

# FEDERAL TRADE COMMISSION DECISIONS



## FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

NOVEMBER 5, 1926, TO JANUARY 29, 1928

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PUBLISHED BY THE COMMISSION

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## VOLUME XI



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## MEMBERS OF THE FEDERAL TRADE COMMISSION

AS OF JANUARY 29, 1928

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**WILLIAM E. HUMPHREY, *Chairman.***

Took oath of office February 25, 1925.

**ABRAM F. MYERS, *Vice Chairman.***

Took oath of office August 2, 1926, and June 19, 1928.<sup>1</sup>

**EDGAR E. McCULLOCH.**

Took oath of office February 11, 1927.

**GARLAND S. FERGUSON, Jr.**

Took oath of office November 14, 1927, and January 9, 1928.<sup>1</sup>

**CHARLES W. HUNT.**

Took oath of office June 16, 1924, and September 23, 1925.<sup>1</sup>

**OTIS B. JOHNSON, *Secretary.***

Took oath of office August 7, 1922.

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During the period November 5, 1926, to January 29, 1928, there also served as commissioner—

**JOHN F. NUGENT.**

Took oath of office January 15, 1921. Term expired September 25, 1927.

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<sup>1</sup> Second term.



## **ACKNOWLEDGMENT**

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This volume has been prepared and edited by Richard S. Ely, of the Commission's staff.



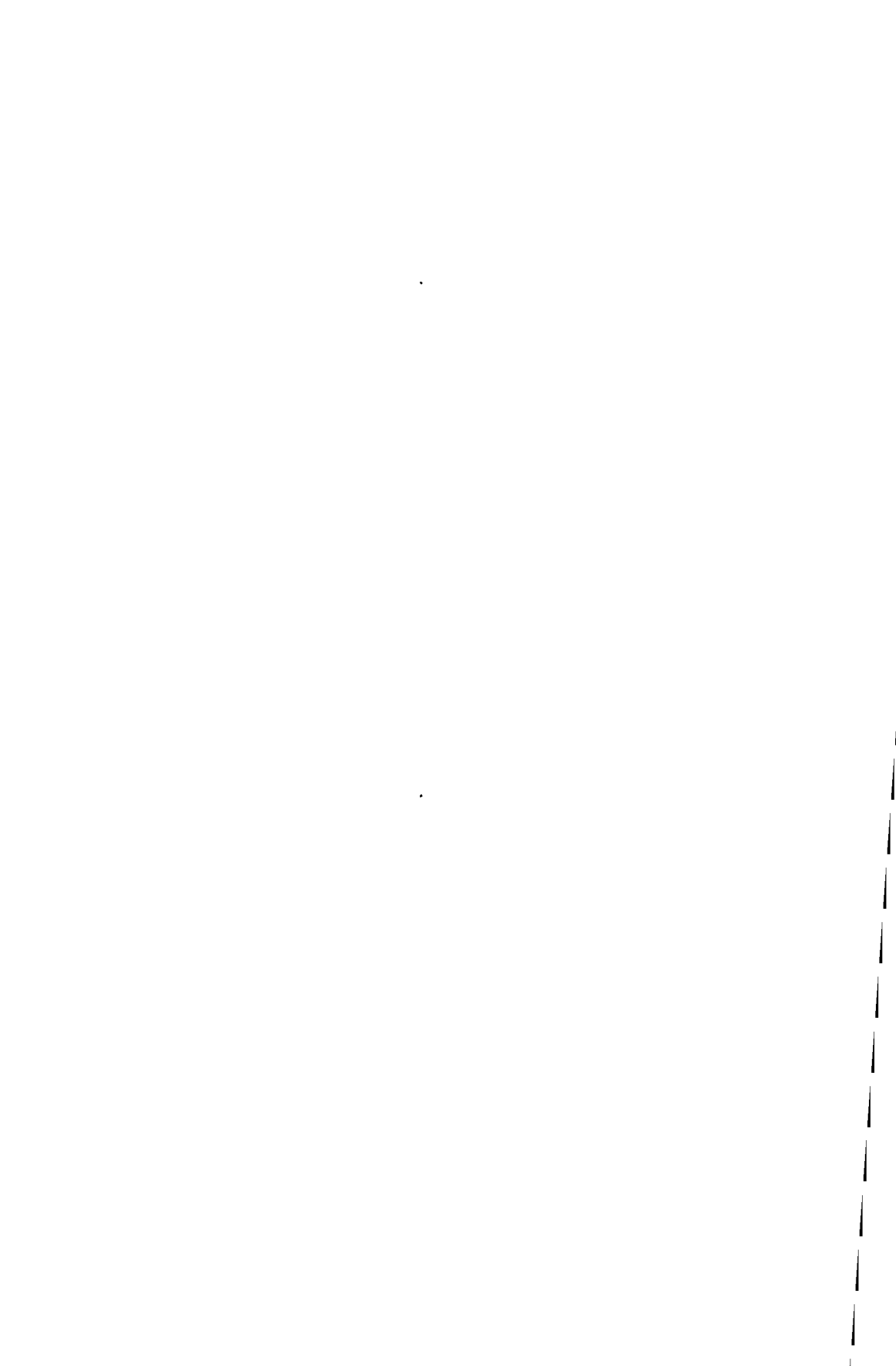
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<sup>1</sup> Supreme Court of the District of Columbia.



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# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS NOVEMBER 5, 1926, TO JANUARY 29, 1928

## IN THE MATTER OF

### NORTHWESTERN TRAFFIC & SERVICE BUREAU, INCORPORATED, ITS OFFICERS, DIRECTORS AND SUBSCRIBERS, ET AL.

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

*Docket 1145. Complaint, Mar. 28, 1924—Decision, Nov. 5, 1926*

Where a nonprofit corporation which had for its object the purpose, among others, of confining the distribution of coal in the states served by retail dealers associated with it, to channels considered by it as regular under definitions and standards set up by it, and of preventing its distribution, through channels similarly considered irregular; and the members and directors thereof; in pursuance of the aforesaid object and purpose and in cooperation with its retail dealer "subscribers",

- (a) Solicited and received from its said subscribers and other sources information as to so-called "regular" and "irregular" dealers, consumers entitled to purchase direct from producers or wholesalers, irregular shipments (secured in some cases from railroad employees and records in violation of law), etc., and disseminated the aforesaid information among subscribers, "regular" dealers, shippers, and their associations, in the form of directories and otherwise;
- (b) Asked those suspected of having sold or shipped coal through irregular channels for definite information in the matter on the pretext of securing the same for a particular subscriber, and sought to dissuade those suspected of or ascertained as making such shipments, from so doing and threatened them with the loss of the patronage of its subscribers and of "regular" dealers in the territory served by it in the event of their failure to do so, advising them, further, that they would be held responsible for the policy or mistakes of vendee wholesalers who resold coal to "irregular" dealers;
- (c) Frequently sent shippers lists of "the only equipped retail coal dealers" in towns where "irregular" dealers or "snowbirds" were located and disparaged and misrepresented to them the status, equipment, and business methods of dealers considered irregular by it;
- (d) Advised subscribers of the results of its efforts to trace "irregular" shipments and of its dealings with those responsible therefor, as above set forth, and circulated false and misleading propaganda among subscribers troubled with "irregular" competition, to the effect that the coal handled through such "irregular" channels was uniformly of poor quality and such as could not be sold by regular dealers with satisfaction to their customers;

## Complaint

11 F. T. C.

- (e) Intimidated and attempted to intimidate persons from acting as agents of concerns which sold direct to consumers, through representing that the Government was about to prosecute their principals for misrepresentation and misbranding;
- (f) Cooperated in the matter with a similar trade organization operating in a different territory and exchanged information with it relative to the object and purpose above set forth, and entered into understandings with shippers' associations directed to the prevention of the sale of coal by members thereof through "irregular" channels; and
- (g) Supplied and caused to be published in a trade periodical, the subscribers to which were largely made up of retail dealers in the territory concerned, false and damaging reports relative to the quality of coal, equipment, and business methods of persons who handled coal through so-called "irregular" channels, and information as to shippers who declined to confine their shipments to the desired channels;

With the result that "regular" dealers operating in the territory in question withdrew and withheld their patronage from producers and wholesalers reported and published as selling through so-called irregular channels, producers and wholesalers of coal for such territory quite generally confined the distribution of their coal to the approved channels and in numerous instances refused or discontinued dealing with consumers and competing retailers reported to them by it as not entitled to buy direct, and producers refused to supply wholesalers who made a practice of selling to consumers and to retailers so reported:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Walter B. Wooden* for the Commission.

*Mr. Stanley B. Houck*, of Minneapolis, Minn., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Northwestern Traffic & Service Bureau, Incorporated, a Minnesota corporation, its officers, directors, and subscribers,<sup>2</sup> respondent Northwestern Publishing Co., a Minnesota corporation principally engaged in the publication and distribution of a coal trade journal named "The Coal Dealer," and respondent I. C. Cuvellier, individually and as president of said publishing company, with agreeing and undertaking to cooperate with one another in preventing distribution in the territory concerned other than through "regular"<sup>3</sup> retail dealers; to coerce wholesalers and producers to confine,

<sup>2</sup> The officers and directors were made respondents as such, individually, and as representative of the subscribers, numbering about 1,800, and varying from time to time.

<sup>3</sup> Under the constitution of the Northwestern Retail Coal Dealers Association, the activities and functions of which were taken over by respondent bureau, "any firm, individual or corporation, owning or leasing and operating a coal yard, having a set of scales, keeping an office open during regular business hours with a competent person in charge to attend to the wants of the customers at all times, and who has storage capacity (and shall at all times carry a stock of coal) commensurate to the needs of the community in which he is doing business, and is regularly engaged in the sale of coal at retail in the States of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri,

and to assist respondents in confining distribution to the so-called regular channels (i. e., producer to wholesaler, to "regular" retailer, to consumer); to prevent producers and wholesalers from selling direct to independents or consumers in their territory; and to confine retail dealers' sales to their own respective localities; all with the purpose and effect of enabling the local dealers to control the price of coal in their communities without interference from outside competition, and in pursuance of their general purposes.

Methods employed by respondent bureau, which had for its subscribers and financial supporters most of the qualified retail coal dealers, including "line yards," doing business in the territory concerned, comprising the States of Minnesota, the two Dakotas, Iowa, Nebraska, Missouri, and Kansas, in pursuance of the aforesaid common undertaking, included the following:

Soliciting and receiving from subscribers names and addresses of regular and independent dealers doing business in their respective communities, names of manufacturing plants and institutions therein and data pertaining thereto, reminding subscribers of its readiness to serve them in carrying out the undertaking hereinabove set forth, and inviting them to inform it promptly regarding activities of independents, together with such information as will aid in tracing the sources of shipments to such independents, and identifying their vendors.

Bringing pressure upon such vendors, when identified and seeking to persuade and coerce them from further selling coal to independents concerned, and others, through threats, direct or indirect, of loss of patronage by subscribers and regular dealers generally in association territory.

Notifying subscribers of the results of such efforts and of facts and of information secured, including the names of the wholesalers concerned, either directly or through publication in *The Coal Dealer*, or both, and advising and urging subscribers to withhold their patronage from offenders and notifying subscribers if and when offenders comply with the bureau's demands.

Seeking to ascertain, through inquiries of subscribers, railroads, friendly wholesalers and producers, and otherwise, producers supply-

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and Kansas shall be considered a retail coal dealer and be eligible to membership in this organization."

A dealer so qualified was considered a "legitimate" or "regular" dealer and the objects of the association, taken over as above set forth by respondent bureau, were, among other things, to further the interests of its retail dealer members, qualified as above set forth, and by cooperative means to prevent wholesalers from selling coal in the territory served by the members, direct to consumers or to any others not qualified retail dealers, to confine the sales of retailers to their respective localities where they operated a yard, and to prevent producers and others from supplying coal to wholesalers who resold direct to consumers or to retailers not qualified as above stated.

ing offending wholesalers, and thereupon bringing pressure as above set forth upon such producers to cease further supplying the offending wholesalers.

Notifying subscribers of the results of the aforesaid efforts and following the same course in relation thereto as in the case of offending wholesalers.

Publishing and issuing a directory, based on information obtained as hereinabove set forth and otherwise, containing names and locations of regular dealers, and consumers considered entitled to purchase coal direct from producers or wholesalers<sup>4</sup> and sending the same freely or at a nominal charge to wholesalers and producers serving association territory, together with a communication conveying the information that the bureau operates in the interest of and with the support of its subscribers, and that the names listed are regular dealers and intimating that the recipient confined his business dealings to them in association territory; supplying such directory also to subscribers with request for corrections and revisions from them, and issuing revised directories from time to time.

Seeking through its agents to induce dealers and consumers purchasing coal from offending wholesalers or independents, to break their contracts or refuse to accept the coal upon arrival, through defamatory or disparaging statements relative to the quality thereof and the business standing and reliability of the sellers.

Soliciting and securing reports and cooperation of other associations of wholesalers and retailers both within and without association territory, in order to establish more fully the undertaking charged.

Advising respondent publishing company and respondent Cuvellier of its activities as above set forth, together with names of independents, consumers, offending wholesalers and producers concerned, in order that they may assist in shutting off supplies to such independents and consumers, in intimidating and coercing offending wholesalers and producers into refusing further sales to independents and consumers, and in forcing such wholesalers and producers to restrict their business transaction and sales to regular channels.

Respondent publishing company and respondent Cuvellier were charged with the following acts and practices in pursuance of the general undertaking hereinabove set forth.

Publication of articles and editorial comment derogatory and condemnatory of independents and producers, and wholesalers supplying the same, and contending for the so-called rights of the "equipped dealer trade."

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<sup>4</sup> Under respondent bureau's rule conceding such right or privilege to a manufacturing plant or public institution consuming one or more tons of coal a day.



Soliciting and securing subscribers for the publication among regular dealers in association territory, and urging and procuring them at the same time to become subscribers of or to respondent bureau.

Soliciting and securing, through articles and otherwise, from bureau subscribers and regular dealers, reports concerning activities of independents in the territory concerned, and reports concerning producers and wholesalers supplying coal thereto or to consumers.

Setting forth information so secured, in said publication, together with the names of independents and consumers concerned, and the wholesalers and producers supplying them, and comment urging or intimating that they be boycotted by regular dealers.

Soliciting, accepting and publishing only advertisements of wholesalers restricting sales to regular channels and publishing a list of such advertisers, together with favorable comment, and urging dealers to patronize the same.

Refusing advertisements of offending wholesalers pending the giving of satisfactory assurances by them of restricting their sales to regular channels in the future, or to include their names in the list of favored dealers, pending such assurances.

Publication of lists of wholesalers and producers selling to independents or direct to consumers, with condemnatory and derogatory comment.

Publication similarly of such names and comments, including names of independents, when brought to their attention by respondent bureau.

Entering into correspondence with offending wholesalers, seeking to persuade them to cease so offending, and bringing pressure to bear in the case of recalcitrant offenders through coercion and intimidation by condemnatory articles and editorials, together with suggestions or intimations of a withholding of patronage by regular dealers unless and until they cease so offending, and publication of articles, pictures and editorials containing false, derogatory, and condemnatory statements about independents involved, together with threats and intimations of withdrawal or withholding of patronage in the future with respect to wholesalers supplying the same.

Seeking to ascertain producers supplying offending wholesalers, and upon identifying them, to persuade them to refuse further supplies to such wholesalers, and using such intimidating and coercive methods and means in the case of producers not acceding, as hereinabove set out.

Assisting respondent bureau to obtain information to identify offending wholesalers by publishing the fact of the desired information, and requesting the furnishing thereof by subscribers.

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In some instances referring complaints or inquiries concerning irregular or offending sales to respondent bureau and notifying the complaining or inquiring dealer thereof.

Publishing corrected lists of names for the respondent bureau as directly hereinbefore referred to, and supplying copies thereof to the trade for and on behalf of said bureau and urging its subscribers to become subscribers to respondent bureau.

Respondent bureau subscribers, as charged, utilized the bureau and publishing company as agencies through which to take action in pursuance of the general undertaking above set forth and in so doing—

Financed and supported the bureau and its activities through yearly assessments or dues.

Reported to the bureau names, addresses, etc., of independents operating in their territory, together with information directed to identifying wholesalers supplying the same and producers supplying the wholesalers, and made similar reports to respondent publishing company.

Subscribed to the aforesaid "Coal Dealer" and made use of and acted upon the information therein supplied and reported thereto and to the bureau names of regular dealers, independents and consumers buying direct, located in their respective vicinities, and whether or not consumers so concerned were entitled to so buy under the rule hereinabove referred to.

Refused to further purchase coal from offending wholesalers brought to their attention through the bureau or through the columns of the publication herein concerned until the offending wholesalers ceased supplying independents or consumers and similarly refused to patronize offending producers supplying such wholesalers.

Individually brought persuasion, threats and other coercive measures to bear upon offending wholesalers and producers, in order to compel them to cease supplying independents, and consumers or dealers supplying independents, and also upon consumers purchasing from independents or wholesalers, seeking to prevent them, from receiving or accepting coal purchased, and making defamatory statements concerning the quality thereof and the business standing and reliability of the independent or wholesaler vendors.

In addition to the foregoing acts, respondents as charged, used and employed other equivalent and cooperative means to carry out the undertaking hereinabove set forth.

According to the complaint "the above alleged acts and things done by the respondents, and by each of them, have tended and still tend to and did and do, constrain producers and wholesalers

of coal to confine the distribution of coal in the association territory to so-called regular channels selected and approved by respondents and to prevent producers and wholesalers from selling coal to independents and direct to consumers in said territory, with the result that competition in the distribution of coal in said territory has been and is unduly obstructed and hindered and consumers in said territory have been and are deprived of the advantages which they would obtain from the natural flow of commerce in coal under conditions of free competition."

Upon the foregoing complaint, the Commission made the following

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

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the various parties mentioned in the caption hereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer herein, hearings were held before an examiner of the Commission theretofore duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission being fully advised in the premises makes these its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Northwestern Traffic & Service Bureau, Inc., was incorporated under the laws of Minnesota in October, 1915, as a corporation not for profit, and has continuously existed as such with its headquarters and principal office at Minneapolis in said State, except that in 1924 its name was changed to Northwestern Coal Dealers' Service Bureau. Said respondent is the outgrowth and successor of two voluntary, unincorporated associations, to wit, Iowa-Nebraska Retail Coal Dealers' Association, organized at Omaha in 1899 and Northwestern Retail Coal Dealers' Association, organized at Minneapolis, in 1901. The latter in 1909 absorbed the former and continued the work of both associations until 1915 when respondent bureau was organized. Respondent bureau has held itself out to be a body which has been continuously serving the interests of the retailers of coal in its territory for more than 25 years. Respondent bureau limits its service as did the Northwestern Retail

Coal Dealers' Association its membership to retail coal dealers doing business in the States of Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Missouri.

PAR. 2. The purpose of incorporating respondent bureau was to escape or attempt to escape the legal liability attaching to individual membership in an unincorporated association in the event of prosecution by Federal authorities. A bureau plan of selling service contracts to retail coal dealers designated as subscribers, instead of admitting them to membership in the bureau, was decided on after two years of labor by the secretary, the executive committee and the legal department of the Northwestern Retail Coal Dealers' Association at its annual convention in July, 1915. This association elected temporary officers and directors for the purpose, and instructed them to take action to discontinue the activities of the association. This action was taken and respondent bureau was incorporated, as aforesaid, for the purpose of taking over, and it did take over, the work of said association in the same territory that the association had served. It assumed association debts, chose for officers and committee members the same persons who had acted in similar capacities in the association, and placed on its board of eight directors only one person who did not come from the final officers and directors of the association.

PAR. 3. The number of coal dealers or yards subscribing for the service of the bureau has ranged downward from 1,800 and in 1924 stood at 1,566. About 35 per cent of the subscribers are so-called line yards, that is, yards whose owners operate yards in more than one town. Eleven of these line-yard concerns operate 20 or more yards each and 15 of them operate yards in more than one State. The bureau's officers in 1924 were, and from its inception had been: H. L. Laird, of Minneapolis, secretary-treasurer; C. A. Cruikshank, of Hannibal, Mo., vice president; A. L. Havens, of Omaha, Nebr., president. Said Laird had been secretary of the bureau and its predecessors since 1907. Its directors in 1924 were said Laird, Cruikshank, and Havens, and H. T. Folsom, of Lincoln, Nebr., William Hardman, of Kansas, F. C. Potter, of Fargo, N. Dak., and J. A. Young, of Waterloo, Iowa. A sufficient amount of the capital stock of the bureau was sold to retail dealers, one share each, to provide a source from which to elect officers and directors, but the number of stockholders has always been under 20.

A \$5 charge for annual dues in the association was replaced by a \$10 yearly service charge by the bureau and this has been recently changed to a service charge based on the number of tons handled by the subscriber annually. Respondent bureau's expenditures during the years 1916 to 1923 ranged from over \$17,000 to slightly under \$14,000 per year.

Respondents, Havens, Cruikshank, Folsom, Hardman, Young, and Potter, were stockholders, officers, and directors of respondent bureau from 1915 through 1924, and with the exception of said Cruikshank are still such; respondent Rourke was a stockholder and director of said bureau from 1915 to 1919, and respondent Furber was a stockholder and director of said bureau for a short time in 1915. All of these officers and directors in their official capacities are or were charged with the management of the affairs of respondent bureau; they assist, or during their tenure of office assisted, respondent secretary in and about his activities hereinafter set out; most of them are or were subscribers or were connected with subscribers to respondent bureau and as such individually assist or assisted in carrying out the work hereinafter referred to.

Respondent Laird is, and since 1915 has been, a stockholder, a director, and the secretary-treasurer of respondent bureau, and has been secretary of it and its two predecessor associations since July, 1907; he has charge of and manages the functions and activities of respondent bureau and conducts its affairs, and in its behalf does and directs the things done by said bureau.

PAR. 4. The fuel needs of bureau territory are supplied largely from coal mines located in the States of Illinois, Indiana, Kentucky, West Virginia, and Pennsylvania, and the producers of coal in said States supply and sell that commodity in part to wholesale dealers who in turn supply and sell the same to retail dealers and consumers located at points in bureau territory. Upon receiving orders from and selling coal to said wholesalers, said producers cause the coal so sold to be shipped from their respective mines and places of business in the above-named States, into and through other States of the United States to said wholesalers or to the customers of said wholesalers at their respective points of location. Said wholesalers are located at points in the several States comprised within bureau territory, and in some instances are located in other States of the United States. Upon reselling said coal to retailers and consumers as above set out, said wholesalers cause the coal so sold to be transported from their respective places of business, or from point of origin, into and through other States of the United States to the purchasers thereof in bureau territory at their respective points of location. An important group of wholesalers who ship from their own stocks are the so-called dock companies located at Duluth, Superior, and other upper lake points. The retail dealers above referred to who are thus supplied with coal by said wholesalers, include the bureau subscribers. In frequent instances producers of coal sell their commodity at wholesale direct to retail dealers and consumers in bureau

territory, and the term "wholesalers" is hereinafter used as referring to producers so wholesaling, as well as to wholesalers who purchase the coal in which they deal from producers.

PAR. 5. Respondent bureau is and has been engaged and its predecessor associations before it, in furthering the interests of retail coal dealers affiliated therewith, in various ways, some of which are beyond the purview of this proceeding. The object and purpose of respondent bureau and of its predecessors is and has been to confine the distribution of coal in bureau territory to so-called regular channels and to prevent its distribution through so-called irregular channels. The channels which the bureau considers regular are:

(a) The retail dealer who owns or leases, and operates a coal yard, has a set of scales, keeps an office open during regular business hours with a person to wait on customers at all times, has storage capacity and carries a stock of coal commensurate with the needs of his community, and is regularly engaged in the retail coal business.

(b) Sales by producers and wholesalers direct to consumers are a regular channel only when the consumer is a steam plant located on railroad tracks and uses 300 tons or more per year.

The channels which the bureau considers irregular are as follows:

(c) Sales by producers and wholesalers direct to a consumer are irregular regardless of quantity unless he be located on railroad track. This includes public buildings, schools, hospitals, hotels, office buildings and consumers of that type, as well as the ordinary household consumer whether buying singly or collectively. Sales and shipments by producers to wholesalers who supply such consumers are also held to be irregular by respondent bureau.

(d) Retail dealers are considered irregular channels when they sell and deliver out of railroad cars without operating a retail yard, when they are not located on track, even though trackage sites are unavailable, when they do not maintain continuous service throughout the year, when they are not equipped with sheds, bins, and scales, the bureau making no allowance for the fact that municipal ordinances in some towns in bureau territory require that all coal be weighed on city scales, when they undertake to ship coal into towns where regular dealers operate yards and the shipping dealers do not, and in some instances when dealers sell at prices below the prevailing retail level. Sales and shipments by producers and wholesalers to retailers of the above description are considered irregular except that in some instances branches of line yards affiliated with the bureau are not held to the requirement of continuous service. The term "snowbird" is applied by the bureau and its subscribers to all retailers who come within the classes described. Sales and shipments

by producers to wholesalers who regularly supply the above-described retailers are also considered irregular by respondent bureau.

PAR. 6. In order to accomplish the aforesaid object and purpose, respondent bureau, its officers and directors, have adopted and with the cooperation of bureau subscribers have used the following methods and practices:

(a) They have solicited and received from bureau subscribers reports giving the names and addresses of "regular" dealers operating and doing business in a community wherein the reporting subscriber in each instance is located; the names of manufacturing plants and public institutions in the vicinity and the amount of coal consumed by each. Said reports are usually made by said subscribers upon blanks furnished by the bureau for that purpose, and the subscribers, at the bureau's invitation, furnish other information bearing upon the distribution and consumption of coal in said vicinity, including the names and addresses of "snowbirds" and "irregular" dealers.

(b) They have prepared from the foregoing reports made by subscribers and from other sources a directory of the names and locations of "regular" dealers and such consumers as are, in the opinion of the bureau and its subscribers, entitled to purchase coal direct from producers or wholesalers under the rule and definition in that respect adopted by respondents, to wit, that a manufacturing plant or public institution consuming one or more tons of coal per day and not requiring team delivery, shall be entitled to purchase direct. The bureau sends these directories on request to shipping companies who use them as a guide in making quotations and shipments, and to subscribers for their information in the premises and to assist them in cooperating with the bureau and other respondents in carrying on the work aforesaid. The bureau requests and receives from subscribers to whom said directory is sent corrections and revisions of, and additions to, the lists contained in said directory, and from time to time issues a revised directory by means of the information thus received and otherwise.

Prior to 1920 no charge was made to shippers for these directories and the charge made since then has paid little more than one-half the cost.

(c) They have solicited and received reports from bureau subscribers of shipments which arrive in the subscribers' respective towns, consigned to consumers or to retail dealers who do not come within the bureau's definition of so-called regular channels. Subscribers are requested to report and they do report to the bureau such shipments, including the names of railroads delivering the coal

and initials, car number and other marks on the freight cars employed, and all available data tending to identify the shipper, the point of origin, the mine from which shipped, and the consignee. Subscribers to respondent bureau have at times obtained such information from employees and records of the railroads handling so-called irregular shipments and have transmitted it to the bureau with a statement that it was obtained from such sources. The Commission takes judicial notice of the act of Congress dated June 18, 1910 (36 U. S. Stats. p. 553), declaring it unlawful for any common carrier or its agent "knowingly to disclose to or permit to be acquired" by any one other than a shipper or his consignee, "any information concerning the nature, kind, quantity, destination, consignee, or routing" \* \* \* "which may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor"; also for "any person or corporation to solicit or knowingly receive any such information which may be so used."

(d) Respondent bureau, its officers and agents promptly use the information supplied by bureau subscribers as set forth in paragraph 6 (c) herein to trace the shipments so reported and to locate and identify the person or concern by or on whose behalf the so-called irregular sale was made. Respondent bureau carries on correspondence with the sellers and shippers so identified. It seeks acknowledgment from them that they made the so-called irregular shipment in question, informs them that their customer is not considered legitimate trade for the wholesale shipper, and solicits assurances that further sales and shipments will not be made to that customer or to any other buyer whom the bureau does not recognize as entitled to buy direct. In writing producers whose coal has been sold by wholesalers to so-called irregular buyers, the bureau informs them that they are held responsible for the policy or mistakes of their wholesalers. In tracing irregular shipments the bureau sends form letters to suspected or ascertained shippers asking for information on specific shipments described by car number, name and address of consignee, point of origin, and date of delivery, stating that the information is desired only for the benefit of the subscriber who reported the shipment. These letters, however, show that the bureau has subscribers in seven specified States.

(e) Respondent bureau uses another form letter which it circulates among shippers when it is advised by subscribers that certain parties not recognized as legitimate wholesale trade are seeking shippers who will supply them. This form letter requests the shipper to advise respondent bureau if he has any inquiries for quotations and



shipments from the particular party, and states that the bureau has information of value about such party.

The bureau also frequently sends shippers lists of "The Only Equipped Retail Coal Dealers" in towns where "snowbirds" and other "irregulars" are located. During a period of less than nine months ending in February, 1922, it sent a single dock company at Minneapolis eight of these "regular dealer" lists, nine letters of the tracer type and fifty-six of those stating that the bureau had information of value to the shipper on specified "snowbirds" and other "irregular" buyers.

(f) The bureau advises shippers suspected of selling or ascertained to have sold so-called irregular trade that the bureau subscribers are interested in knowing what is and will be their policy in selling to such trade. It threatens the offender, directly or by intimation, that bureau subscribers and "regular dealers" generally in bureau territory will refuse to patronize him unless and until he ceases selling to the particular "irregular" buyer in question and confines himself generally to the trade which the bureau and its subscribers consider legitimate for the wholesale shipper.

(g) Respondent bureau gives its subscribers who report so-called irregular shipments the results of its efforts to trace same to the responsible shipper and the nature of the shipper's response, whether favorable or unfavorable to the bureau's contention that they are shipping to "irregular" trade and whether giving or refusing to give satisfactory assurances as to future conduct.

(h) Respondent bureau, its officers and employees, have intimidated and attempted to intimidate shippers from selling to so-called irregular trade by intimations that they could not expect the patronage of the so-called regular dealer if such sales became known. A representative of respondent bureau has intimidated and attempted to intimidate persons from acting as agents of concerns which make it a policy to sell direct to consumers, by posing as a Government agent and intimating that the Government was about to prosecute their principals for misrepresentation and misbranding.

(i) Respondent bureau has circulated statements among shippers concerning the status, equipment, and business methods of retail dealers considered by it irregular, which statements were false, disparaging and calculated to cause shippers to refuse or discontinue business relations with such dealers. Dealers admittedly competing with bureau subscribers for the trade of consumers were reported by the bureau to shippers as being themselves consumers. Dealers admittedly having some equipment were reported by the bureau to shippers as having no equipment whatever. Dealers having scales,

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bins and sheds were reported by the bureau to shippers as not having such equipment. The bureau ordinarily accepted without question or verification the reports which its subscribers made to it about the status and equipment of their alleged irregular competitors.

(j) Respondent bureau has circulated among such of its subscribers as were troubled with so-called irregular competition, propaganda to the effect that coal handled through such channels was uniformly of poor quality and such as could not be sold by the so-called regular dealers with satisfaction to their customers, whereas in fact the coal so handled was in many instances of good quality and in some cases originated at mines widely recognized as producers of good coal.

(k) Respondent bureau, its officers and subscribers, have sought and secured the cooperation and assistance of the Midwest Retail Coal Dealers Association operating in the State of Missouri, and have exchanged information with it for the purpose of confining the coal trade to the channels jointly approved by them as regular.

(l) Respondent bureau, its officers and subscribers, have negotiated and entered into agreements and understandings with various associations of coal shippers, for the purpose of preventing the sale of coal by members of such shippers' associations to so-called irregular channels and facilitated the execution of said agreements and understandings by frequently informing such associations and their members that certain parties were not recognized as legitimate trade for the wholesale shipper.

(m) Respondent bureau, its officers, employees, and subscribers have from time to time supplied respondents, Northwestern Publishing Co. and I. C. Cuvellier with and procured the publication of false, derogatory, and damaging reports concerning the quality of coal handled through so-called irregular channels and the status, equipment, and business methods of persons so engaged, in the Coal Dealer, a trade paper published monthly at Minneapolis, Minn., by the Northwestern Publishing Co. and I. C. Cuvellier, respondents herein.

(n) When offending shippers fail or refuse to assure respondent bureau and its complaining subscribers that they will refrain from selling to alleged "irregular" buyers, the bureau, its officers and employees, supply information to that effect, together with reports of specific instances of "irregular" sales, to the aforesaid the Coal Dealer. The bureau supplies said information for purposes of publication and procures its publication in said paper, well knowing that so-called regular dealers will refuse to patronize the shippers so reported and published and intending such to be the result. More

than 1,000 of the subscribers to the bureau are also subscribers to the Coal Dealer and the great majority of the Coal Dealers' subscribers are retail coal dealers in bureau territory.

PAR. 7. The aforesaid methods and purposes of respondent bureau, its officers, directors and subscribers, have tended to produce and have produced the following results:

(a) So-called regular dealers operating in bureau territory, including subscribers to respondent bureau, have withdrawn and withheld their patronage from producers and wholesalers reported and published as selling through so-called irregular channels.

(b) Producers and wholesalers of coal shipped into and sold in the various States where respondent bureau and its subscribers operate, have quite generally confined the distribution of their coal to the so-called regular channels approved by respondent bureau and its officers and subscribers. Said producers and wholesalers have been well aware of the hostile attitude of the retail trade toward concerns reported and published as being the source of supply for alleged irregular buyers.

(c) In numerous specific instances producers and wholesalers of coal have refused to sell or have discontinued selling to persons reported to them by the bureau as not entitled to buy direct. In some cases the persons so reported and so refused were consumers. In many cases the persons so reported and so refused were retailers competing with respondent bureau subscribers and falsely reported by them to be without any equipment. In some cases the shippers refused to sell the persons so reported against their own judgment of the status of the customers in question.

(d) Producers have refused to supply wholesalers who made it a practice of selling to consumers and to retailers whom respondent bureau reported as not entitled to buy direct from the wholesale trade.

#### CONCLUSION

The practices of respondent bureau, its officers and directors, as set forth in paragraph 6 of the foregoing findings as to the facts, in the circumstances set forth in paragraphs 1 to 5, inclusive, and in paragraph 7 thereof, constitute a combination and conspiracy to restrain the trade of competitors of respondent bureau subscribers, of consumers seeking to buy at wholesale, and of producers and wholesalers selling to such competitors and consumers. Said practices are to the injury and prejudice of the public and constitute unfair methods of competition in interstate commerce in violation of the provisions of the act of Congress approved September 26,

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1914, entitled "An act to create a Federal trade commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the various parties mentioned in the caption hereof, charging them with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance and filed their answer herein, and the Commission having made its findings of fact and reached the conclusion that certain respondents herein have violated section 5 of the act creating the Federal Trade Commission, fixing its powers and duties,

*Now, therefore, it is ordered,* That respondents Northwestern Traffic & Service Bureau, Inc., its successor by change of name, Northwestern Coal Dealers' Service Bureau, its officers and directors: A. L. Havens, president and a director of said corporation; C. A. Cruikshank, as vice president and a director of said corporation; H. L. Laird, as secretary-treasurer and a director of said corporation; H. T. Folsom, as a director of said corporation; William Hardman, as a director of said corporation; F. N. Furber, as a director of said corporation; J. A. Young, as a director of said corporation; C. F. Rourke, as a director of said corporation; F. C. Potter, as a director of said corporation, cease and desist from:

1. Supplying to I. C. Cuvellier, the Northwestern Publishing Co., or any other medium of publicity, information concerning sales made by particular shippers to alleged irregular trade, for the purpose of notifying so-called regular dealers of such sales and of compelling such shippers to discontinue such sales or to forego the patronage of the so-called regular dealers.

2. Supplying I. C. Cuvellier, the Northwestern Publishing Co., or any other medium of publicity, information concerning purchases made by particular buyers alleged to be irregular, for the purpose of notifying shippers that said buyers are not recognized as entitled to buy direct from them.

3. Preparing, publishing, and circulating among shippers for the purpose of preventing any one buying direct from producer or wholesaler, information in the form of directories or otherwise to the effect that specified persons or concerns are recognized as entitled to buy direct from producer or wholesaler and that other persons, concerns, or classes thereof, are not so entitled.

4. Soliciting, accepting, or acting upon reports from respondent bureau subscribers concerning the arrival, delivery, or origin of shipments made to persons or concerns not recognized as entitled to buy direct from producer or wholesaler, for the purpose of preventing further dealings between such buyers and the producers or wholesalers selling them.

5. Soliciting, receiving, or acting upon reports made by respondent bureau subscribers or others concerning so-called irregular shipments where such reports are known to be based upon information coming from the employees or records of common carriers engaged in the transportation of coal.

6. Communicating with shippers suspected of selling to alleged irregular buyers for the purpose of tracing such transactions and preventing further sales to them, or to others who supply them.

7. Stating or intimating to shippers suspected, accused or found guilty of selling to so-called irregular buyers that if such sales became known, the so-called regular dealers would withhold or withdraw their patronage.

8. Making or circulating among shippers false and defamatory reports concerning the status, equipment, and business methods of retailers who compete with bureau subscribers, for the purpose of inducing shippers not to sell to such retailers.

9. Making to or circulating among subscribers to the bureau or so-called regular dealers, false, defamatory, and indiscriminating reports concerning the quality and grade of coal handled through so-called irregular channels.

10. Cooperating with other organizations of retail coal dealers and with organizations of wholesale shippers, for the purpose of confining the distribution of coal to so-called regular channels and preventing its distribution otherwise.

11. Intimidating the agents and customers of wholesale shippers who sell so-called irregular trade from having or continuing business relations with such shippers.

12. Supplying so-called regular dealers with information concerning sales made by particular wholesale shippers to particular "irregular" buyers, for the purpose of preventing such shippers and buyers from continuing business relations with each other.

13. Taking any step and doing any act or thing with the purpose and for the object of preventing producers and wholesalers of coal from selling freely to consumers and retailers of any class or description and of preventing consumers and retailers of any class or description from purchasing freely from producers and wholesalers.

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*It is further ordered,* That respondent bureau, its officers and directors, shall file with the Commission, within sixty days after the service upon them of a copy of this order, their report in writing stating in detail the manner and form in which they have complied with the order to cease and desist herein set forth.

*It is further ordered,* That the complaint herein as to the subscribers to respondent Northwestern Traffic & Service Bureau, Inc., be and is hereby dismissed.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and the Commission having made its findings as to the facts and being fully advised in the premises:

*Now, therefore, it is ordered,* That the complaint herein as to respondents Northwestern Publishing Co. and I. C. Cuvellier, individually and as president of said Northwestern Publishing Co., be and is hereby dismissed.

## Syllabus

## IN THE MATTER OF

ABRAHAM KRITZER, ARTHUR KRITZER, AUGUSTA  
KRITZER, AND CLARA KRITZER

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

*Docket 1192. Complaint, June 17, 1924<sup>1</sup>—Decision, Nov. 24, 1926*

Where the city of Grand Rapids, Mich., had long been known as a large and important center of the furniture manufacturing industry in the United States, furniture there manufactured was extensively advertised, sold and distributed among the trade and purchasing public as "Grand Rapids furniture," and such furniture had come to enjoy a widespread popularity, high reputation and good will, and great demand by the purchasing public, and to be preferred by many to furniture made elsewhere; and thereafter various individuals engaged jointly and in association with one another and also through a corporation organized and owned by them, in the sale at retail in and from New York City of furniture, of which only an unsubstantial and inconsequential amount was made in Grand Rapids; and neither representatives, agents or warehousemen, of any furniture manufacturers, nor at any time selling out the stock of any Grand Rapids manufacturers retiring from business, nor acting in any way in behalf of such manufacturers, nor manufacturers themselves of the furniture dealt in by them, which they purchased outright and in the usual course of commerce from manufacturers or other dealers and resold to the purchasing public as retail dealers, at prices fixed by them, which included their costs and profits and those of the manufacturers;

- (a) Carried on their business and advertised the furniture dealt in by them under such trade names and styles as "Grand Rapids Salesrooms," "Grand Rapids Furniture Co.," "Furniture Manufacturers' Warehouse," and "Furniture Manufacturers' Auction Outlet";
- (b) Represented by means of large and conspicuous display signs and numerous advertisements conspicuously published in newspapers of general circulation that the furniture advertised and sold by them was genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich., and that they offered for sale and sold large quantities of such furniture including hundreds of suites of living room furniture; and
- (c) Similarly represented that they were the manufacturers of the furniture dealt in by them or the warehousemen, representatives, branches or agents of the manufacturers thereof, that they were selling the furniture in question at manufacturers' prices for the account and on behalf of such manufacturers, and that furniture sold and distributed by them came direct from the manufacturers to their own customer purchasers without the intervention of middlemen, thereby eliminating and saving to such customer purchasers the costs and profits of middlemen;

With the effect of misleading and deceiving the purchasing public, and thereby causing many thereof to purchase their furniture, and of unfairly diverting trade from and injuring competitors dealing in furniture made in Grand

<sup>1</sup>Amended complaint, Oct. 29, 1924.

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Rapids and truthfully so advertised and sold, competitors neither dealing in furniture there made nor so representing themselves, and competitor dealers who did not misrepresent themselves as manufacturers, or as branches, warehouses, agents or representatives thereof, or as selling directly from the manufacturer to the consumer to the exclusion of the aforesaid costs and profits, and with the further effect of diverting trade unfairly from manufacturers who sold and distributed their product directly to the consuming public to the exclusion of such profits and costs, in competition with it, and from Grand Rapids furniture manufacturers, and prejudicing and injuring the good will and business thereof:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle and Mr. Henry Miller* for the Commission.  
*Raphael & Randel and Winston & Goddard*, of New York City, for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, engaged and mutually interested in selling furniture at retail to purchasers in various States, with various places of business in New York City, and doing business under various corporate organizations and trade names, with using misleading corporate and trade names and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, being neither representatives nor agents of any furniture manufacturers of Grand Rapids, Mich., nor connected with them in any business way, nor selling furniture direct from the manufacturer to the consuming public, nor at a saving to the purchaser of middlemen's profits, but purchasing the furniture dealt in by them, for the most part made at points other than Grand Rapids, or by Grand Rapids manufacturers, and reselling the same at retail and at a profit, displayed conspicuous signs at their various places of business bearing such corporate or trade names as "Furniture Manufacturers Warehouse," "Furniture Manufacturers Auction Outlet," "Grand Rapids Sales Rooms" and "Chelsea Auction Rooms" and advertised in newspapers and other advertising media, featuring the aforesaid names together with such statements and representations as "Grand Rapids Furniture, Selling Out Entire Factory Outputs, including one of the largest Grand Rapids Manufacturer (retiring)," "We have been appointed by these large factories to sell their entire stock Regardless of Cost. They must have cash," "We are strictly manufacturers' representatives \* \* \*,"



"Manufacturers Sacrifice Sale. 26 Carloads \* \* \*," "Grand Rapids Furniture, In many instances lower than wholesale cost \* \* \*," "\* \* \* Selling Direct to Public, Surplus Stocks of leading Grand Rapids Manufacturers."

Such acts and practices had the capacity and tendency, as charged, to mislead and deceive many of the public into believing respondents to be direct and authorized sales representatives for Grand Rapids furniture manufacturers, offering an opportunity to buy direct from the manufacturers with resulting saving of profits of middlemen, and to induce many of the public to purchase their furniture in such belief, and also to mislead and deceive many of the public into believing the furniture in question to be of that quality and other desirable characteristics long associated in the public mind with furniture manufactured in Grand Rapids, Mich., and to induce the purchase thereof in such belief, and had the further capacity and tendency to unfairly divert business from competitors dealing in genuine Grand Rapids furniture, and from competitors dealing in furniture not there manufactured nor so represented, or as associated therewith, and had the effect of unfairly diverting business from competitors who, as manufacturers, sell their furniture direct to the consuming public, and from competitors who, as retail dealers, sell the furniture dealt in by them without holding themselves out falsely as manufacturers' sales agents or manufacturers' representatives selling their product direct to the consumer at a saving of the profits of middlemen; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondents, Abraham Kritzer, Arthur Kritzer, Augusta Kritzer, and Clara Kritzer, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance and filed their answers herein to said amended complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said amended complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision and counsel for the Commission and for the respondents having submitted briefs,

and the Commission having duly considered the record, and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals who, during the past five years, have been engaged as hereinbelow set forth in the business of selling and distributing household furniture at retail at and from sundry stores and places of business maintained by them for said purpose in the city and State of New York. In completing the sales of, and in delivering, their furniture to their customers, respondents caused same to be transported in interstate commerce from said places of business in the city and State of New York into and through various other States of the United States and delivered to the respective customer-purchasers in said other States. Respondents' combined sales of said furniture varied in amounts from \$100,000 to \$400,000 per annum, and at all times during which they carried on said business, each of respondents was in the conduct thereof engaged continuously in commerce between and among several States and in direct, active competition with many other individuals, partnerships, and corporations also engaged in the sale and distribution of household furniture in interstate commerce between and among various States of the United States, particularly the State of New York and States adjacent thereto. Respondents carried on their said furniture business under various and sundry names, as follows: For more than one year immediately prior to and including November, 1923, all of said respondents conducted their said business jointly and in association with, and to the mutual interest of each other, as and under the unincorporated trade names and styles of "Furniture Manufacturers' Warehouse" and "Furniture Manufacturers' Auction Outlet," and also as and under the corporate name of "Kritzer's, Inc.," a corporation under the laws of the State of New York which was organized, and the stock of which was owned, by the respondents who were its directors and constituted its officers, to wit: President, respondent Abraham Kritzer; vice president, respondent Augusta Kritzer; secretary, respondent Clara Kritzer; and treasurer, respondent Arthur Kritzer. Respondents used said trade names and said corporate name in and under which to make the misleading and deceptive representations of their business and furniture as hereinafter set forth. Said trade name "Furniture Manufacturers' Warehouse" was used by respondents under which to operate their said furniture business at premises No. 163 West Nineteenth Street, New York City, N. Y. Said trade name

"Furniture Manufacturers' Auction Outlet" was used by respondents under which to operate their said furniture business at premises No. 110 West Seventeenth Street, New York City, N. Y.; and for more than a year immediately following November, 1923, respondents continued the use of said trade name "Furniture Manufacturers' Auction Outlet" as and under which to carry on said furniture business. The place of business of said "Kritzer's, Inc.," used by respondents as aforesaid was at No. 120 West Twenty-third Street, New York City, N. Y. In carrying on their furniture business in interstate commerce, respondents from January, 1924, to March 10, 1925, also conducted same at premises Nos. 162 to 170 West Twenty-third Street, New York City, N. Y., as and under the unincorporated trade name and style of "Grand Rapids Salesrooms." On or about March 10, 1925, said trade name "Grand Rapids Salesrooms" was changed to the unincorporated trade name and style of "Grand Rapids Furniture Co." and thereafter said furniture business of respondents located at Nos. 162 to 170 West Twenty-third Street, New York City, N. Y., was and still is conducted in and under the said name "Grand Rapids Furniture Co." and under the supervision and management of respondent Abraham Kritzer and as a continuation of the business formerly conducted by respondents under the various other trade names hereinbefore set forth, which business organizations were also under the supervision and management of respondent Abraham Kritzer. Respondent Abraham Kritzer likewise manages and controls the Chelsea Auction Rooms, a corporation organized and existing under the laws of the State of New York, with an authorized capital stock of \$25,000, and respondents use said Chelsea Auction Rooms through and in the name of which to purchase furniture for their said business.

