

liver trouble, or that through use of said product surgical operations for gallstones or other disorders may be avoided or prevented, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Gallsto Company, Docket 3444, October 7, 1938.]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 7th day of October, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

*IN THE MATTER OF MARY ROSENHEIMER,
TRADING AS GALLSTO COMPANY*

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent Mary Rosenheimer, trading as Gallsto Company, or under any other trade name, her representatives, agents and employees, in connection with the offering for sale, sale and distribution of medicinal preparations, under whatever name sold, for the relief of colds, grippe, headaches, gallstones, colic and liver complaints, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or by inference:

(1) That the preparation now designated and described as "Doctor's prescription" is an effective remedy or competent treatment for colds, la grippe and headaches;

(2) That the preparation now designated and described as "Gallsto" relieves, or that it is a competent treatment or effective remedy for, gallstones, colic or liver trouble;

(3) That through the use of said preparation now designated and described as "Gallsto" surgical operations for gallstones or other disorders may be avoided or prevented.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 38-3094; Filed, October 18, 1938;
4:03 p. m.]

[Docket No. 3492]

IN THE MATTER OF LEE SALES COMPANY

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Supplying to, etc., others, pull cards or circulars having pull tabs thereon, or other lottery devices, for the purpose of enabling such persons to dispose of, etc., jewelry, cameras, china, silverware, razors, clothing, cosmetics, and various other articles, by the use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Lee Sales Company, Docket 3492, October 6, 1938.]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Mailing, etc., to his agents, etc., pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable said persons to sell, etc., jewelry, cameras, china, silverware, razors, clothing, cosmetics, and various other articles, by the use thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Lee Sales Company, Docket 3492, October 6, 1938.]

SEC. 3.99 (b) *Using or selling lottery devices—In merchandising.*—Selling, etc., jewelry, cameras, china, silverware, razors, clothing, cosmetics, and various other articles, by the use of pull cards or circulars having pull tabs thereon, or any other lottery device, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Lee Sales Company, Docket 3492, October 6, 1938.]

SEC. 3.6 (gg) *Advertising falsely or misleadingly—Value.*—Representing, directly or indirectly, in connection with sale of jewelry, cameras, china, silverware, razors, clothing, cosmetics, etc., that various articles of merchandise which respondent sells, etc., have a retail value greatly in excess of usual or normal retail value thereof, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Lee Sales Company, Docket 3492, October 6, 1938.]

SEC. 3.6 (i) *Advertising falsely or misleadingly—Free goods or service.* SEC. 3.72 (e) *Offering deceptive inducements to purchase—Free goods.*—Falsely representing, directly or indirectly, in connection with sale of jewelry, cameras, china, silverware, razors, clothing, cosmetics, etc., that respondent's merchandise is distributed free or without cost, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b.) [Cease and desist order, Lee Sales Company, Docket 3492, October 6, 1938.]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 6th day of October, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[Docket No. 3492]

*IN THE MATTER OF ADOLPH SPATER, IN-
DIVIDUALLY AND TRADING AS LEE SALES
COMPANY*

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent Adolph Spater, individually and trading as Lee Sales Company, or trading under any other name, his representatives, agents and employees, in connection with the offering for sale, sale and distribution of various articles of merchandise including, among others, watches, cameras, china and silverware, lamps, razors, razor blades, pens, mirrors, dolls, dresser sets, clothing, clocks, cigarette lighters, jewelry, cosmetics, bedding and kitchenware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell such merchandise by the use thereof.

(2) Mailing, shipping or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof.

(3) Selling or otherwise disposing of such merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

(4) Representing directly or indirectly that the articles of merchandise which he sells or offers for sale have a retail value greatly in excess of the usual or normal retail value thereof.

(5) Representing directly or indirectly that his merchandise is distributed free or without cost when such is not the fact.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 38-3095; Filed, October 18, 1938;
4:03 p. m.]

