 This annotation collects the cases in which the courts have construed, or passed upon the validity of, a statute or ordinance prohibiting promotional games in connection with the...	Secondary Source	—	225
—	**342. Validity of pyramid distribution plan** Validity of pyramid distribution plan 1974 WL 35067, 1974 This annotation collects the cases considering the validity of so-called pyramid distribution or marketing plans. For purposes of exhaustive collection, the scope of this...	Secondary Source	—	225
—	**343. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer--Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies** Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer-... 2011 WL 3276259, 2011 While Congress has enacted the Motor Vehicle Information and Cost Savings Act for the purposes of prohibiting the tampering with motor vehicle odometers and providing safeguards to...	Secondary Source	—	225
—	**344. Validity, construction, and application of 39 U.S.C.A. sec. 3009, making it an unfair trade practice to mail unordered merchandise** Validity, construction, and application of 39 U.S.C.A. sec. 3009, making it an unfair trade practice to mail unordered merchandise 1978 WL 42933, 1978 This annotation collects and analyzes the federal cases determining the validity of, and construing and applying, 39 U.S.C.A. § 3009, making it an unfair trade practice to mail...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**345. Validity, construction, and application of sec. 5(l) of Federal Trade Commission Act (15 U.S.C.A. sec. 45(l)), providing for imposition of civil penalty for violation of FTC cease and desist order** Validity, construction, and application of sec. 5(l) of Federal Trade Commission Act (15 U.S.C.A. sec. 45(l)), providing for imposition of civil penal... 1975 WL 37016, 1975 This annotation collects and analyzes those federal court decisions that construe or apply, or determine the validity of, the provisions of 15 U.S.C.A. § 45(l) relating to the...	Secondary Source	—	225
—	**346. Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer--Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute** Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer... 2011 WL 3760831, 2011 A number of cases have construed and applied state laws concerning the disclosure of and tampering with a motor vehicle odometer, with respect to issues concerning statutes of...	Secondary Source	—	225
—	**347. Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commissions, Discounts, or the Like** Validity, Construction, and Application of State Statute Forbidding Unfair Trade Practice or Competition by Discriminatory Allowance of Rebates, Commi... 2013 WL 1295818, 2013 With the objective of fostering fair competition in business, some states have prohibited price discrimination among similarly situated customers. To establish that this unfair...	Secondary Source	—	225
—	**348. Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements** Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements 1934 WL 59453, 1934 The reported case for this annotation is Bryan v. Cohen, 108 Fla. 421, 149 So. 211, 89 A.L.R. 1001 (1933).	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**349. Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods** Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods 1981 WL 167453, 1981 This annotation collects and analyzes the reported state and federal cases in which the courts have passed upon the validity of, or have interpreted or applied, a state or local...	Secondary Source	—	225
—	**350. Validity, construction, and effect of state franchising statute** Validity, construction, and effect of state franchising statute 1975 WL 37218, 1975 This annotation collects the cases discussing the validity, construction, and effect of state enactments designed to regulate the relationship between franchisors and franchisees....	Secondary Source	—	225
—	**351. Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices** Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices 1973 WL 34011, 1973 One of the devices used in taking advantage of consumers is the "bait-and-switch" or "disparagement" advertising or sales practices. This usually involves advertising in such an...	Secondary Source	—	225
—	**352. W. M. R. Watch Case Corp. v. F.T.C.** 343 F.2d 302, D.C.Cir., 1965 Proceeding on petition for review of a cease and desist order of Federal Trade Commission. The Court of Appeals, Bazelon, Chief Judge, held, inter alia, that even if no...	Case	—	225+
—	**353. Waltham Precision Instrument Co. v. F.T.C.** 327 F.2d 427, 7th Cir.(Ill.), 1964 Proceeding on petition for review of a final order and order to cease and desist by the Federal Trade Commission. The Court of Appeals, Hastings, Chief Judge, held that findings...	Case	—	225+