PAR. 2. In the course of carrying on their business under the various and sundry trade and corporate names all as hereinbefore set forth, and through and by means of large and conspicuous display signs and numerous advertisements conspicuously published by them in newspapers of general circulation among the purchasing public, respondents represented to their customers and prospective customers—

(a) That all said furniture advertised and sold by them was genuine Grand Rapids Furniture or furniture manufactured in the city of Grand Rapids, Mich.

(b) That respondents were and are the manufacturers of the furniture in which they dealt, or the warehouseman, factory representative, branch or agent of the manufacturers thereof, and were selling

said furniture at manufacturers' prices for the account and on behalf of said manufacturers.

(c) That said furniture as sold and distributed by respondents comes directly from the manufacturers thereof to respondents' customer-purchasers without the intervention of middlemen, thereby eliminating and saving to such customer-purchasers the costs and profits of middlemen.

(d) That respondents offered for sale and sold large quantities of Grand Rapids furniture, including hundreds of suites of living room furniture.

PAR. 3. In truth and in fact respondents did not manufacture any of the furniture in which they dealt as aforesaid. None of the respondents have ever owned, controlled or operated directly or indirectly any furniture factory or factories in which or by which any of the furniture in which they dealt in their said business was manufactured or produced, and none of respondents have at any time mentioned herein been the representative, agent or warehouseman of the manufacturer of any of their furniture. Respondents have at no time been engaged in selling out the stock of any Grand Rapids manufacturer retiring from business, nor have any of respondents acted in any way for or on behalf of manufacturers of Grand Rapids furniture or other furniture. In the conduct of their said business respondents were at all times herein mentioned retail furniture dealers who purchased their furniture outright and in the usual course of commerce from manufacturers or other dealers and resold said furniture to the purchasing public at prices fixed by them as such retail dealers, which prices included the costs and profits of themselves and the manufacturers. Respondents' stock in trade during all the times herein mentioned consisted principally and almost wholly of furniture which was not genuine Grand Rapids furniture or furniture manufactured or made in the city of Grand Rapids, Mich., but was furniture manufactured at widely scattered points elsewhere than Grand Rapids, Mich. Said stock in trade of respondents at no time contained more than an insubstantial and inconsequential amount (approximately 1 per cent to 3 per cent) of genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich.

PAR. 4. For a great many years prior thereto, and at all times during which respondents have engaged in the business hereinbefore described, the city of Grand Rapids, Mich., has been and still is a large and important center of the furniture-manufacturing industry in the United States, which fact is well known to the purchasing public throughout the United States. The furniture manu-

factured in said city of Grand Rapids is extensively advertised, sold and distributed by the trade and purchasing public throughout the United States, including particularly that portion of the purchasing public served by respondents, as "Grand Rapids furniture" or as furniture manufactured or made in Grand Rapids, Mich.; and said Grand Rapids furniture at all times herein mentioned has enjoyed and still enjoys a widespread popularity, high reputation and good will among, and is well and favorably known and in great demand by, the purchasing public. Many consumers desire to purchase furniture manufactured at Grand Rapids, Mich., or Grand Rapids furniture, in preference to furniture manufactured elsewhere.

PAR. 5. Respondents' representations of their business and furniture as set forth in paragraph 2 hereof are false and misleading, were calculated, have and had the capacity and tendency to, and did, mislead and deceive the purchasing and consuming public and thereby cause many thereof to purchase their furniture from respondents in the erroneous belief that said representations were true in fact.

PAR. 6. There are among the competitors of respondents mentioned in paragraph 1 hereof, many who truthfully advertise and sell, as such, furniture manufactured in said city of Grand Rapids, Mich. There are also many of said competitors who deal in and sell furniture not manufactured in said city of Grand Rapids, Mich., and who do not through trade names, newspaper advertisements or otherwise, represent that such furniture is Grand Rapids furniture or furniture manufactured in said city of Grand Rapids or in any wise connected with the furniture industry thereof. The misleading and deceptive practices indulged in by respondents as hereinbefore set forth, tend to and do unfairly divert trade from and otherwise injure the business of said competitors and are to the prejudice and injury of the public. Said misleading and deceptive practices of respondents also tend to and do unfairly divert trade from the furniture manufacturers of Grand Rapids, Mich., and prejudice and injure the good will and business of said Grand Rapids manufacturers. Among respondents' competitors are many furniture dealers who do not, in carrying on their business, represent themselves as manufacturers, or as branches, warehouses, agents, or representatives of furniture manufacturers, or as selling their furniture directly from the manufacturer thereof to the consuming public to the exclusion of the profits and costs of middlemen; and said misleading and deceptive practices of respondents tend to and do unfairly divert trade from and otherwise injure the business of such competitors. Said misleading and deceptive practices of respondents likewise tend to and do unfairly divert trade from manufacturers of furniture who,

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in competition with respondents, sell and distribute their furniture directly to the consuming public to the exclusion of the profits and costs of middlemen.

## CONCLUSION

The acts and things done by respondents, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers of respondents thereto, the testimony and evidence; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered*, That respondents Abraham Kritzer, Arthur Kritzer, Augusta Kritzer, and Clara Kritzer, and each of them, their agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(a) Using the words "Grand Rapids" in any trade name or corporate name under which is sold and distributed in interstate commerce any furniture which has not been manufactured in the city of Grand Rapids, Mich.; or representing through newspaper advertisements, signs, business correspondence, or in any other manner whatsoever, that any of said furniture has been manufactured in Grand Rapids, Mich.

(b) Making representations through trade names, corporate names, signs, business correspondence, newspaper advertisements, or in any other manner whatsoever, in connection with the sale and distribution by any of the respondents of furniture in interstate commerce, (1) that respondents, or either of them, are the manufacturers of said furniture or the factory distributors, representatives, agents or warehousemen of the manufacturers of said furniture, and are selling and distributing same directly from the manufacturers

or factory warehouse to their customer-purchasers without the intervention of middlemen; or (2) that the prices at which respondents are offering for sale and selling said furniture are factory prices or manufacturers' prices; unless and until respondents actually own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture as offered for sale and sold, or are the direct agents or warehousemen of such factory or factories and are conducting said business as such agents for the account and on behalf of said factory or factories.

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

## IN THE MATTER OF

JACOB A. MILLER AND HARRY TOBIAS, PARTNERS,  
DOING BUSINESS UNDER NAME AND STYLE GRAND  
RAPIDS SALES COMPANY, GRAND RAPIDS SALES  
COMPANY (A CORPORATION)

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

*Docket 1193. Complaint, June 17, 1924<sup>1</sup>—Decision, Nov. 24, 1926*

Where the city of Grand Rapids, Mich., had long been known as a large and important center of the furniture industry in the United States, furniture there manufactured was extensively advertised, sold, and referred to by the trade and purchasing public throughout the United States and particularly by a portion of such public near New York City, as "Grand Rapids furniture," and such furniture had come to enjoy a widespread popularity, high reputation and good will, and great demand by the purchasing public, and to be preferred by many to furniture made elsewhere; and thereafter a corporation, operated and controlled by former members of its predecessor partnership, engaged in the sale at retail in and from New York City of furniture, of which only an unsubstantial and inconsequential amount was made in Grand Rapids; and neither representative nor branch of any furniture manufacturer, nor manufacturer of the furniture dealt in by it, which was not sold directly from manufacturer to consumer to the exclusion of the costs and profits of middlemen, but was purchased by it in the usual manner from manufacturers or other dealers and sold by it as a retail dealer to the public at dealers' prices including the costs and profits of itself and manufacturers;

- (a) Carried on its business under the names "Grand Rapids Sales Company, eastern representative of furniture makers," and "Grand Rapids Show Rooms," and featured said names and statement at its places of business and salesrooms, and on its letterheads, billheads, and other business stationery;
- (b) Falsely represented itself on a sign displayed at its salesroom as "factory representative" of certain Grand Rapids manufacturers thereon named;
- (c) Conspicuously advertised its furniture under its aforesaid names in the daily papers with such statements as "World's best furniture, made in Grand Rapids. A number of leading manufacturers are offering their sample lines together with their regular stocks made for the 1925 season, ordinarily shown at August sales. Are now on exhibition and offered for sale at our wholesale showrooms, direct to retail buyers for cash only at one-half retail prices," "Every suite offered in this great sale is priced only at manufacturers' cost of production which really means lower than wholesale cost," "Public disposal sale of Grand Rapids manufacturers' sample furniture at less than wholesale prices. In offering these wonderful sample stocks of advance showroom suites we present to the public a buying opportunity that is rare. \* \* \*";

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<sup>1</sup>Amended complaint, Oct. 28, 1924.



With the capacity and tendency to mislead and deceive the purchasing public in reference to the source of manufacture of the aforesaid furniture, and its own supposed status as a direct representative or branch of Grand Rapids furniture manufacturers, selling genuine Grand Rapids furniture in their behalf directly to the purchasing and consuming public at manufacturers' prices, thereby saving its customers the costs and profits of middlemen, and to cause purchasers to buy its furniture in such erroneous beliefs; and

With the effect of diverting trade from Grand Rapids furniture manufacturers and prejudicing and injuring their good will and business, and of unfairly diverting trade from and injuring competitors dealing in furniture made in Grand Rapids and truthfully so advertised and sold, competitors dealing in furniture neither there made nor so represented, competitor dealers who did not misrepresent themselves as manufacturers, or their representatives or branches, or as selling directly from the manufacturer to the consumer to the exclusion of the aforesaid costs and profits, and manufacturers who sold and distributed their product directly to the consuming public to the exclusion of such profits and costs, in competition with it:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle and Mr. Henry Miller* for the Commission.  
*Mr. Frank Weinstein*, of New York City, for respondents.

#### SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners theretofore engaged in New York City, in the sale of furniture at retail to purchasers in the various States, and respondent corporation, organized under the laws of the State of New York, and successor to said partnership, with the aforesaid individuals as president and treasurer thereof, and similarly engaged, with adopting and using misleading trade and corporate name, misrepresenting business status or advantages, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as alleged, dealing in furniture made for the most part at points other than Grand Rapids, Mich., and by manufacturers in nowise connected with the Grand Rapids furniture industry, and not buying agents of furniture manufacturers, but purchasing the furniture dealt in by them and reselling the same at retail and at a profit, used and featured such trade and corporate names at their place of business as "Grand Rapids Sales Co." and also there made the representation "Eastern Representatives of Furniture Makers," and featured the aforesaid names in advertise-

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ments in newspapers of general circulation, together with such statements as "Original Factory Samples, World's Best Furniture, Made in Grand Rapids," "Entire \$300,000 Sample Stock Direct to Public," "We must quickly dispose of this great stock \* \* \* to raise cash for the manufacturers," "A Great Furniture Institution, representing America's foremost manufacturers have opened doors to sell Direct to Retail Buyer," "Entire 1924 Sample Lines of America's leading furniture manufacturers for lower than wholesale cost."

Such acts and practices had the tendency, as charged, to deceive the public into believing respondents' furniture to have been manufactured in Grand Rapids, Mich., and to be of the quality and other desirable characteristics long associated in the public mind with furniture there manufactured, and to cause many to purchase the same in such belief, and thus unfairly divert business from competitors dealing in genuine Grand Rapids furniture, and from competitors dealing in furniture not there manufactured nor so represented or as in anywise connected therewith, and had the capacity and tendency to mislead and deceive many among the consuming public into believing that purchasers from respondents were buying directly from the manufacturer and thereby saving the profits of middlemen, and to induce many to purchase respondents' furniture in such belief, thereby unfairly diverting business from competitor manufacturers selling their furniture directly to the consuming public, and from competitor retail dealers who do not falsely hold themselves out as sales agents or representatives of manufacturers offering their furniture at a saving to the consumer of the profits of the middlemen; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint and an amended complaint upon the respondent Grand Rapids Sales Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent corporation having entered its appearance and filed its answer herein to said complaint and amended complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint and amended complaint, and in opposition thereto, before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision, and counsel for the Commission and for the respondent having submitted briefs and waived oral argument, and the Commission having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Grand Rapids Sales Co. is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business in the City and State of New York. Since April 1, 1924, when it succeeded to the business theretofore conducted by Jacob A. Miller and Harry Tobias as copartners under the trade name and style of Grand Rapids Sales Co., respondent corporation has engaged and is still engaged in the business of selling household furniture at retail to the consuming public, maintaining and operating for that purpose public sales rooms at Nos. 41, 43 and 45 West Thirteenth Street and No. 90 Fifth Avenue, in the City and State of New York. The managing officers and directors of respondent corporation are said Jacob A. Miller and Harry Tobias. Respondent corporation's method of conducting its business was at all times hereinabove mentioned as follows: It offered for sale and sold its furniture to the consuming public at its said sales rooms in New York City; and also through and by means of advertisements of said business and furniture which it caused to be published from time to time in daily newspapers of general circulation among the consuming public throughout the State of New York and States adjacent thereto, respondent corporation induced purchasers and prospective purchasers to come to its said sales rooms and make purchases of its furniture. For the purpose of completing the sales of its furniture to its customers respondent corporation operated on regular continuous schedule its own delivery trucks by which it transported and delivered the furniture so sold by it from its aforesaid places of business in New York City, N. Y., to points within a radius of 100 miles from New York City, and including particularly such points of delivery in the State of New Jersey. Many sales of its furniture were made by respondent corporation to purchasers residing in the State of New Jersey and in delivering the furniture so sold respondent caused same to be transported in interstate commerce from its places of business in New York City, N. Y., into the State of New Jersey and to be delivered to the respective purchasers thereof in the State of New Jersey. Said deliveries of its furniture were made on regular sched-

ule four times per week and served approximately 17 to 19 different New Jersey customers per week. Respondent corporation's total annual sales approximated \$1,000,000 and its sales of furniture delivered by it to said New Jersey purchasers amounted to a minimum of \$30,000 per year. In the course and conduct of such business respondent corporation was at all times hereinabove mentioned, and still is, in direct active competition with many individuals, partnerships and other corporations engaged in the sale and distribution of household furniture to the purchasing and consuming public in commerce between and among various States of the United States, particularly the States of New York and New Jersey.

PAR. 2. In the course of selling, and as a means by which to induce the public to purchase, its furniture, respondent corporation for many months immediately after April 1, 1924, carried on its aforesaid business in the names of "Grand Rapids Sales Company, Eastern representative of furniture makers" and "Grand Rapids Show Rooms," which names and statement it caused to be publicly displayed and set forth in large and conspicuous letters at its places of business and sales rooms and on its letterheads, billheads, and other business stationery which it used in the course of making sales to the public. It also publicly displayed at its sales rooms a sign bearing the statement "Factory representatives of Luce Furniture Co., Sligh Furniture Co., Widdicomb Furniture Co." And as a further means by which to induce the public to purchase its furniture respondent corporation during the same time caused to be published many large and conspicuous advertisements of its furniture in daily newspapers of general circulation among the consuming public throughout various States, particularly the States of New York and New Jersey, in which advertisements it named, represented and described its business and the furniture in which it dealt by the following names and statements of similar import:

(a) "Grand Rapids Sales Company. World's best furniture, made in Grand Rapids. A number of leading manufacturers are offering their sample lines together with their regular stocks made for the 1925 season, ordinarily shown at August sales, are now on exhibition and offered for sale at our wholesale showrooms, direct to retail buyers for cash only at one-half retail prices."

(b) "Grand Rapids Sales Company, World's Best Furniture, Made in Grand Rapids. Every suite offered in this great sale is priced only at manufacturers' cost of production which really means lower than wholesale cost."

(c) "Grand Rapids Showrooms Furniture. This sale offers an opportunity to purchase Advance Styles Priced One-half Regular Cost."

(d) "Grand Rapids Sales Company. Public disposal sale of Grand Rapids Manufacturers' sample furniture at less than wholesale prices. In offering those wonderful sample stocks of advance showroom suites we present to the public a buying opportunity that is rare. Among the furniture offered for sale are great quantities of prize suites that have been awarded high honors for beauty and quality."

For the advertisement of its names and business as aforesaid, respondent corporation expended from \$2,000 to \$2,500 per week.

PAR. 3. For a great many years prior to and at all times since respondent corporation and its predecessors in business have engaged in the business hereinabove described, the city of Grand Rapids, Mich., has been and still is, a large and important center of the furniture manufacturing industry in the United States, which fact is well known to the purchasing public throughout the United States. There are approximately 60 furniture factories located in said city of Grand Rapids, the combined annual production of which factories is estimated to be of the approximate value of \$45,000,000. The furniture manufactured in said city of Grand Rapids is extensively advertised, sold and referred to by the trade and purchasing public throughout the United States, including particularly that portion of the purchasing public served by respondent corporation, as "Grand Rapids Furniture" or furniture manufactured or made in Grand Rapids, Mich.; and said furniture at all times herein mentioned has enjoyed and still enjoys a widespread popularity, high reputation and good will among, and is well and favorably known and in great demand by, the purchasing public. Many consumers desire to purchase furniture manufactured at Grand Rapids, Mich., or Grand Rapids furniture, in preference to furniture manufactured elsewhere.

PAR. 4. The use by respondent corporation of its corporate name and said trade name and advertising statements all as set forth in paragraph 2 hereof, are calculated, have and had the capacity and tendency to mislead and deceive the purchasing public into, and to cause purchasers to buy respondent corporation's furniture in, the erroneous belief—

(a) That all said furniture offered for sale and sold by respondent corporation was manufactured in the aforesaid city of Grand Rapids, Mich., and is genuine Grand Rapids furniture;

(b) That respondent corporation is a direct representative, agent, or branch of furniture manufacturers who are located in Grand

Rapids, Mich., and who are the manufacturers of the furniture comprising respondent corporation's stock in trade, and that respondent corporation is selling and distributing said furniture as such agent or branch for and on behalf of said manufacturers and directly from such manufacturers to the purchasing and consuming public at said manufacturers' prices and without the intervention of middlemen, thereby eliminating and saving to its customers the costs and profits of middlemen.

In truth and in fact during all of the time aforesaid representations were made by respondent corporation its stock in trade, which it advertised and sold as stated above, consisted principally and almost wholly of furniture which was not Grand Rapids furniture or furniture manufactured or made in the city of Grand Rapids, Mich., but was furniture manufactured at widely scattered points elsewhere than Grand Rapids, Mich. Said stock in trade contained only an insubstantial and inconsequential amount of genuine Grand Rapids furniture or furniture manufactured in the city of Grand Rapids, Mich. Respondent corporation is not and never has been the manufacturer of any of its furniture in which it dealt or the representative, branch, or agent of said Luce Furniture Co., Sligh Furniture Co. or Widdicomb Furniture Co., or any other manufacturer of Grand Rapids furniture or other furniture. Respondent corporation is a retail dealer or middleman and purchased its stock in trade in the usual manner from manufacturers or other dealers, and said furniture dealt in by it was never sold directly from manufacturer to the consuming public without the intervention of middlemen or to the exclusion of the costs and profits of middlemen, but same was at all times herein mentioned sold by respondent corporation as a retail dealer to the public at dealers' prices which included the costs and profits of itself and of the manufacturers.

PAR. 5. There are among the competitors of respondent corporation mentioned in paragraph 1 hereof many who truthfully advertise and sell, as such, furniture manufactured in said city of Grand Rapids, Mich. There are also many of said competitors who deal in and sell furniture not manufactured in said city of Grand Rapids, Mich., and who do not through trade names or otherwise represent that such furniture is Grand Rapids furniture or furniture manufactured in said city of Grand Rapids or in anywise connected with the furniture industry thereof. The misleading and deceptive practices indulged in by respondent corporation as hereinbefore set forth tend to and do unfairly divert trade from and otherwise injure the business of said competitors and are to the prejudice and injury of the public. Said misleading and deceptive practices of

respondent corporation also tend to and do divert trade from the furniture manufacturers of Grand Rapids, Mich., and prejudice and injure the good-will and business of said Grand Rapids manufacturers. Among respondent corporation's competitors are many furniture dealers who do not in carrying on their business represent themselves as manufacturers or as branches, agents or representatives of furniture manufacturers or as selling their furniture directly from the manufacturer thereof to the consumer to the exclusion of the profits and costs of middlemen; and said misleading and deceptive practices of respondent corporation tend to and do unfairly divert trade from, and injure the business of, such competitors. Said misleading and deceptive practices of respondent corporation likewise tend to and do unfairly divert trade from manufacturers of furniture who in competition with respondent corporation sell and distribute their furniture directly to the consuming public to the exclusion of the profits and costs of middlemen.

#### CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent corporation's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint and amended complaint of the Commission, the answers of respondent corporation thereto, the testimony and evidence; and the Commission having made its findings as to the facts, with its conclusion that respondent corporation has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That respondent corporation, Grand Rapids Sales Co., its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly—

(a) Using the words "Grand Rapids" in any trade name or corporate name under which is sold and distributed in interstate commerce any furniture which has not been manufactured in the city of Grand Rapids, Mich.;

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(b) Making representations through trade names, corporate names, signs, business correspondence, newspaper advertisements, or in any other manner whatsoever in connection with the sale and distribution of furniture in interstate commerce, (1) that respondent corporation is the manufacturer of the furniture which it sells or is the factory branch, representative or agent of the manufacturer thereof; or (2) that any furniture offered for sale or sold by respondent corporation in interstate commerce comes from the manufacturer of such furniture, or such manufacturers' agent to the respondent corporation's customer-purchasers without the costs and profits of middlemen; unless and until respondent corporation actually owns and operates or directly and absolutely controls a factory or factories wherein or by which is made all such furniture so offered for sale and sold, or is the direct agent of such factory or factories and is conducting said business as such agent for the account and on behalf of said factory or factories.

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

#### ORDER OF DISMISSAL

This proceeding coming on for decision upon the amended complaint, the answer thereto of respondents Jacob A. Miller and Harry Tobias, the testimony and evidence adduced, and briefs of counsel for the Commission and for respondents, and the Commission having duly considered the record and being now fully advised in the premises:

*It is ordered,* That the amended complaint herein be and the same is hereby dismissed as to respondents Jacob A. Miller and Harry Tobias only.



## Complaint

## IN THE MATTER OF

F. BURKHALTER, DOING BUSINESS UNDER THE TRADE  
NAME AND STYLE ROYAL SOAP COMPANY

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

*Docket 1289. Complaint, Feb. 17, 1925—Decision, Nov. 29, 1926*

Where an individual engaged in the sale of a soap which was neither medicated nor contained ingredients having a curative and healing effect upon the skin; branded and labeled the same and the wrappers thereof "Royal Medicated Cuticle Doctor Soap", and represented said soap as being medicated and containing various ingredients having the aforesaid effect, in soliciting the sale thereof and advertising the same in newspapers in the communities of his retail dealer vendees; with the effect of causing many of the trade and public to purchase such soap as and for a medicated product possessing curative and healing qualities not possessed by ordinary toilet soap, and of diverting business from competitors dealing in soaps having such qualities, and from competitors dealing in ordinary toilet soaps, and selling the same under truthful representations:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Otto R. Stites and Mr. Alfred M. Craven for the Commission.  
Lathrop, Morrow, Fox & Moore and Mr. John S. Bates, of Kansas  
City, Mo., for respondent.*

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, engaged in the sale of an unmedicated toilet soap to retail dealers in various States and with place of business in Kansas City, with misbranding or mislabeling and misrepresenting product dealt in, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, for more than a year preceding the complaint, stamped each cake of the aforesaid soap "Royal Medicated Cuticle Doctor Soap" and so labeled the wrappers thereof, and falsely represented the same to dealers solicited by him as a high-grade toilet soap of the regular value of twenty-five cents per cake, and as medicated and containing ingredients having a curative and healing effect upon the skin, and so advertised said soap in local papers in communities in which he sold the same, the facts being that said soap was of the

## Findings

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reasonable value of not more than ten cents a cake and was habitually sold by him to retail dealers for resale at such price, and had no further curative and healing effect than ordinary toilet soaps; with the effect of causing many of the trade and public to purchase the aforesaid soap as and for one possessing the qualities above set forth, and of diverting business from and otherwise prejudicing competitors selling toilet soaps to retailers without representing the same as medicated or otherwise superior to ordinary soaps and as offered at lower than the ordinary and usual retail prices, and with the capacity and tendency so to do; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, F. Burkhalter, doing business under the trade name of Royal Soap Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent having entered his appearance, but not having filed an answer, hearings were had and evidence was thereupon introduced on behalf of the Commission before William F. Dinnen, an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision and the Commission having considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

**FINDINGS AS TO THE FACTS**

**PARAGRAPH 1.** Respondent is now and since the year 1922, has been, doing business under the trade name and style "Royal Soap Co." with his place of business in the city of Kansas City, State of Missouri, and engaged in the business of selling toilet soap to retail dealers located at points in various States of the United States. He causes said soap when sold to be transported from his place of business or from various places where said soap is manufactured into and through States other than the States wherefrom said soap is so shipped, to said purchasers at their respective points of location. In the course and conduct of his said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of toilet soap in interstate commerce between and among various States of the United States.

PAR. 2. The soap dealt in by respondent in the course of his business as set out in paragraph 1 hereof, is named and denominated by respondent "Royal Medicated Cuticle Doctor Soap," which said name and designation respondent causes to be stamped upon each cake of his said soap and to be printed upon the wrappers wherein said soap is wrapped, and respondent delivers said soap so stamped and wrapped to his aforesaid vendees.

PAR. 3. Upon soliciting and making sales to aforesaid vendees respondent represents to said dealers that said soap is medicated and contains various ingredients having a curative and healing effect upon human skin. Further, upon making a sale respondent causes to be inserted in a newspaper or newspapers of general circulation in the community wherein the dealer is located advertisements offering said soap for sale by said dealer, in which advertisements respondent causes to be inserted aforesaid representations and others of similar import.

PAR. 4. In truth and in fact respondent's said soap is not medicated and contains no ingredients having a curative and healing effect upon the human skin. The representations referred to in paragraphs 2 and 3 hereof have been made by the respondent continuously since some time in the year 1922 down to the present time, during which period of time respondent has never sold a soap containing medicaments or any ingredients of a curative or healing nature.

PAR. 5. The stamping and wrapping by respondent of his said soap with the name and designation "Royal Medicated Cuticle Doctor Soap," and the representations made by respondent to his dealer vendees and in his advertising, all as set out in paragraphs 2 and 3 hereof, have the capacity and tendency to cause and have caused many of the trade and public to purchase respondent's said soap in the belief that said soap is a medicated soap possessing curative and healing qualities not possessed by ordinary toilet soap.

PAR. 6. Among the competitors of respondent referred to in paragraph 1 hereof are many manufacturers of and dealers in soap who sell and have sold soap in competition with respondent which contains ingredients having healing and medicinal qualities. There were and now are many other competitors who sell ordinary toilet soap having no medicinal or healing qualities. Both classes of said competitors as a rule make truthful representations in regard to the soap offered for sale by them. The respondent's misrepresentations as found in paragraphs 2 and 3 hereof tend to and have diverted business from both classes of said competitors,

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## CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the evidence received in support of said complaint, the respondent, not having offered any evidence, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondent, F. Burkhalter, his agents and employees do cease and desist from using the words "Doctor Soap" or "Medicated Soap" on soap, labels, wrappers, boxes, or other containers, or in newspapers, circulars, or other printed matter in connection with the sale of respondent's soap, or representing in any other manner soap sold or offered for sale by respondent as "Doctor Soap" or "Medicated Soap."

*It is further ordered,* That the respondent, F. Burkhalter, shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

## Complaint

## IN THE MATTER OF

## A. HERSKOWITZ, MORRIS GOLDBERG, AND SAMUEL BELL, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE, BELL CAP COMPANY

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

*Docket 1315. Complaint, May 21, 1925—Decision Dec. 8, 1926*

Where a firm engaged in the manufacture and sale of shop caps, advertised the same in its price lists and catalogues as "union made shop caps with union labels", notwithstanding the fact that recognition of its shop or factory as a union shop had theretofore been withdrawn, it did not employ union labor, and had no right to advertise that it was conducting a union shop, or to use the union label; with the capacity and tendency to mislead many of the trade and purchasing public into believing that its caps had been made by union labor and to induce the purchase thereof in such belief, and with the result that competitors conducting recognized union shops lost business due to cancellation of orders in many instances and refusal thereof in others, on account of its aforesaid representations, with offers to sell its caps at prices below those of competitors:

*Held*, That such false and misleading advertising and representations, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

## SYNOPSIS OF COMPLAINT

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Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the manufacture of shop caps, not made by union labor, for artisans, craftsmen, and laborers, and in the sale thereof to wholesale and retail dealers in various States, and with place of business in New York City, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that they, for more than a year preceding the complaint, featured the words "Union Made" upon catalogues, price lists and other trade literature sent to customers and prospective customers, and describing and offering said caps for sale, with the effect of misleading many of the trade and consuming public into believing said caps to have been made by union labor and to purchase the same in such belief and with the capacity and tendency so to do, and to divert business from and otherwise injure and prejudice competitors making and fabricating their caps with

union labor and rightfully representing the same as so made; all to the prejudice of the public and respondent's competitors.<sup>1</sup>

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provision of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, copartners, doing business under the firm name and style of Bell Cap Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearances and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondents before William C. Reeves, an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell are now and have been since some time in 1921, copartners, doing business under the firm name and style of Bell Cap Co., and engaged in the business of manufacturing, at the City of New York, State of New York, caps intended to be worn by miners, railroad operatives, and workmen in shops, commonly known as

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<sup>1</sup> The complaint contains the following allegations as to the term "Union Made" and the effect of the use thereof:

"The term 'Union Made' means and is understood and taken by the trade and public generally throughout the United States to mean that goods, wares and articles of merchandise in connection with which said phrase is used have been made and fabricated by artisans, craftsmen and laborers who are members of a labor union or unions. Artisans, craftsmen, and laborers in the United States who are members of one or more labor unions number many thousands, and practically all said persons and the members of their families habitually purchase goods, wares and articles of merchandise made and fabricated by members of labor unions in preference to goods, wares and articles of merchandise made and fabricated by persons who are not members of such unions. Further, there are many thousands of persons throughout the United States who are not members of labor unions but who favor and support the objects, aims and purposes of labor unions and who habitually purchase goods, wares and articles of merchandise made by members of labor unions in preference to goods, wares and articles of merchandise made by persons who are not members of such unions."

"shop caps," and in the selling of such caps to jobbers and wholesalers throughout the United States. Respondents solicit business by means of traveling salesmen and by means of printed catalogues and price lists circulated among jobbers and wholesalers, and upon the receipt of orders for such caps ship same into and through States of the United States other than the State of New York in interstate commerce.

PAR. 2. During the duration of the partnership and up to the present time, respondents have had and now have numerous competitors located in the City of New York and other places in the United States engaged in the business of manufacturing and selling shop caps and shipping them in interstate commerce upon orders received into and through States of the United States other than the States of their respective locations. Among such competitors in the City of New York were Klein & Frankfeldt, Metro Cap Co., and A. Arnoff & Sons, all corporations, which concerns consolidated about January 1, 1925, under the name of Klein, Frankfeldt, Arnoff, Inc.

PAR. 3. Shortly after respondents began business as a partnership they procured from the Cloth Hat, Cap, and Millinery Workers' International Union, the right to advertise the caps manufactured by them as union made caps and to affix to said caps the cloth label bearing the name of the Cloth Hat, Cap, and Millinery Workers' International Union, and other words signifying that the cap to which such label is attached is made in a shop recognized by the said union as a union shop. The label above described is copyrighted and is the property of such international union. The recognition by the said International Union of a shop as a union shop is made only when such shop complies with the regulations of the union in regard to hours of labor, sanitation, and other matters, including the employment exclusively of workmen who are members of local unions.

PAR. 4. The respondents, upon receiving recognition, as mentioned in paragraph 3, and the right to use the union label and to advertise that fact, circulated among its customers and prospective customers, consisting of jobbers and wholesalers, certain catalogues and price lists in which they represented that the caps manufactured by them were "Union made shop caps with union label" and "Union made." On or about the 8th day of April, 1922, the union withdrew its recognition of the shop or factory of the respondents as a union shop, and after said date respondents did not employ union labor and had no right to represent or advertise that they were conducting a union shop or to use the union label. Respondents, notwithstand-

ing the loss of their right so to do, continued after said 8th day of April, 1922, and up to long after the issuance of the complaint herein, to advertise throughout the trade by means of price lists and catalogues "Union made shop caps with union labels."

PAR. 5. The term "Union Made" means and is understood and taken by the trade and public generally throughout the United States to mean that goods, wares and articles of merchandise in connection with which said phrase is used have been made and fabricated by artisans, craftsmen and laborers who are members of a labor union or unions.

PAR. 6. The advertisements and representations of the respondents above set forth are and have been since April 8, 1922, false and misleading and have had and have the capacity and tendency to mislead many of the trade and purchasing public into the belief that respondents' aforesaid shop caps were made and fabricated by union laborers, and to induce the purchase of said caps in that belief.

PAR. 7. The competitors of respondents named in paragraph 2 hereof and many other competitors have been, since the 8th day of April, 1922, when respondents ceased to conduct a union shop, conducting union shops with the full recognition of the said Cloth Hat, Cap and Millinery Workers' International Union and the right to use the label of said union. The said false representations and advertising by the respondents mentioned in paragraph 4 hereof have resulted in loss of business to such competitors. In many cases orders placed with such competitors by customers have been canceled and in many other cases customers have refused to purchase, by reason of the representations made by the respondents coupled with their offers to sell caps at prices lower than the prices of such competitors.

#### CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the several answers of the respondents and the evidence introduced and the Com-



mission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, their agents and employees, cease and desist from advertising or in any manner representing that caps sold or offered for sale by them in interstate commerce are union made, unless they are made by union labor, and in a shop or factory having authoritative recognition as a union shop or factory.

*It is further ordered,* That the respondents, A. Herskowitz, Morris Goldberg, and Samuel Bell, shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

By the Commission, Commissioner Humphrey dissenting.

## IN THE MATTER OF

P. PERLMUTTER AND C. W. QUIGLEY, PARTNERS DOING  
BUSINESS UNDER THE TRADE NAME AND STYLE OF  
P & Q FACTORY DIRECT TO YOU FURNITURE

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

*Docket 1143. Complaint, Mar. 25, 1924—Decision, Dec. 18, 1926*

Where a firm engaged in the sale of furniture, which it purchased from the manufacturers and resold to the consuming public as a dealer or middleman and at dealer's prices, including the costs and profits of itself and of the manufacturers, and neither manufacturing furniture dealt in by it, nor owning, controlling or operating any furniture factories, nor selling or distributing such furniture directly from the manufacturers to its customer purchasers without the intervention of middlemen and to the exclusion of the costs and profits thereof; included in its trade name the words "Factory direct to you furniture" and featured the same in its business correspondence, business cards, and newspaper advertisements, and on large and conspicuous signs displayed at its sales rooms and place of business, with the capacity and tendency to mislead and deceive the purchasing public into believing that purchasers from it were dealing directly with the manufacturer and thereby saving themselves the costs and profits of middlemen, and to cause many of them to buy said furniture in such belief, and with the effect of unfairly diverting trade from and otherwise injuring the business of competitors who as manufacturers sold their furniture directly to the consuming public under truthful representations as to their method of distribution, and competitor dealers who did not in any manner represent themselves as manufacturers of the furniture dealt in by them:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle and Mr. Henry Müller* for the Commission.  
*Mr. Samuel G. Schwartz*, of Philadelphia, Pa., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the sale of furniture which they bought from the manufacturers and resold at a profit and at substantially prevailing retail prices to purchasers in various States, and with principal place of business in Philadelphia,

with misrepresenting business status and advertising falsely or misleadingly in that, for more than a year preceding the complaint, they set forth the statement and slogan "Factory Direct To You", upon their letterheads used in soliciting customers, and upon the business cards furnished their salesmen for their use in soliciting customers, with the capacity and tendency to mislead and deceive many among the consuming public into believing that persons buying from them were purchasing direct from the manufacturer of the furniture and thus saving the profits of middlemen, and to induce many to purchase said furniture in such belief, all to the prejudice of the public and respondent's competitors, a number of whom as manufacturers, sell their furniture to the consuming public and a number of whom, as retail dealers do not in any manner hold themselves out as manufacturers of the furniture sold by them.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, P. Perlmutter and C. W. Quigley, partners doing business under the trade name and style of "P & Q—Factory Direct to You", charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answer herein to said complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of the complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision; and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondents P. Perlmutter and C. W. Quigley are copartners, trading for more than five years last past in and under the unincorporated trade name and slogan "P & Q—Factory to You Furniture", in conducting the business of selling and distributing household furniture to retail furniture dealers and the consuming public throughout various States, particularly the States of Pennsylvania, New Jersey, and Delaware, with their store and place of business at No. 119 North Second Street, in the city of Philadelphia,

State of Pennsylvania. Approximately 80 per cent of respondents' sales are made to the consuming public and approximately 20 per cent of their sales go to retail furniture dealers. The method by which they have at all times mentioned conducted said business is as follows: Respondents purchase the furniture comprising their stock in trade from many different furniture manufacturers located in various States of the United States, which furniture so purchased is shipped to respondents' said place of business in Philadelphia, Pa., where respondents display, offer for sale and sell said furniture to the trade and consuming public. Respondents also offer for sale and solicit trade for said furniture through newspaper advertisements, and through letters, and similar business correspondence, which they send from their place of business in Philadelphia, Pa., to customers and prospective customers residing in other States. Further, respondents employ six traveling salesmen who call upon and solicit orders for the purchase of their furniture from the consuming public at their respective residences in various States, particularly the States of Pennsylvania, New Jersey, and Delaware. In the course of their employment said salesmen distribute to said customers and prospective customers respondents' business cards containing the name and description of respondents' business as set forth in paragraph 2 hereof. As a result of the offering for sale and solicitation of business as aforesaid, respondents sell from time to time large quantities of their furniture to the trade and consuming public in the approximate proportions stated; and in completing said sales respondents cause said furniture to be transported in interstate commerce from their place of business in Philadelphia, Pa., through and into other States of the United States, particularly the States of New Jersey and Delaware, and to be then and there delivered to the respective customer-purchasers thereof in said other States. In so conducting their business, respondents are and have been at all times herein mentioned in direct active competition with many individuals, partnerships and corporations engaged in the sale and distribution of household furniture in commerce between and among several States of the United States, particularly the States of Pennsylvania, New Jersey, and Delaware.

PAR. 2. In the course and conduct of said furniture business and as a means by which to induce the public to purchase said furniture, respondents at all times herein mentioned carried on said business under the name, slogan, and description "P & Q—Factory Direct to You Furniture" and caused said name and description of their business to be prominently and conspicuously displayed in aforesaid business correspondence, business cards, and newspaper advertise-

ments used in furthering the sale of said furniture, and on large and conspicuous signs publicly displayed at their salesrooms and place of business. Said place of business of respondents is not a factory or in any way connected with a furniture factory, nor have any of the respondents ever owned, controlled, or operated any factory or factories wherein or whereby was made any of said furniture. In carrying on their business as aforesaid, respondents are and were dealers or middlemen, and said furniture dealt in by them was not sold or distributed directly from the manufacturers thereof to the respondents' customer-purchasers without the intervention of middlemen or to the exclusion of the costs and profits of middlemen; but same was sold and distributed by respondents, as dealers or middlemen, to the public at dealers' prices, which included the costs and profits of themselves and of the manufacturers.

PAR. 3. The use by respondents of the slogan, description, and representation "Factory Direct to You," under the conditions and circumstances hereinbefore set forth, is false and misleading, has and had the capacity and tendency to mislead and deceive the purchasing public into, and to cause them to buy said furniture in, the erroneous belief—

(a) That respondents are and were the manufacturers of their furniture and owned, controlled, or operated the factory or factories in which said furniture was made, and

(b) That purchasers, in buying from respondents, are buying directly from the manufacturers of said furniture to the exclusion of middlemen and thereby saving to such purchasers the cost and profits of middlemen.

PAR. 4. There are among the competitors of respondents mentioned in paragraph 1 hereof a number of manufacturers of furniture who sell and distribute their furniture directly to the purchasing public and under truthful representations as to their method of distribution. Among said competitors of respondents are also numerous furniture dealers who do not in any manner represent that they manufacture the furniture which they sell; and the false and misleading practices of respondents as set forth in paragraphs 2 and 3 hereof tend to and do unfairly divert trade from and otherwise injure the business of said competitors, and are to the prejudice of the public.

#### CONCLUSION

The acts and things done by respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors, and are unfair methods of competition in interstate commerce and constitute

## Order

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a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents thereto, the testimony and evidence; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That respondents P. Perlmutter and C. W. Quigley, their agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(a) Using in connection with the sale and distribution of furniture in interstate commerce, the slogan or statement "Direct from Factory to You" or any slogan or statement of similar import; and

(b) Representing in newspaper advertisements, signs, business correspondence or in any other manner whatsoever that respondents are the manufacturers of said furniture, or are selling and distributing said furniture directly from the manufacturers to respondents' customer-purchasers without the costs and profits of middlemen, unless and until respondents actually own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture so offered for sale and sold.

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

## Complaint

IN THE MATTER OF  
ARNOLD ELECTRIC COMPANY

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

*Docket 1308. Complaint, May 12, 1925—Decision, Dec. 23, 1926*

Where a corporation engaged in the manufacture and sale of electrically driven drink mixing machines,

- (a) Procured assurances from a large number of its customer dealers whereby they undertook to maintain the resale price specified by it, and removed from its list those who failed to give such assurances; and
- (b) Requested its dealers to cooperate in the maintenance of its resale prices and to report and investigate cases of price cutting in order that it might eliminate the same by refusing further sales to the price cutters or by securing their assurances that in the future they would observe its prices;

With the result that it secured the cooperation of its customers, resale prices fixed by it generally prevailed, dealers engaged in the distribution and sale of its product were prevented from selling the same at such lower prices as they might deem warranted, and competition in respect of such products was suppressed and hindered:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

*Hand & Quinn* of Racine, Wis., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Wisconsin corporation engaged in the manufacture of electrically driven drink-mixing machines and in the sale thereof to dealers in various States, and with principal office and place of business in Racine, Wis., with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent for about four years preceding the complaint has enforced and enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its machine shall be sold by dealers handling the same and has enlisted and

secured the support of said dealers and of its own officers, agents, and employees in enforcing said system.

In order to carry out such system respondent has employed and employs the following, among other means, whereby it and those cooperating with it have undertaken to prevent and have prevented dealers handling those products from reselling the same at prices lower than the resale prices established by it:

(a) Establishing uniform minimum prices for the resale of its said machines and issuing price lists and catalogues setting forth the same, to its dealers;

(b) Making it generally known to the trade that it expects and requires its dealers to maintain and enforce said resale prices;

(c) Entering into agreements and understandings with its dealers providing for the maintenance of said prices by them;

(d) Seeking and securing from its dealers reports of and information concerning price cutting on the part of other dealers;

(e) Employing its salesmen and other agents and employees to investigate and secure information relative to price cutting and to report to it in the premises;

(f) Using information secured relative to price cutting through the aforesaid means or otherwise, to induce and coerce price-cutting dealers to observe and maintain its prices in the future, by exacting promises and assurances from them that they will so do under penalty of refusal of further sales by it to them;

(g) Keeping and maintaining lists of its dealers and striking therefrom names of price cutters pending the giving of promises and assurances by them that they will thereafter maintain its prices, and using said lists in the maintenance of its system of resale prices;

(h) Refusing further supplies of its machines to price cutters pending the giving of satisfactory assurances and promises by them as above set forth; and

(i) Using other equivalent means and methods for the enforcement of its said system;

According to the complaint, the result of said acts and practices has been the general maintenance of its resale prices and "has been and now is to suppress competition in the distribution and sale of respondent's machines; to constrain said dealers to sell said machines at aforesaid prices fixed by respondent and to prevent them from selling said machines at such less prices as they may desire, and to deprive the ultimate purchasers of said machines of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said machines under conditions of free competition. Wherefore, said acts and practices of respondent



are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Arnold Electric Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent, having entered its appearance herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before William F. Dinnen, an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for decision and the Commission having considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Arnold Electric Co., is a corporation organized under the laws of the State of Wisconsin, with its principal place of business and factory at the city of Racine, in said State. It is now, and for over twelve years has been, engaged in the manufacture and sale, among other things, of electrically driven drink-mixing machines, which machines are used chiefly in the operation of soda fountains. Since the early part of 1922, its principal article of manufacture in this line has been a drink-mixing machine known as the "Arnold Automatic Mixer."