TITLE 29—LABOR

WAGE AND HOUR DIVISION

PART 541. REGULATIONS DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OR LOCAL RETAILING CAPACITY, OR IN THE CAPACITY OF OUTSIDE SALESMAN" PURSUANT TO SECTION 13 (A) (1) OF THE FAIR LABOR STANDARDS ACT *

The following regulations—Part 541—(Regulations defining and delimiting the terms "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman" pursuant to Section 13 (a) (1) of the Fair Labor Standards Act) are hereby issued. Said Regulations—Part 541—shall become effective on my signing the original and after the publication thereof in the FEDERAL REGISTER and shall be in force and effect until repealed by regulations hereafter made and published by me.

Signed at Washington, D. C., this nineteenth day of October, 1938.

ELMER F. ANDREWS,
Administrator.

SECTION 541.1 *Executive and Administrative.* The term "employee employed in a bona fide executive [and] administrative . . . capacity" in Section 13 (a) (1) of the Act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary powers, and who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer, and who is compensated for his services at not less than \$30 (exclusive of board, lodging, or other facilities) for a workweek.*

SECTION 541.2 *Professional.* The term "employee employed in a bona fide . . . professional . . . capacity" in Section 13 (a) (1) of the Act shall mean any employee

(a) who is customarily and regularly engaged in work

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and

(ii) requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as

opposed to work subject to active direction and supervision, and

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(iv) based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, mechanical or physical processes in accordance with a previously indicated or standardized formula, plan or procedure, and

(b) who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer.*

SECTION 541.3 *Local retailing capacity.* The term "employee employed in a bona fide . . . local retailing capacity" in Section 13 (a) (1) of the Act shall mean any employee who customarily and regularly is engaged in making retail sales the greater part of which are in intrastate commerce, or who performs work immediately incidental thereto, such as the wrapping or delivery of packages, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer.*

SECTION 541.4 *Outside Salesman.* The term "employee employed . . . in the capacity of outside salesman" in Section 13 (a) (1) of the Act shall mean any employee who customarily and regularly performs his work away from his employer's place or places of business, who is customarily and regularly engaged in making sales as defined in Section 3 (k) of the Act and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer. For the purposes of this definition, recurrent routine deliveries, whether or not prior orders are placed by the purchases, and collections, shall not be considered sales.*

SECTION 541.5 *Petition for Amendment of Regulations.* Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.*

[F. R. Doc. 38-3109; Filed, October 19, 1938; 12:30 p. m.]

Notices

CIVIL AERONAUTICS AUTHORITY.

[Special Order 401-A-6]

EXEMPTING NATIONAL AIRLINES, INCORPORATED, RELATIVE TO THE AIR TRANSPORTATION SERVICE TO BE RENDERED BY SAID AIR CARRIER OVER A ROUTE FROM JACKSONVILLE, FLORIDA, TO NEW ORLEANS, LOUISIANA, VIA INTERMEDIATE CITIES

At a session of the Civil Aeronautics Authority, held at its office in Washington, D. C., on the 10th day of October, 1938.

Upon consideration by the Authority of the application of National Airlines, Incorporated, for exemption from the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, in so far as the provisions of said section are applicable to the air transportation service to be rendered by said air carrier from Jacksonville, Florida, to New Orleans, Louisiana, via Tallahassee, Marianna, and Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi, the Authority is of the opinion and finds that:

(1) The applicant was, prior to May 14, 1938, and is now an air carrier engaged in the rendition of an interstate air transportation service, and as such air carrier is subject to the provisions of the Civil Aeronautics Act of 1938 and the jurisdiction of the Civil Aeronautics Authority.

(2) Said air carrier, prior to, on and since May 14, 1938, and has been continuously engaged in the rendition of a scheduled air transportation service between Miami, Florida, and Daytona Beach, Florida, via Fort Myers, Sarasota, St. Petersburg, Tampa, Lakeland and Orlando, Florida.