—	**354. Waltham Watch Co. v. F.T.C.** 318 F.2d 28, 7th Cir.(Ill.), 1963 Proceeding to review cease and desist order of Federal Trade Commission. The Court of Appeals, Duffy, Circuit Judge, held that where watch company, which was organized as...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**355. Ward Laboratories, Inc. v. Federal Trade Com'n** 276 F.2d 952, 2nd Cir., 1960 Petition to review an order of the Federal Trade Commission directing petitioners to cease and desist the dissemination of false and misleading advertisements. The United States...	Case	—	225+
—	**356. Warner's Renowned Remedies Co. v. F.T.C.** 140 F.2d 18, App.D.C., 1944 Petition for Review of Order of the Federal Trade Commission. Proceedings by Warner's Renowned Remedies Company against the Federal Trade Commission to review a cease and desist...	Case	—	225+
—	**357. Warner-Lambert Co. v. F.T.C.** 562 F.2d 749, D.C.Cir., 1977 Manufacturer of mouthwash petitioned for review of order of Federal Trade Commission requiring it to cease and desist from advertising that its product prevented, cured, or...	Case	—	225+
—	**358. Western Radio Corp. v. F.T.C.** 339 F.2d 937, 7th Cir.(Wis.), 1964 Manufacturer of pocket size portable radio transmitter and manufacturer's officers filed a petition to review and set aside a cease and desist order of the Federal Trade Commission...	Case	—	225+
—	**359. What constitutes "false advertising' of drugs or devices within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52)** What constitutes "false advertising' of drugs or devices within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52) 1980 WL 131083, 1980 This annotation collects and analyzes the federal cases and representative decisions of the Federal Trade Commission which have discussed what constitutes false advertising of a...	Secondary Source	—	225
—	**360. What constitutes "false advertising' of food products or cosmetics within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52)** What constitutes "false advertising' of food products or cosmetics within secs. 5 and 12 of the Federal Trade Commission Act (15 U.S.C.A. secs. 45, 52... 1980 WL 130829, 1980 This annotation collects and analyzes the federal cases and representative decisions of the Federal Trade Commission which have discussed what constitutes false advertising of a...	Secondary Source	—	225

Treatment	Referenced Title	Type	Depth	Page Number
—	**361. What Constitutes False Advertising of Vitamins under FTC Act Provisions on "Health Claims" Federal Trade Commission Act, 15 U.S.C.A. ss41 to 58** What Constitutes False Advertising of Vitamins under FTC Act Provisions on "Health Claims" Federal Trade Commission Act, 15 U.S.C.A. ss41 to 58 2015 WL 5091317, 2015 The Federal Trade Commission (FTC) regulates the advertising of health claims of vitamins under the Federal Trade Commission Act (15 U.S.C.A. §§ 41 to 58). Section 5 (15 U.S.C.A. §...	Secondary Source	—	225
—	**362. What Constitutes Substantial Injury to Consumers for Purposes of Unfair Business Practices under Federal Trade Commission Act, s5(n), 15 U.S.C.A. s45(n)** What Constitutes Substantial Injury to Consumers for Purposes of Unfair Business Practices under Federal Trade Commission Act, s5(n), 15 U.S.C.A. s45(... 2010 WL 2891578, 2010 The Federal Trade Commission Act provides, in 15 U.S.C.A. § 45(n), that the Federal Trade Commission (FTC) may not declare an act or practice to be an unfair trade practice unless...	Secondary Source	—	225
—	**363. When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts** When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts 1982 WL 198935, 1982 The purpose of this annotation is to collect and discuss the state and federal cases in which the courts have discussed or decided at what point the statute of limitations begins...	Secondary Source	—	225
—	**364. Who is a "consumer" entitled to protection of state deceptive trade practice and consumer protection acts** Who is a "consumer" entitled to protection of state deceptive trade practice and consumer protection acts 1998 WL 1032140, 1998 Consumer–protection laws were enacted in the mid–60's to prevent fraud and deception in consumer transactions. In order to impose liability under a state deceptive–trade–practice...	Secondary Source	—	225
—	**365. Wm. H. Wise Co. v. F.T.C.** 246 F.2d 702, D.C.Cir., 1957 Proceeding upon petition to review Federal Trade Commission's order. The Court of Appeals held that Commission properly directed petitioners to cease and desist from using...	Case	—	225+

Treatment	Referenced Title	Type	Depth	Page Number
—	**366. World Wide Television Corp. v. F.T.C.** 352 F.2d 303, 3rd Cir.(Pa.), 1965 Proceeding on petition to review an order to cease and desist issued by the Federal Trade Commission. The Court of Appeals held that record sustained findings of Federal Trade...	Case	—	225+
—	**367. Zenith Radio Corporation v. Federal Trade Commission** 143 F.2d 29, C.C.A.7, 1944 Petition for Review of Order of the Federal Trade Commission. Proceedings on petition of Zenith Radio Corporation to review an order of the Federal Trade Commission directing...	Case	—	225+