Respondent sells, and has sold, its drink mixers almost exclusively to dealers who in turn sell them to the users thereof, and these dealers, although jobbers in other lines, are as to respondent's products retail dealers inasmuch as they sell to the ultimate user. In 1923 respondent traveled seven salesmen who solicited orders from dealers over the United States generally and sold its mixers to about 1,000 dealers.

PAR. 2. Respondent causes its mixers, when sold, to be transported in interstate commerce, from Racine, Wis., into and through the various States of the United States to the purchasers thereof.

In the sale and distribution of its products, respondent is, and has been since 1922, in active and direct competition with other persons, firms, and corporations who manufacture drink mixers and who likewise sell and cause same to be transported from the State where manufactured into and through other States of the United States in interstate commerce. Principal among these competitors are: Hamilton-Beach Manufacturing Co., of Racine, Wis.; Gilchrist Co., Newark, N. J.; Wisconsin Electric Co., Racine, Wis.; and Kar-Lac Co., Chicago, Ill. It is estimated that the respondent sells about one-third of the drink mixers sold in the United States.

PAR. 3. Upon commencing to manufacture the Arnold Automatic Mixer in the early part of 1922, respondent fixed minimum resale prices at which the various types of the Arnold Automatic Mixer should be sold by the dealers to the users. It advertised and since said time has continued to advertise extensively in trade papers, having a general circulation among the users or probable users of drink mixers, a description of its mixers together, in all cases, with its specified retail prices. It also made known its specified retail prices to the trade by means of a "confidential price list," which price list described the mixers and contained the prices at which they were to be sold by the retailers to the consumer. The respondent also instructed its salesmen not to make sales to any dealer who would not observe the retail prices specified by it, and to make known to said dealers that the respondent would refuse to do business with any dealer who deviated from such prices. These instructions were carried out by the salesmen of the respondent, who procured from dealers in many cases, oral agreements for the maintenance of the prices specified by respondent.

PAR. 4. In the latter part of the year 1923 the respondent, for the purpose of procuring written agreements from its various dealers to observe the prices specified by it in the resale of its mixers, sent to all of its jobbers (about one thousand in number) a circular letter and to those who did not respond, a second circular letter, and to those who did not respond to the second circular letter, a third circular letter. The purpose of sending these circular letters was to procure written agreements or understandings obligating the dealers to observe in the resale of the mixers, the prices specified by respondent. In the second circular letter, the respondent states:

We are at this time making changes in the distribution of Arnold Automatic Mixers necessary to confine our cooperation entirely with jobbers who are upholding our policy as established and only want an understanding with you that you will cooperate with us. In return we promise to do everything in our power to make your continued association with us most pleasant and profitable.

The respondent received, in answer to the various circular letters above referred to, approximately 700 letters from its customers, which letters were assurances by the writers thereof that they respectively would maintain the prices specified in the confidential price list in the resale of the Arnold Automatic Mixer. The names of the dealers not giving such assurances were removed from respondent's list of customers, as appears from a letter written by respondent under date of October 15, 1923, to one of its representatives, as follows:

We have removed from our lists the names of several hundred jobbers throughout the country who have failed to give us a satisfactory reply to our letters and believe that we have now eliminated to a large extent, the serious matter of price cutting.

PAR. 5. The respondent, in furtherance of its price maintenance policy through correspondence and its salesmen, requests of its dealers their cooperation in maintaining the resale prices which it fixes. Respondent also requests its dealers to aid and assist it in ascertaining the names of dealers who cut prices. Dealers are requested to report the names of price cutters to respondent and are urged to make investigation for the purpose of ascertaining the names of price cutters and are informed by the respondent that the purpose of securing such information is to eliminate price cutting either by the refusal of further sales by respondent or securing from the price cutter his assurance that, as to future sales, the specified prices will be observed.

PAR. 6. Respondent has secured the cooperation of its dealers generally by reason of the methods and practices stated in these findings with the effect that the resale prices fixed by respondent generally prevail, by reason of which, dealers engaged in the distribution and sale of respondent's products are prevented from selling such products at such lower prices as might be deemed by them to be warranted, thus suppressing and hindering competition in respect to respondent's products in interstate commerce.

#### CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the evidence introduced, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondent, Arnold Electric Co., its officers, agents, and employees cease and desist from—

(1) Entering into contracts, agreements, or understandings with dealers, or any of them, that respondent's products are to be resold by such dealers at prices specified or fixed by respondent.

(2) Procuring either directly or indirectly from its dealers promises or assurances that the prices fixed by respondent will be observed by such dealers.

(3) Requesting its dealers to report the names of other dealers who do not maintain respondent's resale prices, or who are suspected of not maintaining the same.

(4) Seeking the cooperation of dealers in making effective its price maintenance policy, by manifesting to dealers an intention to act upon reports sent in by them of variations from the suggested prices, by the elimination of the price cutter or by informing dealers that price cutters reported who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales.

*It is further ordered*, That the respondent, Arnold Electric Co., a corporation, shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

## Complaint

IN THE MATTER OF  
TWINPLEX SALES COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1282. Complaint, Feb. 13, 1925—Decision, Jan. 11, 1927*

Where a corporation engaged in the manufacture and sale of stropers for safety-razor blades, gave and offered to give to employee salesmen of its retail dealer customers, without the knowledge or consent of their employers, cash rewards for each stropper sold as an inducement to devote time and care to the demonstrations and instructions involved in the sale thereof; with the capacity and tendency to injure competitors by diverting trade from their products to its own, deprive such competitors of equal opportunity for the sale and distribution of their products, and mislead and deceive the purchasing public and especially those who sought information and advice from the aforesaid salesmen with their undisclosed interest as to the relative merits of its products and those of its competitors, and thereby destroy the competition in quality, price and service to which the public is entitled:

*Held*, That such practices, under the circumstances set forth, constituted an unfair method of competition.

*Mr. Robert O. Brownell* for the Commission.

*Covington, Burling & Rublee*, of Washington, D. C., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture of safety razor blades and in the sale thereof in wholesale or retail quantities to purchasers in various States and with principal or executive offices in St. Louis, and with manufacturing plant in Chicago, with subsidizing secretly customers' salesmen, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent for more than a year preceding the complaint, "for the purpose and with the effect of depriving competitors of access to equal opportunities to compete in the channels of trade in the sale and distribution in interstate commerce of safety razor blade stropers, has offered to give and has given sums of money to salesmen in the employ of retail merchants, without the knowledge or consent of their respective employers or principals and without other consideration therefor, to induce said salesmen to sell respondent's product or as a gratuity for selling respondent's product to the exclusion

of the products of said competitors," with the capacity "to injure competitors who do not engage in such practice by unduly hindering and otherwise obstructing the sale of their products and by unfairly and unlawfully diverting said trade to the said respondent," and with the effect of depriving competitors "of access to equal opportunities in the channels of trade for the sale and distribution of their products" and with the further capacity "of deceiving and misleading the purchasing public as to the relative merits of the competitors' products, especially those of the purchasing public who seek information and advice from such salesmen having an undisclosed interest in the sale of respondent's product, thereby destroying the advantage of competition in quality, price and service to [which] the purchasing public is entitled," all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon respondent, Twinplex Sales Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, an agreed statement of the facts in this proceeding was signed and filed by counsel for respondent and counsel for the Commission, and it was further stipulated and agreed by them that the Commission might proceed further upon said agreed statement of the facts to make its report in the said proceeding, stating its findings as to the facts and its conclusion based thereon, and entering its order disposing of the said proceeding.

The Federal Trade Commission, having considered the record herein and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Twinplex Sales Co., is a corporation organized and doing business under the laws of the State of Delaware, with its principal or executive office located in the city of St. Louis, State of Missouri, and with a manufacturing plant, known as the Floyd Manufacturing Co., located in the city of Chicago, State

of Illinois. It is now and for several years has been engaged in the manufacture of stropers for safety razor blades, and the sale of same to wholesale and retail customers located in various States of the United States. It causes its said products, when so sold, to be transported from its said place of business in the city of Chicago, State of Illinois, into and through other States of the United States to the said purchasers thereof. In the regular course of its said business, respondent has been at all times hereinafter mentioned, and still is, in competition with other persons, partnerships, and corporations manufacturing and selling safety razor blade stropers in interstate commerce between and among the various States of the United States.

PAR. 2. In order to display the qualities of the stropper manufactured and sold by respondent, a salesman in a retail store must demonstrate its use to purchasers and also give them instructions thereon. To induce such salesmen to devote time and care to this demonstration and instruction, respondent offers to give and gives them cash rewards for each stropper sold. Respondent incloses with each stropper a folder containing instructions in the use of the stropper, and a coupon which is arranged for the signatures of the purchaser and of the salesman. Upon the receipt of the coupon, properly signed, respondent sends to the salesman whose name appears thereon, the said cash reward. There are more than 1,300 clerks in the various States of the United States who have received or are now receiving the cash rewards paid by the respondent as aforesaid.

PAR. 3. Prior to January 1, 1925, respondent paid cash rewards in the manner aforesaid in paragraph 2 hereof, to salesmen who were employed in stores where the owners or managers of the said stores were opposed to the practice of a manufacturer giving premiums to the said salesmen and did not know that the said salesmen were receiving premiums or rewards as aforesaid from respondent.

PAR. 4. Prior to January 1, 1926, in an advertising magazine called "Edgewise" respondent had explained its reward plan for paying rewards to salesmen, and had sent copies of this magazine, from time to time, to its trade throughout the United States, and to others who might become customers. The executive officials of respondent had not authorized or approved the payment of rewards to salesmen without the knowledge and consent of their employers, and when protests had been made to them by such employers, they had taken steps to prevent the payment of further rewards unless the employer subsequently consented to such payment.

PAR. 5. On or about January 1, 1925, after learning that rewards had been paid to certain salesmen without the knowledge and consent

Order

11 F. T. C.

of their employers, respondent instituted a method of operation whereby any retail salesman, before becoming eligible to receive rewards from respondent, was required to file with respondent an application, signed by a responsible official of the company for which he worked, containing the company's consent to the payment of such rewards, when earned by the salesman. This method of operation is now in full force and effect.

PAR. 6. The said acts and practices of respondent as carried on prior to January 1, 1925, in giving cash rewards to salesmen employed by retailers, whose employers did not know that the salesmen were receiving such rewards, and who were opposed to the giving of such rewards by manufacturers, had the capacity and tendency to injure the respondent's competitors by diverting trade from their goods to those of respondent, and to deprive the said competitors of the equal opportunity for the sale and distribution of their products; and the said acts and practices of respondent had the further tendency and capacity to mislead and deceive the purchasing public as to the relative merits of the products of respondent and its competitors, especially those of the purchasing public who seek information and advice from the salesmen who have an undisclosed interest in the sale of respondent's product, thereby destroying the competition in quality, price and service to which the public is entitled.

#### CONCLUSION

The acts and practices of respondent, as carried on prior to January 1, 1925, under the conditions and circumstances set forth in the foregoing findings, are all to the prejudice of the public and of respondent's competitors, and constitute methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and an agreed statement of the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",



## Order

*It is now ordered,* That the respondent, Twinplex Sales Co., its officers, agents, representatives, servants, and employees do cease and desist from offering to give or giving to salesmen employed by dealers in the products made by respondent any premium, reward, or bonus whatsoever, conditioned upon the sale of respondent's products by said salesmen, without the full knowlegde and consent of the employers of the said salesmen.

*It is further ordered,* That respondent shall, within 30 days after the service of this order, file with the Commission a report in writing setting out the manner and form in which it has complied with the said order.

Complaint

11 F. T. C.

## IN THE MATTER OF

## W. HARRIS THURSTON &amp; COMPANY, INCORPORATED

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

*Docket 1313. Complaint, May 20, 1925—Decision, Jan. 15, 1927*

Where a "fine cotton goods converter", engaged in the sale to shirt and garment manufacturers, of an all cotton fabric resembling silk in appearance,

- (a) Offered and sold said fabric through advertisements in trade journals and other publications, circulars, cards and other advertising literature, and through traveling salesmen under its trade-mark "Nusyik"; and
- (b) Supplied its traveling salesmen and customers with cards and display cards, respectively, and with labels in the case and at the request of the latter, and employed labels, tags and bands for its said fabric, upon which various cards, labels, tags, and bands the words "Nusyik" and "Imported" (and "English" in the case of said customer labels) were conspicuously printed and the words "Superfine" and "Cotton" were printed in relatively small and inconspicuous letters;

With the result that its customers' retail dealer vendees were enabled to offer and sell products made from the aforesaid fabric under the name "Nusyik", without sufficient notice as to the nonsilk content thereof, and with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing said fabric and shirts or other articles made therefrom to consist in whole or in part of silk and thereby divert trade from competitors dealing in silk, cotton, and mixed silk and cotton, shirts, truthfully advertised and described:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* for the Commission.

*Cullen & Dykman*, of Brooklyn, N. Y., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the importation of cotton shirt fabrics, and in the sale thereof to purchasers in the various States, and with principal office and place of business in New York City, with naming product misleadingly, misrepresenting product, advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, in that it offered and sold to shirt manufacturers an imported fabric dealt in by it made entirely of cotton and with the appearance of silk, under the trade name "Nusyik," through

advertisements and trade journals and other publications, advertising circulars, cards and other literature, and solicitation of traveling salesmen, and supplied said vendees labels to be attached by them to the shirts manufactured from said fabric, containing the aforesaid name in large and conspicuous letters, and the words "All cotton" or "Superfine cotton" in small and inconspicuous letters; with the capacity and tendency and with the effect of misleading and deceiving the purchasing public into believing such fabric and the shirts made therefrom and labeled as above set forth to be composed in whole or in part of silk from the cocoon of the silkworm, and with the capacity, tendency and effect of diverting business from and otherwise injuring competitors dealing in shirting fabrics composed in whole or in part of silk and properly so represented and labeled and competitors dealing in such fabrics composed of cotton or other material containing no silk and neither in trade name, label nor otherwise represented as containing silk in whole or in part; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, W. Harris Thurston & Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act. Respondent filed its answer and appeared by attorney. Hearing was had in the course of which testimony and evidence were received, briefs filed by attorneys for the Commission and the respondent, and thereupon this proceeding came on for decision, and the Commission having considered the record and being now advised in the premises makes this, its report, stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondent, W. Harris Thurston & Co., Inc., is and since 1921 has been a corporation organized and existing under and by virtue of the laws of New York with its principal office and place of business in New York, State aforesaid, and branch office in the city of Chicago, State of Illinois. It is, and during said period has been, engaged in a business usually known in the trade as a fine cotton goods converter. Some of the cotton cloth for conversion is pur-

chased in the United States but it is the practice of respondent to import the greater part of its cloth for such purposes from England where it is constructed according to the specification of respondent. It is so imported in the gray state as it comes off the looms, and in the United States is placed in bleacheries by respondent, where it is converted by finishing, printing and dyeing. The kind of finish and form of pattern are selected or determined by respondent, and by means of a special process the cotton cloth acquires in the course of its conversion a luster and finish which causes it to have the appearance of silk. The word "silk" signifies and means and is generally understood by the public to signify and mean a fabric or material derived from the product of the cocoon of the silkworm. On account of its said resemblance to "silk", respondent caused the coined word "Nusylk" to be registered as a trade-mark for its converted product.

PAR. 2. In the course and conduct of said business, respondent for several years last past, by means of advertisements in trade journals and other publications, circular, cards and other advertising literature, and also through traveling salesmen, has offered for sale and sold, and now offers for sale and sells the said all-cotton fabric to manufacturers of shirts and other garments under the said trade-mark "Nusylk", and has caused and causes such fabric when sold to be transported to purchasers thereof in the various States of the United States in competition with persons, partnerships and other corporations engaged in the sale to such customers of silk, cotton and other fabrics containing no silk.

PAR. 3. It has been and is the practice of respondent to furnish its customers with a display card for use in advertising "Nusylk", on which said name is shown in much larger letters than elsewhere appear thereon, and in a combination of colors which renders "Nusylk" the most conspicuous and legible word on the card. Just above the center of the lower half of the card is the word "Imported" in large letters of orange color; on its left is the word "Superfine" and on its right the word "cotton" and each of them appears in smaller letters than the word "Imported". The traveling salesmen of respondent use in the solicitation of purchasers for Nusylk a card bearing the same inscription in smaller letters but with the same relative sizes. Tags affixed to the Nusylk when shipped to customers, and bands used in wrapping for shipment contain the same words, although on these the word "Imported" appears below the word Nusylk, and above the words "Superfine cotton", instead of intervening between them. It has been and still is the practice of respondent, when so requested by the manufacturer or jobber to whom it sells its Nusylk, to furnish labels to be attached to shirts or other garments manufactured therefrom. There is no obligation

on the part of the manufacturer to attach such label to the finished product, their use by the customer when so furnished being entirely discretionary. The label is the usual size for shirts or other garments and bears the following legend:

ENGLISH  
NUSYLK  
Reg. U. S. Pat. Off.  
IMPORTED  
Superfine Cotton

The trade-mark "Nusylk" appears in letters of such size that it is the most conspicuous feature of the label and attracts notice before any other inscription thereon. Appearing inconspicuously in small letters at the lower edge of the label are the words "superfine cotton".

PAR. 4. Retailers engaged in the sale of men's shirts made from the product of respondent called "Nusylk" have utilized its resemblance to silk and the trade name "Nusylk" by which respondent describes and sells it, to advertise, offer for sale and sell such shirts under and by name "Nusylk" without any reference whatever to its production from cotton or any other qualification. Instances or illustrations of the methods employed by retailers in advertising and offering for sale men's shirts made from the product of respondent are furnished by the following:

A place of business, known as Rittoff's, located at Fort Wayne, Ind., engaged in the sale of men's wear, on the 6th day of August, 1924, in an advertisement in the News Sentinel of said city, offered for sale, men's shirts made from the product of respondent, the pertinent part of which was as follows:

SALE OF \$3.00, \$4.00 and \$5.00  
NUSYLK AND GENUINE IMPORTED  
ENGLISH BROADCLOTH SHIRTS

At Scranton, Pa., October 23, 1924, the Hagen & Wagener Co.'s store, in an advertisement in the Scranton Times, offered for sale men's shirts made from the product of respondent under the name of "Nusylk" and at Providence, R. I., during said year, there was taken from the window of the Matheson Toggery Shop, where shirts made from the product of respondent were being offered for sale, a display card which read as follows:

IMPORTED  
NUSYLK  
SHIRTS  
SEPARATE COLLAR  
TO MATCH  
\$3.45

In none of these advertisements of said retailers, or on the display card was there any warning or notice that the material "Nusylk" contained or contains no silk and consists entirely of cotton.

PAR. 5. The use of the word "Nusylk" by respondent on its label, display cards and in other descriptive and advertising matter, as hereinbefore described, puts an instrument in the hands of its customers and furnishes means to the retailers, to whom said customers in turn sell the shirts or other finished articles made from the product of respondent, by which they are enabled to offer for sale and sell them, in commerce among the various States of the United States, under the name of "Nusylk" without sufficient notice that the cloth or fabric so called, or the shirts or other articles manufactured therefrom, contain no silk, and the said use of the word "Nusylk" by respondent has had and has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the belief that the material to which it is applied and the shirts or other articles made therefrom consist in whole or in part of silk, thereby diverting trade from competitors of respondent, engaged in the sale in commerce, among the several States, of silk shirts, cotton shirts, and mixed silk and cotton shirts, who truthfully advertise and describe their respective products when offering them for sale to the public.

#### CONCLUSION

The above and foregoing acts and practices of respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and evidence and briefs of counsel for the Commission and for the respondent, and the Commission having made its report stating its findings as to the facts with its conclusion that the respondent, W. Harris Thurston & Co., Inc., has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondent, W. Harris Thurston & Co., Inc., its officers, agents, and employees, cease and desist from

using directly or indirectly, in connection with the sale or offering for sale of a cotton fabric, in interstate commerce, the word "Nusylk," alone or in combination with other word or words, as a trade name, trade-mark, label or brand, or on invoices, or in advertising, or using any other word or trade name, trade-mark, brand or label containing the word silk or any phonetic equivalent thereof which implies that respondent's cotton fabric contains silk in whole or in part.

*It is further ordered,* That respondent, its officers, agents and employees, cease and desist, directly or indirectly, from furnishing to their customers to use, or authorizing their use, in connection with a cotton fabric, at their discretion, or at all, a label containing or bearing the word "Nusylk" alone or in combination with other word or words, or the word "Silk" or the words "New Silk," or any phonetic equivalent of the word "Silk" or the words "New Silk" which implies that the cotton fabric or garment made therefrom consists of or contains silk.

*It is further ordered,* That respondent shall file with the Federal Trade Commission a report within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

Commissioner Humphrey dissents.

## IN THE MATTER OF

REUBEN BERMAN, DOING BUSINESS UNDER THE  
TRADE NAME AND STYLE OF SILKTEX HOSE  
MILLS

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

*Docket 1317. Complaint, May 22, 1925—Decision, Jan. 15, 1927*

Where an individual engaged in the purchase of hosiery containing about 14 per cent of genuine silk and 86 per cent of "artificial silk" or fibre, from the manufacturers, and in the sale thereof directly to the consuming public through house-to-house canvassers, and neither owning nor operating any mill or factory manufacturing hosiery,

- (a) Employed the words "Silktex Hosiery Mills" as a part of his trade name, and featured said words in his trade literature describing said hosiery, with the capacity and tendency to mislead and deceive the purchasing public into believing him to be a manufacturer selling his said product at prices substantially below prevailing prices for similar hosiery sold in the usual course of trade from manufacturer to jobber to retailer to public, and thereby divert trade from manufacturers who sold their product directly to the public in competition with him, and from dealers who purchased their hosiery from the manufacturers and resold the same to the public under truthful descriptions of the source thereof;
- (b) Used and featured the words "Ladies Silk Hosiery" or "Ladies Silktex Fashioned Silk Hose" in connection with the sale and offer of his said hosiery and in the designations applied thereto in his trade literature, and upon the containers thereof, with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing such hosiery to be composed wholly of the silk of the cocoon of the silk worm, and to divert business from and otherwise injure competitors engaged in the sale of hosiery composed entirely of silk, and hosiery composed partly of silk and partly of artificial silk and other materials:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* for the Commission.

*Berman & Berman*, of Hartford, Conn., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of hosiery direct to the consuming public through house to house canvass by canvassers soliciting business from consumers in various States, and with place of business in New York City, with assuming or using misleading trade name, advertising falsely or misleadingly and misbranding or



mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, dealing in a hosiery containing only about 15 per cent silk derived from the cocoon of the silkworm, together with other material simulating the general appearance thereof, and neither owning nor operating any hosiery mill whatever, but purchasing the hosiery sold by him from manufacturers and reselling the same to the consumer at a profit and at prevailing retail prices, for about three years preceding the complaint set forth upon the trade literature supplied to his aforesaid agents the phrases "Silktex Fashioned Hosiery," "Ladies' Silk Hosiery" and his trade name "Silktex Hosiery Mills," and packed his said hosiery in containers with the phrase "Ladies' Silktex Fashioned Silk Hose" thereon.

Such acts and practices had the capacity and tendency, as charged, to cause, and the effect of causing many of the consuming public to purchase said products as and for those composed of silk, and also the capacity and tendency to mislead and deceive and the effect of misleading and deceiving many of the public into believing that in dealing with respondent, the purchaser was buying directly from the manufacturer and thus eliminating the profits of middlemen, and obtaining a saving equivalent thereto, and also had the tendency to and the effect of diverting business from and otherwise prejudicing competitors who, as manufacturers of silk and other hosiery sell their products directly to the consuming public, respectively, rightfully represented the one as silk and in no wise misrepresenting the other, and competitors who purchase the hosiery dealt in by them from the manufacturers and resell the same to retailers and to the consuming public in the ordinary course of trade; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Reuben Berman, doing business under the trade name and style of Silktex Hosiery Mills, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

Respondent filed his answer and appeared by attorney. Hearing was had in the course of which testimony and evidence were duly received. Thereafter brief was filed by the attorney for the Commission, and the respondent having failed to file brief, the matter came

on for decision, and the Commission having considered the record and being now advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Reuben Berman, is an individual and is now and for several years last past has been engaged, under the trade name and style of "Silktex Hosiery Mills," in the business of selling hosiery in the various States of the United States. It has been and is the practice of respondent, to offer for sale and sell his hosiery directly to the consuming public through the agency of so-called "house-to-house canvassers." These canvassers representing respondent have solicited and still solicit purchasers for his hosiery in the various States of the United States by the use of cases containing samples of said hosiery, color charts, descriptive leaflets and other trade literature which are displayed to purchasers or prospective purchasers. The literature so employed by respondent in connection with the sale or attempted sale of his hosiery, contains in conspicuous places thereon the phrase "Silktex Fashioned Hosiery," "Ladies' Silk Hosiery," and the trade name of respondent, "Silktex Hosiery Mills." Orders for hosiery received by said solicitors or canvassers so representing respondent, are by them transmitted to respondent at his place of business in the City and State of New York, and thereupon respondent completes the sales of such hosiery by causing it to be transported, in compliance with the orders so transmitted, from his said place of business, to the purchasers thereof at their respective points of location in other States of the United States. Respondent packs his hosiery for shipment in boxes upon which there is set forth the phrase, "Ladies' Silktex Fashioned Silk Hose," and said hosiery is delivered to purchasers in such boxes bearing said inscription. Respondent is, and for several years last past has been, in the course and conduct of said business in competition with other individuals, corporations and partnerships engaged in the sale of hosiery in commerce between or among the various States of the United States.

PAR. 2. The word "silk" as applied to hosiery signifies and means and is generally understood by the purchasing public to signify and mean hosiery made from a material derived from the cocoon of the silkworm.

PAR. 3. Respondent now sells, and for several years last past, has sold hosiery containing 14 per cent of silk and 86 per cent of another material known as artificial silk or fiber, which contains no silk but which resembles it in general appearance. It has been and is the practice of respondent and his canvassers and agents to use in connection with offering for sale or selling such hosiery as descriptive

thereof, the phrases "Ladies' Silk Hosiery" and "Ladies' Silktex Fashioned Silk Hose."

PAR. 4. Respondent does not own or operate a mill or factory and at no time heretofore has owned, operated or had an interest in or connection with any mill or factory in which hosiery of any kind has been or is manufactured. He purchases, and at all times heretofore has purchased from manufacturers the hosiery sold or offered for sale by him in the course and conduct of his business.

PAR. 5. The use by respondent of the phrases "Ladies' Silk Hosiery" and "Ladies' Silktex Fashioned Silk Hose" upon his trade literature and upon the boxes in which his product is shipped and delivered to purchasers, has had and has the capacity and tendency to mislead and deceive a substantial portion of the public into the belief that such hosiery is composed wholly of silk of the cocoon of the silkworm and has had and has the capacity and tendency to divert business from and otherwise injure competitors engaged in the sale, in interstate commerce, of hosiery consisting entirely of silk and of hosiery consisting partly of silk and partly of artificial silk or other material.

PAR. 6. The use by respondent of the trade name "Silktex Hosiery Mills" in connection with his said business, was calculated to mislead and deceive the purchasing public by inducing numerous persons to purchase hosiery from respondent in the erroneous belief that respondent was a manufacturer of hosiery and was selling his product at prices substantially below those at which hosiery of like grade and quality would sell in the usual course of trade, from manufacturer to jobber, to the retailer, to the public, thereby diverting trade from manufacturers of hosiery and other competitors selling their product directly to the public, including dealers purchasing hosiery from the manufacturer and reselling same to the public, through truthful descriptions of the source and qualities thereof.

#### CONCLUSION

The above and foregoing acts and practices of respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

spondent, the testimony and evidence and brief of counsel for the Commission, the respondent having failed to file brief or to appear either in person or by counsel for argument at the time designated therefor and the matter having come on regularly for decision and the Commission thereupon having made its report, stating its findings as to the facts, with its conclusion that the respondent, Reuben Berman, doing business under the trade name and style of Silktex Hosiery Mills, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That respondent Reuben Berman, doing business under the name and style Silktex Hosiery Mills, his agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Using the word "Silk" alone or in combination with other words, on brands, labels, boxes, or packages, or in trade names, or trade-marks, or in newspapers, magazines, circulars, booklets, or in any manner whatsoever, in connection with the sale or offering for sale of hosiery, in interstate commerce, (a) unless the material of the hosiery is derived entirely from the cocoon of the silk worm, or (b) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

(2) Carrying on the business of selling hosiery in interstate commerce under a name which includes the word "Mills" in combination with the words "Silktex Hosiery," or words of like import, and from making representations through advertisements, circulars, correspondence, stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that respondent is the owner of or controls a hosiery mill or mills, or that the hosiery sold by respondent comes direct from manufacturer to purchaser, unless and until respondent actually owns and operates, or directly and absolutely controls a factory or mill wherein is made any and all hosiery by him sold or offered for sale under such title or name, or by or through any advertisement or other representation of ownership of such a mill or factory.

*It is further ordered*, That respondent shall file with the Federal Trade Commission a report within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

## Syllabus

## IN THE MATTER OF

W. R. MAXWELL, TRADING UNDER THE NAME OF  
INTERNATIONAL PUBLISHING COMPANY

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

*Docket 1331. Complaint, July 10, 1925—Decision, Jan. 19, 1927*

Where a company long published, extensively advertised, and sold throughout the United States an encyclopedia under the name "The New International Encyclopedia," and said publication acquired a good reputation and came to be in considerable demand; and thereafter an individual engaged in the sale, under contract with the owner thereof, of a work theretofore long published and extensively sold throughout the United States under the name "The Teachers' and Pupils' Cyclopeda" and "The New Teachers' and Pupils' Encyclopedia," to be sold, pursuant to said contract, under a different name, and in ten instead of eight volumes, contemporaneously with the sale of the same work under its old name, to a different class of purchasers, and to be sold, with loose-leaf binder, for \$49; and neither owning nor operating any printing establishment, nor collecting any matter for publication in the aforesaid work, nor editing any of the matter published therein, and with no branch offices,

- (a) Published said cyclopeda under the name "International Reference Work," and also falsely represented the same as "The New International Encyclopedia," with the result that many persons were induced to subscribe for such publication as and for said last named work and many persons already possessing "The New Teachers' and Pupils' Cyclopeda" purchased said "International Reference Work" as and for a different publication, the fact being that the two were the same;
- (b) Adopted and used the name "International Publishing Company," with the effect of deceiving many of the purchasing public into believing that they were dealing with a publishing concern, thereby saving a middleman's profit, and obtaining an advantage in the price paid for the publication;
- (c) Falsely represented on the title page of his said work and also upon letterheads and circulars that he maintained branch places of business in many of the principal cities of the United States, such as New York, Chicago, San Francisco, Cleveland, Detroit, Minneapolis, St. Paul, Kansas City, and St. Louis;
- (d) Falsely represented in his advertising matter and through his agents that said work was a new and recent compilation and publication;
- (e) Gave the names of two individuals as "Associate Editors" on the page immediately preceding the preface in said work and on the page following and in advertisements and circulars included under the caption "Partial list of contributors and assistants" the names of 48 persons, together with titles and prominent positions held by them as educators and authors, the fact being that neither of the individuals named as associate editors had

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- anything to do with said work and that none of the others listed as contributors and assistants had ever assisted in the preparation of said work nor contributed any matter thereto;
- (f) Printed, circulated and used many letters recommending said work, falsely purporting to have been written by certain persons of prominence, and falsely represented in soliciting the sale thereof, that the same had been officially indorsed by superintendents of public education of more than 24 States, was used in more than 300 colleges and normal schools, and in the public schools in all the principal cities of the United States;
  - (g) Falsely represented in his advertising and through his agents that said work was bound in "full library buckram" and in other cases in "full crome Levant";
  - (h) Represented that he would present said "International Reference Work," free of charge, upon the condition that the customer would subscribe for and purchase his "Loose-Leaf Revision Service" for \$49, or that said price for such work and service was a greatly reduced one and that the usual and customary price therefor was \$165 or some other sum greatly in excess of said actual and usual price of \$49 for the two; and
  - (i) Pretended, in connection with the advertisement, offer for sale, and sale of his said publication, to offer to enroll purchasers as members of the "International Research Bureau," represented as one that would answer questions propounded by its members, the fact being that inquiries submitted were sent by him to his contractee who answered the same upon consulting encyclopedias and other sources of information, and that the aforesaid research bureau was fictitious;

With the effect of deceiving the purchasing public and inducing the purchase of his publication in reliance upon the truth of the aforesaid representations:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle* and *Mr. Alfred M. Craven* for the Commission.

*Langworthy, Stevens & McKeag*, of Chicago, Ill., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale and distribution of certain subscription books or publications entitled "International Reference Work," through agents and employees to persons in various States, and with principal office and place of business in Chicago, with misrepresenting business status, advantages or size, in its advertising and otherwise, misrepresenting product or services offered, simulating trade name of competitor, misrepresenting prices, offering falsely as free, services or products charged for, using as testimonials forged, faked, fraudulent and counterfeit statements, claiming falsely official indorsements, agreeing to maintain resale

prices, securing orders and promissory notes by trickery and fraud, and enforcing wrongfully payments of moneys alleged due, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in the following acts and practices:

(a) False pretense of being a publisher, publishing the aforesaid work, the fact being that respondent purchases the same from the Holst Publishing Co., of Boone, Iowa, at \$9.25 per set of 10 books, and resells same to the public at \$49 a set.

(b) False representation of having branch places of business in New York, Los Angeles, Cleveland, Detroit, Minneapolis, St. Paul, Kansas City, New Orleans, and Omaha;

(c) False representation in advertising matter that many prominent educators, authors, writers, scientists, executives, and public officials, as specified, were assistant editors or contributors to, or otherwise connected with said "International Reference Work," the fact being that said educators, etc., were in nowise so connected, associated, or otherwise affiliated with respondent nor said work, and had not authorized the use of their names in connection therewith; respondent also in this general connection listing fictitious names as editors and contributors, and further representing the aforesaid educators, etc., as holders of titles and positions or offices, or as officials of organizations, not in accordance with the facts;

(d) Representing the aforesaid work in his advertising matter and through agents, etc., as a new and recent compilation, the fact being that it had been printed and sold under various names to the public for more than 20 years, without change, except for occasional minor revisions or additions and was antiquated;

(e) Representing said work as bound in "full library buckram" and taking orders therefor on such basis, the fact being that the volumes were bound in a cloth binding known as "fabrikoid" and were so delivered;

(f) Agreeing with the aforesaid Holst to sell the compilation or publication under the title "International Reference Work," said Holst to sell a compilation from the same plates, bound into 8 volumes instead of 10, under the title "The New Teachers' and Pupils' Cyclopedia," with the result that purchasers already possessing the books under the said last-named title purchased the same as "International Reference Work," believing them to be a new and different compilation and publication;

(g) Misleading and deceiving many persons, through the adoption and use of the trade name "International Publishing Company" and the name "International Reference Work," into buying the books so

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captioned as and for "that certain well known and reputable compilation, publication and set of books sold and distributed by one of respondent's competitors and entitled 'New International Encyclopedia'";

(h) Pretending, by means of "raised contracts" and otherwise, that the regular price of said work was \$165, but that a special offer, at a greatly reduced price of \$49, was being made, the fact being that said last-named price was respondent's regular price;

(i) Representing that said \$49 entitled the customer to certain revision extension and research service, without further charge, the fact being that respondent did not expect to and did not furnish any such service without the payment of additional money;

(j) Representing that respondent had set aside a limited number of sets of said work to be given free of charge to prospective customers agreeing to subscribe and pay for a certain alleged loose-leaf extension service, the fact being that in any such arrangement entered into respondent charged the regular price of \$49 for its said work, plus the regular amount charged for the so-called "extension service," in the amount collected;

(k) Contracting to and pretending to enroll purchasers in and make them members and beneficiaries of a fictitious nonexistent "International Research Bureau";

(l) Using in the advertisement, offer, and sale of said work alleged copies of testimonials or letters purporting to have been sent to respondent by purchasers of said work and expressing their pleasure therewith, the fact being that said copies were, and were known to be by respondent, forged, faked, fraudulent, and counterfeit;

(m) Falsely representing that said work was officially indorsed by superintendents of public education in more than twenty-four States, was used in more than 300 colleges and normal schools and in the public schools in all the principal cities of the United States, and that it had been officially adopted and approved by Government officers, public bodies, libraries, and well known and prominent educators;

(n) Contracting with said Holst to maintain the resale price of said work at \$49 a set and so maintaining the same;

(o) Inducing customers and prospective customers by trickery, chicanery, and ruse to sign orders for said work and to sign and give negotiable promissory notes in payment therefor;

(p) Sending such orders and notes, or memoranda thereof, to said Holst who, for a consideration and as respondent's secret agent sought to collect from the makers the amounts named therein; said



Holst upon receipt of said notes or memoranda, advising the makers thereof that the said Holst Publishing Co. had possession thereof and that payments thereon were to be made to it; all for the purpose of collecting payment on said notes, and deceiving the makers thereof and/or their legal counsel into believing that said Holst had become the bona fide purchaser of the notes, for value, and for the purpose of discouraging the makers and their legal counsel from interposing the defense of "fraud in the inception" to said notes;

Such acts and practices were, as charged, all to the prejudice of the public and respondent's competitors, and had the capacity and tendency to and did deceive, mislead, and defraud the purchasing public and had the capacity and tendency to and did unfairly divert business from and otherwise prejudice and injure said competitors, many of whom did not in advertising, offering, and selling their respective publications and reference works do the acts and things, nor use the means and methods adopted and used by respondent as above set forth.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, W. R. Maxwell, trading under the name of International Publishing Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent having entered his appearance and filed no answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent, before William W. Sheppard, an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision and the Commission having considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion, drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. R. Maxwell, is now, and since March, 1923, has been, engaged in the business of selling a set of books in ten volumes entitled "International Reference Work," with his principal office and place of business in Chicago, Ill., and in causing said books to be transported on orders received therefor,

from the place where same are printed in the State of Indiana, into and through States other than the State of Indiana, in interstate commerce. Respondent sells said books through agents who solicit orders and subscriptions therefor directly from purchasers and prospective purchasers. Books sold through agents by such solicitations are known in the trade and by the public as "subscription books."

PAR. 2. In the course of his business respondent has been and now is in competition with many other persons, firms, and corporations engaged in the sale and distribution of similar subscription books throughout the various States of the United States in interstate commerce.

PAR. 3. Respondent engaged in the business described in paragraph 1 hereof in pursuance of a contract entered into on the 12th day of February, 1923, between one B. P. Holst, of Boone, Iowa, doing business under the name of Holst Publishing Co., as party of the first part, and respondent, as party of the second part. Said contract provides among other things, as follows:

Party of the first part declares he is the sole owner of the plates and copyright of the publication now being sold on the market and known under the trade name of *THE NEW TEACHERS' AND PUPILS' CYCLOPEDIA* in eight volumes.

It is understood and mutually agreed by the parties hereto that the aforesaid publication beginning on or before the 15th day of March, 1923, will also be published and placed on the market under the trade made of *INTERNATIONAL REFERENCE WORK* and is to consist of *TEN VOLUMES* to be bound in Fancy Interlaken with the addition of one loose-leaf binder to be uniform in size with original volumes and bound in the identical binding as original volumes, to hold the loose-leaf revision service.

Party of the first part does hereby assign the United States to party of the second part as a territory for himself and representatives to solicit orders for the above publication, that is, the exclusive right to the sale of the above reference work to business and professional people at their respective places of business only, is hereby granted by party of the first part to party of the second part, provided that an occasional sale made by party of the second part, or his representatives to such professional or business people at their homes shall not be considered a violation of this contract.

Party of the first part reserves the right to sell the above reference work to parents in their homes, to teachers in school, to all classes of schools, and at wholesale, and it shall not be considered a violation of this contract if party of the first part or his representatives shall make an occasional sale to business or professional people at their respective places of business.

Party of the second part agrees to sell the above mentioned *INTERNATIONAL REFERENCE WORK* in ten volumes with one binder at a retail price of \$49 per set, and the retail purchasers are to pay additional the sum of 20 cents per year for the cost of the loose-leaf service as per coupons attached to coupon certificate. It being agreed by the parties hereto that this price is to remain in effect throughout the period of this contract, and can not be changed or modified, except by mutual agreement of both parties hereto in writing, with the

single exception that where subscribers pay the entire amount within thirty days after delivery of the books the parties thereto may allow cash subscriber a discount of TEN PER CENT.

Party of the first part agrees to ship by PREPAID EXPRESS with reasonable promptness, all sets of the above stated INTERNATIONAL REFERENCE WORK ordered shipped by party of the second part, to subscribers sold by party of the second part or his representatives, shipments made direct to the party of the second part shall be F. O. B. Hammond, Ind. It is understood that the wholesale price of said reference work as stated above is for delivery F. O. B. Hammond, Ind. Party of the second part hereby agrees to reimburse party of the first part the actual delivery charges on all sets of the above mentioned INTERNATIONAL REFERENCE WORK that are shipped prepaid, settlement to be cash the 10th day of each month following delivery.

PAR. 4. The publication mentioned in said contract as "The New Teachers' and Pupils' Cyclopaedia," was first published by the said Holst in the year 1895, in three volumes, under the title "The Teachers' and Pupils' Cyclopaedia." Later it was published in four volumes, and still later in eight volumes under a different name, to wit: "The New Teachers' and Pupils' Cyclopaedia." Prior to the execution of the contract mentioned in paragraph 3 hereof, said B. P. Holst had through his agents thoroughly canvassed the entire United States in the selling of his publication under its two titles "The Teachers' and Pupils' Cyclopaedia" and "The New Teachers' and Pupils' Cyclopaedia," and had sold over 350,000 sets of said publication. After the execution of said contract, the work was printed, published, and sold under two titles, "The New Teachers' and Pupils' Cyclopaedia" and the "International Reference Work." The subject matter of both titles is the same and is printed from the same plates—"The New Teachers' and Pupils' Cyclopaedia" in eight volumes, and the "International Reference Work," on account of there being a lesser number of pages per volume, in ten volumes. There is the necessary difference as to the respective title pages and also the difference in color of the binding.

PAR. 5. The "International Reference Work" and "The New Teachers' and Pupils' Cyclopaedia" have been printed for many years by W. B. Conkey Co., printers, of Hammond, Ind. Respondent does not own or operate a printing establishment and does not collect any matter for publication in said work, nor edit any of the matter published therein. His business consists solely of the purchase and sale of said books through his own sales organization as provided for in the contract mentioned in paragraph 3 hereof. The name adopted and used by respondent, "International Publishing Co.," has the tendency and capacity to deceive and has deceived many of the purchasing public into the belief that they were dealing with a

publishing concern, thereby saving a middleman's profit and obtaining an advantage in the price paid for the publication.

PAR. 6. Respondent in the course of his business represented on the title page of the "International Reference Work," and also upon letterheads and circulars mailed and distributed to customers and prospective customers, that he maintained branch places of business in many of the principal cities of the United States, such as New York, Chicago, San Francisco, Cleveland, Detroit, Minneapolis, St. Paul, Kansas City, and St. Louis. Whereas, in truth and in fact, respondent does not now and at no time has maintained a branch office or any office at any of said cities.

PAR. 7. During the time that the respondent has been engaged in the sale of the "International Reference Work," and for many years prior thereto, there was and had been sold by subscription an encyclopedia published by Dodd, Mead & Co., entitled "The New International Encyclopedia," which encyclopedia has been extensively advertised and sold throughout the United States and has acquired a good reputation, and there is a considerable demand therefor. In the course and conduct of his said business respondent has represented and now represents the "International Reference Work" to be the "New International Encyclopedia," and thereby has induced many persons to subscribe for the "International Reference Work" in the belief that they were subscribing for "The New International Encyclopedia."

The similarity in the titles of these two works tends to and does confuse the purchasing public and has induced many of the purchasing public to purchase respondent's work in the belief that it was "The New International Encyclopedia," such belief being induced solely by the similarity in the two titles.

PAR. 8. The said "International Reference Work," on the page immediately preceding the preface, in the first volume, give as "Associate Editors" the names of Hill M. Bell and Rurie Neval Roark. Neither of these persons had anything to do with preparing the "International Reference Work." The latter died in April, 1909, some fourteen years before the "International Reference Work" was published.

Respondent on the page following the preface in the first volume of the "International Reference Work," and in advertisements and circulars distributed by its salesmen to customers and prospective customers, includes under the caption "Partial List of Contributors and Assistants" the names of forty-eight persons, together with their respective titles and the prominent positions held by them as educators and authors. None of said persons ever assisted in the

preparation of the "International Reference Work," nor contributed any matter therefor. Some of them had contributed articles for the early editions of "The New Teachers' and Pupils' Cyclopeda." Others had, in response to letters of inquiry from the editor of "The New Teachers' and Pupils' Cyclopeda," merely given information on sundry subjects. Many of said persons had been dead for many years prior to the first publication of the "International Reference Work," others have never heard of respondent Maxwell nor of the "International Reference Work," and still others, not having been informed prior to the hearing in this case that respondent was making use of their names as editors and contributors, vigorously protested at the hearing against such unauthorized use of their names.