(3) On or about the 12th day of April, 1938, the United States Post Office Department caused to be issued an advertisement for bidders for an air mail service over a route from Jacksonville, Florida, to New Orleans, Louisiana, via Tallahassee, Marianna, and Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi, said route being known as route AM 39.

(4) On or about the 10th day of June, 1938, a contract for air mail service over the route described in Finding (3) was awarded by the United States Post Office Department to National Airlines, Incorporated, said air carrier being the lowest bidder therefor. By the terms of said contract, said air carrier was authorized by the Postmaster General to engage in the transportation of mail over said route AM 39. Air mail service over said route was provided for by the Act of Congress making appropriations for the Treasury Department and the Post Office Department, approved March 28, 1938. Said route is specifically set forth in section

* Sections 541 through 541.5 issued under the authority contained in Section 13 (a) (1), 52 Stat. 1060.

401 (e) (2) (F) of the Civil Aeronautics Act of 1938.

(5) On or about the 15th day of July, 1938, the United States Post Office Department caused to be published a notice which provided in terms that air mail service over the route described in Finding (3) would be inaugurated on or about the 15th day of October, 1938. Said air carrier is not required, pursuant to the terms of the contract with the United States Post Office Department, to inaugurate said air mail service prior to the 10th day of December, 1938, although said air carrier desires, in the interest of the public, to commence such service as soon as possible.

(6) The present enforcement of the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, in so far as the provisions of said section are applicable to the air transportation service to be rendered by said air carrier over the route described in Finding (3), would be an undue burden on such air carrier by reason of the unusual circumstances affecting the operations of such air carrier, with respect to said air transportation service, and such enforcement would not be in the public interest.

(7) Failure to exempt said air carrier from the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, with respect to the air transportation service to be rendered by said air carrier over the route set forth in Finding (3) would prevent the institution of such service and would deny to the cities named in the route described in Finding (3), and the citizens thereof, the enjoyment of an air transportation service for the carriage of passengers, property and mail, all of which would be contrary to the public interest.

(8) Said air carrier should be exempted from the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, in so far as the provisions of said section are applicable to the air transportation service to be rendered by said air carrier over the route described in Finding (3) for a period from the date hereof to and including 120 days from June 23, 1938, and said air carrier should be permitted to inaugurate operations over said route and render such services thereon during said period for such charges and rates as are established pursuant to law, provided, and upon the condition that, said air carrier obtains and at all times is possessed of an air carrier operating certificate issued by the Authority, prescribing the terms, conditions and limitations reasonably necessary to assure the safety of the air transportation service to be rendered over said route.

(9) Said air carrier has heretofore caused to be filed with the Authority an application for a Certificate of Convenience and Necessity, for an air transportation service over the route described in Finding (3). Said air carrier should be further exempted from the

provisions of section 401 (a) of the Civil Aeronautics Act of 1938, for all classes of traffic for which authorization is sought, in connection with said air transportation service, from the date hereof until such time as the Authority shall issue a Certificate of Convenience and Necessity for the air transportation service over such route to said air carrier or shall issue its final order denying the application of said air carrier for such certificate.

The Civil Aeronautics Authority, therefore, pursuant to the authority vested in it by sections 205 (a) and 416 (b) of the Civil Aeronautics Act of 1938, hereby makes and promulgates the following Special Order:

[Special Order 401-A-6]

EXEMPTING NATIONAL AIRLINES, INCORPORATED, FROM THE PROVISIONS OF SECTION 401 (A) OF THE CIVIL AERONAUTICS ACT OF 1938, IN SO FAR AS THE SAME ARE APPLICABLE TO THE AIR TRANSPORTATION SERVICE TO BE RENDERED BY SAID AIR CARRIER, FROM JACKSONVILLE, FLORIDA, TO NEW ORLEANS, LOUISIANA, VIA INTERMEDIATE CITIES