PAR. 9. Respondent, in his advertising matter and through his agents, has represented and does represent and pretend that said "International Reference Work" is a new and recent compilation and publication, whereas, in truth and in fact, said publication is antiquated and has been sold to the public under sundry and divers names and titles for more than twenty years last past, and for the past twenty years said publication has remained unchanged except for an occasional minor revision or addition.

PAR. 10. That by reason of the sale by respondent and by said Holst of the same publication under different titles, many purchasers were confused, misled and deceived, and many persons already possessing said books published under the title "The New Teachers' and Pupils' Cyclopeda," purchased said "International Reference Work" from respondent, in the belief that it was a publication different from the said "The New Teachers' and Pupils' Cyclopeda."

PAR. 11. Respondent, in advertising, offering for sale, and selling the "International Reference Work," has caused to be printed, circulated, and used by his agents who solicit the orders for said work, many letters of recommendation purporting to have been made by persons of prominence, whereas, in truth and in fact, such letters were not written by the persons named as having written them.

PAR. 12. Respondent, through his agents, in offering for sale and selling "International Reference Work," represents and pretends that said work has been officially indorsed by superintendents of public education of more than twenty-four States, and that said work is used in more than three hundred colleges and normal schools and in the public schools of all the principal cities of the United States. These representations, and each of them, are false.

PAR. 13. Respondent, in advertising and through his agents, represents in some cases that said "International Reference Work" is

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bound in "full library buckram," and in other cases in "full chrome Levant"; whereas, in truth and in fact, said books have never been bound in Levant or leather of any kind, or in buckram, but are bound in cloth.

PAR. 14. In the course and conduct of his said business, respondent, through his agents, represented and still represents to prospective customers that respondent will present, free of charge, the "International Reference Work," upon the condition that such customer will subscribe for and purchase, for the price of \$49, respondent's "Loose-leaf Revision Service."

Aforesaid representations are false, in that the price asked for the "Loose-leaf Revision Service" is the usual and customary price obtained by respondent for both the "Loose-leaf Revision Service" and the pretended gift, "International Reference Work." The respondent was, by the terms of the contract mentioned in paragraph 3 hereof, obligated to sell the "International Reference Work," including the "Loose-leaf Revision Service," for the sum of \$49, and such has been the actual selling price of the "International Reference Work" and the "Loose-leaf Revision Service" from the time respondent engaged in business down to the present time.

In other instances respondent has falsely represented, and continues to falsely represent, that the price of \$49 for the "International Reference Work" and "Loose-leaf Revision Service" is a greatly reduced price, and that the usual and customary price received is \$165, or some other sum greatly in excess of the actual price.

PAR. 15. In the course and conduct of his said business, respondent, in advertising, offering for sale, and selling his said publication, offers to and pretends to enroll purchasers in, and make them members of, an association or bureau designated as the "International Research Bureau," which bureau is represented to be one that will answer questions propounded by its members. In truth and in fact, any inquiry submitted was sent by the respondent to the said B. P. Holst, who, upon consulting encyclopedias and other sources of information, answered the same. The "International Research Bureau" is fictitious and mythical.

PAR. 16. The various representations in these findings set forth were and are false and misleading, and each of them had and has the tendency and capacity to deceive and induce, and has deceived and induced, the purchasing public to purchase respondent's publications in the belief of and in reliance upon such representation.

## CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice

of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and evidence introduced on behalf of the Commission and the respondent, briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that respondent had violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondent W. R. Maxwell, his agents and employees, cease and desist from:

(1) Advertising, offering for sale, or selling the set of books heretofore advertised, offered for sale and sold by him under the title "International Reference Work," under any other title than "The New Teachers' and Pupils' Cyclopaedia."

(2) Doing business under the name "International Publishing Co."

(3) Advertising or in any manner representing that respondent maintains branch offices.

(4) Representing any person to be an editor or assistant editor of any set of books or publication who has not performed services in the editing of such book or publication and consented that he may be represented as an editor or assistant editor, as the case may be.

(5) Advertising or in any manner representing any person to be a contributor to any publication who has not furnished matter inserted in such publication.

(6) Advertising or in any manner representing that any person has given a testimonial or recommendation of any publication who has not, as a matter of fact, given such testimonial or recommendation applicable to the publication as actually offered for sale.

(7) Representing that any book or set of books has received the indorsement of persons who have not in fact indorsed same.

(8) Representing any book or set of books as being bound in full Levant or any other leather, when such is not the fact.

(9) Representing that any book or set of books offered for sale is bound in buckram, when such is not the fact,

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(10) Representing that any research service to be furnished subscribers for "The New Teachers' and Pupils' Cyclopedia," or any other publication, is supplied by the "International Research Bureau," or any other pretended bureau, society, or association having no existence in fact.

(11) Representing to customers or prospective customers that the usual selling price of any book or set of books is greater than the price at which such books are actually sold.

(12) Representing that customers or prospective customers are to receive books or publications free of charge, when such is not the fact.

(13) Representing that any book or set of books offered for sale by him has been indorsed by superintendents of public education to a number in excess of the number of such superintendents who have in fact indorsed same.

(14) Representing that any book or set of books offered for sale by him is used in colleges and normal schools to a manner in excess of the number of colleges and normal schools in fact using same.

*It is further ordered,* That the respondent, W. R. Maxwell, shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.



## Complaint

## IN THE MATTER OF

JACQUES E. GREENBERGER, AND CARRIE GREENBERGER, INDIVIDUALLY AND AS COPARTNERS, TRADING AS BIG G FURNITURE WORKS, AND BIG G FURNITURE WORKS, A CORPORATION

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

*Docket 1242. Complaint, Oct. 31, 1924—Decision, Feb. 10, 1927*

Where a firm and a corporation engaged in the sale of furniture at retail, operated as one business by the principal and controlling party in interest in both, and neither manufacturing any furniture, nor owning, controlling or operating any furniture factory, nor factory representatives, agents or branches of the manufacturers of the furniture dealt in by them, which they purchased as middlemen in the usual course of commerce from manufacturers or others and sold to the public at prices fixed and determined by them as dealers; by means of large signs at their place of business, and by their newspaper advertisements and business correspondence represented that they manufactured the furniture dealt in by them and sold the same at manufacturers' prices directly to their customer purchasers to the exclusion of middlemen, thereby saving the former the costs and profits of the latter; with the effect of misleading and deceiving the purchasing public and thereby causing many to purchase their furniture, and of unfairly diverting trade from competitors who manufacture and sell their furniture directly to the consuming public to the exclusion of middlemen, and from competitors who neither manufacture the furniture dealt in by them nor falsely hold themselves out as so doing, and distributing the same directly from manufacturer to consumer to the exclusion of middlemen; to the prejudice and injury of said competitors and the public:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Morgan J. Doyle and Mr. Henry Miller* for the Commission.

*Mr. Jesse I. Miller*, of Washington, D. C., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, engaged in the sale of furniture at retail to persons in various States, and with principal office and place of business in New York City, and respondent corporation similarly there engaged, and officered and owned by Jacques, Sidney, and Ernst Greenberger, purchasing the furniture dealt in by them

and reselling the same at a profit to themselves, and not manufacturers, with assuming and using misleading trade and corporate names, misrepresenting business status or advantages and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents for many years past, as charged, conducted their aforesaid businesses under the trade name and style "Big G Furniture Works," prominently displaying said name at their places of business, together with such statements as "Buy direct from factory at wholesale prices," and in their advertisements in newspapers of general circulation likewise featured their aforesaid names together with such statements as "Direct from factory to you," "No middleman's, jobber's, or salesman's commissions are added to the purchase price," "Furniture direct from the factory floor to your floor means savings of 35 per cent to 55 per cent. We are the factory and DO sell everything for the home at wholesale factory prices," and upon their letterheads, billheads and trade stationery and literature featured the aforesaid trade and corporate names.

Such acts and practices had the capacity and tendency, as charged, to mislead and deceive many among the consuming public into believing that the purchasers from respondents were buying directly from the manufacturers of the furniture, and thereby saving the profits of middlemen, and to induce many to purchase said furniture in that belief; all to the prejudice of the public and respondent's competitors, a number of whom as manufacturers, sell their furniture direct to the consuming public and a number of whom as retail dealers do not in any manner hold themselves out as manufacturers of the furniture dealt in by them.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents Jacques E. Greenberger and Carrie Greenberger, individually, and as copartners, trading as "Big G Furniture Works," and Big G Furniture Works, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answers herein to said complaint, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint, and in opposition thereto, before a trial

examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for decision and counsel for the Commission and for the respondents having submitted briefs and oral argument, and the Commission having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Jacques E. Greenberger and Carrie Greenberger are copartners doing business as and under the trade name and style of "Big G Furniture Works," with their office and place of business in the City and State of New York. They are, and at all times since prior to July, 1921, have been engaged, as herein-after more fully set forth, in the business of selling and distributing household furniture in commerce from their place of business in New York City, N. Y., to the consuming public throughout various States of the United States, particularly the States of New York and New Jersey. In the course and conduct of said business, respondent individuals are and at all times herein mentioned have been engaged in direct, active competition with many other individuals, partnerships and corporations similarly engaged in the sale and distribution of furniture in commerce between and among various States of the United States.

PAR. 2. Respondent Big G Furniture Works is a corporation organized in July, 1921, and existing under the laws of the State of New York, with its principal office and place of business in the City and State of New York. The business of said respondent corporation is the selling and distributing of household furniture in commerce from its said place of business in New York City, N. Y., to the consuming public throughout various States of the United States, particularly the States of New York and New Jersey. In the course and conduct of its said business respondent corporation is and at all times since July, 1921, has been in direct, active competition with many persons, partnerships and other corporations similarly engaged in the sale and distribution of household furniture between and among various States of the United States.

PAR. 3. Respondents Jacques E. Greenberger and Carrie Greenberger, as said copartners, and respondent corporation Big G Furniture Works have, for more than four years last past, conducted their said businesses as a single unit, jointly and in association with each other maintaining the same office and place of business, which is a furniture store located at and occupying premises Nos. 203 to 207

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East Seventy-sixth Street, New York City, and which joint business is managed, conducted and controlled for and on behalf of all respondents by respondent Jacques E. Greenberger, who is the principal and controlling party in interest in the business of said partnership and is the principal and controlling stockholder of said corporation. Respondents' said place of business, their stock in trade, advertising matter, sales and delivery activities are maintained and operated by them jointly and in such a manner that ostensibly to the public such businesses appear in all respects to be the business of one concern operating under the name of "Big G Furniture Works".

PAR. 4. In the course and conduct of their businesses, as aforesaid, respondents have, at all times since July, 1921, offered for sale and solicited trade for their said furniture through and by means of advertisements which they cause to be published from time to time in daily newspapers of general circulation throughout several States particularly the States of New York and New Jersey and through which advertisements members of the consuming public residing in the State of New Jersey and other States were induced to make purchases of such furniture from respondents. In the conduct of said business, respondents also offered for sale and displayed to the consuming public their furniture at said place of business in New York City, N. Y., and there received, from the consuming public of various States, orders for the purchase of said furniture. Respondents maintained their own delivery trucks by which in filling said orders and in completing the sales of their furniture to their customers they caused said furniture to be transported in interstate commerce from their place of business in New York City, N. Y., to points in various other States of the United States particularly in the State of New Jersey, and to be delivered to their customers in New Jersey and such other States. They also made delivery of furniture to customers residing within the State of New York. Said furniture business of respondents is very large and they sold and delivered large quantities of their furniture in interstate commerce as aforesaid to customers in New Jersey for which purpose they operate their delivery trucks on a regular, continuous schedule. Said business was conducted by respondents in general open competition with manufacturers and all other dealers serving the consuming public in said territory served by respondents.

PAR. 5. Through and by means of large signs publicly displayed at their place of business, and in their newspaper advertisements and business correspondence, respondents for more than three years last past represented to their customers and prospective customers—

(a) That they, the respondents, were and are the manufacturers of the furniture in which they dealt, as aforesaid, and owned, con-

trolled or operated a factory or factories by which said furniture was produced; and

(b) That said furniture was being sold and distributed by respondents at the manufacturers' prices and directly from the manufacturers thereof to their customer-purchasers to the exclusion of middlemen, thereby saving to such customer-purchasers the costs and profits of middlemen.

PAR. 6. In truth and in fact said place of business from which respondents distributed their furniture to the public is not a factory, and neither they nor either of them manufactured any of the furniture in which they dealt as aforesaid. None of the respondents have ever at any time herein mentioned, owned, controlled, or operated any furniture factory nor has either of them been a factory representative, agent, or branch of the manufacturers of the furniture in which they dealt. In the conduct of said business respondents were and are dealers or middlemen, and their stock in trade was purchased by them as dealers in the usual course of commerce from the manufacturers or other dealers and sold by them to the public at dealers' prices or prices fixed and determined by them as such dealers. None of said furniture sold and distributed by said respondents was sold at prices fixed and determined by the manufacturers thereof, or distributed directly from the manufacturers or factory to respondents' customer-purchasers.

PAR. 7. Respondents' representations of their business and furniture as set forth in paragraph 5 hereof are false and misleading and are calculated to and had and have the capacity and tendency to and do mislead and deceive the purchasing public and thereby cause many thereof to purchase said furniture from respondents in the erroneous belief that said representations were and are true in fact.

PAR. 8. There are a number of furniture manufacturers who sell in interstate commerce, and distribute their furniture directly to the consuming public to the exclusion of middlemen, and who do not misrepresent the character of their business or the method of distribution of said furniture. There are also a number of furniture dealers selling and distributing their furniture in competition with respondents who do not in any manner hold themselves out or pretend that they manufacture the furniture in which they deal or that they distribute their furniture directly from manufacturer to consumer to the exclusion of middlemen; and the false and misleading and deceptive practices of respondents as hereinabove set forth have the capacity and tendency to and do unfairly divert trade from above-mentioned competitors and prejudice and injure the business of said competitors and the public.

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## CONCLUSION

The acts and things done by the respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in interstate commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents thereto, the testimony and evidence; and the Commission having made its findings as to the facts, with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondents Jacques E. Greenberger and Carrie Greenberger, their agents, representatives, servants, and employees cease and desist, in connection with the sale and distribution of furniture in interstate commerce, from directly or indirectly—

(a) Using the slogan "Direct from Factory to You," or any other slogan of similar import, or any statement or representation whatsoever that said Jacques E. Greenberger and Carrie Greenberger, are the manufacturers of said furniture and are selling and distributing same direct from the manufacturer or factory to their customer-purchasers without the intervention of middlemen; or

(b) Making representations or statements in any manner whatsoever that the prices at which said Jacques E. Greenberger and Carrie Greenberger are offering for sale and selling said furniture are factory prices or manufacturer's prices;

Unless and until said Jacques E. Greenberger and Carrie Greenberger own and operate or directly and absolutely control a factory or factories wherein or by which is made all such furniture so offered for sale and sold.

*It is further ordered*, That respondent Big G Furniture Works, a corporation, its officers, agents, representatives, servants, and employees cease and desist, in connection with the sale and distribution of furniture in interstate commerce, from directly or indirectly—

(a) Using the slogan "Direct from Factory to You," or any other slogan of similar import, or any statement or representation whatso-

ever that said Big G Furniture Works, a corporation, is the manufacturer of said furniture or is selling and distributing same direct from the manufacturer or factory to its customer-purchasers without the intervention of middlemen; or

(b) Making representations or statements in any manner whatsoever that the prices at which said Big G Furniture Works, a corporation, is offering for sale and selling said furniture are factory prices or manufacturer's prices;

Unless and until said Big G Furniture Works owns and operates or directly and absolutely controls a factory or factories wherein or by which is made all such furniture so offered for sale and sold.

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

Complaint

11 F. T. C.

IN THE MATTER OF

## M. SAMUELS &amp; COMPANY, INCORPORATED

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

*Docket 1374. Complaint, Mar. 30, 1926—Decision, Mar. 22, 1927*

Where a corporation engaged in the manufacture of a shoe with a sole composed chiefly of rubber and carbon black and painted and polished so as to resemble the appearance of leather, though containing none, and in the sale thereof, together with other shoes made by it, through a large number of retail stores which it operated, and also by means of mail-orders; stamped and imprinted the word "Tufhide" upon the sole of said shoe and in its advertising and display cards furnished to its retail stores described the same as soled with "Tufhide" soles; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the material so designated and described to be leather and to cause them to purchase said shoes in such belief, and to divert trade from and otherwise prejudice competitors engaged in the sale of shoes soled with genuine leather, and so described by them to purchasers, and competitors engaged in the sale of shoes neither so soled nor so represented:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. E. J. Hornibrook* for the Commission.

*Mr. Robert E. Barry*, of Washington, D. C., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Delaware corporation engaged in the manufacture of shoes and in the sale thereof through retail stores owned and operated by it, through wholesale and retail dealers, and also direct to the consuming public, in various States, and with principal office and factory in Baltimore, with misbranding or mislabeling and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, for about five years preceding the complaint, respondent stamped and imprinted the word and legend "Tufhide", upon soles containing no leather, attached to many of its shoes, and advertised said shoes in newspapers, magazines and periodicals of general circulation throughout the United States and certain sections thereof, and in circulars distributed among retailers, and the consuming public, as shoes with "Tufhide" soles, with the



capacity and tendency to and with the effect of misleading and deceiving many of the trade and consuming public into purchasing said shoes as and for shoes fitted with leather soles, and with the capacity and tendency to divert trade from and otherwise injure and prejudice competitors dealing in shoes fitted with genuine leather soles and rightfully and lawfully so representing the same to the trade and consuming public, and competitors dealing in shoes fitted with soles composed of other materials and in nowise represented by them as having soles of leather; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon respondent, M. Samuels & Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and made its answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed, and evidence was introduced in support of the allegations of the said complaint, respondent being present by its counsel but offering no evidence in its own behalf. The trial examiner having made his report upon the facts and respondent having filed its exceptions thereto, briefs were received and oral argument heard by the Commission.

Whereupon this proceeding came on for decision, and the Commission, having considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, M. Samuels & Co., Inc., is a corporation organized under the laws of the State of Delaware, with its principal office and place of business in the city of Baltimore, State of Maryland. It is engaged in the manufacture of shoes, and the sale and distribution thereof in commerce between and among various States of the United States in the manner set out in paragraph 2 of these findings. In the course and conduct of its said business, respondent is in competition with other corporations, partnerships and individuals who are also engaged in the sale and distribution of shoes in commerce between and among the various States of the United States.

## Findings

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PAR. 2. Respondent sells and distributes its shoes in the following manner: It owns and operates about 400 retail stores located in various States of the United States, from which stores it sells its shoes to the purchasing public. It causes its said shoes to be transported from its said principal place of business in the city of Baltimore, Md., into and through other States of the United States to its said retail stores at their various points of location, where they are sold as aforesaid.

PAR. 3. Respondent solicits by means of advertisements published in newspapers, magazines, and other periodicals, and secures mail orders from members of the purchasing public in the several States of the United States, and fills said orders by causing its said shoes to be transported through the United States mail to the purchasers thereof.

PAR. 4. For more than a year prior to December 1, 1925, respondent appointed agents to solicit and secure orders for its shoes in several different States of the United States, and filled orders from said agents by causing its said shoes so ordered to be shipped from its said principal place of business in the city of Baltimore, Md., to said agents at their various points of location. Since on or about December 1, 1925, respondent has not sold its shoes through agents.

PAR. 5. Among the shoes manufactured and sold by respondent as set out in paragraphs 2, 3, and 4 hereof, is a shoe which is designated and described by respondent as the "Newark Shoes," intended for sale to workmen at prices ranging from three dollars to three dollars and a half. This shoe is made with a sole composed chiefly of rubber and carbon black, painted and polished so that it resembles leather, but contains no leather whatsoever. Upon each of the soles of its said "Newark Shoes," respondent stamps and imprints the word "Tufhide," and the said shoes, so stamped and imprinted, are offered for sale and sold to the purchasing public as heretofore described.

PAR. 6. Respondent causes advertisements of its said "Newark Shoes" to be published in newspapers and periodicals having interstate circulation, and also distributes and causes to be distributed circulars, posters, and like advertising literature, in all of which it describes its said "Newark Shoes" as being soled with "Tufhide" soles. Respondent also furnishes to all of its retail stores cards for display in the windows of the said stores, advertising its said "Newark Shoes" and describing them as being soled with "Tufhide" soles.

PAR. 7. The word "hide" is understood by the trade and the purchasing public to mean the skin of an animal, or leather. The word "tuf" is understood by the trade and the purchasing public to be

the phonetic spelling of the word "tough" and to mean the quality of being tenacious or susceptible to great tension or strain without breaking. The word "Tufhide", when used to designate and describe the material used for soles of shoes, is commonly understood by the purchasing public to mean that the shoes so described are soled with a tough leather.

PAR. 8. The use by respondent of the word "Tufhide" to designate and describe the material used in the soles of the "Newark Shoes" sold by it, as above set out, has the capacity and tendency to mislead and deceive a substantial part of the purchasing public and to cause them to believe that the material so designated and described is leather, and to cause them to purchase the said shoes in that belief.

PAR. 9. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell and distribute in interstate commerce shoes soled with genuine leather, and who so describe them to purchasers. There are others of the said competitors of respondent who sell and distribute in interstate commerce shoes soled with materials other than leather, and who do not represent that their said shoes are soled with leather.

The acts and practices of respondent as hereinbefore set out have the capacity and tendency to divert trade from and otherwise prejudice all of its said competitors.

#### CONCLUSION

The acts and practices of respondent, M. Samuels & Co., Inc., under the circumstances set forth in the foregoing findings as to the facts are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of respondent, testimony and evidence offered before the trial examiner, briefs and oral arguments, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

## Order

11 F. T. C.

*It is now ordered,* That respondent M. Samuels & Co., Inc., its officers, agents, servants, and employees do cease and desist from—

(1) Using the word "Tufhide" as a brand, label or otherwise on a shoe sole which is not composed wholly of the prepared skin of an animal, or

(2) Using the word "Tufhide" in advertisements, circulars, posters, or otherwise, to designate or describe a shoe sole which is not composed wholly of the prepared skin of an animal, or

(3) Using any other word or words as a brand or label upon shoe soles not composed wholly of the hide or skin of an animal, which import or imply that such soles are composed of such hide or skin.

*It is further ordered,* That respondent M. Samuels & Co., Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
SEA ISLAND THREAD COMPANY, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1211. Complaint, Aug. 1, 1924—Decision, Mar. 24, 1927*

Where a corporation engaged in the manufacture and sale of cotton thread so mercerized and finished as closely to resemble silk, featured the word "Satin silk" or "Satin Silk" upon the labels on its spools and the containers thereof, using such legends in its aforesaid labels as "Satin silk" with the word "Trade-Mark" and "None Better Mercerized Cotton", and "Satin silk Trade-Mark. Mercerized Machine Twist," with the word "Trade-Mark" in each case written in small letters underneath the word "Satin silk"; with the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe the aforesaid thread to be composed in whole or in part of silk, and to purchase the same in that belief, and to divert trade from and otherwise injure competitors engaged in the sale and distribution of sewing thread composed wholly of silk and so designated and described, and competitors engaged in the sale and distribution of sewing thread composed of mercerized cotton and so designated and described:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. T. John Butler* and *Mr. Robert O. Brownell* for the Commission.

*Munn, Anderson and Munn*, of New York City, for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of sewing thread and in the sale thereof in part to wholesale dealers in dry goods and notions in various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that it branded or labeled the spools of a cotton sewing thread made by it and composed wholly of mercerized cotton, "Satin Silk" or "Satin silk," in large and conspicuous letters, together with the words, in some instances, "Mercerized Cotton," "Perfect Substitute for Best Silk" or "Mercerized Machine Twist,"

in smaller and less conspicuous letters, and so labeled the containers thereof, with the capacity and tendency to mislead and deceive the consuming public into purchasing said thread as and for a product composed of silk, and with the effect of diverting business from and otherwise prejudicing competitors manufacturing sewing thread of pure silk and properly so labeling and branding the same, and competitors manufacturing thread containing no silk, without in anywise branding, labeling or representing the same as silk; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon respondent Sea Island Thread Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

Respondent having entered its appearance and filed its answer to the said complaint, hearings were held before a trial examiner therefore duly appointed, and testimony was heard and evidence introduced in support of the charges stated in the complaint and in opposition thereto. The said trial examiner made his report upon the facts, to which exception was taken by counsel for the Commission, and briefs were filed and oral argument made before the Commission by counsel for the Commission and counsel for the respondent.

Thereafter this proceeding came on for final decision, and the Commission, having considered the record and being fully advised in the premises, making this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondent, Sea Island Thread Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business in the City of New York in said State. It is engaged in the manufacture of sewing thread and the sale thereof to manufacturers of clothing and to retail dealers located in several different States of the United States. It causes its said product, when so sold, to be transported from its said principal place of business in the City and State of New York, into and through other States of the United States to the said purchasers at their respective points of location. In the regular course and conduct of its said business respondent is in competition with other corporations, partnerships and individuals who are also engaged

in the sale and distribution of sewing thread in interstate commerce between and among the several States of the United States.

PAR. 2. The thread manufactured and sold by respondent as set out in paragraph 1 of these findings is composed wholly of cotton which has been mercerized and finished so that it closely resembles silk thread. It is wound upon spools containing one hundred yards each for sale to retail dealers and on spools containing five hundred yards each for sale to manufacturers. Respondent packs the thread sold to retail dealers in pasteboard boxes each containing one dozen spools.

PAR. 3. Since on or about January 1, 1923, respondent has labeled and branded the spools of thread sold and shipped to retail dealers, as set out in paragraphs 1 and 2 of these findings, by imprinting on one end of each spool its name and address, and on the other end the word "Satinsilk" with the word "trade-mark" written beneath in small letters and the words "None Better Mercerized Cotton." Respondent labels the ends and sides of the pasteboard boxes in which the thread is packed with the words "Satinsilk Trade Mark. Mercerized Machine Twist," the words "Trade-Mark" being written in small letters under the word "Satinsilk." Upon the tops of the boxes respondent affixes labels bearing the words "Satinsilk, Trade Mark Reg., U. S. Pat. Off., None Better, Mercerized Cotton, Pure Dye Machine, Twist made in all Shades by Sea Island T. Co., New York, U. S. A."

Many retail dealers remove the spools of thread from the boxes in which they are received and place them in display cabinets or upon open counters, and others display the thread by removing the cover of the box and placing it in a cabinet or upon an open counter.

PAR. 4. Prior to January 1, 1923, respondent had branded and labeled the spools of its thread sold to retail dealers by imprinting on one end of the spool the words "Satin Silk. Warranted None Better," and on the other end the words "Perfect Substitute for Best Silk, Made by Sea Island T. Co., New York." Upon the labels of boxes in which the spools were packed appeared the words "Satin Silk" followed by the words "Reg. Trade Mark, U. S. Pat. Off., Mercerized Cotton, None Better Made. Warranted Fast Color, Sea Island Thread Co., New York."

PAR. 5. The word "Silk," when used to designate or describe sewing thread, is understood by the trade and the purchasing public to mean that the thread so designated and described is composed wholly of silk made from the cocoon of the silkworm. The word "Satin," when used to designate and describe a fabric, is understood

by the trade and by the purchasing public to mean that the fabric so described is composed wholly of silk made from the cocoon of the silkworm, to which has been imparted a glossy finish.

PAR. 6. The use by respondent of the word "Satin-silk" as the first and most prominent word in brands or labels upon spools of thread composed wholly of cotton and the containers thereof, as set out in the foregoing findings, has the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe that the thread so branded and labeled is composed, in whole or in part, of silk, and to cause them to purchase it in that belief.

PAR. 7. Among the competitors of respondent mentioned in paragraph 1 of these findings, are many who sell and distribute, in interstate commerce, sewing thread composed wholly of silk, and so designate and describe it. There are others of said competitors who sell and distribute in interstate commerce mercerized cotton sewing thread, and who so designate and describe it. The acts and practices of respondent as set out in the foregoing findings have the tendency and capacity to divert trade from and otherwise injure both classes of its said competitors.

#### CONCLUSION

The acts and practices of respondent under the conditions and circumstances set out in the foregoing findings are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission, the answer of respondent, the testimony taken and evidence adduced at hearings, the report upon the facts by the trial examiner and the exceptions thereto, and briefs and oral argument, and the Commission having made its findings as to the facts with its conclusion that respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",



*It is ordered,* That respondent, Sea Island Thread Co., Inc., its officers, agents and employees, cease and desist from—

Using the word "Satinsilk" or the words "Satin Silk", either alone or with other word or words, as a brand or label upon spools of thread composed wholly of cotton, or upon the containers of such thread.

*And it is further ordered,* That respondent shall within thirty days from the date of receipt of the order set out herein file with the Commission a report in writing setting out the manner and form in which it has complied with the said order.

*Dissent by Commissioner Humphrey*

The name "Satin Silk" or "Satinsilk" in itself seems somewhat fanciful and might to some extent put the purchaser on inquiry. Under all the facts as presented in this case, I am not entirely satisfied that a person of reasonable intelligence, exercising reasonable care, would be deceived.

Complaint

11 F. T. C.

IN THE MATTER OF

**ATLANTA WHOLESALE CONFECTIONERS ASSOCIATION,  
ITS OFFICERS AND MEMBERS**

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

*Docket 1364. Complaint, Feb. 20, 1926—Decision, Mar. 30, 1927*

Where an association of wholesalers or jobbers dealing in candies or confectionery, and members thereof; in pursuance of a conspiracy to prevent chain stores, and jobbers dealing principally in products other than confectionery and candy (held by them to be "illegitimate" dealers and not entitled to deal in such products) from obtaining the same from the manufacturers or other sources,

- (a) Held meetings for the interchange of information concerning, and the discussion and adoption of plans and measures for carrying out, the same;
- (b) Wrote letters to manufacturers of candy, confectionery and allied products selling the same to "illegitimate" dealers, representing that all of the "legitimate" dealers in the products concerned in the city involved were members of the association and that others were "illegitimate" dealers and should not be permitted by said manufacturers to purchase such merchandise, and made similar representations in personal interviews with said manufacturers and their agents;
- (c) Threatened to cancel and canceled orders given said manufacturers, on account of sales by them to "illegitimate" dealers;
- (d) Falsely represented by letters to and interviews with, said manufacturers and their agents, that the "illegitimate" dealers were selling their goods below their suggested prices and were thereby demoralizing the market; and
- (e) Gave the representative of a manufacturer orders conditioned upon his thereafter refusing to deal with certain competitors of the members classified by them as "illegitimate" dealers;

With the result that many competitors were hindered and many others prevented from purchasing confectionery, candy and allied products, and competition in the purchase and sale thereof was hindered and suppressed: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

*Messrs. A. A. Meyer* and *E. L. Meyer*, of Atlanta, Ga., for respondent *Harry L. Schlesinger*, and *Candler, Thomson & Hirsch*, of Atlanta, Ga., for all other respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Atlanta Wholesale Confectioners Association, its officers

and members, purchasing the confectionery and allied products dealt in by them, for the most part from manufacturers in other States and, but for the matters and things alleged, naturally and normally in competition with one another in price and otherwise, and in competition with other individuals and concerns similarly engaged, with uniting in a common course of action and cooperating and confederating together and with others to confine distribution to so-called regular and legitimate channels of trade, and to themselves as wholesale dealers in the chain of distribution, to prevent so-called irregular and illegitimate dealers from obtaining supplies directly from the manufacturers, and thereby to suppress competition and especially competition in price in the sale and distribution of the products concerned in Georgia, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.<sup>1</sup>

As alleged by the complaint, respondents have done and still do, among others, the following acts and things:

“(a) Hold meetings for the interchange of information concerning and the discussion and adoption of plans and measures for the carrying out of their said undertaking.

“(b) Notify aforesaid manufacturers of said undertaking and its said purposes and seek to and do induce and procure many said manufacturers to abide by and adhere thereto.

“(c) By threats of boycott, by boycott, and otherwise seek to and do persuade, induce, and compel many aforesaid manufacturers to sell aforesaid products which they manufacture to the members of respondent association only, and to refrain from selling said products to so-called irregular or illegitimate dealers.

“(d) Seek for and ascertain instances of sales by aforesaid manufacturers to aforesaid so-called irregular or illegitimate dealers, and thereupon by threats of boycott, by boycott and otherwise seek to and do persuade, induce and compel such manufacturers to refrain from selling and supplying goods to such dealers in future.

“(e) Seek for and secure the names of so-called irregular or illegitimate dealers and supply said names to aforesaid manufacturers,

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<sup>1</sup> According to the complaint, “respondents regard and designate the channel of distribution commencing with the manufacturer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public as the only regular and legitimate channel of distribution of aforesaid products in which they deal and which is by them regarded and denominated the regular or legitimate channel of distribution. Channels of distribution originating with the manufacturer which do not flow through the wholesale dealer, but go direct to dealers doing both a wholesale and retail business, or a retail business only, are by respondents regarded and designated as irregular and illegitimate channels of trade, and aforesaid dealers acquiring goods through said so-called illegitimate channels are by respondents regarded and designated irregular and illegitimate dealers.”

and by the means and methods in these specifications above set out, persuade, induce and compel said manufacturers to cease dealing with and to refuse to open accounts with the dealers so reported.

“(f) Use other cooperative and individual means to carry out and make effective their aforesaid undertaking.”

According to the complaint, “the effect and result of the above alleged acts and practices of respondents has been and now is to close sundry outlets within the State of Georgia for the direct and immediate sale by manufacturers in other States of goods shipped by them into said State; to regulate such commerce by eliminating therefrom aforesaid so-called irregular and illegitimate dealers, and manufacturers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by and adhere to respondents’ undertaking hereinbefore described; to substantially lessen, hinder and suppress competition in the sale and distribution of confectionery and allied products in the State of Georgia; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said State those advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition; wherefore, said acts and practices are all to the prejudice of the public and of respondents’ competitors, and constitute unfair methods of competition in commerce within the meaning and intent of section 5 of an act of Congress entitled ‘An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes. approved September 26, 1914.’”

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Atlanta Wholesale Confectioners Association, its officers and members, S. L. Sugarman, individually and as president of said association, A. B. Tenenbaum, individually and as secretary of said association, Brower Candy Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners doing business under the trade name and style Tenenbaum Bros., Sugarman-Hirsch Co., Cohen Bros. Co., T. S. Lewis Co., and Harry L. Schlesinger, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearances and filed answers therein, hearings were had and evidence was thereupon introduced

on behalf of the Commission and the respondents before William W. Sheppard, an examiner of the Federal Trade Commission, theretofore duly appointed.

Thereupon this proceeding came on for decision, and the Commission having considered the record and being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Atlanta Wholesale Confectioners' Association, hereinafter called the "Association," is and has been since September 30, 1921, a voluntary unincorporated association of wholesalers or jobbers of candy and confectionery, having their respective places of business in the city of Atlanta, State of Georgia. The members of respondent association purchase products in which they deal from manufacturers thereof located in States other than the State of Georgia, and said manufacturers ship said products when so purchased from their respective places of manufacture in such other States to respondents at their respective places of business. The said members of the association sell and distribute their merchandise to retail dealers throughout the State of Georgia.

PAR. 2. Respondents S. L. Sugarman and A. B. Tenenbaum are president and secretary, respectively, of said association. The members of said association are, respondents Brower Candy Co., Sugarman-Hirsch Co., and Cohen Bros. Co., corporations organized under the laws of the State of Georgia, respondents A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners doing business under the trade name and style Tenenbaum Bros., and respondent Harry L. Schlesinger. Respondent T. S. Lewis Co., was a corporation organized under the laws of the State of Georgia, and a member of said association from the time of its organization until the time of the dissolution of the said T. S. Lewis Co. Said T. S. Lewis Co. was dissolved by order of the Superior Court of Fulton County, State of Georgia, duly made and entered on August 10, 1926. Respondents Harry L. Schlesinger and Brower Candy Co., in addition to dealing in products of manufacturers as set forth in paragraph 1 hereof are manufacturers of confectionery and candy. All of the respondent members of said association are, and since September 30, 1921, have been, in competition with one another and with many other persons, partnerships, and corporations at Atlanta, State of Georgia, also engaged in the purchase of confectionery and candy from aforesaid manufacturers, and the resale thereof in the State of Georgia.

## Findings

11 F. T. C.

PAR. 3. The respondent association was organized in September, 1921, with the above-named respondent jobbers and one other, the Griffith Candy Co., constituting its membership. W. A. Brower, of the respondent Brower Candy Co., was the first president of the association, one Craddock Goins was the first secretary of said association. Regular semimonthly meetings have been held since the organization of the association and minutes of said meetings were regularly kept from the time of the organization of the association down to December, 1922, but not since that time.

PAR. 4. At the time of the organization of said association, confectionery, candy, and allied products were purchased by many dealers located at Atlanta, Ga., from manufacturers located in States other than Georgia and shipped by said manufacturers to said purchasers thereof, and by said purchasers sold and distributed to the retail trade in Atlanta and throughout the State of Georgia. The dealers referred to were of the following classes:

- (1) Jobbers dealing principally in confectionery and candy;
- (2) Jobbers dealing principally in drugs;
- (3) Jobbers dealing principally in cigars and tobacco;
- (4) Jobbers dealing principally in ice cream;
- (5) Chain stores.

PAR. 5. Upon the organization of said association, the members thereof, with the exception of Harry L. Schlesinger, conspired and confederated together and have ever since conspired and confederated together to prevent all of the dealers described in paragraph 4 hereof, except those dealing principally in confectionery and candy, from obtaining such merchandise from the manufacturers thereof and from any other sources. It was agreed by and between the members thus conspiring and confederating that all such dealers not dealing principally in confectionery and candy were "illegitimate" dealers and were not entitled to purchase and deal in candy and confectionery, and it was further agreed by and between said conspiring and confederating members, with the exception of Harry L. Schlesinger, that jobbers who dealt principally in confectionery and candy were "legitimate" dealers and that all of the "legitimate" dealers located in the city of Atlanta were members of said association.

PAR. 6. In order to accomplish and effectuate the purposes and object of said conspiracy, as in paragraph 5 hereof set forth, the respondents other than the said Harry L. Schlesinger, have—

(a) Held meetings for the interchange of information concerning, and the discussion and adoption of plans and measures for the carrying out of their said conspiracy.

(b) Written letters and caused the president and secretary of said association to write letters to manufacturers selling candy, confec-

tionery, and allied products to the so-called "illegitimate" dealers, in which letters it was represented that all of the classes of distributors mentioned in paragraph 4 hereof, except class (1), comprising the members of the association, were "illegitimate" dealers and should not be permitted by said manufacturers to purchase such merchandise and that all of the "legitimate" dealers in the city of Atlanta, Ga., were members of said association.

(c) Made the same representations as in subdivision (b) above in personal interviews with said manufacturers and their agents.

(d) Threatened to cancel and did cancel orders to said manufacturers for merchandise, giving as the reason therefor the sale by such manufacturers to so-called "illegitimate" dealers.

(e) Falsely represented in letters to, as well as by personal interviews with, said manufacturers and their agents that the so-called "illegitimate" dealers were selling goods below the prices suggested by such manufacturers, and were thereby demoralizing the market.

(f) On or about July 23, 1922, all the respondent members, with the exception of Harry L. Schlesinger, gave to the sale representative of a manufacturer orders for merchandise to be filled by said manufacturer only on the condition that the manufacturer would thereafter refuse to sell merchandise to certain competitors of said members classified by them as "illegitimate" dealers.

PAR. 7. As a result of the conspiracy and confederation and the acts done in pursuance thereof, mentioned in paragraphs 5 and 6 hereof, many of respondents' competitors have been hindered and many others have been prevented from purchasing in interstate commerce, confectionery, candy, and allied products and competition in interstate commerce in the purchase and sale of confectionery, candy, and allied products has been hindered and suppressed.

#### CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings as to the facts are to the prejudice of the public and respondents' competitors and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto, and the evidence introduced on behalf of the Commission and respond-

ents, and the brief of counsel for the Commission, filing of briefs and oral arguments having been waived by respondents, and the Commission having made its findings as to the facts, and its conclusion that respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That this proceeding as to respondent Harry L. Schlesinger be and the same is hereby dismissed for the reason that the evidence does not sustain the charges in the complaint against said respondent, and that the proceeding against respondent T. S. Lewis Co. be and the same is hereby dismissed for the reason that said respondent corporation was dissolved by order of the Superior Court of the County of Fulton, Ga., duly made and entered on the 10th day of August, 1926.

*It is further ordered,* That respondents Brower Candy Co., Sugarman-Hirsch Co., Cohen Bros. Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners, doing business under the trade name and style, Tenenbaum Bros., their officers, agents, and employees, and respondent Atlanta Wholesale Confectioners Association, its officers, members, and employees, do cease and desist from:

(1) Cooperating, confederating, or agreeing among themselves, or with each other, or others, to hinder or prevent any manufacturer or dealer from selling, or any jobber, dealer, or other person from purchasing, in interstate commerce, confectionery, candy, or other products.

(2) Any attempt or effort, through respondent Atlanta Wholesale Confectioners Association, or other association, or by concert of two or more respondents to hinder or prevent by persuasion, inducement, intimidation, withdrawing, or threatening to withdraw patronage, or by any other method or device, any person, firm, or corporation from purchasing or selling in interstate commerce confectionery, candy, or other products.

*It is further ordered,* That respondents Brower Candy Co., Sugarman-Hirsch Co., Cohen Bros. Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners, doing business under the trade name and style, Tenenbaum Bros., and respondent Atlanta Wholesale Confectioners' Association, shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.



## Complaint

## IN THE MATTER OF

## FLORA LEVY AND SARAH LEE, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STLYE ACME FOUNTAIN PEN COMPANY

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

*Docket 1429. Complaint, Oct. 30, 1926—Decision, Apr. 26, 1927*

Where a firm engaged in the purchase of fountain pens, pencils and sets, and in the sale thereof to agents or representatives who purchased such pens, pencils and sets at \$1.55, \$1.50, and \$3.50 each, respectively, and resold the same to the consuming public at \$2.50 each for the pens and pencils and \$5.50 for the sets,

- (a) Falsely represented in the letters through which they solicited persons to become their representatives and in their circulars inclosed by them therein, describing and depicting their aforesaid products, that they manufactured the same, that their prices to their representatives did not include middlemen's profits, and that they were therefore able to and did sell their said products to representatitves at prices much lower than prevailling retail prices; with the tendency and capacity to mislead and deceive said representatives and, through them, a substantial part of the consuming public, and induce the purchase of such articles in the belief that they, the partners, were the manufacturers thereof, selling the same at prices which did not include any middleman's profit, and with the effect of diverting trade from competitors who manufactured and sold like products and truthfully represented themselves as so doing; and
- (b) Affixed to their aforesaid pens, pencils and sets, bands and labels respectively bearing the price marks \$7, \$4, and \$11.50, and in their circulars and letters falsely represented the aforesaid false and greatly exaggerated prices as the ordinary retail prices of their said products; with the tendency and capacity to mislead and deceive said representatives, and, through them, a substantial part of the consuming public by causing them to believe the aforesaid prices to be those at which such products were respectively sold to the public, and to cause them to purchase the same in such belief, and with the effect of diverting trade from competitors who placed upon the articles dealt in by them bands and labels showing the true prices at which the various articles were usually and customarily sold to the consuming public:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Robert O. Brownell* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent individuals, partners engaged in the sale of fountain pens and lead pencils to persons in various States, and with place of business in Chicago, with advertising falsely or misleadingly in misrepresenting prices and in misrepresenting business status, and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, for about two years preceding the complaint, in their leaflets, pamphlets and other trade literature sent to persons whom they solicited to become their representatives in said persons' communities, represented that their pens and pencils were of a specified regular retail value and price and so banded and labeled, and that they were the manufacturers thereof, and therefore able to sell the same at prices greatly below said purported regular retail prices, and offered said products to such prospective representatives at prices greatly below said prices, with the suggestion and instruction that in the event of becoming respondents' representatives, they resell the same to the consuming public at prices about one dollar higher than those at which bought by said representatives, but greatly below the purported regular retail prices, the fact being that said prices upon the bands and labels of respondents' pens and pencils were fictitious and exaggerated and greatly in excess of those at which said products were regularly sold by respondents as also of those at which respondents' representatives were advised and instructed to and did regularly sell the same to the consuming public and that respondents did not manufacture said products but purchased the same from others and resold them to such representatives at a profit to respondents, with the result that respondents procured many persons to become their representatives for the sale of said pens and pencils, to purchase and offer the same to the consuming public at a profit to such representatives, to repeat to their customers and prospective customers respondents' false and misleading statements and representations, to display respondents' aforesaid leaflets, etc., with said false and misleading statements and representations, and to display said pens and pencils bearing said fictitious regular retail prices.

Such acts and practices by respondents were done with the intent and had the effect of misleading and deceiving such sales representatives and through them the consuming public into believing that said pens and pencils were of the fair retail value of and regularly sold at such fictitious and exaggerated prices, were calculated and intended to cause such representatives to offer and sell the same and many of the consuming public to purchase the same, at prices

much lower than said fictitious retail prices, in the belief that they were thus sold and purchased at greatly reduced prices, and had the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom do not, by the use of fictitious price marks or otherwise, represent pens and pencils dealt in by them, or enable others to represent such pens and pencils, as of a regular and usual retail value in excess of the actual and customary retail price, and with the tendency to cause such effect; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondents Flora Levy and Sarah Lee, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondents having entered their appearance, hearings were had and evidence received before W. W. Sheppard, an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Flora Levy and Sarah Lee are partners doing business under the trade name and style of Acme Fountain Pen Co., with their principal office and place of business in the city of Chicago, State of Illinois. They are now and for more than a year last past have been engaged in the business of purchasing from the manufacturers thereof fountain pens, lead pencils, and sets each consisting of a pen and a pencil packed together in a case, and selling same to persons located in various States of the United States. They cause said pens, pencils, and sets when so sold to be transported from their said place of business in Chicago, Ill., into and through other States of the United States to the purchasers thereof at their various places of location. In the regular course of their business respondents have been and now are in competition with corporations, partnerships, and individuals who are also engaged in the sale and distribution of fountain pens, pencils, and sets in commerce between and among the various States of the United States.

## Findings

11 F. T. C.

PAR. 2. For more than a year last past respondents have conducted their business described in paragraph 1 of these findings in the following manner: They sent to individuals engaged in various occupations, such as insurance agents, tailors, and managers of hotels, letters soliciting each to become their representative in his locality and as such representative to purchase fountain pens, lead pencils, and sets from respondents and resell same to the consuming public by personal solicitation. In the said letters respondents represented that they manufactured the pens, pencils, and sets which they offered for sale, that the prices at which they offered to sell the said articles to their representatives did not include middlemen's profits and that for this reason they were able to and did sell to their representatives at prices much less than the ordinary and customary retail prices of the quality of pens, pencils, and sets so manufactured and sold by respondents. With the said letters respondents sent to each of said individuals circulars describing and depicting their said pens, pencils, and sets and repeating the said representations. Many of the individuals receiving said letters and circulars accepted respondents' offer and became representatives of respondents in their respective localities, purchased the said fountain pens, pencils, and sets from respondents, resold same to the consuming public and used and displayed the said circulars received from respondents as aids in making such sales to the public.

PAR. 3. The representations made by respondents that they were the manufacturers of the fountain pens, pencils, and sets thereof which they sold and offered for sale all as set out in paragraphs 1 and 2 of these findings were false and misleading and had and have the tendency and capacity to mislead and deceive their representatives and through them a substantial part of the consuming public by causing them to believe that respondents were the manufacturers of the said articles and were selling direct from their factory to their representatives at prices which did not include any middleman's profit, and to cause them to purchase the said articles in that belief.

PAR. 4. It is an advantage to a seller of fountain pens, pencils, and sets of pens and pencils, to be known and recognized by the trade and by the consuming public as the manufacturer of the said articles, both because it is understood by the trade and the public that a manufacturer can and does sell at prices which do not include middlemen's profits, and because a manufacturer is understood by both trade and public to be responsible for the quality of his products.

PAR. 5. There are among the competitors of respondents mentioned in paragraph 1 of these findings many who manufacture the fountain pens, pencils, and sets thereof, which they sell and distribute in interstate commerce, and who truthfully represent that they are the manufacturers of the said articles. The acts and practices of respondents as set out in paragraphs 2 and 3 of these findings tend to and do divert trade from said competitors.

PAR. 6. In the regular course of their said business for more than a year last past respondents have affixed or caused to be affixed to their said fountain pens, pencils, and sets paper bands and labels bearing price marks of \$7 on the fountain pens, \$4 on the lead pencils, and \$11.50 on the sets, and in their said circulars and letters respondents have set out these prices and have represented that said prices were the ordinary and customary retail prices of the pens, pencils, and sets, respectively. The said pens, pencils, and sets so marked and labeled were sold by respondents to their said representatives and by them to the consuming public. The said prices were fictitious, false and exaggerated, and greatly in excess of the prices at which respondents' pens, pencils, and sets were usually and customarily sold to the consuming public. The prices paid respondents by their representatives during the said period were \$1.55 each for the pens, \$1.50 each for the pencils, and \$3.50 each for the sets. The said representatives sold the said articles to the consuming public at the usual and customary prices of \$2.50 for the pens, \$2.50 for the pencils, and \$5.50 for the sets.

PAR. 7. The use by respondents of false, fictitious, and exaggerated price marks in connection with the sale of fountain pens, pencils, and sets thereof, all as set out in paragraph 6 of these findings, had and has the tendency and capacity to mislead and deceive their representatives and through them a substantial part of the consuming public by causing them to believe that the said prices are the prices at which the said fountain pens, pencils, and sets, respectively, are sold to the public, and to cause them to purchase the said articles in that belief.

PAR. 8. There are among the competitors of respondent mentioned in paragraph 1 of these findings, many who manufacture, sell, and distribute, or sell and distribute, in interstate commerce fountain pens, pencils, and sets thereof, and who place upon said articles paper bands and labels marked with the prices at which the said articles, respectively, are usually and customarily sold to the consuming public. The acts and practices of respondents as set out in paragraph 6 of these findings tend to and do divert trade from competitors.

Order

11 F. T. C.

## CONCLUSION

The acts and practices of respondents under the conditions and circumstances set out in the foregoing findings are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents and the evidence received at hearings, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondents Flora Levy and Sarah Lee, their agents, representatives, and employees, do cease and desist from—

(1) Representing by means of advertisements, letters, circulars, or otherwise that respondents are the manufacturers of the fountain pens, pencils, and sets thereof which they sell or offer for sale in interstate commerce, or that the said articles by them sold come direct from manufacturer to purchaser, unless and until such respondents or either of them actually own and operate or directly and absolutely control a factory or factories in which the said fountain pens, pencils, and sets sold by them or either of them are manufactured; or

(2) Offering for sale or selling in interstate commerce fountain pens, pencils, or sets thereof bearing upon them any band, label, or other mark indicating a false or fictitious price in excess of the price at which such articles, respectively, are ordinarily and customarily sold to the consuming public.

*It is further ordered,* That the said respondents shall within 30 days after the service of this order file with the secretary of the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

## Complaint

IN THE MATTER OF  
NORTHWEST CHAIR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1427. Complaint, Oct. 13, 1926—Decision, May 9, 1927*

Where a corporation engaged in the manufacture and sale of maple chairs resembling walnut or mahogany, as the case might be, depicted and represented said chairs in its catalogues, price lists, circulars and similar trade literature as "Walnut", and "Mahogany", respectively, and so sold the same, thereby placing in the hands of its dealer vendees the means of assisting and enabling them to misrepresent and sell such chairs to the consuming public as composed of walnut or mahogany, respectively, and to use the aforesaid designations and descriptions in its catalogues as evidence and confirmation by the manufacturer of the truth of such misrepresentation; with the capacity and tendency to mislead and deceive many of the trade and purchasing public into believing the chairs in question to be composed of walnut or mahogany, respectively, and to purchase the same in such belief, and with the effect of unfairly diverting trade from competitors dealing in chairs respectively made of the aforesaid woods and truthfully so represented by them to the trade and consuming public, and from competitors dealing in chairs neither so composed nor in anywise so represented by them:

*Held*, That such misleading designation of product, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Henry Miller* for the Commission.

*Hayden, Langhorne & Metzger*, of Tacoma, Wash., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Washington corporation engaged in the manufacture of chairs, and in the sale thereof to dealers in various States, and with principal office and place of business in Tacoma, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, for about three years preceding the complaint, for the purpose of deceiving the purchasing public, falsely designated and described certain of its chairs in its catalogues, price lists, circulars and other trade literature supplied to its dealer vendees as "Walnut" and "Mahogany," the fact being

that said chairs resembled in appearance furniture made of, but were not walnut or mahogany, thereby placing in the hands of said dealer vendees the means of committing a deception and fraud upon the purchasing public by enabling them to represent said chairs as made of walnut and mahogany, respectively, and to display respondent's designations and descriptions as evidence and confirmation of the truth of such representations; with the tendency to divert and with the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom deal in chairs composed of walnut wood and mahogany wood, respectively, and rightfully and lawfully so represent the same to the trade and consuming public, and others of whom deal in chairs resembling those immediately above described but composed of other woods, and who in nowise represent the same to the trade and consuming public as walnut and mahogany, respectively; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Northwest Chair Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein to said complaint, a stipulation as to the facts (filed of record), was agreed upon by and between respondent corporation and the chief counsel of the Federal Trade Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts of the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed further upon said stipulation to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

And thereupon this proceeding came on for decision, and the Commission having duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Washington, with its principal office



and place of business in the city of Tacoma in said State. It is and for more than two years last past has been engaged in the manufacture of chairs and the sale and distribution thereof to dealers throughout various States of the United States. In the distribution of its products it causes same when sold to be transported from its said place of business in the city of Tacoma, Wash., into and through other States of the United States to said dealer-vendees at their respective points of location in such other States. In the course and conduct of its said business, respondent is and at all times herein mentioned has been in direct active competition with many individuals, partnerships and other corporations engaged in the sale and distribution of chairs in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business and for more than two years last past, respondent has offered for sale and sold its said chairs through and by means of catalogues, price lists, circulars and similar trade literature which it sent and supplied from time to time to its aforesaid dealer-vendees and in and through which it depicted, represented and sold many of its said chairs as "Walnut" and "Mahogany"; whereas in truth and in fact said chairs so described and represented as "Walnut" and "Mahogany" resembled in appearance respectively chairs made of walnut wood and mahogany wood, but were in fact composed of or made of wood other than walnut or mahogany, namely maple wood. Respondent's catalogues in which its chairs are depicted and described as aforesaid are frequently displayed by said dealer-vendees to their customers, the consuming public, in making sales of said chairs of respondent's manufacture to such consuming public.

PAR. 3. By use of the designation and description as "Walnut" and "Mahogany" of certain of its chairs in its catalogues, price lists, circulars and similar trade literature, as set forth in paragraph 2 hereof, respondent thereby places in the hands of its said dealer-vendees the means whereby said dealer-vendees are aided, assisted and enabled to misrepresent to the consuming public that said chairs are made of walnut wood or mahogany wood, respectively, and to sell such chairs as made of walnut wood, or mahogany wood, respectively, and to use respondent's said designation and descriptions in its catalogues as evidence and confirmation by the manufacturer that such misrepresentations are true in fact. Respondent's designation, descriptions and representation of said chairs as "Walnut" and "Mahogany", respectively, as set forth in paragraph 2 hereof was and is false and had and has the capacity and tendency to mislead and deceive many of the trade and purchasing public into the

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erroneous belief that said chairs are composed or made of walnut wood and mahogany wood, respectively, and to purchase said chairs in such erroneous belief.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who deal in and sell chairs made of walnut wood and mahogany wood, respectively, and who truthfully represent their said chairs to the trade and consuming public. There are also many of said competitors who deal in and sell chairs made wholly of woods other than walnut wood or mahogany wood, respectively, but who in no wise represent to the trade and consuming public that their said chairs are made of walnut wood and of mahogany wood, respectively. Respondent's above-mentioned acts and practices in designating and representing certain of its chairs as walnut and mahogany tend to and do unfairly divert trade from said competitors and are to the prejudice and injury of the public.

#### CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the stipulation as to the facts in lieu of testimony executed and filed by the respondent and the chief counsel of the Commission, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That respondent Northwest Chair Co., its officers, agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of chairs in interstate commerce, from directly or indirectly representing, describing, advertising, branding or labeling—

(a) Any such chairs or parts of such chairs as "Mahogany" unless the exposed surfaces thereof are composed wholly of solid mahogany wood or mahogany wood veneered with mahogany; or

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(b) Any such chairs or parts of such chairs as "Walnut" unless the exposed surfaces thereof are composed wholly of solid walnut wood or walnut wood veneered with walnut;

Provided that this order shall not be construed as prohibiting the use of such phrases as "Mahogany Finish," or "Walnut Finish," or phrases of similar import denoting color, in connection with chairs composed of other than mahogany or walnut wood, respectively, if and when in using such phrases and immediately preceding the same, the respondent clearly designates the name of the wood or woods of which such chairs are actually composed.

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

## IN THE MATTER OF

WINDSOR CIGAR COMPANY, BENJAMIN PARIS, DOING  
BUSINESS UNDER THE TRADE NAME AND STYLE,  
PARIS CIGAR COMPANY, RAPHAEL N. PARIS

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

*Docket 1301. Complaint, Apr. 8, 1925—Decision, May 24, 1927*

Where tobacco grown upon the Island of Cuba and known as Havana tobacco had long had a wide and favorable reputation among the trade and cigar-consuming public and been generally considered as being the highest grade of tobacco from which cigars could be made, and the word "Havana" had come to signify to said trade and public that the cigars to which it was applied were made entirely of tobacco there grown; and thereafter a corporation engaged in the manufacture and sale of cigars containing no Havana tobacco and two individuals associated with it therein, named cigars made by it as above set forth, and sold at retail at five cents each "Havana Cadet," and so advertised and labeled the same, together with the picture of a cadet and the inscription in smaller type "Imported Sumatra Wrapper—Domestic Filler" (under which name and label the aforesaid individuals had theretofore sold cigars without such inscription); with the capacity and tendency to mislead and deceive the trade and cigar-consuming public into believing the aforesaid cigars to be composed of Havana tobacco, and with the effect of diverting trade from competitors engaged in the manufacture and sale of cigars so composed and ordinarily sold to the consuming public, as to some, at the aforesaid price, and from competitors engaged in the manufacture and sale of cigars neither so composed nor so represented by them:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Edward E. Reardon* for the Commission.

*Mr. John E. Cross* and *Mr. Louis Hollander*, of Baltimore, Md., and *Mr. Martin Lehmyer* and *Mr. Henry C. Niles*, of York, Pa., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent corporation, engaged at York, Pa., in the manufacture of cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba, and in the sale thereof through respondent Paris as distributor, with naming product misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate

commerce, in that respondents, for about one year preceding the complaint, adopted as a name and designation for said cigars the phrase "Havana Cadet," and featured the same upon the containers thereof, with the capacity and tendency to mislead, deceive, and confuse many wholesale and retail dealers and many of the consuming public into believing said cigars to be composed entirely of tobacco grown on the Island of Cuba, long favorably known to the cigar-tobacco trade, the cigar trade, and the cigar purchasing public of the United States as Havana tobacco, and considered by many thereof superior in quality for the manufacture of cigars to tobacco grown elsewhere, and to cause many of said trade and public to purchase said cigars in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom sell cigars composed in part or in whole of tobacco grown elsewhere than in Cuba, without using the word Havana in connection therewith, or in other manner representing the same as composed entirely of tobacco grown in Cuba, and others of whom sell cigars composed entirely of such tobacco and properly label, brand, advertise, and otherwise represent the same under the name "Havana" and various phrases and appellations including such word; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having made and filed their answers to the complaint; formal hearings were had before an examiner of the Commission at which all of the above-named respondents appeared by counsel and testimony was taken and evidence introduced on the part of the Commission in support of the charges stated in the complaint and by the respondents in opposition thereto.

Thereupon this proceeding came on for decision before the Federal Trade Commission and upon the testimony and evidence introduced on the part of the Commission and the respondents and upon argument of counsel for the Commission and for the respondents, the Commission, having duly considered the record and being fully advised in the premises, makes these its findings as to the facts and its conclusions drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Windsor Cigar Co., is a corporation, organized April 29, 1924, under the laws of the State of Pennsylvania, with its principal office and place of business at Windsor, in York County, in said State.

PAR. 2. The respondent, Benjamin Paris, is an individual doing business under the trade name and style, Paris Cigar Co., having its principal place of business at Windsor, in York County, State of Pennsylvania.

PAR. 3. The respondent, Raphael N. Paris, is an individual having his principal place of business in the city of Baltimore, Md.

PAR. 4. The respondent, Windsor Cigar Co., is and has been since the date of its incorporation engaged in the manufacture and sale of cigars at Red Lion, in the county of York, Pa., and on May 20, 1924, the Windsor Cigar Co. entered into an agreement with respondents, Benjamin Paris and Raphael N. Paris, whereby the Windsor Cigar Co. agreed to manufacture cigars under the direction and according to the instructions of respondent, Benjamin Paris, and to sell them in accordance with the directions of respondent, Raphael N. Paris. This agreement provided that the Windsor Cigar Co. should manufacture cigars to be sold under the name "Havana Cadet" and that respondents Benjamin Paris and Raphael N. Paris were to be paid a commission, respectively, by the Windsor Cigar Co. for cigars made and sold under the name or brand of "Havana Cadet."

PAR. 5. Immediately after the organization of the respondent, Windsor Cigar Co., it began to manufacture cigars under the above contract. The cigars were packed in tin containers and have been and are sold to wholesale and retail dealers by respondents and the said cigars have been and are offered for sale and sold by said retail dealers to the consuming public. The respondents caused the said cigars when sold by them to be transported from within the State of Pennsylvania, to the purchasers, the said wholesale and retail dealers, located in various States of the United States other than the State of Pennsylvania. The cigars made and sold by the respondents under the brand name "Havana Cadet" have been and are offered for sale and sold to the purchasing public for use and consumption at the retail price of 5 cents. In the course and conduct of their said business respondents are and have been in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of cigars in interstate commerce between and among the various States of the United States,

PAR. 6. On the containers of the cigars made and sold by the respondents, as aforesaid, the respondents caused to appear the picture or illustration of a young man in a uniform such as is commonly worn by students of a military academy. Above this picture or illustration on the containers of the cigars and in advertisements, respondents caused the word "Havana" to be set forth and immediately underneath the picture the word "Cadet." On the containers of the cigars in smaller type the printed inscription "Imported Sumatra Wrapper—Domestic Filler" was caused to appear. In advertisements of the said cigars the respondents sometimes caused the brand or name "Havana Cadet" to appear without the said picture.

PAR. 7. For a number of years prior to the organization of the respondents' Windsor Cigar Co., cigars were sold by the respondents Benjamin Paris and Raphael N. Paris under the said brand, name, or label "Havana Cadet," in containers on which appeared the aforesaid picture of a young man in the uniform of a cadet together with the name "Havana Cadet" as above described, and during this time neither the inscription "Imported Sumatra Wrapper—Domestic Filler" nor any other inscription, or words, were used in connection with the sale of the said brand of cigars which indicated the name or nature in any way of the tobacco composing them, excepting the word "Havana" in the brand name "Havana Cadet."

PAR. 8. At all times herein mentioned and for a great many years prior thereto, the word "Havana" signified and still signifies to the tobacco trade and the consumers of cigars that the cigars of which it is descriptive are made as to all component parts, filler, binder and wrapper, of tobacco grown upon the Island of Cuba. Tobacco grown upon the Island of Cuba, generally known as Havana tobacco, has long had a wide and favorable reputation among the trade and cigar-consuming public and has been and is now generally considered the highest grade of tobacco from which cigars can be manufactured.

PAR. 9. The cigars made and sold by the respondents under the brand name "Havana Cadet" have not at any time contained, and do not now contain, any Havana tobacco.

PAR. 10. There are among the competitors of respondents referred to in paragraph 5 hereof many who manufacture and sell cigars made entirely of Havana tobacco, some of which cigars are ordinarily sold to the consuming public at 5 cents each. There are many others among said competitors who do not represent that cigars manufactured and sold by them are Havana cigars or are made of Havana tobacco except when the cigars so represented are made entirely from tobacco grown upon the Island of Cuba. The use of the name "Ha-

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vana" by respondents as set forth and found in these findings tends to and does divert trade from both classes of said competitors.

PAR. 11. The name or word "Havana" used by the respondents in the brand name "Havana Cadet" on the containers of their cigars, which are not made wholly of Havana tobacco, and in their advertisements, is misleading and has the capacity and tendency to mislead and deceive those engaged in the trade and also consumers of cigars into the belief that respondents' cigars thus described were and are made of Havana tobacco.

#### CONCLUSION

The practices of the respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answers of the respondents, filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That respondent Windsor Cigar Co., its officers, agents, representatives, servants, and employees and the respondents Benjamin Paris and Raphael N. Paris, their agents, representatives, servants, and employees cease and desist in connection with the sale and distribution of cigars in interstate commerce from—

(1) Using the word "Havana" as a brand name for or descriptive of such cigars unless the same be composed entirely of tobacco grown in the Island of Cuba.

(2) Representing in any manner whatsoever that any of respondents' said cigars other than those manufactured entirely from tobacco grown in the Island of Cuba are Havana cigars.

*It is further ordered*, That the respondents, Windsor Cigar Co., Benjamin Paris and Raphael N. Paris, shall, each of them, within 30 days after service upon them, respectively, of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each of them has complied with the order to cease and desist herein set forth.



## Syllabus

## IN THE MATTER OF

MCGOWAN LABORATORIES, INC., AND WOMANHOOD  
PUBLISHING CORPORATION

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

*Docket 1393. Complaint, July 13, 1926—Decision, June 6, 1927*

Where a corporation engaged in the preparation and sale of a toilet compound alleged to be effective in removing excess flesh, made many false and misleading statements in advertising the same in newspapers, magazines, and other publications of general circulation, to the effect that by the use thereof anyone might be freed from every ounce of unwelcome flesh, that getting thin was made pleasurable simple and easy for anyone thereby, that upon the application thereof to the human body a harmless chemical reaction took place, during which the excess fat was literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace desired by every man and woman, and that any purchaser thereof by patting the same gently on to the parts desired to be slenderized, thereby reduced any part of the body so treated, no matter how much or how little excess flesh there might be, quickly, surely, and permanently, the fact being that the preparation was of no value whatever for any such purposes; with the capacity and tendency to induce numerous persons seeking a safe and dependable means of quickly and permanently ridding their bodies of undesired flesh, into believing that the aforesaid product, when used as directed, produced the results represented; and

Where a corporation engaged in the publication and distribution throughout the United States of a monthly periodical designated True Romances, purposely and knowingly becoming a party to said false and fraudulent plan and scheme for the advertisement, sale, and distribution of said product (requiring for its success the cooperation of publishers of magazines and other publications of general circulation), and a medium for the accomplishment thereof, as such and for said purpose and for a consideration agreed upon, incorporated such false, misleading and fraudulent advertisements into its aforesaid magazine, and distributed the same as a part thereof to its subscribers and purchasers throughout the several States;

With the capacity and tendency to mislead and deceive persons into purchasing such fraudulent product, who might otherwise seek and obtain the services or products of competitors engaged in offering to the public, without any such misrepresentations, professional advice, instructions, etc., for ridding the body of undesired flesh, in response to the demands of many persons for a safe and dependable means of so doing, to the prejudice of the public and its competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

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*Mr. Martin A. Morrison* for the Commission.

*Tenney, Harding, Sherman & Rogers*, of Chicago, Ill., for respondent McGowan Laboratories, Inc.

*Mr. Joseph Schultz*, of New York City, for respondent Womanhood Publishing Corporation.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent McGowan Laboratories, Inc., engaged in the manufacture or preparation of a toilet compound or cream alleged to be effective in removing excess flesh, and in the sale to customers throughout the several States, and with principal place of business in Chicago, with advertising falsely or misleadingly in connection with the sale of said product, and charged respondent Womanhood Publishing Corporation, engaged in the publication of a monthly magazine "True Romances," and in the sale thereof to subscribers and to the public by dealers throughout the several States, and with principal place of business in New York City, with becoming purposely and knowingly party to and part of a false and fraudulent plan for the misleading and deceptive advertisement and sale of a product, and medium for the accomplishment of such a plan; all in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Said last-named corporation, as charged, published in its aforesaid magazine advertisements of the first-named respondent falsely representing that upon the application of said compound to the body "a harmless chemical reaction takes place during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires"; and that any purchaser "by applying said product and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely, and permanently," the fact being that the product in question was of no value for the purposes for which thus advertised and sold; with the capacity and tendency to induce those numerous persons seeking some safe and dependable means of removing excess fat or flesh into believing the aforesaid representations relative to said compound and to deceive those who might otherwise seek and obtain the services, products, means and

methods of competitors offering the public professional advice, information, instructions, etc., for ridding the body of excess flesh, without any such false or misleading and fraudulent assertions and representations, into purchasing the aforesaid fraudulent product; all to the prejudice of the public and respondent McGowan Laboratories' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, charging them with the use of unfair methods of competition in violation of the provisions of said act.

Respondents having entered their appearance and filed their separate and several written returns to the complaint herein, expressly waiving proof of the allegations of the complaint, admitting all allegations of the complaint, and consenting that the Federal Trade Commission may, upon said complaint and returns thereto, proceed to the final disposition of this cause and issue and serve upon respondents an order requiring respondents to cease and desist from using such method of competition, to wit, to cease and desist from the violation or violations of the law so charged in said complaint, the Federal Trade Commission, being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and its conclusions of law thereon:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, McGowan Laboratories, Inc., is a corporation, with its principal place of business located in the city of Chicago, in the State of Illinois. It is engaged in the manufacture or preparation of a certain toilet compound or cream alleged to be useful and effective in dissolving away and removing excess flesh of the human body, and in offering to sell and selling said compound or cream to customers in and throughout the several States of the United States. It causes its said product, when so sold, to be transported from its said place of business in the city of Chicago, in the State of Illinois, into and through other States of the United States to said purchasers thereof at their respective points of location.

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Said respondent designates, advertises and sells its said product by and under the name of "McGowan's Reducine."

PAR. 2. Respondent Womanhood Publishing Corporation is a corporation, with its principal place of business located in the city of New York, in the State of New York. It is engaged in publishing and distributing to the public a certain monthly magazine, under the name of True Romances, in which are included, together with the reading matter, many advertisements inserted and paid for by persons using said magazine as a medium for placing themselves and their products before the public. That said magazine is by respondent delivered, through United States mails and otherwise to the subscribers therefor, in and throughout the several States of the United States, and is by said respondent caused to be offered for sale and sold to the public by dealers in and throughout the several States of the United States.

PAR. 3. Respondent McGowan Laboratories, Inc., causes its said product to be advertised in newspapers, magazines, periodicals and other publications of general circulation throughout the United States and in various sections thereof. In all the aforesaid advertising, said respondent makes many false and misleading statements and assertions regarding the certain harmless chemical reaction which is alleged to take place in the portions of the human body to which said compound or cream is applied, to the effect that by the use of said product anyone may be freed from every ounce of unwelcome flesh and that getting thin is made pleurably simple and easy for anyone. In all said advertisements said respondent asserts and represents that upon the application of said product to the human body, a harmless chemical reaction takes place, during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires. In all said advertisements said respondent asserts and represents that any purchaser thereof, by applying said product and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely and permanently. That in and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or flesh or of other portions of the flesh they now bear, and that said advertisements have the capacity and tendency to induce such persons to believe that said respondent's said product, to wit, McGowan's Reducine, will, when used as directed, produce

the results in said advertisements so asserted and represented. That in truth and in fact, said product does not possess the qualities or properties so asserted and represented in said advertisements, and the use or application of the same upon the human body, as so directed, does not produce any of the results in said advertisements so asserted or represented, and said product is useless and of no value for the purposes for which it is so advertised and sold by respondent, McGowan Laboratories, Inc.

PAR. 4. That in the enterprise of so advertising said product to the public, and misleading and deceiving intended purchasers thereof as to its qualities and properties and the results of its said use upon the human body, it is necessary for respondent McGowan Laboratories, Inc., to have the cooperation of publishers of magazine and other publications of general circulation in and throughout the several States of the United States. That respondent Womanhood Publishing Corporation has purposely and knowingly become a party to, and part of, said false and fraudulent plan and scheme for the advertisement, sale, and distribution of said product, and a medium for the accomplishment of the same; and as such, and for said purpose, and for a consideration agreed upon by and between the respondents herein, has incorporated such false, misleading, and fraudulent advertisements into its said monthly magazine, to wit: True Romances, and has distributed and is distributing the same as such part of said magazine to its subscribers and to purchasers thereof in and throughout the several States of the United States.

PAR. 5. That, to meet the demands of said many persons so seeking a safe and dependable means of ridding their bodies of excess fat or flesh, or other portions of the flesh they now bear, many competitors of respondent are offering to the public professional advice, books of information and instructions, and other means and methods for the accomplishment of such results; which said competitors do not make any of the false, misleading, and fraudulent assertions and representations above alleged as to the service, means and methods so offered by them, or any like or equivalent false, misleading and fraudulent assertions and representations.

That said false, misleading, and fraudulent assertions and representations so made and published by respondents herein have the capacity and tendency to mislead and deceive persons who might otherwise seek and obtain the services, products, means and methods of said competitors, into purchasing said fraudulent product of respondent McGowan Laboratories, Inc.

PAR. 6. That the acts and practices of the respondents, and each of them, above alleged, are all to the prejudice of the public and of

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the competitors of respondent, McGowan's Laboratories, Inc., and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

## CONCLUSION

The acts and practices of respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, alleged in said complaint and set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the separate and several written returns of respondents to the complaint herein, and pursuant to the terms of said written returns of the respondents, and the Commission having accordingly made its report in writing stating its findings as to the facts and its conclusion of law thereon, that the acts and practices of respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, alleged in the complaint herein and set forth in said findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered*, By the Federal Trade Commission that respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, do cease and desist from all and singular the acts and practices in said complaint alleged and set forth in said findings as to the facts, to wit:

PARAGRAPH 1. That respondent, McGowan Laboratories, Inc., cease and desist, in selling or offering for sale in interstate commerce its certain toilet compound or cream in said complaint referred to, and in causing its said compound to be advertised for sale in interstate commerce in newspapers, magazines, periodicals or other publications of general circulation throughout the United States and in various sections thereof, or in otherwise advertising the same for sale in interstate commerce, from making the false and misleading statements and assertions regarding the certain harmless chemical reac-

tion which is alleged to take place in the portions of the human body to which said compound or cream is applied:

(1) To the effect that by the use of said product anyone may be freed from every ounce of unwelcome flesh and that getting thin is made pleurably simple and easy for anyone.

(2) To the effect that, upon the application of said product to the human body, a harmless chemical reaction takes place, during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires.

(3) To the effect that any purchaser of said compound, by applying said product and patting it gently into the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely and permanently.

(4) To the effect that any portion or portions of the alleged effects of the application of said compound to the human body, will result therefrom.

PAR. 2. That respondent, McGowan Laboratories, Inc., cease and desist in selling or offering for sale in interstate commerce its said certain toilet compound or cream, and in causing its said compound to be advertised for sale in interstate commerce, in newspapers, magazines, periodicals, or other publications of general circulation throughout the United States and the various sections thereof, or in otherwise advertising the same for sale in interstate commerce, from making any false and misleading statement or statements or assertions as to the said product or as to the effect or effects of its use upon, or application to, the human body.

PAR. 3. That respondent, Womanhood Publishing Corporation, cease and desist from incorporating in its certain magazine, to wit: True Romances, and distributing the same as a part of said magazine to its subscribers and to the purchasers thereof in and throughout the several States of the United States or any section thereof, all and singular the false and misleading statements and assertions in relation to the certain toilet compound or cream sold and offered for sale in interstate commerce by respondent, McGowan Laboratories, Inc., alleged and set forth in the complaint herein, or set forth in the Commission's findings as to the facts herein, or referred to or set forth in paragraph 1 or paragraph 2 of this order.

PAR. 4. That respondent, Womanhood Publishing Corporation, cease and desist from incorporating any of the false and misleading statements as to said toilet compound or cream referred to in paragraph 3 of this order, or any similar false and misleading statement

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or assertion, as to said toilet compound or cream, or as to the effect of its application to the human body, in any newspaper, magazine, periodical, or other publication, and distributing the same as a part of such newspaper, magazine, periodical, or other publication to the subscribers therefor, or purchasers thereof, in and throughout the several States of the United States or in any section thereof.

*And it is further ordered,* That respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, shall severally within 30 days after service upon them of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which each respondent respectively has complied with the order to cease and desist hereinabove set forth.



## Syllabus

## IN THE MATTER OF

## COMMONWEALTH MANUFACTURING CO. AND HARRY DUSHOFF, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES HARRY DUSHOFF &amp; COMPANY AND CHICAGO MANUFACTURING COMPANY

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

*Docket 1367. Complaint, Mar. 1, 1926<sup>1</sup>—Decision, June 25, 1927*

Where a corporation, and an individual, the organizer, owner, and operator thereof, engaged in the sale and distribution of prison-made binder twine, and prison-made shoes, which simulated the general appearance of those long used by and manufactured under the supervision and specifications of the War Department, though greatly inferior thereto in quality and workmanship, and of surplus prison-made shirts available for sale and distribution after supplying the needs of the State's public institutions (made by the State, at the State prison, by prison labor, in its own factory building and with its own manufacturing machinery, augmented by some sewing machines furnished by them, along with some cloth and trimmings); and doing no manufacturing, nor owning, controlling nor operating any shirt factory;

(a) Included in their corporate and trade names the word "manufacturing" and featured said names upon their order forms, letterheads, billheads, shipping tags, and other business stationery used in carrying on their aforesaid businesses, together with such statements as "Manufacturers and Distributors of BINDER TWINE," "Mills: Michigan City, Indiana. Buy Direct," "Manufacturers and distributors, SHOE DEPARTMENT," "Manufacturers, SHIRT DEPARTMENT, Factory: Michigan City, Indiana," "SPECIAL OFFER OF HIGH-GRADE WORK SHIRTS AT A LOW PRICE. Buy direct from the manufacturer," and in carrying on the sale of the shirts dealt in by them, held themselves out to customers and prospective customers as the manufacturers thereof; with the capacity and tendency to mislead and deceive the purchasing public into believing them to be the manufacturers of the aforesaid products, and that in buying from them they were obtaining the same directly from the manufacturers thereof, thereby eliminating and saving the costs and profits of middlemen, and to cause them to purchase said products in the aforesaid erroneous belief; and

(b) Sold the aforesaid shoes branded with the letters "U. S." on the soles thereof, in large and conspicuous type, surrounded by an outline of the United States shield, together with the brand "Munson Army Last" in smaller letters, and invoiced and billed the same to its customers as "United States Army Munson Last Work Shoes," with the capacity and tendency to mislead and deceive the consuming public into believing said shoes to be genuine army shoes or shoes manufactured under the supervision and specifications of the United States Government, and cause the pur-

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<sup>1</sup>Amended complaint, Mar. 23, 1926.

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chase thereof in such belief, and with the effect of thereby enabling retailers with or without further representations, to pass off said shoes to the consuming public as genuine army shoes as above set forth;

With the effect of unfairly diverting trade from and otherwise injuring the business of competitors engaged as manufacturers in the sale of the aforesaid products and rightfully representing themselves as such, competitors neither manufacturing such products so dealt in by them nor so representing themselves, and competitors engaged in the sale of shoes under truthful representations, whether formerly owned by or manufactured under the supervision and specifications of the United States Government, or not:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. G. Ed. Rowland and Mr. Henry Miller* for the Commission.  
*McNab, Holmes & Long*, of Chicago, Ill., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Commonwealth Manufacturing Co., an Illinois corporation, and respondent Dushoff, president, principal stockholder, and manager and operator thereof, both with principal office and place of business in Chicago and engaged in the sale of binder twine, shirts, and shoes to wholesale and retail dealers, which commodities they purchased from the manufacturers and resold at a profit to themselves, they doing no manufacturing, with adopting and using misleading trade or corporate name, misrepresenting business status, advertising falsely or misleadingly, and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in soliciting business under their aforesaid names from wholesale and retail dealers through circulars, pamphlets, leaflets, and other similar advertising matter, featured their aforesaid names, together with such statements as "Manufacturers and Distributors of Binder Twine," "Manufacturers of Work Shirts," "Buy direct from the manufacturer," "Manufacturers and Distributors, Shoe Department," and "Manufacturers, Shirt Department," with the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving retail and wholesale dealers into believing that in dealing with respondents they were purchasing from the manufacturers of the commodities concerned, and, in the case of the former, at a saving to them through the elimination of the middlemen, and to cause said dealers to make purchases of respondents in such beliefs, and with the tendency to divert business from and otherwise injure and prejudice competitors, many of whom, as manufacturers, sell their commodities to retail

or wholesale dealers, as the case may be, and others of whom, purchasing the commodities dealt in by them and reselling the same at a profit, in nowise represent themselves as the manufacturers thereof.

Respondents further, as charged, stamped and imprinted the legend "U. S. Munson Army Last" upon shoes sold by them to wholesale and retail dealers, said shoes not being originally Government surplus property nor "Army Shoes" but shoes obtained from manufacturers in the ordinary course of trade, and in some instances, stamped the words "T. J. Healy, Inspector," thereon, thereby placing in the hands of others the means of committing a fraud upon the consuming public by enabling unscrupulous dealers to offer said shoes for sale to said public as and for surplus army shoes, considered, in accordance with the general belief among the public throughout the United States, as sold to the civilian trade at prices greatly below the fair wholesale value thereof, and as resold by said retail trade to the consuming public at prices substantially below their fair retail value, and below prevailing retail prices for comparable shoes, procured from the manufacturer through the ordinary channels of trade, and thus causing many among such consuming public to purchase said shoes, acting in that belief; with the tendency to divert and with the effect of diverting business from and otherwise injuring and prejudicing competitors who sell surplus army shoes procured from the Government and rightfully and truthfully so represent the same, and competitors who sell shoes, not surplus army, without in anywise so representing them.

Such acts and practices of respondents were, as charged, all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondents Commonwealth Manufacturing Co., a corporation, and Harry Dushoff, doing business under the trade names and styles Harry Dushoff & Co. and Chicago Manufacturing Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having failed to file their answers herein to said amended complaint, hearings were had upon due notice thereof to respondents, and evidence and testimony was thereupon introduced in support of the allegations of said amended complaint before a trial examiner of the Federal Trade Commission theretofore duly ap-

pointed, upon which evidences and testimony respondents elected to stand without thereafter availing themselves of full opportunity which was given them to file briefs and present oral argument before the Commission in opposition to the charges of said amended complaint.

Thereupon this proceeding came on regularly for decision; and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Commonwealth Manufacturing Co., is a corporation organized in July, 1921, under, and existing by virtue of, the laws of the State of Illinois, with its branch office and place of business in the city of Chicago in said State. Its business is and has been the selling and distributing of prison-made products to wholesale and retail dealers and consumers throughout the United States. Said products and the respective periods during which respondent corporation marketed the same are as follows: Men's shirts, sold and distributed at all times since the date of respondent corporation's organization as aforesaid; binder twine, sold and distributed during the years 1921, 1922, and 1923; and shoes, sold and distributed for about three years next preceding July, 1925. In addition to carrying on business under its corporate name, part of respondent corporation's shirt business is and for more than three years last past has been conducted under the trade name and style of "Chicago Manufacturing Co." The authorized capital stock of said corporation is \$50,000, only \$5,000 of which has been issued and is outstanding, all of which outstanding stock is held by respondent Harry Dushoff, its president, except two shares, one of which is held by each of two individuals for the purpose only of enabling them to qualify as directors of the corporation.

PAR. 2. Respondent Harry Dushoff is an individual having his office and place of business in the city of Chicago, State of Illinois, and has been engaged ever since prior to July, 1921, in the business of selling and distributing to wholesale and retail dealers and consumers throughout numerous States of the United States prison-made shirts; and during the years 1921 and 1922, prison-made binder twine. He also has since the date of its organization managed and controlled the affairs, business and policies of respondent corporation Commonwealth Manufacturing Co. Respondent Dushoff conducted his said unincorporated business of selling and distributing shirts and binder twine under the trade name and style "Harry

Dushoff & Co.," to and until June, 1922. Thereafter and for more than three years last past he conducted, and is still conducting, his said shirt business under the trade name and style "Chicago Manufacturing Co."

PAR. 3. At all times in the course and conduct of said businesses, respondents Commonwealth Manufacturing Co. and Harry Dushoff solicited trade and orders for their products through and by means of circular letters, price lists, and similar trade literature, which they mailed from time to time to their customers and prospective customers throughout several States; and also through and by means of traveling salesmen, about ten in number, whom respondents employed on a commission basis and who on behalf of respondents called upon and solicited trade from customers and prospective customers throughout numerous States and offered for sale and sold said products of respondents. In distributing and supplying said products to their customers, respondents caused said merchandise to be transported in commerce from Michigan City, Ind., the place of manufacture, through and into other States of the United States, to the respective purchasers thereof in such other States; and in so carrying on their business respondents are and were at all times herein mentioned in direct active competition with many other persons, partnerships and corporations similarly engaged in selling and distributing similar products in commerce between and among various States, particularly those States into which respondents sold and distributed their products.

PAR. 4. Said businesses of respondent corporation, Commonwealth Manufacturing Co., and respondent Harry Dushoff, are conducted jointly and as a single unit by and under the active management and control of respondent Harry Dushoff. The place of business, equipment and employees of respondent corporation and of respondent Dushoff are identical. They occupy office space of about 15 feet by 20 feet and employ two clerical assistants, besides aforesaid traveling salesmen. Only one set of books is kept of the businesses of both respondents.

PAR. 5. Throughout the operation of their binder-twine business during the years 1921, 1922, and 1923, as aforesaid, respondents' combined sales of such binder twine amounted to 18,000 to 20,000 pounds per year, which was sold and distributed by them to dealers, farm organizations and farmers throughout several States, particularly the States of Kansas and Minnesota. At all times in the offering for sale, selling, and distributing of said binder twine to their customers, respondent Harry Dushoff, trading under the trade name and style Harry Dushoff & Co., and respondent Commonwealth Manufacturing

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Co., acting under the domination, management and control of respondent Dushoff, used and carried on such business with order forms, letterheads, billheads, shipping tags, and other business stationery containing the following representations set forth in large and conspicuous lettering, to wit:

**HARRY DUSHOFF AND COMPANY**  
Manufacturers and Distributors of  
**BINDER TWINE**

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Manufacturers and Distributors of  
**STANDARD AND**  
**SISAL TWINE**

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Mills: Michigan City, Indiana.

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**COMMONWEALTH MANUFACTURING COMPANY**  
Manufacturers and Distributors of  
**BINDER TWINE**

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Manufacturers and Distributors of  
**STANDARD AND**  
**SISAL TWINE**

Mills: Michigan City, Indiana.

Buy Direct \* \* \*

**COMMONWEALTH MANUFACTURING COMPANY.**

In truth and in fact neither of said respondents have ever manufactured binder twine, and in carrying on said binder-twine business they were in fact dealers or middlemen and not the manufacturers thereof. Said binder twine was manufactured by the State of Indiana in the Indiana State Prison, Michigan City, Ind., and with the labor of the prisoners there incarcerated. Respondents purchased said twine from the State of Indiana and resold and distributed same to their customers. The aforesaid statements and representations on respondents' letterheads, order blanks, billheads, shipping tags, and other business stationery were and are false and their use as set forth above had the capacity and tendency to mislead and deceive purchasers of said twine into the erroneous belief that said respondents were the manufacturers of said twine and that in buying from said respondents they were buying directly from the manufacturer and thereby eliminating and saving the costs and

profits of middlemen; and to thereby cause said purchasers to purchase said twine in such belief.

PAR. 6. The shoe business of respondent Commonwealth Manufacturing Co. was carried on for the space of about three years next preceding July, 1925, under the management, domination and control of respondent Harry Dushoff. Throughout said period respondent corporation's sales of said shoes were made in the name "Commonwealth Manufacturing Co." to jobbers, department stores, and so called Army and Navy goods stores throughout numerous States of the United States at the rate of from 50 to 60 pairs per day. In offering for sale, selling and distributing said shoes respondent corporation used letterheads, invoices, order forms, shipping tags, and other business stationery containing the following representations in conspicuous lettering, to wit:

### COMMONWEALTH MANUFACTURING COMPANY

#### Manufacturers and Distributors

#### SHOE DEPARTMENT.

Neither of the respondents have ever been the manufacturers of shoes. The shoes dealt in by respondent corporation as aforesaid were manufactured by the State of Indiana in the Indiana State Prison, Michigan City, Ind., and with the labor of prisoners there incarcerated by said State. Said shoes were sold by the warden of said prison to respondent corporation which in reselling and distributing them to its customers as aforesaid was in truth only a dealer or middleman. The use by respondents of said corporate name Commonwealth Manufacturing Co. with or without said other representations and assertions, all as set forth in this paragraph above, was false and misleading and had the capacity and tendency to mislead and deceive the purchasing public into, and to cause said purchasers to buy said shoes in, the erroneous belief that respondent corporation was the manufacturer thereof and that in so buying from respondent corporation they were purchasing said shoes directly from the manufacturer and thereby eliminating and saving the costs and profits of middlemen.

PAR. 7. In carrying on and conducting said shirt business respondent Dushoff, trading under the name and style of Chicago Manufacturing Co., and respondent Commonwealth Manufacturing Co., acting under the management and control of respondent Dushoff, sold and are selling jointly from 40,000 to 50,000 dozen shirts per annum. At all times in conducting said shirt business both respondents held themselves out to their customers and prospective customers as the manufacturer of said shirts, and offered for sale, sold, and distributed said shirts in the corporate name "Commonwealth Man-

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ufacturing Co." and in the trade name "Chicago Manufacturing Co."; and in circular letters, pamphlets, leaflets, letterheads, billheads, invoices and other business stationery, respondents caused the following representations and assertions to be set forth prominently and conspicuously:

**COMMONWEALTH MANUFACTURING COMPANY**

Manufacturers

SHIRT DEPARTMENT

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Factory: Michigan City, Indiana.

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**CHICAGO MANUFACTURING COMPANY**

Not Inc.