National Airlines, Incorporated, is hereby exempted from the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, with respect to transportation by such air carrier of mail, passengers and property, over the route between Jacksonville, Florida, and New Orleans, Louisiana, via Tallahassee, Marianna, and Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi, during the period from the date hereof to and including 120 days from June 23, 1938. Such exemption from the provisions of said section shall continue after the expiration of such 120-day period until such time as the Authority shall issue a Certificate of Convenience and Necessity for the air transportation service over such route to said air carrier, or shall issue its final order denying the application of said air carrier for such certificate. This exemption is granted subject to the condition that, during all times while it shall continue to be in effect, said air carrier shall have a valid air carrier operating certificate issued by the Authority with respect to its operations on such route and that such air carrier shall, during all such times, comply with all applicable provisions and requirements of the Civil Air Regulations.

By the Authority.

[SEAL]

PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 38-3105; Filed, October 19, 1938;
11:19 a. m.]

[Special Order 401-A-7]

EXEMPTING EASTERN AIR LINES, INC., RELATIVE TO THE AIR TRANSPORTATION SERVICE TO BE RENDERED BY SAID AIR CARRIER OVER A ROUTE FROM TAMPA, FLORIDA, TO TALLAHASSEE, FLORIDA, AND FROM TALLAHASSEE, FLORIDA, TO MEM-

PHIS, TENNESSEE, VIA DOTHAN, MONTGOMERY, BIRMINGHAM, AND FLORENCE-SHEFFIELD-TUSCUMBIA, ALABAMA, AND FROM TALLAHASSEE, FLORIDA, TO ATLANTA, GEORGIA, VIA ALBANY, GEORGIA

At a session of the Civil Aeronautics Authority, held at its office in Washington, D. C., on the 10th day of October, 1938.

Upon consideration by the Authority of the application of Eastern Air Lines, Inc., for exemption from the provisions of section 401 (a) of the Civil Aeronautics Act of 1938, in so far as the provisions of said section are applicable to the air transportation service to be rendered by said air carrier from Tampa, Florida, to Tallahassee, Florida, and from Tallahassee, Florida, to Memphis, Tennessee, via Dothan, Montgomery, Birmingham, and Florence-Sheffield-Tus-cumbia, Alabama, and from Tallahassee, Florida, to Atlanta, Georgia, via Albany, Georgia, the Authority is of the opinion and finds that:

(1) The applicant was, prior to May 14, 1938, and is now an air carrier engaged in the rendition of an interstate air transportation service, and as such air carrier is subject to the provisions of the Civil Aeronautics Act of 1938 and the jurisdiction of the Civil Aeronautics Authority.

(2) Said air carrier, prior to, on and since May 14, 1938, was and has been continuously engaged in the rendition of a scheduled airline transportation service between Houston, Texas, and Atlanta, Georgia, via intermediate cities; between Miami, Florida, and Atlanta, Georgia, via intermediate cities; between Miami, Florida, and Newark, New Jersey, via intermediate cities; between Atlanta, Georgia, and Newark, New Jersey, via intermediate cities; between Richmond, Virginia, and Newark, New Jersey, via intermediate cities; and between Atlanta, Georgia, and Chicago, Illinois, via intermediate cities; and was then and yet is possessed of a valid Scheduled Airline Competency Certificate therefor, issued by the Secretary of Commerce.

(3) On or about the 12th day of April, 1938, the United States Post Office Department caused to be issued an advertisement for bidders for an air mail service over a route from Tampa, Florida, to Tallahassee, Florida, and from Tallahassee, Florida, to Memphis, Tennessee, via Dothan, Montgomery, Birmingham, and Florence-Sheffield-Tus-cumbia, Alabama, and from Tallahassee, Florida, to Atlanta, Georgia, via Albany, Georgia, said route being known as route AM 40.

(4) On or about the 26th day of May, 1938, a contract for air mail service over the route described in Finding (3) was awarded by the United States Post Office Department to Eastern Air Lines, Inc., said air carrier being the lowest bidder therefor. Thereafter, to-wit, on or about the 6th day of July, 1938, a contract providing for air mail service