Manufacturers of

WORK SHIRTS

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Special Offer of

**HIGH-GRADE WORK SHIRTS AT A LOW PRICE**

Buy direct from the manufacturer

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**\$6.50 PER DOZEN, F. O. B. FACTORY**

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**COMMONWEALTH MANUFACTURING COMPANY**

Said shirts sold by respondents were manufactured by the State of Indiana in the Indiana State Prison, a penal institution of said State located at Michigan City, Ind. In a factory building owned by it, and within the walls of said prison, said State operates a shirt factory under its direct and absolute control and with the labor of the prisoners there incarcerated. Said State is and has been for many years last past engaged in manufacturing in and by such factory and with such prison labor large quantities of shirts. Said shirts are, in accordance with the laws of the State of Indiana, used primarily to supply the needs of the public institutions of the State of Indiana, numbering some 22. The surplus of the shirts so manufactured above and beyond the requirements of said State institutions is sold by the warden of said State prison in the open market,



and the shirts dealt in by respondents are and were sold and supplied by said warden to respondent from such surplus. Respondents pay said State for their shirts a certain stated price in cash and furnish some sewing machines, which the State uses to augment its other manufacturing machinery, and also furnish some cloth and trimmings which are manufactured by the State into shirts. Neither of respondents is nor has either ever been the manufacturer of the shirts sold by them as aforesaid. They do not own, control or operate a shirt factory.

PAR. 8. Respondents' representations that they are the manufacturers of the shirts sold by them and their use of the names "Commonwealth Manufacturing Co." and "Chicago Manufacturing Co." with or without said other statements and representations, all as set out in paragraph 7 hereof, are and were false and misleading and have and had the capacity and tendency to mislead and deceive the purchasing public into, and to thereby cause them to purchase said shirts in, the erroneous belief that respondents are and were the manufacturers of said shirts and that in buying from respondents they are buying and obtaining said shirts directly from the manufacturers thereof thereby eliminating and saving the costs and profits of middlemen.

PAR. 9. The prison-made shoes dealt in and sold by or in the name of respondent Commonwealth Manufacturing Co., as aforesaid, were a type of heavy work shoe simulating in general appearance shoes which have for many years been used by, and manufactured under the supervision and specifications of the War Department, a branch of the Government of the United States, large quantities of which were sold to the public by the Government after the close of the World War as surplus Government property, and which shoes so sold have been and still are quite extensively marketed as such among the trade and to the consuming public throughout the United States. Said shoes sold as surplus Government property are in great demand by the consuming public and are generally considered by the consuming public to be of high quality, sold at low prices and to have been made for and under the supervision and specifications of the United States Government. Respondent corporation's shoes were never owned by or manufactured for or under the supervision or specifications of the United States Government but were greatly inferior to such shoes in quality and workmanship. Said shoes of respondent corporation when sold by it to its customers, and when purchased by the consuming public in the ordinary course of trade, contained branded and embedded on the soles thereof the letters "U. S." in large conspicuous type surrounded by an out-

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line of what is commonly known and recognized by the public as the shield of the United States, below which in smaller letters and less conspicuous appeared the brand "Munson Army Last." With the full knowledge and consent of respondents said brands and words were placed on the shoes under the direction of the warden of the Indiana State Prison, Michigan City, Ind., for the purpose of aiding the salability of said shoes to the consuming public. Said shoes were invoiced and billed by respondent to its customers as "United States Army Munson Last Work Shoes."

PAR. 10. The use by respondent corporation, in connection with its shoes, of the letters "U. S." under the circumstances and conditions set forth in paragraph 9 above was misleading and had the capacity and tendency to mislead and deceive the consuming public into, and to thereby cause them to purchase said shoes in, the erroneous belief that same were genuine army shoes or shoes manufactured under the supervision and specifications of the United States Government. In selling its shoes with said brands, as set forth above, respondent corporation thereby placed in the hands of retailers the means by which such retailers could, with or without further representations, pass off said shoes to the consuming public as genuine army shoes or shoes made under the supervision and specifications of the United States Government.

PAR. 11. Among the competitors of respondents mentioned in paragraph 3 hereof are many who manufactured and sold shoes, binder twine and shirts in competition with respondents and who rightfully and truthfully represented themselves to be the manufacturers of such products. There are also many among said competitors who did not manufacture the shirts, binder twine or shoes which they sold in competition with respondents and who in nowise represented themselves to be the manufacturers of said products. There are likewise many of said competitors who sold in competition with respondent corporation and under truthful representations certain shoes which were and certain other shoes which were not owned by, or manufactured for or under the supervision and specifications of, the United States Government. The false and misleading practices indulged in by respondents as hereinbefore set forth tend to and do unfairly divert trade from and otherwise injure the business of said competitors and are to the prejudice of the public.

## CONCLUSION

The acts and things done by respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are

unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the testimony and evidence; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* (1) That respondent corporation Commonwealth Manufacturing Co., its officers, directors, agents and employees, and respondent Harry Dushoff, his agents, representatives, and employees, cease and desist from carrying on the business of selling shirts, shoes, binder twine, or other merchandise in commerce among the several States of the United States under a trade name or corporate name which includes the word "manufacturing," or a word or words of like import, and from making representations through advertisements, letterheads, order forms, billheads or other business stationery, or by any other means whatsoever in connection with such business; that respondents, or either of them, are the manufacturers of said product, unless and until such respondent actually owns and operates, or directly and absolutely controls a factory in which the products so sold and distributed by such respondent are manufactured.

(2) That respondent corporation Commonwealth Manufacturing Co., its officers, directors, agents, servants, and employees cease and desist from selling and distributing in interstate commerce any shoes which are branded or labeled with the letters "U. S." or with letters or words of similar import, or with a simulation of what is commonly recognized as the shield of the United States, or any other device of similar import, unless all of said shoes so sold and distributed were made for and under the supervision and specifications of the Government of the United States.

*It is further ordered,* That respondents Commonwealth Manufacturing Co. and Harry Dushoff shall within 60 days after the service upon them of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF  
AMERICAN SNUFF COMPANY

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

*Docket 1100. Complaint, Dec. 17, 1923<sup>1</sup>—Decision, June 30, 1927*

Where a corporation engaged in the manufacture and sale of Strong Scotch snuff in competition with two concerns, to which it had theretofore conveyed factories and brands formerly owned by it, in compliance with a decree entered, pursuant to a mandate of the Supreme Court, in a suit by the United States against the American Tobacco Co. and subsidiary and affiliated companies, including itself, requiring it to dispose of approximately two-thirds of its business (amounting at the time to over 96 per cent of the snuff manufactured and sold in the United States);

- (a) Employed a cooperative system or plan directed to the maintenance and observance by its jobber customers, and said jobbers' retail dealer customers, of the resale prices fixed by it and made known to such jobbers and dealers through price lists, orders, correspondence, and salesmen's interviews, and in pursuance of the aforesaid scheme or plan, in which it sought and received the cooperation of such jobbers and dealers;
- (1) Entered into agreements and understandings binding them to maintain its said resale prices;
  - (2) Refused to sell its products to jobbers, or to make drop shipments thereof to retailers, who respectively either failed to observe its prices or would not agree to maintain the same in the future, or to sell to jobbers who resold to retail dealers who would not so agree, and, with the cooperation of its jobbers, prevented retail dealers falling to maintain such prices and refusing to so agree, from obtaining its products;
  - (3) Reinstated upon its list of customers, jobbers and retailers previously refused shipments on account of price cutting, upon their agreeing to maintain prices thereafter;
  - (4) Solicited and secured reports and information from jobber customers and retail dealers relative to prices at which others were selling its products, required its salesmen to investigate price cutting thus or otherwise brought to their attention, and notified reporting customers of cooperation and action on its part to stop price cutting so reported;
  - (5) Notified jobber customers of instances of price cutting by their retail dealers and that it would refuse to make drop shipments to such dealers, and received and accepted cooperation from the aforesaid jobbers in obtaining agreements from said dealers binding them thereafter to sell its products at its designated resale prices;
  - (6) Maintained a "Don't Ship List" upon which it enrolled the names of price-cutting jobbers and retailers, and supplied jobbers with lists of price-cutting retailers to whom it refused to make shipments, notifying them that it would decline to make shipments to or for the account of those who supplied such retailers;
  - (7) Removed the names of retailers, entering into agreements and understandings thereafter to maintain its prices or indicating such a purpose, from

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<sup>1</sup>Amended complaint, June 6, 1924.

the aforesaid list, resumed business relations with them, and notified jobbers to whom it had previously sent such list, of its action;

- (8) Used identifying marks on the containers of its products for the purpose of tracing shipments and identifying price-cutting dealers or those supplying price-cutting dealers, and preventing such dealers from obtaining its products; and
- (9) Secured from jobber customers promises and assurances that they would maintain the same rate of discount from competitors' list prices as maintained on its own products, and refused to sell the same to any jobbers declining to so agree, and, with the cooperation of other jobber customers, prevented such jobbers from securing further shipments of its products; With the result that it was enabled to obtain agreements and cooperation of jobbers and dealers and secure the general maintenance of its prices, and with the effect of suppressing competition among such jobbers and retail dealers in the distribution and sale of its products, constraining them to sell the same at the prices fixed by it, thereby preventing them from selling the same at such lower prices as they might consider warranted by their respective selling costs and trade conditions generally, and unduly suppressing and hindering competition; and

Where said corporation,

- (b) Sought to induce, and induced wholesale and retail dealers to cancel or repudiate their contracts with a competitor and return or put away said competitor's brands, through making and circulating false and misleading statements and representations to the effect, among other things, that a competitor was a "little company", would soon "be out of business", that its product was to be "taken off the market", that its plan to increase the price of one of its brands was for the purpose of inducing large purchases and was a "loading scheme", and that there was no warrant for any increase in price;
- (c) Sought through false and disparaging representations concerning its competitors' products, to dealers in and consumers of snuff, to obtain therefrom, by trade or exchange, competing snuffs found in their possession;
- (d) Stated that "a great many people think snuff is made of trash, cigar stumps, tobacco stems, etc.", but that its snuff was made of the best heavy-bodied leaf tobacco with extraordinary care, and was therefore "absolutely the cleanest, purest form of manufactured tobacco" offered to the trade, and falsely stated that products of competitors contained trash, were made out of cigar stumps, old tobacco chews, tobacco stems, contained opium, copperas, glass, hair, dirt, and similar substances, and would cause blindness, tuberculosis and other injury to the health, misrepresented its brand as one of its competitors, the competitor as owned by it, and the competitor's brand as not the genuine one, and falsely stated that the competitor's brands would soon be off the market, and that the containers for one of said competitor's brands were short weight, and filled with an inferior and fluffier tobacco, therefore requiring a larger container; with the effect of causing consumers to cease using competitive brands and the sales of such brands by merchants to materially decrease;
- (e) Made, published and circulated through advertising cards, signs and other types of advertising matter, and brand names featured thereon, and through oral representations by salesmen and representatives, false and misleading statements to the effect that its product was the only 100 per cent pure snuff

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on the market, containing no copperas, alum, alfalfa, opium or dope, and sold in full weight containers, all in conjunction with the aforesaid misrepresentations of competitor's products, for the purpose of injuring such competitors and with the effect of misleading and deceiving the public into believing the various misrepresentations above set forth; and

- (f) Sold a brand containing no ingredient other than tobacco labeled "Dental", together with a depiction of a tooth, and other matter, all so closely simulating a former brand or formula containing an ingredient calculated to be beneficial to teeth and gums and so represented to the purchasing public, as to confuse and mislead purchasers familiar with the original product as to the character and contents of the latter; and in its advertising and orally, made false representations to purchasers and consumers to the effect that its said Dental brand was prepared especially for the teeth and would cure pyorrhea and other diseases of the teeth and gums, together with false and disparaging statements to the effect that competitors' brands would destroy the teeth, cause pyorrhea, bleeding gums, tuberculosis and other maladies, the fact being that its said brand stood on no different basis in the foregoing respects than any other Strong Scotch snuff; with the result that many consumers purchased such brand in reliance upon such representations and refrained from purchasing competitors' brands, and the consuming public was misled and deceived into benefiting it by increased sales, and into correspondingly decreasing those of its competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. William A. Sweet* for the Commission.

*Mr. Morton E. Finch*, of Memphis, Tenn., *Mr. S. P. Smith*, of Birmingham, Ala., and *Mr. Edward S. Rogers*, of Chicago, Ill., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation engaged in the manufacture of snuff and other tobacco products, and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of business in Memphis, with maintaining resale prices and disparaging and misrepresenting a competitor, and its products, with the intent and effect of intimidating and inducing said competitor's customers to cancel contracts with it for the purchase of its products and to return and cease dealing therein, and of inducing prospective customers thereof to refuse dealing therewith, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years preceding the complaint "has enforced and still enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its aforesaid products, and especially said snuff, shall

be resold by wholesale and retail dealers handling same; and respondent has enlisted and secured the support and cooperation of wholesale and retail dealers and of respondent's officers, agents, and employees in enforcing said system.

"In order to carry out said system respondent, during aforesaid time, has employed and still employs the following, among other means, whereby respondent and those cooperating with it have undertaken to prevent and have prevented wholesale and retail dealers handling respondent's products from selling same at prices less than aforesaid resale prices established by respondent":

(a) Fixing uniform minimum prices for the sale of its products by retailers to the public, and, by a system of discounts, for the sale thereof, by wholesale dealers to retail dealers;

(b) Publishing its resale prices to wholesalers and retailers handling its products, through correspondence, salesmen and other agents, and notifying them that they must observe and maintain the same, and that it will refuse further sales of its products to price cutters or to those wholesalers supplying price cutting retailers;

(c) Refusing further sales to price cutters or those supplying same, pending the giving of promises and undertakings to maintain prices in the future;

(d) Securing from wholesale and retail dealers names of price cutting dealers or those selling thereto;

(e) Requiring its traveling salesmen and other agents to search for and investigate price cutting and report names of offenders to it;

(f) Marking containers of their products with numbers and symbols in order to trace the same and identify price cutting dealers or those selling thereto, and use thereof by its salesmen and other agents in so identifying offending dealers, in the course of the investigations and searches made by them;

(g) Visiting offending dealers so identified, and exacting promises and undertakings that they will thereafter maintain its prices as a condition of being further supplied with its products, refusing to supply further those declining to give such promises or undertakings, and continuing, in many instances, to supply those giving the same;

(h) Listing names of offending dealers, who are not to be supplied pending the giving of promises and undertakings by them, as above set forth, and "which lists are used by respondent and those cooperating with it in and about the enforcement of said resale price system";

(i) Supplying wholesalers with names of price-cutting retailers, and advising them no longer to supply the same with its products;

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(j) Requiring and exacting through salesmen and agents from dealers selling its products and similar products of other manufacturers, promises and/or undertakings not to sell the latter at prices lower than its own specified uniform prices, as a condition of obtaining its products for resale, and refusing to sell and supply its products to such dealers failing to make or enter into such promises or undertakings; and

(k) Using other equivalent cooperative means and methods to compel the maintenance of its said resale prices.

According to the complaint "the effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among wholesale and retail dealers in the distribution and sale of respondent's snuff and other products; to constrain said dealers to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive consumers of said products of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Respondent further, as charged, for about two years preceding the complaint "has made, published and circulated for more than two years last past, and continues to make, publish and circulate, in interstate commerce, by written statements, and by oral representations of its salesmen and agents, false, misleading, disparaging and unfair reports, assertions, statements and representations concerning the said United States Tobacco Co. [theretofore referred to as one of its competitors], its officers, policies and products, which have the purpose and effect of intimidating and inducing the customers of the said United States Tobacco Co. to cancel contracts already made with it for the purchase of its products and to return and cease to deal in such products, and of inducing prospective customers of said United States Tobacco Co. to refuse to purchase or contract to purchase its said products, among which statements and representations are the following:

"(a) That the products of said United States Tobacco Co. contain opium, glass, hair, dirt and similar substances;



“(b) That said United States Tobacco Co. connived at price cutting, planted pace-setters, and procured the cutting of prices through secretly encouraging ‘cut-throat’ jobbers;

“(c) That the financial condition of the said United States Tobacco Co. was such that it could not make good its guarantees;

“(d) That the contents of the 6-ounce bottle of snuff manufactured and sold by said United States Tobacco Co. weighs less than 6 ounces;

“(e) That respondent made other similar statements and representations disparaging the said United States Tobacco Co. and its products.

“That the said statements and representations have the tendency and capacity to mislead and deceive purchasers and prospective purchasers with respect to the United States Tobacco Co. and its said products, and that the effect thereof has been and is to injure and embarrass the said United States Tobacco Co. in its business and to hinder and restrain competition in the manufacture and sale, in interstate commerce, of snuff and other tobacco products. Wherefore, said acts and practices of respondent are all to the prejudice of the public and of respondent’s competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled ‘An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,’ approved September 26, 1914.”

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an original complaint upon the respondent, American Snuff Co., on or about December 17, 1923, and an amended complaint, on or about June 6, 1924, and after the close of the testimony, on motion of the chief counsel of the Commission, duly granted, the complaint was further amended to conform to the evidence. Said complaint and its amendments charge respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answers to the original complaint and the first amendment, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before William F. Dinnen, an examiner of the Federal Trade Commission, duly appointed. Thereupon this proceeding came on for decision and the Commission having duly

considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation formed in 1900 under the laws of the State of New Jersey with a capitalization of \$15,000,000. During all the times herein mentioned respondent has been and still is engaged in the manufacture and sale of Strong Scotch snuff, having one factory at Memphis, Tenn., and another at Clarksville, Tenn. Its executive offices are situated at Memphis, Tenn. It ships its product when sold from its said factories into and through various States of the United States, principally into the States of Texas, Oklahoma, Arkansas, Mississippi, Alabama, North Carolina, West Virginia, Virginia, and points in Tennessee. Its annual output is approximately 11,000,000 pounds. Its product is marketed under various brand names, the chief of which are "Garrett," "Honest" and "Dental." It sells its said products to jobbers and through jobbers to retail dealers throughout the above territory. It makes drop shipments directly to retail dealers for the account of jobbers upon orders solicited from retail dealers by its salesmen and jobbers' salesmen which are submitted to the jobbers for acceptance.

In the course and conduct of its business, respondent is in competition with other corporations, partnerships and individuals also engaged in the manufacture and sale of Strong Scotch snuff, and who sell and transport their products from their respective factories or places of business in the United States into and through the various States of the United States.

PAR. 2. Upon its organization in 1900, respondent consolidated the snuff businesses of the Atlantic Snuff Co., the George W. Helme Co., the Continental Tobacco Co., and the American Tobacco Co. The Atlantic Snuff Co. in turn was a consolidation of W. E. Garrett Co., Stewart Ralph & Co., Dental Snuff Co., Bruton & Condon Co., and Crain & Co. The Continental Tobacco Co. included the old Lorillard Co. and the Bowers Snuff & Tobacco Co. Up to December, 1911, respondent was a subsidiary of the American Tobacco Co. and manufactured and sold over 96 per cent of the snuff produced in the United States, amounting approximately to 29,000,000 pounds annually. In December, 1911, by a decree of the Circuit Court for the Southern District of New York, entered pursuant to the mandate of the Supreme Court of the United States, in the suit of the United States against the American Tobacco Co. and its subsidiary and affiliated companies, including this respondent, the American Snuff

Co., the respondent herein, was required to dispose of approximately two-thirds of its business.

Pursuant to that decree two new corporations were formed, the George W. Helme Co. and Weyman-Bruton Co. (now the United States Tobacco Co.). There were conveyed to the George W. Helme Co. as of December 1, 1911, the factories formerly owned and operated by respondent, at Helmetta, N. J., and Yorklyn, Del., together with the brands of snuff manufactured therein, amounting to approximately 9,800,000 pounds annually. Among these brands "Railroad Mills", "Lorillard", "Buttercup", and "Maccoboy". The factories at Spottswood, N. J., Chicago, Ill., and Nashville, Tenn., together with the brands manufactured therein, were conveyed to the Weyman-Bruton Co. Among the brands so conveyed, are "Copenhagen," manufactured at the Chicago factory, and "Bruton" and "Rooster", Strong Scotch snuffs, manufactured at the Nashville factory. The brands conveyed to the Weyman-Bruton Co. amounted in the aggregate to approximately 9,000,000 pounds annually. This respondent retained the factories at Memphis, and Clarkesville, Tenn., and the Strong Scotch brands made therein. These brands were chiefly "Garrett", "Honest" and "Dental", and amounted in the aggregate to approximately 10,500,000 pounds annually.

There are several distinct types of snuff, chief of which are:

(1) Scotch snuff, which consists of tobacco leaf and stems finely powdered or ground and is divided into several classes, the most important of which is Strong Scotch snuff which consists of powdered tobacco leaf and stems with nothing whatever added. There are also sweet Scotch, salt Scotch, hightoast Scotch and hightoast salt Scotch. Of these the Strong Scotch is the largest seller;

(2) Maccoboy snuffs, designated in some instances by consumers as black snuff;

(3) Chewing snuffs, sometimes known as Swedish, which are ground much less fine than the Scotch snuffs and contain a large amount of moisture.

These various types of snuff enjoy their chief popularity in particular sections of the country. Sweet snuff is popular along the Atlantic seaboard from Norfolk to the southern end of Florida. The heavy Strong Scotch snuff belt includes Texas, Arkansas, Louisiana, Oklahoma, Mississippi, Tennessee, Alabama, the western end of Florida, and the northern portion of Georgia, while the Maccoboy trade lies principally from Central Georgia south into the southeast section of Alabama. The chewing snuffs are popular where there is Scandinavian population, particularly in the Northwestern States.

Said division of factories and brands brought about a situation whereby the George W. Helme Co.'s brands consisted almost entirely of (a) sweet and Maccoboy snuffs, which were sold principally in the Southeastern States and along the Atlantic seaboard, and (b) also Strong Scotch snuff having its chief sale in the West Virginia territory, while the business of Weyman-Bruton Co. consisted of (a) chewing snuff which had its chief sale in the Northwest, and (b) Strong Scotch snuffs manufactured at the Nashville factory and having their principal sales in western North Carolina, eastern and central Tennessee, a part of Kentucky, northern Georgia and Alabama from the north almost down to the coast. The brands retained by the respondent, being Strong Scotch only, had their principal sales in Texas, Arkansas, Louisiana, Oklahoma, Mississippi, and Tennessee. At the time of the disintegration aforesaid (December 11, 1911) the sales of the brands of snuff retained by respondent approximated 95 per cent of the snuff business in the States of Arkansas, Louisiana, Texas, and Oklahoma, and 85 per cent of the snuff business in Mississippi; far the greater portion of this business, 80 to 85 per cent being in the Garrett brand. The only territory where respondent had any substantial competition was the middle Southern States aforesaid, where it was in competition with the brands of Weyman-Bruton Co. and the Helme Co., and also the West Virginia territory, where it was in competition with the Strong Scotch business of the Helme Co.

Respondent maintains throughout its aforesaid territory a force of salesmen under the immediate direction of division managers. Its territory west of the Mississippi River in turn is under the direction and in charge of one of respondent's vice presidents, the remaining territory is under the direction and in charge of another of respondent's vice presidents. Many of the respondent's division managers of salesmen, as well as salesmen, were in its employ prior to the disintegration in 1911 and thereafter remained with the respondent in the same capacities. Conferences for the purpose of discussing sales and marketing plans are held by the respondent's officers with its sales force at Memphis, Tenn., annually, and from time to time in the respective districts where such sales force operates.

PAR. 3. Respondent publishes and issues price lists which designate the prices at which its snuff is to be resold by jobbers in case lots of 48 packages each to retail dealers, and which also designate the prices at which retail dealers shall sell the various single packages to consumers, as "Thirty-five cent sellers", "Twenty-five cent sellers", "Ten-cent sellers", and "Five-cent sellers". From the list price per case respondent gives to jobbers a trade discount of 10

per cent on shipments for stock and allows a cash discount of 2 per cent. The resale prices designated by respondent for jobbers from their stock are these list prices per case, less 2 per cent discount for cash. On drop shipments by respondent direct to retail dealers for the account of jobbers respondent gives to the jobbers a trade discount of 10 per cent and 4 per cent and 2 per cent cash discount. The resale prices designated by respondent for jobbers on drop shipments are these list prices, less 5 per cent trade discount and 2 per cent cash discount. These price lists are sent by respondent to jobbers and are put in the hands of jobbers' salesmen. These prices and discounts are also made known to the jobbers by respondent through correspondence and salesmen's interviews. Jobbers thus know that the resale prices designated by respondent are the prices at which said jobbers are to resell respondent's snuff out of their stock less 2 per cent for cash, and that drop shipments are to be billed by said jobbers at said prices less 5 per cent trade discount and 2 per cent for cash.

Retail dealers are informed by respondent through correspondence and salesmen's interviews what its designated resale prices to consumers are and initial orders for its snuff solicited from retailers by respondent's salesmen to be shipped through jobbers are written up under instruction from respondent as "Garrett Bottles, 35¢", etc., so that said retailers are informed of respondent's designated resale prices when such orders are placed.

PAR. 4. Respondent has sought and received, and still receives, the cooperation of its jobber customers and of retail dealers in maintaining its designated resale prices. Respondent enters into agreements and understandings with its said jobber customers and with retail dealers to maintain its designated resale prices. Respondent refuses to sell its products to jobbers who fail to maintain its designated resale prices and who will not enter into agreements to maintain the same in the future. It also refuses to make drop shipments of its product to retail dealers who fail to maintain its designated resale prices, and who will not agree to maintain the same in the future. In carrying out its purpose to maintain the resale prices designated by it, and as a part of the cooperative system between the respondent and its customers, respondent refused to make shipments to between 50 and 60 jobbers, and to make drop shipments to hundreds of retail dealers who failed to maintain its designated resale prices, and has also refused to sell its product to those jobbers who sell to retail dealers who will not agree to maintain its designated resale prices. Through the cooperation of its jobber customers, respondent has prevented retail dealers who have failed to main-

tain its designated resale prices and who refused to agree to maintain the same in the future from obtaining its product.

Respondent reinstates on its list of customers jobbers and retailers who have previously been refused shipments on account of price-cutting when such jobbers and retailers enter into agreements with respondent that they will maintain its designated resale prices in the future.

PAR. 5. Respondent has solicited and secured and still solicits and secures from its jobber customers and from retail dealers reports and information concerning prices at which other jobbers and retail dealers are selling its products. These reports are received by respondent in correspondence and from interviews with its salesmen. Its salesmen are required to make daily reports of instances of price-cutting which come to their attention or are brought to their attention by respondent's customers. Respondent's salesmen are instructed to investigate reports received from respondent's customers concerning price-cutting by other customers, and do investigate the same. Respondent's customers who so report instances of price-cutting receive from it assurances of cooperation and action on its part to stop such price-cutting. Respondent notifies its jobber customers of instances of price-cutting by retail dealers who are customers of such jobbers, and that it will refuse to make drop shipments to said retail dealers, and receives and accepts cooperation from such jobbers in obtaining agreements from such retailers that they will in the future sell respondent's product at its designated resale prices.

PAR. 6. As a part of its cooperative system and as a means of maintaining its designated resale prices respondent keeps a list designated "Don't Ship List", upon which it enrolls the names of jobbers and retail dealers to whom it refuses to sell its product for the reason that they resell the same at less than respondent's designated resale prices. Respondent supplies jobbers with lists containing the names of retailers to whom it refuses to make drop shipments of its products for the reason that such retailers sell the same at less than respondent's designated resale prices, and notifies such jobbers that it will decline to make shipments to or for the account of jobbers who supply such retailers. When the retailers whose names were enrolled on respondent's "Don't Ship List" enter into agreements and understandings to maintain its designated resale prices in the future, or indicate their purpose to sell at said prices, such dealers are removed from said list and business relations with them are resumed. Jobbers to whom such lists had previously been sent are notified of such action by respondent.

PAR. 7. As a part of its cooperative system and as a means of maintaining its designated resale prices respondent has used and still uses certain identifying marks or symbols on the containers in which its products are shipped to trace shipments for the purpose of identifying dealers who sell its products at less than its designated resale prices, or who sell to other dealers who sell such products at less than its designated resale prices, and for the purpose of preventing any dealer who fails to maintain its said designated resale prices from obtaining its products.

PAR. 8. Respondent secured from certain of its jobber customers promises and assurances that they would maintain the same rate of discount from the list prices of respondent's competitors' products that they maintained on respondent's products. Respondent refused to sell its products to any jobbers who refused to enter into such agreements and understandings, and through the cooperation of its other jobber customers prevented jobbers who would not so agree from obtaining further shipments of its products.

PAR. 9. Jobbers throughout the territory in which respondent's products are sold are informed and know that their accounts will be closed and further shipments refused by respondent if they sell its products at less than the resale prices so designated by it. Retail dealers throughout said territory are informed and know that they will not receive drop shipments of respondent's products if they sell same at less than respondent's designated resale prices. In localities in which the sales of respondent's brands "Garret" and "Dental" predominate, by reason of the acts of respondent in closing the accounts of and refusing to make shipments to between fifty and sixty jobbers and drop shipments to hundreds of retail dealers for the account of jobbers, for failure to observe its designated resale prices, a condition was brought about and still prevails whereby respondent was and is able to obtain agreements and the cooperation of its jobbers and dealers to maintain specific uniform resale prices, thus fixed, and through such agreements and cooperation of dealers respondent's said resale prices were and are generally maintained.

PAR. 10. The direct effect and result of the above acts and practices of respondent in cooperating with its jobber customers and with retail dealers has been and now is to suppress competition among such jobbers and retail dealers from selling respondent's products at respondent's products and to constrain such jobbers and retailers to sell said products at prices so fixed by respondent, thereby preventing such jobbers and retail dealers from selling respondent's products at such lower prices as they might deem to be warranted by their respective selling costs and by trade conditions generally, and to unduly suppress and hinder competition in interstate commerce.

PAR. 11. During the times mentioned in the complaint and commencing shortly after December, 1911, the date of the court decree referred to in paragraph 2 hereof, respondent, by letters and personal exhortation to its sales managers and salesmen, instructed them, frequently upon pain of dismissal from its employ for failure to carry out said instructions, to persuade or induce or attempt to persuade or induce wholesale and retail dealers to cancel or repudiate their contracts for snuff with respondent's competitor, Weyman-Bruton Co., and to procure the return by dealers of said competitor's brands of snuff found in the possession of such dealers by causing the same to be packed up and shipped back to said competitor. Respondent, by written statements and by oral representations of its salesmen, pursuant to the aforesaid instructions, through the territory in which its competitor's snuff was sold, made and circulated false and misleading statements and representations concerning its said competitor, among which were the following: That said competitor was a "little company"; that it would soon "be out of business"; that its product was to be "taken off the market"; that its plan to increase the price of its "Rooster" brand of snuff was for the purpose of inducing large purchases of said snuff and was "a loading scheme"; and that there was no warrant for any increase in the price of snuff, and thereby procured the cancellation by wholesale and retail dealers of a great number of contracts with the Weyman-Bruton Co. for the purchase of its snuff and the return by such dealers of the snuff manufactured by the Weyman-Bruton Co. then in such dealers' stores, and induced other dealers to take the snuff products of the Weyman-Bruton Co. off their shelves and either put them out of sight of prospective customers or pack them up and send them back to Weyman-Bruton Co.

Said acts and the false and misleading statements and representations of respondent and its salesmen were made for the purpose of securing cancellation of orders for its said competitor's product and of otherwise interfering with the normal flow of interstate commerce in snuff and resulted in the cancellation of such orders in great numbers by merchants who had placed same with the Weyman-Bruton Co. for its snuff.

PAR. 12. During the period referred to in the complaint herein, respondent from time to time in addition to its regular sales force, placed throughout the territory in which Strong Scotch Snuff is principally used an augmented force of salesmen. These salesmen called upon merchants and consumers throughout the territory. Very soon after the court decree of December, 1911, referred to in paragraph 2 hereof, respondent's officers and sales managers placed



in the hands of its salesmen a circular letter, with an inclosure, by means of which each of respondent's salesmen has been and still is told that "a great many people think snuff is made of trash, cigar stumps, tobacco stems, etc.," but that respondent's "Garrett" snuff is made of the best heavy bodied leaf tobacco; that extraordinary care is used in the handling of the tobacco from which said snuff is made, and "for this reason it is absolutely the cleanest, purest form of manufactured tobacco that is offered to the trade." Commencing immediately after the respondent began to issue this circular letter and inclosure, and continuing up to the time of the several hearings herein, the salesmen of the respondent, with its knowledge, in certain territories in which the brands of snuff manufactured by its competitors are sold, made and circulated false and misleading statements concerning the brands of snuff made by said competitors. Among these statements were the following: that the products of the Weyman-Bruton Co. and the George W. Helme Co. contained trash and were made out of cigar stumps, old tobacco chews, tobacco stems, contained opium, copperas, glass, hair, dirt, and similar substances, and would cause blindness, tuberculosis and other injury to the health. Respondent's salesmen, in certain other territories, further falsely stated and represented that the Weyman-Bruton Co. was in fact owned by respondent, that its brands of snuff would soon be off the market, that respondent's Brand "Honest" was really "Honest Bruton" and the "Bruton" brand of the Weyman-Bruton Co. was not genuine "Bruton", because it had been made by Bruton & Condon, a partnership of which Mr. Condon, now respondent's president, was a member and could be made by no one except Mr. Condon and his employees remaining in respondent's employ. Respondent's salesmen further falsely stated that the 6-ounce bottles in which the Weyman-Bruton Co. packed its Rooster snuff were short weight, and that Rooster being made of lower grade tobacco the snuff flour is fluffier and consequently requires a larger container. These false and misleading statements were made over a long period of years by respondent's salesmen, with its knowledge and consent, to dealers in and consumers of snuff of various sections throughout the territory covering the states from Kentucky to the Gulf of Mexico, and from Texas to the Atlantic Ocean, in which respondent had competition in the sale of Strong Scotch Snuff. These acts of respondent and its salesmen had and have the effect of causing consumers to cease using the brands of snuff made by respondent's competitors, and of causing sales of said brands by merchants to materially decrease.

Respondent in the course and conduct of its business in interstate commerce has caused and still causes its salesmen and agents to visit

dealers in and consumers of snuff, and to seek by means of false and disparaging representation concerning its competitors' snuff to obtain from such dealers and consumers, by trade or exchange, competing snuff found in their possession.

PAR. 13. During all the times mentioned in the complaint, in the course and conduct of its business and concurrently with the false and disparaging statements referred to in paragraph 12 herein, respondent has made, published and circulated, through advertising cards, signs and various other types of advertising matter and the brand names and labels featured thereon, and by oral representations of its salesmen and representatives, false and misleading statements in connection with the sale of snuff products manufactured and sold in interstate commerce by it, among others, that its product is the only 100 per cent snuff, or the only 100 per cent pure snuff on the market, or the only snuff made of 100 per cent pure tobacco; that respondent's product contains no copperas, alum, alfalfa, opium or dope, and that the contents of its containers are not short weight, which latter statements and representations, while true in themselves, were made in conjunction with the misrepresentations of competitors' products as set forth in these findings, and for the purpose of injuring its competitors and had and still have the capacity and tendency to, and did and still do mislead and deceive the public into the belief that the products of respondent's competitors are impure and do contain copperas, alum, alfalfa, opium or dope, and that the contents of competitors' containers are short weight, none of which is true.

The use by respondent in such advertising matter and in the oral representations of its salesmen and agents of the term "only 100 per cent" and other like terms, had and still has the capacity and tendency to, and did and still does mislead and deceive the purchasing public into the erroneous belief that the snuff products manufactured and sold by other manufacturers are not pure as such term is usually known and understood.

PAR. 14. During the times referred to in the complaint the respondent has branded and labeled and still brands and labels certain of its snuff "Dental". This formula or brand of snuff was originated in about the year 1879, and was acquired by the respondent by purchase in about the year 1900. At the time this snuff was originated, and for some time thereafter, it contained some ingredient, other than tobacco, calculated to preserve or be beneficial to the teeth and gums, and was so represented to the purchasing public. The labels on the containers of this snuff contained the word "Dental" together with a depiction of a tooth, and the words "Dental Panacea" and "It possesses a virtue that will Preserve The Teeth".

Thereafter the aforesaid ingredient was entirely eliminated from said snuff and during the times mentioned in the complaint said snuff has contained no ingredient other than tobacco. After the acquisition of this brand by the respondent the label on the containers was changed so that said label then contained and now contains the word "Dental", together with a depiction of a tooth, and in place of the words, "Dental Panacea", the words "Dental Brand", and in place of the words, "Preserve the Teeth", the words "Preserves its Flavor".

This new label is so like the original label on said brand of snuff in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other, and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the present containers.

In the course and conduct of its said business in connection with the sale of its Dental brand of snuff respondent through advertising matter and oral representations of its salesmen has falsely represented and still does falsely represent to purchasers and consumers of snuff that its Dental brand of snuff is prepared especially for the teeth and will cure pyorrhea and other diseases of the teeth and gums, coupled with the false and disparaging statements that respondent's competitors' brands of snuff will destroy the teeth, cause pyorrhea, bleeding gums, tuberculosis and other maladies. So far as good or harm to the teeth or health is concerned, respondent's brand of Dental snuff stands on no different basis than any other Strong Scotch snuff. These false representations respecting respondent's Dental brand, coupled with false representations concerning competitors' brands, have been made principally in the territory in which respondent sold Dental snuff, and not its other brands.

Relying upon respondent's aforesaid representations concerning its Dental brand of snuff, and the false representations of respondent's salesmen that the brands of its competitors will cause pyorrhea and other diseases of the teeth and gums, many consumers of snuff have purchased and continue to purchase respondent's Dental snuff in the belief that it will cure toothache and other maladies, and have refrained and continue to refrain from purchasing the brands of snuff manufactured by respondent's competitors. Users of snuff in purchasing respondent's Dental snuff refer to it as "Tooth Dental".

The use of the word "Dental", together with the depiction of a tooth upon the labels on the containers of respondent's said product, had and still has the capacity and tendency to, and did and still does mislead and deceive the public into the erroneous belief that said product has a special merit in respect to the teeth not possessed by the

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products of its competitors, and influences purchasers of snuff to purchase respondent's Dental snuff in such belief in preference to the brands of its competitors.

The effect of the respondent's representations, including the use of the word "Dental", and the depiction of the tooth upon its labels on the containers of its snuff has been to mislead and deceive the consuming public to benefit respondent by increased sales of Dental snuff, and to correspondingly decrease the sales of its competitors.

## CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amendments thereto, the answer of respondent, the briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

(1) *It is now ordered*, That the respondent, American Snuff Co., its officers, agents, representatives, servants, employees, and successors cease and desist from, directly or indirectly, carrying into effect its policy of securing the observance, or maintenance of resale prices, designated by it for its products, by cooperative methods in which the respondent and its distributors, customers and agents undertake to prevent the sale of its products at less than such resale prices, by—

(a) Procuring or entering into contracts, agreements, or understandings, express or implied, with wholesale or retail dealers that respondent's products are to be resold by such dealers at prices designated by respondent or that such dealers will cooperate with the respondent to secure the observance by others of such designated resale prices;

(b) Causing wholesale and retail dealers to be enrolled upon lists of undesirable customers who are not to be supplied with respondent's

products unless and until such dealers have given satisfactory assurance of their purpose to sell said products in the future at the prices designated by respondent;

(c) Utilizing numbers and symbols placed upon cases containing its products with a view to ascertaining the names of wholesale and retail dealers who sell its products at less than its designated prices, or who sell to others who sell its products at less than such prices in order to prevent such dealers from obtaining its products;

(d) Seeking and securing the cooperation of wholesale and retail dealers in carrying into effect the maintenance of its designated resale prices by soliciting reports of the names of other dealers who fail to observe said resale prices, and by refusing after investigation of such reports to make further shipments and sales of its products to dealers found to be selling the same at less than its said resale prices unless and until said dealers give promises or assurances of their adherence to said prices in the future;

(e) Procuring promises or agreements from its jobber-customers, or prospective customers as a condition of selling its products to them, that they will not give a greater discount in selling the snuff products manufactured by respondent's competitors than they give on respondent's product;

(f) Utilizing any other equivalent cooperative methods of accomplishing the maintenance and observance of resale prices thus fixed by respondents for its products.

(2) *It is further ordered*, That the respondent, its officers, agents, representatives, servants and employees, cease and desist from—

(a) Making, publishing or circulating written or oral statements or representations that the snuff products of its competitors are made of trash, inferior tobacco, cigar stubs, old tobacco chews, tobacco stems; that they contain opium, copperas, glass, hair, dirt or similar substances, that they will cause blindness, tuberculosis; will destroy the teeth, cause pyorrhea, bleeding gums or other maladies; or other statements or representations of like import, when such are not the facts;

(b) Making, publishing or circulating written or oral statements or representations concerning its competitors, or any of them, that they will soon be out of business, that their products are to be taken off the market, that they are controlled by respondent, that the contents of six-ounce bottles of snuff manufactured and sold by the United States Tobacco Co., one of its competitors, weighs less than six ounces, or statements and representations of like import, when such are not the facts;

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(c) Making, publishing and circulating in connection with the sale of its snuff products, statements and representations that the same are "the only real refined tobacco," "the only 100 per cent pure tobacco," "the only pure snuff" that is made, "the only 100 per cent pure snuff in the world," or statements and representations of like import, when such are not the facts;

(d) Persuading or inducing, or attempting to persuade, or induce, customers of its competitors to cancel or repudiate contracts for the purchase of the products of said competitors and to return to its competitors products already purchased and delivered, or inducing or attempting to induce consumers of snuff not to use, or to desist from the use of, the snuff products of its competitors;

(e) Causing its salesmen and agents to visit dealers in or consumers of snuff to seek, by means of false and disparaging representations of competitors' snuff, to obtain from them by trade or exchange competing snuff found in the possession of any such dealer or consumer.

(3) *It is further ordered*, That the respondent, its officers, agents, representatives, servants and employees, cease and desist from—

(a) Using the word "Dental" and the depiction of a tooth, or either of them, alone or in connection with any other word or words, in the brand name or on the labels on the containers of any of its snuff products to represent, describe or define such product, when its said product contains no ingredient other than tobacco;

(b) Making, publishing or circulating written or oral statements or representations in connection with the sale or distribution of any of its snuff products that such product will cure toothache, pyorrhea, bleeding gums, neuralgia or other like maladies, when such product contains no ingredient other than tobacco.

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

## Complaint

IN THE MATTER OF  
DWINELL-WRIGHT COMPANY

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

*Docket 1111. Complaint, Jan. 12, 1924—Decision, June 30, 1927*

Where a corporation engaged in the importation, blending, roasting and packing of coffees, including certain extensively advertised and featured brands, and in the sale thereof, and constituting one of the largest importers, packers and sellers thereof; in pursuance of a policy directed to securing the observance or maintenance of the prices designated or suggested by it for the resale of its products by its jobber and retail dealer customers,

- (a) Entered into and secured contracts, agreements and understandings with jobbers for the maintenance by them of such prices;
- (b) Solicited and secured the cooperation of jobbers in ascertaining names of price cutting jobbers and in the maintenance of its resale prices;
- (c) Acted upon information secured from jobbers and salesmen as to price cutting jobbers, by refusing or threatening to refuse to sell the latter its products;
- (d) Endeavored to secure and secured the cooperation of jobbers by letters and by personal solicitation, in preventing those cut off, from obtaining supplies thereof;
- (e) Sought and secured the cooperation of jobber customers in inducing price cutting retail dealers to whom they sold, to increase their prices, and endeavored to induce jobbers to refuse sales of its products to such retailers unwilling to increase their prices; and
- (f) Threatened to cut off and cut off supplies of jobbers refusing to cease selling offending retail dealer price cutters;

With the result that competition among jobbers and retailers in the sale and distribution of its products was suppressed, they were constrained to sell its products at the prices fixed by it and thereby prevented from selling the same at such lower prices as they might deem warranted by their respective selling costs and trade conditions generally, and competition was unduly suppressed and hindered:

*Held*, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

*Mr. William A. Sweet* for the Commission.

*Breed, Abbott & Morgan*, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Massachusetts corporation, engaged principally in the

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importation, blending, roasting and packing of coffees and in the importation, blending and packing of teas, and sale thereof to wholesalers, jobbers and retailers throughout the various States, with principal and executive offices in Boston, and with factories in Boston and Chicago, and constituting one of the largest importers, packers and sellers of coffees and teas in the United States, with many well known trade names or brands, "nationally known, advertised and demanded, without a continued supply of which said brands, it is difficult, because of the buyers' demand therefor, for a wholesaler, jobber or retailer of coffees and teas successfully to conduct his business", with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years preceding the complaint "has employed, and still employs, a system of fixing and maintaining certain specified standard or uniform prices at which the products, prepared and sold by it in interstate commerce, shall be resold by wholesalers or jobbers to retailers, and by retailers to the consuming public, and pursuant to this purpose, and in order to secure the cooperation of dealers and effect the maintenance of such prices, it has adopted and used, and is now using the following practices:"

(a) Issuing and circulating letters and circulars containing uniform resale prices for its products, to the wholesale and retail trade generally;

(b) Causing it to be quite generally known to the trade by price schedules and through salesmen and other means of advertisements that it expects or requires wholesalers, jobbers and retailers handling its product to maintain and enforce its resale prices, "thereby resulting in a mutual understanding between the respondent and the dealers in its products that such prices would be maintained";

(c) Soliciting and securing from such dealers assurances, promises or understandings that they will do so;

(d) Soliciting and procuring from its dealers reports of price cutting by others;

(e) Instructing or requiring its salesmen or other representatives to inquire into the source of supply of price cutting dealers who do not secure their supplies from it, with the intent and effect of enforcing its resale price schedule;

(f) Using information received through reports to induce, require and/or coerce price cutters to resume and maintain its prices and threatening them with no more sales of its supplies if they fail to do so;



(g) Delaying shipments of orders from customers or dealers reported as price cutters, pending investigation of the alleged price cutting and/or the receipt of assurances directed to future resumption or maintenance of its prices;

(h) Refusing sales to price cutting dealers failing to give such assurances;

(i) Instructing salesmen or other representatives to assist in its scheme of price maintenance by (1) reporting price cutters, (2) calling upon them and exhorting them to restore and maintain prices, (3) threatening to refuse future orders from dealers who did not give assurances to maintain its prices and, (4) ascertaining source of supply of price cutters not dealing directly with it, for the purpose of enforcing its resale price schedule;

(j) Preventing and coercing customers from reselling its products to other dealers to whom it has refused further sales because of their price cutting; and

(k) Following other equivalent cooperative methods to maintain its "said established resale price system";

According to the complaint "respondent's acts and practices \* \* \* had and still have the capacity and tendency to constrain all dealers handling respondent's products uniformly to sell the same at the resale price fixed by respondent and to prevent such dealers from selling said products at such less prices as they might and may deem to be adequate and warranted by their respective costs and efficiency, and hence, to hinder and suppress the usual free and open competition which otherwise would exist among the dealers in respondent's products, thus tending to obstruct the free and natural flow of commerce in such products and the freedom of competition in this channel of interstate trade"; all to the prejudice of the public and respondent's competitor.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Dwinell-Wright Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered its appearance and filed its answer to said complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent before Edward M. Averill, an examiner of the Federal Trade Commission, duly appointed. Thereupon this proceeding came on for

## Findings

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decision and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dwinell-Wright Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal and executive offices located in the city of Boston, in the State of Massachusetts, and with factories located in the city of Boston, in the State aforesaid, in Chicago, in the State of Illinois, and in Portsmouth, in the State of Virginia. Respondent is now, and has been since the year 1899, engaged in the importation, blending, roasting and packing of coffees, and the importation, blending and packing of teas, and in the sale of such products to jobbers and retail dealers throughout the various States of the United States and the District of Columbia. It causes its said products, when so sold, to be transported from its said factories in the States of Massachusetts, Illinois and Virginia, to purchasers located in other States of the United States and the District of Columbia. The respondent is one of the largest importers, packers and sellers of coffees and teas in the United States, and is in active competition in the sale of its coffees with between 500 and 600 individuals, firms, partnerships or corporations engaged in roasting and selling coffee in commerce among the States of the United States.

PAR. 2. The respondent packs, sells and ships, under its own special labels, some 30 to 40 brands of coffee, its principal brands being "White House", "Excelsior", "Tiptop" and "Caraja". These brands are extensively advertised by the respondent, particularly the "White House" brand, which has been, and still is, featured and nationally advertised, and is the largest selling brand handled by the respondent. The respondent travels 75 salesmen, who are either under the direct supervision of the home office in Boston or under the supervision of the branch offices in Chicago and Portsmouth.

The respondent sells to jobbers principally, but also, in certain localities, sells to retailers, and has between 1,500 and 1,800 jobber customers and between 300 and 500 direct retail customers, with a minimum of approximately 100,000 dealers ultimately handling its product. The respondent sells between 19,000,000 and 20,000,000 pounds of coffee per annum, and of this, approximately 12,000,000 pounds are sold under its "White House" brand.

There was imported into the United States during the calendar years 1921 to 1923, inclusive, coffee as follows:

	Pounds
1921 -----	1, 340, 979, 776
1922 -----	1, 246, 060, 667
1923 -----	1, 409, 754, 625

PAR. 3. The respondent, prior to the early part of 1924, as a method of selling its coffee, issued to the jobbers and the retailers whom it sold, two lists containing the prices of its coffees. One list known as the "short list", designated the price at which the respondent sold its coffee to the jobber, the other, known as the "long list", designated the price at which the respondent sold to the retailer. The difference between the two lists represented the gross profit to the jobber. These lists were changed from time to time, as the market on coffee changed.

Since the early part of 1924, the respondent has discontinued the use of two lists and uses only one list, which list contains the price per pound at which the respondent sells its coffee to its direct retail customers; and the price at which the respondent sells to the jobber is based upon a discount of 12½ per cent of the prices set out in the list. The respondent issues no list upon which is either indicated or suggested any price at which respondent's coffees shall be sold by the retailer to the consuming public.

PAR. 4. Respondent, in the course and conduct of its business, by letter and by personal interviews of its salesmen, causes it to be generally known to jobbers that the prices contained in its published price list are the prices at which it expects jobbers purchasing from respondent to sell to the retail trade, and seeks and secures the cooperation of jobbers in the maintenance of said resale prices and in the detection of other jobbers who fail to maintain the same by the use of the following methods:

(a) Respondent, in order to enforce and maintain said specified or designated resale prices, enters into contracts, agreements and understandings with jobbers for the maintenance of said prices, and secures from jobbers agreements, promises, or assurances that they will observe the prices specified or designated by the respondent.

(b) Respondent, as a method of maintaining said specified or designated resale prices, solicits and secures the cooperation of jobbers in ascertaining and reporting to respondent the names of other jobbers who cut prices on respondent's products, and jobbers have in fact so reported such other jobbers to respondent. Respondent, as a method of maintaining said specified or designated resale prices, has also secured from its salesmen reports concerning jobbers who sell respondent's products at less than the resale prices specified or

*Conclusion*

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designated by respondent. Acting upon information so secured from jobbers and salesmen as to price cutting by competing jobbers, respondent has thereafter refused to sell or threatened to refuse to sell its products to jobbers so reported and found to have cut its specified or designated resale prices.

(c) Respondent, by letters to jobbers and by personal calls from its salesmen, endeavors to, and does, secure the cooperation of jobbers in preventing other jobbers who have been cut off, from obtaining supplies of its coffees.

PAR. 5. Respondent in the course and conduct of its said business suggests to retail dealers, through its jobbers and its salesmen, prices at which its coffee shall be sold and by reports from its salesmen and by reports and complaints from its jobbers keeps in touch with the prices at which retail dealers are selling its products to consumers, and when such resale prices are below the prices suggested by respondent and complaints and reports of such prices have been made to respondent, it seeks and secures the cooperation of its jobber who sold its products to the retailer, by soliciting said jobber to induce the offending retailer to increase the price at which said retailer is selling to the consumer; and when and if said retailer is unwilling to increase his said selling price, the respondent endeavors to induce the jobber to refuse sales of the respondent's products to said retailer, and threatens to, and has, cut off the supply of the jobber, when the jobber refuses to comply with respondent's request and refused to stop selling the offending retailer.

PAR. 6. The effect and result of the above acts and practices of respondent in cooperating with its jobber customers and with retail dealers has been, and now is, to suppress competition among such jobbers and retailers in the sale and distribution of respondent's products and to constrain such jobbers and retail dealers to sell said products at prices so fixed by respondent, thereby preventing such jobbers and retail dealers from selling said products at such lower prices as they might deem to be warranted by their respective selling costs and by trade conditions generally, and to unduly suppress and hinder competition in interstate commerce.

## CONCLUSION

That the practices of respondents under the conditions and circumstances herein set forth are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondent Dwinell-Wright Co., its officers, agents, representatives, servants, employees, and successors, cease and desist from, directly or indirectly, carrying into effect its policy of securing the observance or maintenance of resale prices, designated or suggested by it for its products by cooperative methods in which the respondent and its distributors, customers and agents undertake to prevent the sale of its products at less than such resale prices, by—

(a) Entering into contracts, agreements or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or designated by respondent.

(b) Procuring either directly or indirectly from jobbers promises or assurances that the prices specified or designated by respondent will be observed by such jobbers.

(c) Requesting jobbers to report the names of other jobbers who fail to observe the resale prices specified or designated by respondent and acting upon reports so obtained by refusing or threatening to refuse to sell its products to jobbers so reported.

(d) Procuring through the cooperation of its jobber customers promises and assurances from retail dealers that such dealers will observe and maintain the resale prices to consumers determined upon and suggested by respondent for its products.

(e) Utilizing any other equivalent cooperative methods of accomplishing the maintenance and observance of resale prices specified or designated by respondent for its products.

*It is further ordered*, That the respondent, Dwinell-Wright Co., shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

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IN THE MATTER OF

JAMES A. McCAFFERTY SONS MANUFACTURING  
COMPANY, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1165. Complaint, Apr. 24, 1924—Decision, June 30, 1927*

Where a corporation engaged in the manufacture and sale of paints and paint products, including a product containing not more than three per cent of carbonate of lead or sulphate of lead, mixed with other ingredients; designated, branded and labeled said product "GOLD SEAL Combination WHITE LEAD"; with the effect of misleading and deceiving the purchasing public into believing the same to be composed of a mixture containing not less than fifty per cent of white lead by weight, and of placing in the hands of retail dealers a means of so misleading and deceiving the public, and with the effect of diverting trade from and otherwise injuring both competitors engaged in the sale of products composed of carbonate of lead or sulphate of lead ground in linseed oil, and by them properly designated and described as "White Lead", and competitors engaged in the sale of products containing only a small percentage of the aforesaid first named ingredients, without designating or describing the same as "White Lead" or "Combination White Lead":

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Robert O. Brownell* for the Commission.

*Fitzgerald, Stapleton & Mahon*, of New York City, for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture of paints and paint products and ingredients, and in the sale thereof to wholesale and retail dealers in the various States, and with principal office and place of business in New York City, with naming product misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent named, branded and labeled a product containing not more than three per cent of sulphate of lead or carbonate of lead "Gold Seal Combination White Lead", with the capacity and tendency to mislead and deceive the trade and public into believing that sulphate of lead or carbonate of lead, understood by the trade and public through common usage as being designated by the term

"White Lead", was the predominant or principal ingredient in said product and to cause the purchase thereof in such belief, all to the prejudice of the public and respondent's competitors, a number of whom, as manufacturers and distributors, do not misbrand or falsely label as white lead their "white lead compound product containing small proportions of sulphate of lead or carbonate of lead", and a number of whom label, brand, advertise and sell as "white lead", products containing "sulphate of lead or carbonate of lead as the predominant or principal ingredient."

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, James A. McCafferty Sons Manufacturing Co., Inc., a corporation organized under the laws of the State of New York, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case in lieu of testimony and proceed forthwith upon said agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, thereupon this proceeding came on for decision, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, James A. McCafferty Sons Manufacturing Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business in the City of New York in said State. It is now and for many years has been engaged in the manufacture of paints and paint products and ingredients, and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes its said products, when so sold, to be transported from its said principal place of business in the City and State of New York, into and through other States of the United States to said purchasers at their respective locations. In the course and conduct of its said business, respondent has been for many years and now is in competition with

## Findings

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other corporations, partnerships, and individuals who are also engaged in the sale and distribution of paints and paint products and ingredients in interstate commerce.

PAR. 2. Among the products which are manufactured by respondent in the regular course of its business is one which it designates, brands and labels as "Gold Seal Combination White Lead," the word "Combination" being in smaller letters than the other words in the label. It is composed of not more than three per cent of carbonate of lead or sulphate of lead mixed with other ingredients. Respondent sold and sells this product in the regular course of its business, as described in paragraph 1 of these findings, to wholesale and retail dealers located in different States of the United States, and it is by them resold to the purchasing public.

PAR. 3. The term "White Lead" is commonly understood by the trade and by the purchasing public to mean either carbonate of lead or sulphate of lead ground in linseed oil, without any other ingredients. The term "Combination White Lead" is understood by the trade and by the purchasing public to mean a mixture of white lead with other ingredients in which mixture the white lead is not less than fifty per cent of the total by weight.

PAR. 4. The use by respondent of the name "Gold Seal Combination White Lead", as set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the purchasing public and part of the trade into the belief that respondent's product is composed of a mixture of white lead with other ingredients, in which mixture the white lead is not less than fifty per cent of the total by weight, and does so mislead and deceive the purchasing public; and places in the hands of retail dealers a means of so misleading and deceiving the public.

PAR. 5. There are among the competitors of respondent mentioned in paragraph 1 of these findings many who sell and distribute in interstate commerce products composed of carbonate of lead or sulphate of lead ground in linseed oil, and who properly designate and describe such products as "white lead". There are others among said competitors who sell and distribute in interstate commerce products which contain small percentages of carbonate of lead or sulphate of lead, and who do not designate or describe said products as "white lead" or "combination white lead". The acts and practices of respondent as set out in paragraph 2 of these findings have the capacity and tendency to and do divert trade from and otherwise injure its said competitors.



## CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and an agreed statement of the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondent, James A. McCafferty Sons Manufacturing Co., Inc., its officers, agents, servants, and employees, do cease and desist from:

(1) Designating or describing any product sold or offered for sale by it in interstate commerce, by means of brands, labels, or otherwise, containing the terms "Gold Seal Combination White Lead" or "Combination White Lead," unless the product so designated or described actually contains carbonate of lead or sulphate of lead as its principal and predominant ingredient to the extent of not less than fifty per cent by weight of the product; or

(2) Using or making any other representation, oral or written, as to any product sold by it in interstate commerce, which falsely represents the relative proportion of carbonate of lead or sulphate of lead contained in said product.

*It is further ordered,* That the said respondent shall, within 30 days from the receipt of this order, file with the Commission a report in writing setting forth the manner and form in which it has complied with this order, and shall attach to said report two copies of any new form of label which it may have adopted in such compliance.

Complaint

11 F. T. C.

## IN THE MATTER OF

HOBART BRADSTREET, INC., KLING-GIBSON COMPANY  
AND WILLIAM R. DURGINCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1394. Complaint, July 20, 1926—Decision, June 30, 1927*

Where a corporation engaged in the sale of courses of instruction in gymnastics and physical exercises by mail, including a course designated by it as "Spine Motion"; in advertising said course in well-known periodicals and publications of general circulation throughout the United States (and originally and prior thereto, in conjunction with an advertising agency and its chief copy writer, until the severance of business relations between them by said agency),

- (a) Reproduced two pictures of the same man over the legends, respectively, "Before taking \* \* \* Spine Motion" and "\* \* \* after taking Spine Motion just five weeks," the fact being that the subject of the pictures, taken only a few minutes apart, was a professional model or poser and that the difference in appearance was due to the use of light extremes and retouching, and not to said "Spine Motion";
- (b) Reproduced a picture of a white haired, dignified appearing man of advanced age on whose shoulder leaned a young woman, over the caption "Bride and Groom," together with statements to the effect that the "Groom" in the picture had, through the use of "Spine Motion," advanced in less than a year from a condition in which "he had become a mere spectator in life's race" to one of "almost youthful energy," "on the rise ever since," and to entering into a happy marriage with the youthful "Bride," under 20, therein depicted, the fact being that the pretended "Bride" was a professional model and the pretended "Groom" was not the personage he was therein represented as being, but a jewelry salesman employed at times as a model, who had never purchased or used "Spine Motion";

With the capacity and tendency to deceive the purchasing public, and induce the purchase of the course in question in reliance upon the truth and good faith of the aforesaid advertisements:

*Held*, That such practices, on the part of said corporation, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

*Winston, Strawn & Shaw* of Chicago, Ill., for respondent Hobart Bradstreet, Inc.

*Kirkland, Patterson & Fleming* of Chicago, Ill., and *Mr. Vernon W. Van Fleet*, of Washington, D. C., for respondents Kling-Gibson Co. and William R. Durgin.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

charged Hobart Bradstreet, Inc., an Illinois corporation engaged in the sale of courses and methods of gymnastics under the name and designation "SPINE MOTION," and "SOMATIC MOTION," and in advertising the same in well-known magazines or publications such as "Physical Culture," "World's Work" and other publications of general circulation among the several States, respondent Kling-Gibson Co., also an Illinois corporation, engaged in the advertising business, and respondent Durgin, said last-named corporation's chief copywriter, all with principal office and place of business in Chicago, with conspiring and agreeing together to deceive and defraud the public and wrongfully secure purchasers for said courses and methods, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, pursuant to the aforesaid conspiracy devised and circulated false and misleading advertising matter, including the following:

Falsely representing Hobart Bradstreet as the inventor of said "Spine Motion," representing said method as a strange one and representing it as a cause for wonder "that such a basic secret of youth was so long in the discovery," together with other similar statements and representations, the fact being that the course or method was neither strange nor a recent discovery and did not possess unusual merits and was not a basic secret of youth;

Portraying two pictures of the same man, captioning one "BEFORE taking," etc., and the other "AFTER— \* \* \* just five weeks," with the statement "Hobart Bradstreet 65 years young," with the intent and effect of misleading and deceiving purchasers and others among the general public in that the pictures were taken only a few minutes apart, the subject was a clothing salesman who sat as a model for illustration of men's suits, etc., was not Hobart Bradstreet, was 53 years old instead of 65, had never heard of spine motion, and was ignorant of the use to be made of his pictures, and that the difference therein "was due to the use of light extremes and retouching in the photographic art and not to Spine Motion;" and

Displaying a two-column picture "of a white haired dignified appearing man of advanced age on whose shoulder a petite appearing, teen age female smilingly leans," with the title "Bride and Groom," the fact being that the bride was a professional model 18 years old, the so-called groom was a jewelry salesman employed at times as a model, was not Colonel Bemis, had never heard of Hobart Bradstreet or spine motion and had a spine of normal length.

## Findings

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Among various false and misleading statements which appeared in connection with the aforesaid picture were the following:

"A man who is almost youthful at 58 because he keeps his spine one-half inch longer than it would ordinarily measure"; "December and May. Once I would have condemned any mating of age with youth. Yet a month ago I was best man for my old friend, Col. Bemis—and 'old' friend he is, for the Colonel is in his fifty-eighth year—and his petite bride who then lacked a few days of being twenty. There isn't a happier couple in the State. But I wonder what others would think if they had seen Col. Bemis as I saw him less than a year ago—before he had taken the big brace that two physicians said a man of his age could never take! Bemis had let-up and slowed-down; he had become a mere spectator in life's race when something happened. The remarkable means by which this man regained an almost youthful energy should interest any man who has lost even part of his normal capacity for work and play. This is the story: Did you ever hear of Spine Motion? Neither did I until two years ago. Neither did Col. Bemis until less than a year ago. But within a month spine motion moved him up several notches physically and his energies have been on the rise ever since. \* \* \* Spine motion is absolutely all that Colonel Bemis used to recover the energies nature had provided so liberally."

According to the complaint, "the said advertisements, statements and representations described in this complaint, as well as divers other advertisements, statements and representations, were devised, printed and distributed among the several States in pursuance of the unlawful conspiracy of the respondents to affect and influence interstate trade and commerce. Such advertisements, statements and representations were intended to and did affect and influence the sale among the several States of courses of gymnastics and methods of gymnastic exercises. Such advertisements, statements and representations were intended to and did mislead and deceive purchasers among the several States of courses and methods of gymnastic exercises, and such advertisements, statements and representations were false and misleading as set out in this complaint, and in divers other respects. The acts of the respondents and each of them, as set out in this complaint, constituted unfair methods of competition in commerce within the meaning of the act of Congress hereinabove mentioned."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, Hobart Bradstreet, Inc., Kling-Gibson Co. and William R. Durgin, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondents before John W. Addison, an examiner of the Federal Trade Commission theretofore duly appointed; whereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hobart Bradstreet, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at Chicago, Ill. It is now, and since its incorporation in 1922, has been, engaged in selling courses of instruction in gymnastics and physical exercises and distributing same in interstate commerce from Chicago, Ill., through the United States mail, to the purchasers thereof, in all of the States of the United States.

Said respondent is, and has been since its incorporation, in competition with many other individuals and corporations likewise engaged.

PAR. 2. Among the courses referred to in paragraph 1 hereof is one called by said respondent "Spine Motion" which consists of ten pictures, illustrating five physical exercises, and certain instructions relative thereto. This course has been sold and distributed by said respondent since its incorporation, and its sale and distribution constitutes the principal portion of respondent's business.

PAR. 3. Respondent Hobart Bradstreet, Inc., since July, 1922, and up to the present time, has advertised "Spine Motion" in such magazines as Physical Culture, Review of Reviews, Sample Case, Atlantic Monthly, and other publications of general circulation throughout the United States.

PAR. 4. One of the advertisements of the respondent Hobart Bradstreet, Inc., which was given wide circulation by means of the publications mentioned in paragraph 3 hereof was one which contained two pictures of the same man, underneath one of which pictures were the words "Before taking Bradstreet's Spine Motion." Under the

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other picture appeared the words "After—the same man after taking Spine Motion just five weeks." Said advertisement and representation was false and misleading in the following particulars: The pictures were pictures of the same man taken a few minutes apart and not five weeks apart. The subject of both pictures was a clothing salesman who was also a professional model or poser for illustrations and pictures, and the difference in his appearance as shown in said pictures was due to the use of light extremes and retouching in the photographic art and not to Spine Motion.

PAR. 5. Another of the advertisements of respondent commonly inserted in the magazines and publications referred to in paragraph 2 hereof contained a two-column picture of a white-haired, dignified appearing man of advanced age on whose shoulder leaned a young woman. Underneath this picture appeared the title "Bride and Groom," after which followed statements concerning the "Bride and Groom" as follows:

A man who is almost youthful at 58 because he keeps his spine one-half inch longer than it would ordinarily measure; December and May. Once I would have condemned any mating of age with youth. Yet a month ago I was best man for my old friend, Col. Bemis—and "old" friend he is, for the Colonel is in his fifty-eighth year—and his petite bride who then lacked a few days of being twenty. There isn't a happier couple in the State. But I wonder what others would think if they had seen Col. Bemis as I saw him less than a year ago—before he had taken the big brace that two physicians said a man of his age could never take! Bemis had let-up and slowed-down; he had become a mere spectator in life's race when something happened. The remarkable means by which this man regained an almost youthful energy should interest any man who has lost even part of his normal capacity for work and play. This is the story: Did you ever hear of Spine Motion? Neither did I until two years ago. Neither did Col. Bemis until less than a year ago. But within a month Spine Motion moved him up several notches physically and his energies have been on the rise ever since. \* \* \* Spine Motion is absolutely all that Col. Bemis used to recover the energies nature had provided so liberally.

The said advertisement was false and misleading. The "Bride" in the picture was not a bride but a professional model. The "Groom" in the picture was not a groom and was not Col. Bemis, but was a jewelry salesman employed at times as a model. He had never purchased or used Spine Motion.

PAR. 6. The advertisements mentioned in paragraphs 4 and 5 hereof were false and misleading and each of them had the capacity and tendency to deceive the purchasing public and induce the purchasing public to purchase respondent's course in reliance upon the truth and good faith of such advertisement.

PAR. 7. The respondent Kling-Gibson Co. is a corporation organized under the laws of the State of Illinois with its principal

place of business at Chicago, Ill., and is engaged in the business of an advertising agency which includes the business of writing advertisements and placing them in circulation. The respondent William R. Durgin is its chief copy writer. In July, 1922, the respondent Hobart Bradstreet, Inc., employed the said respondent Kling-Gibson Co. as its advertising agent, and in such capacity said Kling-Gibson Co., acting through its chief copy writer, the respondent Durgin, wrote and prepared for publication the advertisements mentioned in paragraphs 4 and 5 hereof, and said respondent Kling-Gibson Co. thereafter, with the approval of the respondent Hobart Bradstreet, Inc., placed such advertisements in the various publications and magazines referred to in paragraph 3 hereof. The respondent Kling-Gibson Co. in December, 1924, terminated all its business relations with respondent Hobart Bradstreet, Inc., and since said last mentioned date has not performed any work or services in connection with the advertising of respondent Hobart Bradstreet, Inc. The cessation of the business relations between respondents Hobart Bradstreet, Inc., and Kling-Gibson Co. antedates the issuance of the complaint herein by a period of over 18 months.

#### CONCLUSION

The practices of the said respondent Hobart Bradstreet, Inc., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and the briefs of counsel, and the Commission having made its findings as to the facts and conclusion that respondent Hobart Bradstreet, Inc., has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That this proceeding as to the respondents Kling-Gibson Co. and William R. Durgin be and the same hereby is dismissed for the reason that said respondents long prior to the issuance of the complaint herein had ceased doing the things charged against them in the complaint.

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*It is further ordered,* That respondent Hobart Bradstreet, Inc., its officers, agents, representatives, servants, and employees do cease and desist from—

(1) Circulating or causing to be circulated the advertisements mentioned in paragraphs 4 and 5 of the findings as to the facts, or any other advertisement of like character.

(2) Making in its advertisements or otherwise any untruthful or misleading statement or representation concerning any of its courses of instruction.

*It is further ordered,* That respondent Hobart Bradstreet, Inc., shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

By the Commission: Commissioner Nugent dissenting from the order of dismissal of the complaint against Kling-Gibson Co. and William R. Durgin.



## Complaint

IN THE MATTER OF  
HANFORD F. SMITH

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

*Docket 1456. Complaint, Apr. 19, 1927—Decision, June 30, 1927*

Where an individual engaged in conducting a correspondence school from his residence without the assistance or services of any other person; in advertising and describing said school in letters, catalogues, etc., sent to prospective pupils, and through oral statements by his agents,

- (a) Falsely represented that (1) his courses of study were offered by "Princeton University," and, in some instances, by "Princeton N. I. University", setting forth the aforesaid names upon his envelopes, letterheads and other stationery, together with a list of purported professors and instructors on the faculty thereof, and the various branches of learning taught by them, and, separately, a list of the arts, sciences, trades and branches of learning purportedly offered to pupils by such fictitious educational institution; and (2) that such institution maintained and conducted sundry departments in which were taught, respectively, various courses of instruction; (3) was manned by a large and properly qualified faculty of professors and instructors who were learned and skilled in the teaching of said courses; and (4) owned and possessed sundry buildings and grounds in which its educational activities were conducted and carried on; and
- (b) Falsely represented that such fictitious institution would confer appropriate degrees and diplomas upon pupils taking the various courses, and, in accordance with such representation sent pupils a pretended diploma purporting upon its face to be the official diploma thereof;

With the effect of causing many of the public to take and purchase his courses of instruction, in reliance upon the truth of such statements and representations, and of diverting business, from and otherwise prejudicing competitors who did not falsely represent the nature and character of their business and professional organization, and of the courses offered by them:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Robert O. Brownell* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in teaching various arts, sciences, trades and branches of knowledge to persons in various States, by mail, and from his personal habitation in Elkhart, Ind., and with-

out the assistance or services of any professor, instructor or other person whatsoever, with advertising falsely or misleadingly, and misrepresenting services, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about five years preceding the complaint, in his letters to prospective pupils, and in his trade literature and through oral representations by his agents, made many false and misleading statements and representations, concerning his courses, including the following:

(a) That such courses were those of an educational institution named "Princeton University," and in some instances "Princeton N. I. University"; setting forth the aforesaid names upon its catalogues, pamphlets, envelopes, etc., used in conducting his said business, together with a list of purported professors and instructors, constituting ostensibly the faculty, along with the arts, sciences, etc., supposedly taught by them and, separately, a list of such purported arts, etc., ostensibly offered by such institution;

(b) That it maintained various departments in which said courses were respectively taught;

(c) That it was manned by a large and properly qualified faculty of professors and instructors, learned and skilled in the teaching of the various courses;

(d) That said purported, Princeton University, or, in some instances, Princeton N. I. University, would confer appropriate degrees and diplomas upon pupils completing its courses, and sending its pupils a purported diploma appearing upon its face to be that of the aforesaid institution;

(e) That it possessed and owned various buildings and grounds in which its educational activities were conducted; and

(f) Many other false and deceptive statements and representations of like kind and character.

Such false and deceptive statements and representations, as charged by the complaint, had the capacity and tendency to cause, and did cause, many of the public to purchase respondent's courses of instruction and pay respondent substantial sums therefor, believing in the truth thereof, and had the tendency to and did divert business from and otherwise injure and prejudice competitors who did not thus misrepresent "the nature and character of their business and professional organization and the nature and character of the courses

of study" offered by them; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Hanford F. Smith, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent having entered his appearance and filed his answer herein, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein, thereupon this proceeding came on for decision, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual residing in the town of Elkhart, Ind. He is now and for more than five years has been engaged in the business of teaching sundry arts, sciences, trades and branches of knowledge to persons hereinafter referred to as pupils residing at points in various States of the United States. In the course of his said business respondent secures pupils for his said sundry courses of instruction by means of written correspondence which respondent carries on with prospective pupils, in the course of which correspondence respondent sends to such prospective pupils by mail letters, catalogs, pamphlets, leaflets, and other literature describing and explaining said course of instruction. Further respondent secures pupils through sundry agents whom respondent employs to, and who do, visit prospective pupils located at points in sundry States of the United States and personally solicit said prospective pupils to take respondent's said courses of instruction. Respondent supplies to said agents aforesaid catalogs, pamphlets, leaflets and other literature and said agents display said literature to prospective pupils in and about soliciting said prospective pupils to

take respondent's said courses of instruction. Upon securing pupils through aforesaid means for his said courses of instruction, respondent sends by mail from his said residence in the town of Elkhart, Ind., to such pupils at their respective places of residence in various States of the United States, written lessons, instructions, examination papers and text books to be used by said pupils in and about studying respondent's said courses of instruction, in consideration of which said pupils pay to respondent certain agreed sums of money. In the course and conduct of his said business respondent is now and has been in competition with other individuals, partnerships, and corporations also engaged in the instruction of persons in sundry arts, sciences, trades and branches of knowledge, by correspondence through the mails.

PAR. 2. In all the aforesaid letters and literature and through oral representations made by aforesaid agents to prospective pupils, respondent has caused and causes to be set forth and made many false statements and representations concerning his said course of instruction among which statements and representations are the following:

(a) That respondent's courses of study are the courses of, and are offered by, an educational institution named and designated Princeton University and, in some instances, Princeton N. I. University. Upon aforesaid catalogs, pamphlets, leaflets and other literature and upon envelopes, letterheads and other stationery used by him in and about conducting his said business respondent causes to be set forth, in some instances, said name and designation "Princeton University" and in other instances said name and designation "Princeton N. I. University", together with a list of purported professors and instructors on the faculty of said purported educational institution, said names being listed in connection with the arts, sciences, trades and branches of learning which said professors and instructors, respectively, are purported to teach and, separately, a list of said purported arts, sciences, trades and branches of learning purported to be offered by said institution to pupils;

(b) That said purported educational institution maintains and conducts sundry departments in which are taught, respectively, said sundry courses of instruction;

(c) That said purported educational institution is manned by a large and properly qualified faculty of professors and instructors who are, respectively, learned and skilled in the teaching of said sundry courses of instructions;

(d) That upon pupils taking said courses, said purported Princeton University, and in some instances said purported Princeton N. I.

University will confer appropriate degrees, respectively, and in witness thereof will issue to each such pupil an appropriate diploma. In accordance with said representation respondent sends and supplies to his said pupils, severally, a purported diploma appearing upon its face to be the official diploma of said purported University;

(e) That said purported educational institution owns and possesses sundry buildings and grounds in which said purported educational activities of said institution are conducted and carried on.

PAR. 3. The said statements and representations set out in paragraph 2 hereof are, and each of them is, false. The fact is that respondent's said courses of instruction are not offered and given by any educational or other institution whatsoever, and respondent has conducted and conducts his said business alone from his personal habitation in said town of Elkhart, Ind., and without the assistance or services of any professor, instructor or any other person whatever.

PAR. 4. The aforesaid false statements and representations made by respondent as set out in paragraphs 2 and 3 hereof have the capacity and tendency to and do cause many of the public to take and purchase respondent's said courses of instruction and to pay respondent sums of money therefor in the belief that said statements and representations are true.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who do not falsely represent the nature and character of their business and professional organization and the character and nature of the courses which they offer, and respondent's acts and practices all as hereinbefore set out tend to and do divert business from and otherwise injure and prejudice said competitors.

#### CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and an agreed statement of facts, and the Commission

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having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondent, Hanford F. Smith, his agents, servants and employees do cease and desist:

(1) From representing in catalogs, pamphlets, or on envelopes and letterheads or by any other means whatever that the courses of study or instruction supplied by respondent are courses supplied by Princeton University or any other institution, or that such courses are prepared or endorsed in whole or in part by any professor or instructor other than himself, when said statements or any of them are not true.

(2) From giving, conferring or offering to give or confer a degree or diploma purporting to be the degree or diploma of Princeton University or any institution, educational or otherwise.

*It is further ordered*, That the said respondent shall, within 30 days after the receipt of this order, file with the Commission a report in writing setting forth the manner and form in which he has complied with this order.

## Syllabus

## IN THE MATTER OF

FAMOUS PLAYERS-LASKY CORPORATION, REALART PICTURES CORPORATION, THE STANLEY COMPANY OF AMERICA, STANLEY BOOKING CORPORATION, BLACK NEW ENGLAND THEATERS, INC., SOUTHERN ENTERPRISES, INC., SAENGER AMUSEMENT COMPANY, ADOLPH ZUKER, JESSE L. LASKY, JULES MASTBAUM, ALFRED S. BLACK, STEPHEN A. LYNCH, ERNEST V. RICHARDS, JR.

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

*Docket 835. Complaint, Aug. 30, 1921<sup>1</sup>—Decision, July 9, 1927*

Where two individuals, organizers, presidents, and dominating spirits in two of the only three corporations then engaged in the production and distribution of "feature" pictures, and constituting the leading producing concerns in the motion picture industry;

- (a) Conspired to create a combination in restraint of competition and trade in the production of motion-picture films, and to create a monopoly therein, and in pursuance of said conspiracy, which they consummated, and with the intent and effect of creating a combination of producers of feature pictures, to produce and lease full programs sufficient to use all of an exhibitor's available time, and thereby exclude such exhibitor from showing competitive films;
- (1) Entered, through their respective corporations, and along with said third corporation, into an agreement with a concern engaged exclusively in distributing pictures for its corporate distributor owners, under its well-known and established trade-mark and with unique facilities for nation-wide distribution, giving said distributing concern the exclusive right to distribute all their films, each exhibitor to receive a full program of 104 pictures to be produced and furnished by them for such purpose; with the result that they thereby created in and for themselves a complete monopoly in the production and distribution of motion-picture films;
- (2) Acquired 50 per cent of the stock of the aforesaid distributing concern, which had theretofore acquired control of its distributors;
- (3) Incorporated a holding company (authorized also to carry on all branches of the industry) to acquire and hold the stock of their two companies, of said third corporation, and of a subsidiary created by it to produce feature pictures; with the intent of perpetuating and making more effective their aforesaid conspiracy, and of creating a convenient, permanent, and efficient instrumentality for the maintenance and operation thereof; and

Where said individuals and said holding company, in pursuance of the aforesaid conspiracy,

- (4) Caused to be transferred to it all the stock of the above four corporations and their physical assets, and said corporations to be dissolved;
- (5) Caused a company incorporated by them to engage in distributing pictures in competition with the aforesaid concern, featuring popular actors

<sup>1</sup>Amended complaint, Feb. 14, 1923.

- and actresses theretofore featured in films produced by them and distributed by said concern under their above contract, and thereafter caused the entire stock of said company and concern to be acquired by such holding company, and all of their physical assets to be transferred to it and the corporations to be dissolved;
- (6) Engaged thereafter in releasing and distributing films produced by them directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by them under one or the other, of the names of the two dissolved companies, or under a combination thereof;
  - (7) Sought to induce the officers of a corporation formed to resist the aforesaid policy of leasing programs of films, and owned by exhibitors imperatively requiring freedom of choice to select high-class films only, for the high-grade theaters operated by them, to desert the service of said corporation for that of their own organization, and entered upon and pursued a settled policy of obtaining, by affiliation or otherwise, the control of the prominent and powerful men and concerns constituting said corporation, its franchise holders, and thus affiliated with themselves, employed, or otherwise secured the virtual cooperation of such franchise holders in nine cities, and territories severally adjacent thereto, including some of the largest cities in the country;
  - (8) Caused a company incorporated by them to lease their films to exhibitors, to open and maintain branch offices and selling organizations wholly separate and distinct from those of their own organization, with the result that many exhibitors, contrary to their intent, exhibited films leased from said company in the mistaken belief that the same were produced or controlled by others; and
- Where said holding company, under the domination of such individuals,
- (b) Adopted and maintained the aforesaid method of offering films in blocks made up of both high-grade pictures and less desirable films, and consisting of a sufficient number to occupy the available exhibition time of a theater for three months or a year, at a lump-sum price, and separately only at such prices as to make successful competition by the exhibitor impossible, foregoing its said method only in communities where all competitors refused to lease films upon such a basis; with the purpose and effect of coercing and intimidating the exhibitor into leasing films in blocks as offered, and of thereby denying him the opportunity of leasing and exhibiting other desired films of higher quality as demanded by his patrons; of excluding from the market and the industry, small, independent producers and distributors; and of lessening competition and tending to create a monopoly in the motion-picture industry; and
  - (c) Adopted a progressive and increasing policy of indirectly building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key cities, to give to their best pictures first-run exhibitions under the most favorable conditions, to advertise and exploit the same and to create a public demand therefor by the patrons of the better theaters in adjacent territory, and make leases for their exhibition indispensable to the successful operation of such theaters; extended said program far beyond the point originally estimated by them as necessary to enable them to establish and maintain their unlawful sales policy, and to intimidate and coerce independent exhibitors as above set forth; and threatened to buy, lease, and operate theaters in competition with exhibitors



refusing to lease and exhibit their films; with the intent of perpetuating and making more effective their said distribution policy, of intimidating and coercing exhibitors into leasing their films, and of extending their dominant position as producers of feature pictures of extraordinary merit and of complete programs equal or superior to any, to dominate the entire industry; and with the result that competitors strong enough to do so necessarily adopted their aforesaid method of acquiring and operating theaters and leasing films, making it difficult for small and independent producers or distributors to enter or remain in the industry, destroying the freedom of exhibitors to select individual, acceptable films on merit, and depriving the public of the power to influence exhibitors in the choice of films, and of the benefit of continuous exhibition of meritorious and acceptable films only;

With the result that competition of producers and distributors of motion-picture films was unduly hindered, and with a dangerous tendency to create for said organization and its affiliated companies a monopoly in the motion-picture industry in the greater part of the United States:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition in interstate commerce.

*Mr. William H. Fuller, Mr. Gaylord R. Hawkins, and Mr. M. A. Morrison* for the Commission.

*Cravath, Henderson & DeGersdorff* and *Mr. Gilbert H. Montague*, of New York City, and *Mr. Joseph W. Folk*, of Washington, D. C., for Famous Players-Lasky Corporation.

*Wolf, Block & Schorr*, of Philadelphia, Pa., for The Stanley Co. of America, Stanley Booking Corporation and Jules E. Mastbaum.

*Mr. Herman A. Mintz*, of Boston, Mass., and *Cravath, Henderson & DeGersdorff*, of New York City, for Black New England Theaters, Inc.

*Mr. Alfred S. Barnard*, of Atlanta, Ga., and *Cravath, Henderson & DeGersdorff*, of New York City, for Southern Enterprises, Inc.

*Mr. Charles Rosen* and *Mr. S. L. Herold*, of New Orleans, La., for Saenger Amusement Co.

*Cravath, Henderson & DeGersdorff* and *Mr. E. J. Ludvigh*, of New York City, and *Mr. Joseph W. Folk*, of Washington, D. C., for Adolph Zukor and Jesse L. Lasky.

*Mr. Herman A. Mintz*, of Boston, Mass., for Alfred S. Black.

*Mr. Alfred S. Barnard*, of Atlanta, Ga., for Stephen A. Lynch.

*Mr. Charles Rosen*, of New Orleans, La., for Ernest V. Richards, Jr.

#### SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondents with conspiring and confederating together to unduly hinder competition in the production, distribution and exhibition of motion-picture films in interstate and foreign commerce, and to control,

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dominate, monopolize or attempt to monopolize the motion-picture industry, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The various respondents joined in the complaint were described as follows:

The Famous Players-Lasky Corporation, organized July 19, 1916, under the laws of New York, with principal office and place of business in New York City, and with branch offices in the principal cities of the United States and in foreign countries, and engaged in the business of producing, leasing, distributing and exhibiting motion-picture films throughout the United States.

Respondent Realart Pictures Corporation, which was caused to stop business and to merge with the Famous Players-Lasky Corporation under New York laws, was incorporated under the laws of Delaware and was organized or incorporated by respondents Zukor, Lasky and the Famous Players Corporation on or about May 28, 1919, as a part of the conspiracy above charged, as more fully hereinafter set forth.

*The Stanley Company of America.*—A holding company incorporated under the laws of Delaware, with principal office and place of business in Philadelphia, and owning all or a part of the stock of various corporations owning or controlling and operating motion pictures throughout the States of Pennsylvania, Delaware, and New Jersey and also owning all the stock of respondent Stanley Booking Corporation.

*Stanley Booking Corporation.*—A New York corporation with principal office and place of business in Philadelphia, engaged in booking motion pictures for theaters throughout the States of Pennsylvania, Delaware, and New Jersey.

*Black New England Theaters, Inc.*—A Delaware corporation with principal office and place of business in Boston and a holding company owning the stock of various corporations owning or controlling and operating motion-picture theaters in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

*Southern Enterprises, Inc.*—A Delaware corporation organized in the Spring of 1919 by respondent Zukor and Lasky and respondent Famous Players-Lasky Corporation (also owner of all its stock), with principal office and place of business in Atlanta, and a holding company owning all or part of the stock of various corporations owning or controlling and/or operating motion-picture theaters throughout the States of North Carolina, South Carolina, Georgia,

Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, and Tennessee.

*Saenger Amusement Co.*—A Louisiana corporation, with principal office and place of business in New Orleans, and engaged in owning or controlling, operating and booking motion-picture theaters throughout the States of Mississippi, Louisiana, and Texas and parts of Florida and Arkansas.

Adolph Zukor, president of respondent Famous Players-Lasky Corporation since its organization, and its directing personality.

Jesse L. Lasky, vice president of said corporation, ever since its organization, in charge of production.

Jules Mastbaum, citizen of Pennsylvania and president and principal stockholder of respondent Stanley Co. of America.

Alfred S. Black, a citizen of Maine and, at the commencement of the proceeding, president of respondent Black New England Theaters, Inc.

Stephen A. Lynch, a citizen of Atlanta, Ga., and president of respondent Southern Enterprises, Inc.

Ernest V. Richards, Jr., a citizen of Louisiana and vice president, general manager and directing personality of respondent Saenger Amusement Co.

The various steps and acts charged in the complaint as a part of the alleged conspiracy follow:

Acquisition by respondents Zukor and Lasky, in 1916 through respondent Famous Players-Lasky Corporation organized in that year, of the entire stock and capital of the Jesse L. Lasky Feature Play Co., Inc., the Famous Players Film Co., and Bosworth, Inc., then among the leading producing concerns in the motion-picture industry, and the transfer of the physical assets of said three corporations to respondent Famous Players-Lasky Corporation, following which said three corporations were dissolved and ceased doing business.

Incorporation by respondents Zukor, Lasky and Famous Players-Lasky Corporation on or about July 29, 1916, under the laws of New York, of the Arcraft Pictures Corporation, which engaged in distributing motion-picture films featuring actors and actresses of great popularity, theretofore featured in films produced by the aforesaid Lasky Feature Play Co., Inc., or Famous Players Film Co., and distributed under contract between said producing companies and the Paramount Pictures Corporation, at the time the principal agency engaged exclusively in distributing and leasing motion-picture films to exhibitors throughout the United States with facilities for nationwide distribution, and advertising its business under its well-known

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and established trade-mark name "Paramount" and under a long-time contract with said Lasky Feature Play Co., Famous Players Film Co., and Bosworth, Inc., for the distribution through it exclusively of all films produced by said three corporations; distribution of the aforesaid films by such Arcraft Pictures Corporation being in competition with said Paramount Pictures Corporation.

Causing the entire stock and capital of said Paramount Pictures Corporation and said Arcraft Pictures Corporation to be acquired by the Famous Players-Lasky Corporation, and all of the physical assets of the said first two corporations to be transferred to the Famous Players-Lasky Co. and said corporations to be dissolved and to cease doing business, following which the Famous Players-Lasky Corporation, "in addition to producing motion-picture films, engaged in releasing and distributing such films directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by it as 'Paramount Pictures' or 'Arcraft Pictures' or 'Paramount-Arcraft Pictures'."

Causing said Famous Players-Lasky Corporation to inaugurate, establish and maintain a policy of affiliating with it independent producers of motion-picture films whose products were of such quality and popularity that they were in great demand, and, by its contracts for distribution with them controlling all the terms and conditions through the lease, distribution and exhibition of film of such affiliated producers, which film it nationally advertised and displayed to exhibitors of the public as "Paramount" pictures.

Holding out to the trade and general public the Realart Pictures Corporation, which said Zukor, Lasky and Famous Players-Lasky Corporation caused to be incorporated, and which engaged in distributing and leasing films produced by the Famous Players-Lasky Corporation and affiliated producers to exhibitors throughout the United States, and maintained branch offices or exchanges and selling organizations wholly separate and distinct from those of the Famous Players-Lasky Corporation, and long concealed the latter's ownership and control of it, for the purpose of deceiving exhibitors, and advertised and held itself out generally as wholly independent, for the purpose and with the effect of deceiving exhibitors who did not desire to exhibit motion pictures produced by said Zukor, Lasky or Famous Players-Lasky Corporation or their affiliations, but did so lease and exhibit its films in the belief that they were not made or controlled by said Zukor, Lasky or Famous Players-Lasky Corporation; respondents subsequently and since the filing of the complaint causing said Realart Corporation to cease business and transfer its physical

assets to the said Famous Players-Lasky Corporation and to merge therewith under the laws of New York.

In addition to charging respondents Zukor, Lasky and the Famous Players-Lasky Corporation with the acts, above set forth, pursuant to the conspiracy charged, the complaint charged all the respondents joined herein, with entering into a progressive program consistently adhered to of acquiring or controlling, in pursuance of the aforesaid conspiracy, "by purchase or otherwise, motion-picture theaters throughout the United States, and more particularly first-run theaters, and of compelling and coercing exhibitors throughout the United States to book and exhibit all the motion-picture films produced or distributed by Famous Players-Lasky Corporation; and of inducing and compelling such exhibitors to book a substantial number of "block" of films by refusing to lease a given film or films, unless the exhibitors also book a substantial number or "block" of other films, the exhibition of all of which will take up either the whole or a large portion of their available exhibiting time and close their theaters to the films of producers or distributors who are competitors of said Famous Players-Lasky Corporation; and the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation procured millions of dollars to put said program in successful operation.

"As a result of the carrying out of said progressive program of acquiring or controlling first-run theaters and compelling exhibitors to book all or a substantial 'block' of its product, Famous Players-Lasky Corporation has unduly hindered and is unduly hindering competitors, in that competitor producers and/or distributors are unable to procure the first run showings for their product that are essential to the financially successful motion-picture producer as heretofore alleged; and by and through all of the acts hereinbefore alleged said Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have built up and now possess and exercise a dominating control over the motion-picture industry that has a dangerous tendency to give them a complete monopoly therein.

"As a further result thereof Famous Players-Lasky Corporation is the largest theater owner in the world, and in one week in the year 1920 more than 6,000 American theaters, or approximately one-third of all the motion-picture theaters in the United States, showed nothing but Paramount pictures, and about 67 cents of every dollar that was paid to enter motion-picture theaters was paid to enter those theaters which displayed Paramount pictures.

"In acquiring or controlling, and in attempting to acquire or control, motion-picture theaters, the respondent conspirators have

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coerced and intimidated and attempted to coerce and intimidate motion-picture theater owners or exhibitors by divers means and methods among which were the following, to wit:

“(a) Threatening to build or lease and/or operate theaters in competition with exhibitors who refused to sell or lease their houses;

“(b) Threatening to cut off or interfere with the film service of such exhibitors who refused to so sell or lease their theaters;

“(c) Secretly offering higher rentals, effective upon expiration of leases held by exhibitors who refused to sell or lease such theaters;

“(d) Temporarily reducing the price of admission charged by theaters owned or controlled by the respondents, below that charged by exhibitors who refused to sell or lease their theaters.

“In compelling or attempting to compel independent exhibitors to book and exhibit the motion-picture films produced or distributed by Famous Players-Lasky Corporation, these respondent conspirators have coerced and intimidated, and attempted to coerce and intimidate, exhibitors by various means and methods, among which are the following, to wit:

“(a) Threatening to build or lease and/or operate theaters in competition with independent exhibitors who refused to book and exhibit such films;

“(b) Interfering with the film service of such independent exhibitors and causing the cancellation of contracts for service between such exhibitors and producers;

“(c) Disparaging independent exhibitors who refused to exhibit such pictures, by means of advertisements placed in newspapers circulated throughout the territory in which such independent exhibitors' theaters were located.

“(d) Inducing, and seeking to induce, independent exhibitors who had contracts of release for the exhibition of motion-picture films produced by competitor producers, to cancel such contracts or refuse to make such contracts, by offering to give and giving such exhibitors, motion-picture films produced and distributed by Famous Players-Lasky Corporation, for nominal sums of money, or free of charge.

“And in furthering and carrying out the aforesaid conspiracy, said respondents have used various other fraudulent and unfair methods to exclude competitors from producing, distributing or exhibiting their motion-picture films.”

According to the complaint, “the acts, practices, and things done as hereinbefore alleged, have unduly hindered and are now unduly hindering, the competition in interstate commerce of competing producers and distributors of motion-picture films; and said acts, practices, and programs, carried out as hereinbefore alleged, have a dan-

gerous tendency to create for said Famous Players-Lasky Corporation and its affiliated companies, a monopoly in the motion-picture industry in the greater part of the United States; all of which is in violation of Section 5 of an act of Congress entitled, 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its amended complaint upon the respondents above named, charging them and each of them with violations of said act.

The respondents filed their amended answers to the said amended complaint herein through their attorneys, whereupon hearings were had before an examiner of the Federal Trade Commission. During the course of such hearings, evidence was introduced herein by the attorneys for the Commission and respondents, respectively. Such evidence was duly certified and forwarded to the Commission. Briefs have been filed herein by the attorneys for the Commission and the respondents, respectively.

This matter came on for final hearing before the Commission upon briefs and oral argument by counsel for the Commission and respondents, and the Commission having heard arguments of counsel and having duly considered the briefs filed herein and the evidence introduced herein, and being fully advised in the premises, is of the opinion that the method of competition and the acts, policy and practices of respondents, Famous Players-Lasky Corporation, Adolph Zukor and Jesse L. Lasky as alleged in the amended complaint and established by the evidence herein are in violation of, and prohibited by, said Federal Trade Commission Act. Wherefore, the Commission now makes this its report in writing as to said respondents, Famous Players-Lasky Corporation, Adolph Zukor and Jesse L. Lasky, stating herein its findings as to the facts and its conclusion thereon. The Commission finds the facts established by the evidence to be as follows:

#### FINDINGS AS TO FACTS

**PARAGRAPH 1.** The respondent Famous Players-Lasky Corporation is a corporation organized July 19, 1916, under and by virtue of the laws of the State of New York, with its principal office and place of

business located in the City and State of New York, and with branch offices in the principal cities of the United States, and in foreign countries, engaged in the business of producing, leasing, distributing and exhibiting for profit motion-picture films throughout the United States and foreign countries, in direct competition with other persons, firms, copartnerships and corporations similarly engaged, and the respondent Adolph Zukor is now, and ever since its organization has been, the president of said corporation and its dominating personage, and the respondent Jesse L. Lasky is now, and ever since its organization has been, vice president of said corporation in charge of production.

PAR. 2. In the prosecution of its business respondent Famous Players-Lasky Corporation owns and operates studios located in the city of Los Angeles, State of California, and in New York City, State of New York, where it makes or produces motion-picture films; in the production of motion-picture films large quantities of unexposed negative stock celluloid films are shipped from other States to the studios; at the studios and on "location" scenes are photographed upon reels of negative stock celluloid film and the exposed negative stock film is developed and fixed, and at least one positive print made; the negative film is then shipped from the studios to laboratories located in the same State or in other States, from which many positive prints are made, and it is practicable and customary to print as many of the latter as may be necessary to supply the demand for the films; when the positive prints are projected through a cinematograph machine upon a screen there is then depicted what is commonly known as a motion picture. In connection with the photographing of the scenes in the studios respondent Famous Players-Lasky Corporation employs numerous actors, actresses, directors, continuity and title writers, camera men, designers and other artists and artisans, who are assembled from different States of the United States, and also causes a large amount of scenery, paraphernalia, costumes and similar stage properties to be moved and transported from different States in the United States in and to said studios. Said respondent, from its principal office in New York City, by and through correspondence, traveling salesmen, and its said branch offices or exchanges, makes and enters into contracts of lease with the owners of motion-picture theaters for the exhibition of said positive prints in said theaters throughout the United States and foreign countries. After the positive prints are produced in the laboratories as aforesaid, respondent Famous Players-Lasky Corporation causes them to be packed in metal containers, moved and transported by common carriers to its various branch offices or exchanges, and from



there to the owners of motion-picture theaters in the principal cities and towns of the United States and in foreign countries, including motion-picture theaters in the several States of the United States owned or controlled by said respondent, directly or indirectly, where they are projected through a cinematograph machine upon a screen and exhibited to the public for profit, after which they are moved and transported to other theaters in different States and countries for like exhibition; and there is continuously, and has been at all times herein mentioned, a constant current of trade and commerce in such motion-picture films between and among the several States of the United States and foreign countries, and more particularly, from different States of the United States, through other States, in and to said city and State of New York and the city of Los Angeles, State of California, and therefrom, through and into other States of the United States and foreign countries.

PAR. 3. In the motion-picture industry theaters are known as "first-run" and "repeat-run" houses, the first-run theaters being those in which occurs the initial presentation of pictures in certain generally defined territories or localities and approximately 50 per cent of the revenue from a film is derived from first-run showings within six months from the date of its release, and the remaining revenue from second and repeat runs in other theaters, extending over a period of two or three years. An "exhibitor" is one who is engaged for profit in the business of displaying motion pictures to the public. The "booking" of a motion picture is the making of a contract of lease between the producer or distributor thereof and the exhibitor, whereby the latter is given the right to make public exhibitions thereof. A picture is "released" when it has been finally perfected and placed in the hands of distributing agencies for delivery to theaters. To facilitate the delivery of motion-picture films to exhibitors, most producers have established branch offices throughout the United States and in foreign countries, known as "exchanges," where negotiations for the booking of films are conducted with exhibitors, and these exchanges are located in the principal cities in the various sales districts throughout the United States; from these "exchange" offices service is given to smaller cities and towns within the adjacent territory, and all business between exhibitors and producers or distributors is conducted by or through such "exchange" offices, and the cities wherein are located the exchange offices thereby become the keystone around which center all activities in its sales district, and they have become and in the trade are known as "key cities." The successful booking of a motion picture in a given territory is dependent largely upon its showing in

the first-run theaters in that territory, because exhibitors in adjacent territory are to a large extent governed in booking a motion picture film, by its showing in such first-run theaters, and in order to insure the successful booking of a film in a given territory, it must first have a showing in a first-run theater in that territory.

PAR. 4. Respondent The Stanley Co. of America is a Delaware corporation with its principal office and place of business in the city of Philadelphia, State of Pennsylvania, and is a holding company owning the whole or a part of the capital stock of various corporations which own or control, and operate, motion-picture theaters throughout the States of Pennsylvania, Delaware, and New Jersey, and said The Stanley Co. of America owns all of the capital stock of the respondent Stanley Booking Corporation, hereinafter named.

Stanley Booking Corporation is a New York corporation with its principal office and place of business located in the city of Philadelphia, State of Pennsylvania, and is engaged in the business of booking motion pictures for theaters throughout the States of Pennsylvania, Delaware and New Jersey.

The respondent Jules Mastbaum is a citizen of Pennsylvania and is president and the principal stockholder of the Stanley Co. of America.

Respondent Black New England Theaters, Inc., is a Delaware corporation with its principal office and place of business located in the city of Boston, State of Massachusetts, and is a holding company owning the capital stock of various corporations which own or control, and operate, motion-picture theaters throughout the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, and the respondent Alfred S. Black, a citizen of the State of Maine, was at the time of the commencement of this proceeding its president.

Respondent Southern Enterprises, Inc., is a corporation that was organized in the spring of 1919 by the respondents Adolph Zukor and Jesse L. Lasky and Famous Players-Lasky Corporation, hereinafter named, under the laws of the State of Delaware, with its principal office and place of business located in the city of Atlanta, State of Georgia, and is a holding company owning the whole or a part of the capital stock of divers corporations which own or control, and/or operate, motion-picture theaters throughout the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, and Tennessee, and all of the capital stock of said Southern Enterprises, Inc., is owned by respondent Famous Players-Lasky Corporation; and the respondent Stephen

A. Lynch, a citizen of the city of Atlanta, State of Georgia, is president of said Southern Enterprises, Inc.

Respondent Saenger Amusement Co. is a Louisiana corporation, with its principal office and place of business in the city of New Orleans, State of Louisiana, and is engaged in the business of owning or controlling, operating and booking, motion-picture theaters throughout the States of Mississippi, Louisiana, and Texas and parts of Florida and Arkansas, and the respondent Ernest V. Richards, jr., a citizen of the State of Louisiana, is its vice president, general manager and directing personality.

PAR. 5. The respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have conspired and confederated together and from time to time with other persons unduly to hinder competition in the production, distribution and exhibition of motion-picture films in interstate and foreign commerce and to control, dominate, monopolize or attempt to monopolize the motion-picture industry.

PAR. 6. Among the leading producing concerns in the motion-picture industry in the spring of the year 1915 were Jesse L. Lasky Feature Play Co., Inc., a New York corporation, Famous Players Film Co., a Maine corporation, and Bosworth, Inc., a California corporation, all of whom were engaged in producing motion-picture films in competition with each other for lease and exhibition in all the States of the United States and in foreign countries. Paramount Pictures Corporation of New York was engaged exclusively in the business of distributing motion-picture films, and under the provisions of certain written agreements entered into on or about March 1, 1915, between it and said Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., said Paramount Pictures Corporation was given the exclusive right for a term of 25 years to, and did, distribute all motion-picture films produced by the three above-named corporations respectively, and said Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., released and distributed all motion-picture films produced by them through said Paramount Pictures Corporation. At that time said Paramount Pictures Corporation was the principal agency engaged exclusively in distributing and leasing motion-picture films to exhibitors throughout the United States that possessed facilities for nationwide distribution, and in distributing and leasing such motion-picture films advertising in connection therewith was done by the Paramount Pictures Corporation, and its trade-mark name of "Paramount Pictures" was featured and became well known and established among exhibitors and the motion-picture theater public.

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Said three corporations, to wit: Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., were engaged in the production and distribution of a certain class of motion-picture films of high literary and dramatic quality and merit, known to the trade as feature pictures, as distinguished from short subjects. Feature pictures consist of four or more reels; short subjects consist of less than four reels and are of small literary or dramatic merit. Said three corporations were the only producers of feature pictures as herein described in the United States, until the incorporation of Morosco Photo Play Co. on September 1, 1914.

Said Famous Players Film Co. was dominated by respondent Adolph Zukor, who was its organizer and president. Said Jesse L. Lasky Feature Play Co. was dominated by respondent Jesse L. Lasky, who caused it to be organized. Bosworth, Inc., was also engaged in the production of the same grade and quality of films.

Said respondents desired and purposed to, and did, create a combination of producers of feature pictures; that was to produce and offer for lease, and lease, to exhibitors full programs of motion-picture films. A program of pictures is 104 pictures available for lease and exhibition in any period of 52 weeks, or an exhibition year. The same is sufficient to use all the available exhibition time of an exhibitor during such period. Only a combination of then existing producers and distributors was able to produce and distribute a program of films, no single producer having capacity therefor. The sale of a program to exhibitors by such a combination was intended to, and necessarily did, exclude such exhibitor from leasing or exhibiting films produced or distributed by a competitor or competitors. Such sales necessarily lessen competition in the lease of films, tending to create a monopoly therein, and exclude from the market small and independent producers, and all producers of films who were not able to furnish complete programs to their patrons.

Said Famous Players Film Co., so dominated by respondent Adolph Zukor; said Jesse L. Lasky Feature Play Co. so dominated by respondent Jesse L. Lasky; and said Bosworth, Inc., conspired and confederated together to create, and did create, a combination in restraint of competition and trade in the production and distribution of motion-picture films and to create a monopoly in the production and distribution of moving-picture films in the United States and in foreign countries. In furtherance of said unlawful combination they, on May 15, 1914, entered into certain written agreements with Paramount Pictures Corporation, a corporation organized under the laws of the State of New York, for the distri-

bution for them of all films produced by them all, the total number so to be distributed constituting to each exhibitor a full program of 104 pictures, which said producers agreed to produce and furnish for said purpose. Said producers by said combination did create in and for themselves a complete monopoly for the production and distribution of feature picture films in the United States, which monopoly continued for more than one year before any competition was developed by any other producer. September 1, 1914, Morosco Photo Play Co. was incorporated under the domination of said Bosworth, Inc., for the production of feature picture films.

Said Paramount Pictures Corporation was organized May 8, 1914, by distributors of motion picture films as a National agency for the distribution of such films. The incorporators of said Paramount Co. and the owners of said corporation denominated in said business as franchise holders thereof, were nine certain corporations so engaged in distributing films. The word "films" in these findings is used at all times to mean moving-picture films to be used as above set forth in the exhibition to the public of motion pictures.

Said contracts with Paramount Pictures Corporation for the exclusive distribution of the product of said three producers were for a period of 5 years, which contract was, on March 1, 1915, superseded by a like contract for 25 years from said date.

Said Paramount Co. thereafter acquired 51 per cent of the capital stock of the nine corporations that were its own franchise holders. Thereafter, respondents Zukor and Lasky, acquired 50 per cent of the capital stock of said Paramount Co.

Respondents Zukor and Lasky in furtherance of said unlawful conspiracy and for the purpose and with the intent of perpetuating the same and making it more effective and of creating a convenient, permanent and efficient instrumentality for the maintenance and operation of said unlawful conspiracy, caused respondent, Famous Players-Lasky Corporation, to be incorporated under the laws of the State of New York on July 19, 1916. Said corporation is, by the terms of its charter, primarily a holding company organized expressly by its charter to acquire and hold the capital stock of said Famous Players Film Co. and said Jesse L. Lasky Feature Play Co. and of other domestic and foreign corporations. Said respondent corporation was, by its said charter, authorized also to carry on all branches of the motion picture industry to wit:

To produce films; to distribute them; to build, buy, own and control theaters for the exhibition of films. As a part of said original purpose of said Zukor and Lasky said new corporation was also to

acquire and hold the capital stock of said two corporations, to wit: Bosworth, Inc., and Morosco Photo Play Co.

In furtherance of said unlawful conspiracy, and to effectuate said purpose of the incorporation of respondent Famous Players-Lasky Corporation, respondents Zukor, Lasky and said corporation caused the transfer to said Famous Players-Lasky Corporation of all the capital stock of said Famous Players Film Co., of said Jesse L. Lasky Feature Play Co., of said Bosworth, Inc., and of said Morosco Photo Play Co.; caused all physical assets of said corporations to be transferred to said Famous Players-Lasky Corporation and said four corporations to be dissolved and to cease doing business. The respective dates of the events above enumerated are:

June 1, 1912.—Famous Players Film Co., Inc.

July 31, 1913.—Bosworth, Inc.

November 26, 1913.—Jesse L. Lasky Feature Play Co., Inc.

May 8, 1914.—Paramount Pictures Co., Inc.

May 15, 1914.—Contracts between Famous Players Film Co., The Lasky Corporation and Bosworth, Inc., with the Paramount Co. for the distribution by the Paramount Co. of all pictures produced by said three producers for a period of five years from August 31, 1914.

September 1, 1914.—Morosco Photo Play Co., Inc.

March 1, 1915.—Said distribution contract with the Paramount Co. extended for a period of 25 years from March 1, 1915.

May 2, 1915.—Paramount Pictures Corporation acquired 51 per cent of the capital stock of the nine corporations that were its franchise holders.

May 20, 1916.—Zukor and Lasky acquired 50 per cent of the capital stock of the Paramount Co.

July 19, 1916.—Famous Players-Lasky Corporation incorporated and acquired the stock of Famous Players Film Co. and Jesse L. Lasky Feature Play Co. Acquisition of the stock of Bosworth, Inc., and Morosco Photo Play Co. by Famous Players-Lasky Corporation was contemplated but the actual acquisition was deferred until, and consummated on, November 7, 1916.

**PAR. 7.** In further pursuance of the conspiracy described in paragraph 5 hereof, and as a part thereof, the respondents Adolph Zukor, Jesse L. Lasky, and Famous Players-Lasky Corporation, on or about July 29, 1916, caused to be incorporated under the laws of the State of New York the Artcraft Pictures Corporation, which immediately engaged in distributing motion picture films in competition with said Paramount Pictures Corporation, which motion-picture films featured actors and actresses who had attained great popularity with

the public, and who had theretofore been featured in motion picture films produced by said Jesse L. Lasky Feature Play Co., Inc., or said Famous Players Film Co. and distributed by said Paramount Pictures Corporation under said contract. Thereafter, to further carry out the conspiracy charged in paragraph 5 hereof, and as a part thereof, the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation caused the whole of the stock and share capital of said Paramount Pictures Corporation and said Arcraft Pictures Corporation to be acquired by said Famous Players-Lasky Corporation and all of the physical assets of each of said corporations to be transferred to said Famous Players-Lasky Corporation and said corporations to be dissolved and to cease doing business. Thereafter said Famous Players-Lasky Corporation, in addition to producing motion-picture films engaged in releasing and distributing such films directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by it as "Paramount Pictures" or "Arcraft Pictures" or "Paramount Arcraft Pictures". All subsequent acts of respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, as set forth in these findings were in pursuance and furtherance of said unlawful conspiracy as found in the fifth paragraph of these findings.

PAR. 8. In March, 1917, certain 26 exhibitors of motion-picture films, who operated theaters in the several States of the United States, were operating theaters of the higher grades and qualities, seeking the patronage of the more discriminating and exacting patrons of moving-picture theaters. To maintain the high standards of their said several theaters, it was necessary for said exhibitors to lease and exhibit only films of the higher qualities and grades, and to refrain from the exhibition of films of lower qualities or which were not acceptable to their patrons. During March, 1917, said 26 exhibitors, in order to resist the said policy of leasing programs of films, as distinguished from freedom of choice to lease individual films on merit, and to meet the demands of patrons for the exhibition only of films acceptable to such patrons, organized a corporation popularly known as "First National" to be an instrumentality for the procurement of films freely chosen and leased upon individual merit. Said "First National" became and was the only factor in the national distribution of films that Mr. Zukor and Mr. Lasky regarded as at all formidable to Famous Players-Lasky Corporation.

Respondent Zukor endeavored to form a combination with First National by which the latter would produce no films, exhibit no films

other than those produced by Famous Players-Lasky Corporation, and finally, become subsidiary to, or merge with, Famous Players-Lasky Corporation. To that end, said Zukor endeavored to induce its officers to enter the service of Famous Players-Lasky Corporation, deserting First National. Failing in that he openly threatened to purchase a sufficient number of its franchises to control its action. In pursuance of such purpose, said Zukor in the fall of 1919 induced one Hulsey, reputed to be the strongest of the franchise holders in First National, to desert First National and enter employment under the control of Mr. Zukor. As a defense against said attack upon it, First National reincorporated upon a basis intended to prevent said Zukor from obtaining control of its officers and its activities. Then and thereafter, said Zukor, Lasky and Famous Players-Lasky Corporation, in pursuance of said purpose and threat, entered upon and have at all times pursued the settled policy of obtaining by affiliation, or otherwise, the control of the prominent and powerful men and corporations who constitute First National and are what are known as its franchise holders. Said respondents have thus affiliated with themselves, employed or by other means secured the virtual cooperation of the franchise holders of said First National in the following cities, controlling the territories severally adjacent thereto, to wit:

Boston, Mass., Philadelphia, Pa., Cleveland, Ohio, Chicago, Ill., Detroit, Mich., St. Louis, Mo., Des Moines, Iowa, New Orleans, La., Dallas, Tex.

PAR. 9. Respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation caused to be incorporated, on or about May 28, 1919, under the laws of the State of Delaware, Realart Pictures Corporation, with a capital stock of 10,000 shares without nominal or par value, of which 5,000 shares were issued to and owned by Famous Players-Lasky Corporation, and its principal office to be established in the city of New York, State of New York. Said Realart Pictures Corporation thereupon engaged in distributing and leasing, as aforesaid, to exhibitors throughout the United States, motion-picture films produced by said Famous Players-Lasky Corporation, or its said affiliated producers, and the respondents Adolph Zukor, Jesse L. Lasky, and Famous Players-Lasky Corporation caused said Realart Corporation to open and maintain branch offices or exchanges and selling organizations wholly separate and distinct from that of said Famous Players-Lasky Corporation. Many exhibitors who did not desire to lease or exhibit motion picture films produced by said Adolph Zukor, or Jesse L. Lasky, or Famous Players-Lasky Corporation, or any of their affiliations, did lease and exhibit to the



public motion-picture films leased and distributed by Realart Pictures Corporation, in the belief that the same were not made, produced or controlled by the respondents Adolph Zukor, Jesse L. Lasky, or Famous Players-Lasky Corporation. Since the date of the filing of the original complaint in this proceeding said respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have caused Realart Pictures Corporation to cease doing business and to transfer all of its physical assets to Famous Players-Lasky Corporation and to merge with Famous Players-Lasky Corporation under the laws of the State of New York as in such case made and provided.

PAR. 10. On July 22, 1919, respondents Zukor, Lasky and Famous Players-Lasky Corporation, had become, long had been, and still were, the dominant power in the moving-picture industry. Said corporation produced feature picture films of high quality and merit and other films of the higher and better qualities, suitable for exhibition in the better theaters and to patrons of discriminating and exacting taste. It produced films sufficient to offer, and lease, to the exhibitors of the country complete programs. Its product comprised certain films of extraordinary merit for which there was growing imperative demand by patrons of moving-picture theaters. Its complete program was equal or superior to any complete program being offered by other distributors of films, but its program included films of lesser merit which were not suitable for exhibition in the best theaters, and for which there was little or no demand among the patrons of such theaters. To meet the demands of his patrons, an exhibitor operating a theater charging higher prices of admission and appealing to patrons of discriminating taste was compelled to exhibit such films of unusual merit and for which there had been so created a great demand, but was subject to adverse criticism by his patrons and to financial loss, when he also exhibited said films of lower qualities. To maintain the standard of his theater and the favor of his patrons, an exhibitor catering to discriminating patrons found it necessary to exhibit the better films of respondent, Famous Players-Lasky Corporation, and also the films of other producer-distributors of films, exercising therein a discriminating freedom of choice.

On July 22, 1919, the board of directors of Famous Players-Lasky Corporation under the domination of respondents Zukor and Lasky, for the purpose of modifying, perpetuating and making more effectual its said distribution policy as distinguished from the lease of individual pictures, and for the purpose of intimidating and coercing exhibitors to lease and exhibit films produced and distributed by

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Famous Players-Lasky Corporation, adopted a progressive and increasing policy of building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key cities to be used to give to the best picture films produced by Famous Players-Lasky Corporation first-run exhibitions under the most favorable conditions, to advertise and exploit said films, create a popular demand for their exhibition by the patrons of the theaters of the better class in territories adjacent to said several key cities, and to make leases for their exhibition indispensable to the successful operation of such class of theaters. At said time said respondents occupied a dominant position in the moving-picture industry, except the operation of theaters. It was the openly and publicly avowed purpose of said respondents, by said policy of theater ownership and operation, to dominate the entire moving-picture industry, purchasing increasing numbers of theaters below the grade of first-run theaters and coercing independent exhibitors to lease and exhibit films produced and distributed by Famous Players-Lasky Corporation.

Famous Players-Lasky Corporation adopted the fixed method of leasing, and does lease, its films under a system known in the trade as "block booking". Under such plan films are offered in "blocks" only. A block is a group of films offered as a whole. The number of films in a block is not uniform. The numbers most frequently offered are sufficient to occupy the available exhibition time of a theater for three months or for one year. Such blocks contain 13 or 26 films, or 52 or 104 films according to whether the theater changes films once or twice a week. The individual films in blocks being offered at any time are not always identical. Films are included in a block offered to an exhibitor which the agent of Famous Players-Lasky Corporation chooses for that purpose, and which he deems to be within the revenues of the exhibitor. A block is so constituted as to contain certain films which the exhibitor feels compelled to lease and exhibit and also other films of lower quality which the exhibitor does not desire to lease and exhibit and which the exhibitor considers to be unacceptable to his patrons.

Respondent Famous Players-Lasky Corporation has maintained and still maintains said unfair distribution policy. It offers to lease, and does lease, blocks of films as such, the exhibitor taking all as offered or none. If an exhibitor declines to take all, the block is successively offered to his competitors until a sale is made. As an alternative, Famous Players-Lasky Corporation sometimes offers to permit an exhibitor, who declines to lease a block, to lease less than the whole block at prices so high as to make it impossible for him successfully to compete with rival theaters, to wit: At prices arbi-

trarily fixed at from 50 to 75 per cent higher than the estimated prices of such films as parts of the block. The purpose and effect of such alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity or privilege of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. Only in case all competitors in any community refuse to lease a block of films does Famous Players-Lasky Corporation lease for use in that community the films contained in such block upon some other basis to be arrived at by negotiation between the sales agent of Famous Players-Lasky Corporation and the exhibitor.

The purpose and necessary effect of such distribution policy is to lessen competition and to tend to create a monopoly in the motion-picture industry, tending to exclude from the market and the industry small independent producers and distributors of films and denying to exhibitors freedom of choice in leasing of films.

Because of the dominant position of Famous Players-Lasky Corporation in the motion-picture industry, its methods of competition, policy and practice are necessarily followed, adopted and maintained by all competitors of Famous Players-Lasky Corporation that are strong enough to acquire and operate first-class first-run theaters to exploit their most meritorious pictures and to offer to lease, and lease, films in blocks only and in sufficient numbers to occupy the available exhibition time of exhibitors. Thereby it is made difficult for small and independent producers or distributors of films to enter into or remain in the moving-picture industry or market, or to lease individual pictures on merit. It destroys the freedom of exhibitors to choose according to their judgment and taste films for exhibition and to exhibit only films that in their opinion are meritorious and acceptable to their patrons; and the public is deprived of the power to influence exhibitors in the choice of films and of the benefit of continuous exhibition of meritorious and acceptable films only.

The principal dates of the events above set forth and certain other events closely connected therewith and constituting the current history of said unlawful combination and the means adopted from time to time for its accomplishment are as follows:

July 29, 1916.—Arctcraft Pictures Corporation, Inc.

December —, 1916.—The residue of the capital stock of Paramount Pictures Corporation acquired by Famous Players-Lasky Corporation.

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December 4, 1916.—Famous Players-Lasky Corporation acquire the remaining 49 per cent of the capital stock of the nine corporations that were the franchise holders of Paramount Pictures Corporation.

April 29, 1917.—Contract between Paramount Pictures Corporation and S. A. Lynch Enterprises, Inc., giving latter exclusive 20-year franchise to distribute Paramount pictures in 11 Southern States.

December 28, 1917.—Bosworth, Inc., Jesse L. Lasky Feature Play Co., Famous Players Film Co., Paramount Pictures Corporation, Artcraft Pictures Corporation, Morosco Photo Play Co. and Cardinal Film Corporation merged into Famous Players-Lasky Corporation. From this date forward Famous Players-Lasky Corporation has carried on all branches of the moving-picture industry.

April 18, 1919.—Famous Players-Lasky Corporation acquired one-half of the capital stock of New York & Pacific Coast Amusement Co. operating Grauman's million-dollar theater in Los Angeles, Calif.

April 30, 1919.—Contract between Famous Players-Lasky Corporation and S. A. Lynch Enterprises, Inc., pursuant to which Southern Enterprises, Inc., was incorporated. Famous Players-Lasky Corporation acquired 50 per cent of its capital stock and S. A. Lynch Enterprises, Inc., the other 50 per cent.

May 7, 1919.—Famous Players-Lasky Corporation acquired 58 per cent of the capital stock of the companies leasing the Rialto and Rivoli Theaters in New York City.

May 28, 1919.—Realart Pictures Corporation incorporated.

June 12, 1919.—Contract between Famous Players-Lasky Corporation and Southern Enterprises, Inc., granting Southern Enterprises, Inc., a franchise to distribute Paramount pictures in the 11 Southern States for a period of 25 years from September 1, 1919.

June 25, 1919.—Famous Players-Lasky Corporation, through a subsidiary corporation acquired a plot of ground in St. Louis upon which it built the Missouri Theater, which opened November 6, 1920.

August 1, 1919.—Famous Players-Lasky Corporation acquired a \$2,000,000 interest in Stanley Co. of America.

September 24, 1919.—Famous Players-Lasky Corporation acquired one-half the capital stock of Mountain States Theater Corporation operating two theaters in Denver, Colo.

December 1, 1919.—Famous Players-Lasky Corporation at this date held the whole or portions of the capital stock of eighteen different existing corporations engaged in the motion-picture industry.

December 27, 1919.—Famous Players-Lasky Corporation acquired the remaining 50 per cent of Southern Enterprises, Inc.

January 27, 1920.—Contract between Famous Players-Lasky Corporation and Alfred S. Black by which Black New England Theaters, Inc., was incorporated; half of the stock of which was taken by Famous Players-Lasky Corporation and half by Alfred S. Black. Black New England Theaters, Inc., was granted a franchise to distribute Paramount pictures in New England.

February 5, 1920.—Acquisition of 7,500 shares of first preferred stock of Famous Players Canadian Corporation, Ltd., and 65,064 shares out of 75,000 shares of its common stock.

March 4, 1920.—Contract whereby Famous Players-Lasky Corporation agreed to take one-half interest in the theaters in San Francisco operated by H. L. Rothchild.

June 22, 1920.—Purchase of 40 per cent of the common stock of respondent Saenger Amusement Co. by Georgia Enterprises, Inc., a subsidiary corporation owned by Southern Enterprises, Inc.

June 17, 1920.—Famous Players-Lasky Corporation acquired the remaining 50 per cent of the capital stock of Black New England Theaters, Inc.

July 20, 1920.—Contract between Famous Players-Lasky Corporation and Wm. H. Gray, by which Gray was given the management of New England Theaters in which Famous Players-Lasky Corporation was interested.

December 29, 1923.—Georgia Enterprises, Inc., subsidiary to Southern Enterprises, Inc., disposed of its 40 per cent of the common stock of respondent Saenger Amusement Co.

At the time of said formal adoption of said progressive program by Famous Players-Lasky Corporation, and in the public announcement thereof it was estimated that the ownership of 50 first-class first-run theaters in wisely selected key cities would be sufficient to enable Famous Players-Lasky Corporation successfully to establish and maintain its said unlawful sales policy, and to intimidate and coerce independent exhibitors to lease and exhibit the blocks of films so to be offered by Famous Players-Lasky Corporation. The acquisition of said 50 first-class first-run theaters was the original intention and plan of Famous Players-Lasky Corporation. In the execution of said plan its scope was continually broadened until on June 30, 1926, Famous Players-Lasky Corporation had interests in 368 theaters in the United States, in 332 of which feature pictures were shown. In acquiring theaters Famous Players-Lasky Corporation did not, and does not, take title thereto in the name of said corporation but obtains ownership and control thereof by purchasing the whole or a part of the capital stock of a corporation that owns such theater, or by causing title to a theater to be vested in a corporation,

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usually in a corporation created for that purpose alone. Famous Players-Lasky Corporation procures and owns all or part of the capital stock of said corporation so holding title to such theater and exercises ownership and control thereof in its capacity as a holding company. On June 30, 1926, the interests of Famous Players-Lasky Corporation in said 368 theaters were as follows:

In 128, 100 per cent; in 13, more than 50 per cent and less than 100 per cent; in 128, exactly 50 per cent; in 99, less than 50 per cent.

Interests in 69 of said theaters were acquired by a contract dated May 20, 1926, with the representatives of the holders of the voting trust certificates of the common stock of the Balaban & Katz Corporation, holder in the city of Chicago of the franchise of First National. This contract provides that respondent shall purchase on October 15, 1926, a minimum of 51 per cent and not to exceed 66 $\frac{2}{3}$  per cent of the outstanding capital stock of said Balaban & Katz Corporation, which owns interests in said 69 theaters, 42 of which are located in Chicago and 27 in other cities in Illinois. Said Balaban & Katz Corporation had in force a contract by the terms of which said Balaban & Katz Corporation was to acquire a one-half interest in five first-run theaters in the city of Detroit, the other half interest to be held by one, Kunsky, the holder of the First National franchise in the city of Detroit.

By said methods and means so employed, Famous Players-Lasky Corporation has unduly hindered, and is unduly hindering competitors, lessening competition, and restraining trade in the motion-picture industry, and has achieved a dominant position in the moving-picture industry, with a dangerous tendency toward the creation of a monopoly therein in the several parts of the United States.

In the following cities the Famous Players-Lasky Corporation directly or through subsidiaries has from time to time acquired and enjoyed the control of all or nearly all of the first-class moving-picture theaters, including first-run theaters:

Jacksonville, Fla., Miami, Fla., Tampa, Fla., Dallas, Tex., and Philadelphia, Pa.

In compelling or attempting to compel independent exhibitors to lease and exhibit motion-picture films produced or distributed by it, Famous Players-Lasky Corporation has made use of various means and methods among which are the following, to wit: Building, buying or leasing and operating, or threatening to build, buy or lease and operate, theaters in competition with independent exhibitors who refuse to lease and exhibit the films produced and distributed by Famous Players-Lasky Corporation.

PAR. 11. The acts, practices and things done as hereinbefore set forth, have unduly hindered and are now unduly hindering, the competition in interstate commerce of competing producers and distributors of motion-picture films; and said acts, practices, and programs, carried out as hereinbefore set forth have a dangerous tendency to create for said Famous Players-Lasky Corporation and its affiliated companies, a monopoly in the motion-picture industry in the greater part of the United States; all of which is in violation of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

## CONCLUSION

The respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, by reason of the facts set out in the foregoing findings, have been and are using unfair methods of competition in commerce, in violation of the provisions contained in section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the amended answers of respondents, the testimony and documentary evidence offered and received and the arguments of counsel for the respective parties herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," therefore,

*It is now ordered*, That respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, and each and all of said respondents, their officers, directors, agents, representatives, and employees cease and desist:

1. From continuing in force, recognizing, complying with, carrying into effect or enforcing, or attempting to comply with, carry into effect or enforce the conspiracy heretofore made or entered into by and among the respondents or any of them, or by and among the respondents or any of them and any other person or persons, for the purpose of lessening and restraining competition, and restraining trade or commerce among the several States, or with foreign

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nations, in the business of producing, distributing and exhibiting motion-picture films for profit or the business of producing and distributing such films, and from making or entering into any like conspiracy among themselves or any of them, or among themselves or any of them and any other person or persons, for any of the purposes above set forth and enumerated in this paragraph of this order.

2. From leasing or offering to lease for exhibition in a theater or theaters motion-picture films in a block or group of two or more films at a designated lump-sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibition such motion-picture films in a block or group of two or more at a designated lump-sum price for the entire block or group and at separate and several prices for separate and several films, or for a number or numbers thereof less than the total number, which total or lump-sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relation to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition or tend to create a monopoly in any part of the certain line of commerce among the several States, or with foreign nations, involved in said proposed sale, to wit: The business of the production, distribution and exhibition of motion-picture films to the public, or the business of production and distribution, or of production or distribution of moving-picture films for public exhibition.

3. From building, buying, leasing or otherwise acquiring, or threatening so to do, any theater building or buildings or theater or theaters, for the purpose and with the intent or with the effect of intimidating or coercing an exhibitor or exhibitors of motion-picture films to lease or book and exhibit motion-picture films produced or offered for lease or leased by respondent Famous Players-Lasky Corporation.

*It is further ordered,* That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.



*It is further ordered,* That the charges in the complaint herein as against the respondents, Realart Pictures Corporation, The Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters, Inc., Southern Enterprises, Inc., Saenger Amusement Co., Jules Mastbaum, Alfred S. Black, Stephen A. Lynch and Ernest V. Richards, jr., be, and the same are, hereby dismissed.

*It is further ordered,* That so much of the charges in the complaint herein as against the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation as are not embraced in the findings of fact heretofore made by the Commission in this cause, or in the above and foregoing order to cease and desist, be, and the same are, hereby dismissed.

By the Commission: Commissioner Nugent concurring as to paragraphs 1, 2, 3, and 4 hereof and dissenting as to paragraphs 5 and 6 hereof.<sup>2</sup>

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<sup>2</sup>It is presumed that Commissioner Nugent referred, as to his dissent in this paragraph, to the two paragraphs immediately preceding, dismissing charges of the complaint as therein specified, the paragraphs in question being the fifth and sixth paragraphs of the order, though not numbered in the order as were paragraphs 1, 2, and 3.

Complaint

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## IN THE MATTER OF

DAVID JACOBY AND MORRIS GOTTSEGEN, PARTNERS,  
DOING BUSINESS UNDER THE TRADE NAMES AND  
STYLES, MILLS SILVER WORKS, AND MILLS SALES  
COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1440. Complaint, Mar. 1, 1927—Decision, July 21, 1927*

Where a firm engaged as jobbers in the sale of merchandise of sundry kinds, and doing no manufacturing,

- (a) Used the trade name Mills Silver Works on their letterheads, billheads, invoices and other trade literature and in their catalogues and advertisements, together with such statements as "Manufacturers of Silver-plated Hollow-Ware" and "Importers and Manufacturers", with the intent and effect of misleading and deceiving customers into believing them to be manufacturers and that in dealing with them they were therefore obtaining better goods at cheaper prices than when purchasing from a jobber; and in their catalogues
- (b) Falsely described pyrolin or celluloid combs, ivory colored clocks, wood shaving brush handles painted black to resemble ebony, and bill folds made of some material imitating seal, as pyrolin ivory, and amber and shell, ivory, ebony wood, and American pin seal, respectively; with the capacity and tendency to deceive the purchasing public and induce them to purchase the articles thus described, in reliance upon the truth and accuracy of such description:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners engaged in the sale of merchandise of sundry sorts and kinds at wholesale to retailers in various States, doing no manufacturing but purchasing the merchandise dealt in by them from the manufacturers and reselling the same at a profit, and with principal place of business in New York City, with using misleading trade name, misrepresenting business status, and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, featured the trade name Mills Silver Works, or Mills Sales Co., as the case might be, in their advertisements in newspapers, periodicals and other publications of general circulation throughout the United States and in certain sections thereof, and upon their letterheads, envelopes, bill heads, invoices and other trade stationery, together with statements that they were manufacturers of sundry articles dealt in by them, with the capacity and tendency to mislead and deceive, and with the effect of misleading and deceiving many retail dealers into believing that persons dealing with them were buying directly from the manufacturer, thereby eliminating the profits of middlemen, and to cause many to purchase their merchandise in such belief; with the capacity and tendency to divert business from and otherwise injure and prejudice competitors, many of whom manufacture the merchandise dealt in by them and rightfully represent themselves as so doing and others of whom purchase the merchandise dealt in by them and resell the same to others at a profit to themselves over and above the cost thereof to them, without in anywise representing themselves as the manufacturers thereof, and with the effect of so doing.

Respondents further, as charged, in their aforesaid advertising made many false and misleading statements and representations concerning the origin, nature, character and value of various articles depicted and described in said advertising and the materials whereof composed, holding out the same as of a greater and higher value and quality than was the case, said statements and representations including the following:

(a) Combs as ivory when made entirely of other materials, of much less value, through the use of the phrase "Pyrolin Ivory";

(b) Clocks containing no ivory, as ivory;

(c) Shaving brushes as having ebony handles and imported French bristles, the fact being that said handles were composed wholly of wood other than ebony, of much less value than ebony, and resembling it in general appearance;

(d) Pocket books or bill folds, as of seal skin leather, the fact being that they were made of material other than leather, of much less value than leather, and resembling it in general appearance through the use of the phrase "American Pin Seal"; and

(e) Numerous other similar false and misleading representations.

Said acts and practices, engaged in for about three years preceding the complaint, as charged, had the capacity and tendency to and did cause many retail dealers to purchase, deal in and resell said articles in reliance upon the truth of the aforesaid false and misleading rep-

resentations, and had the capacity and tendency to and did divert business from and otherwise injure and prejudice competitors who did not misrepresent the origin, nature, character and value of the merchandise dealt in by them, and were, as charged, all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, David Jacoby and Morris Gottsegen, copartners doing business under the firm names and styles of Mills Silver Works and Mills Sales Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress. The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission theretofore duly appointed.

The respondents having waived the filing of briefs and oral argument, this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, David Jacoby and Morris Gottsegen are, and have been for 10 years, partners doing business under various trade names and styles, among others, "Mills Silver Works" and "Mills Sales Company." They are engaged in the business of selling merchandise of sundry kinds at wholesale, to retail dealers located at points in various States of the United States. They cause said merchandise when so sold to be transported from their place of business in the City and State of New York into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations engaged in the sale and transportation of like articles of merchandise in interstate commerce between and among the various States of the United States.

PAR. 2. Respondents use their trade names mentioned in paragraph 1 hereof on their letterheads, billheads, invoices and other trade literature, in advertisements inserted in newspapers of national circulation, and also in catalogues descriptive of their merchandise and prices, widely distributed to customers and prospective customers throughout the United States. The trade name is usually accompanied by a statement to the effect that respondents are manufacturers.

The following are samples of respondents' printed matter appearing on such stationery as letterheads and invoices:

"MILLS SILVER WORKS  
Manufacturers of  
Silver-plated Hollow-Ware  
661 Broadway, New York."

"MILLS SALES COMPANY  
Importers and Manufacturers  
13 East 16th Street,  
New York, N. Y."

A catalogue issued by respondents in August, 1926, purporting to be the catalogue of the Mills Sales Company, containing description and prices of a large number of articles offered for sale by respondents, was subscribed as follows:

"MILLS SALES COMPANY  
Importers and Manufacturers."

PAR. 3. Respondents are not manufacturers of silverware or of any other commodity, but are jobbers, and purchase the commodities in which they deal from the manufacturers thereof.

The trade name "Mills Silver Works" imports a factory or plant where silverware is manufactured. The use of such trade name, or of the representation that respondents are manufacturers, taken alone or in connection one with the other, has the tendency and capacity to mislead and deceive, and has misled and deceived, customers of respondent into the belief that respondents were manufacturers, and that said customers were, for that reason, obtaining better goods at cheaper prices than when purchasing from a jobber. It was the purpose and intention of respondents, in using the firm name "Mills Silver Works", to secure the custom of persons having such impression.

PAR. 4. In the catalogue referred to in paragraph 2 as being issued in August, 1926, numerous false and misleading descriptions are

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applied to certain articles, as follows: (Quotations are from the catalogue.)

1. "Fine Combs, Pyrolin Ivory No. 14."

The combs described were not made of ivory, but were made of pyrolin or celluloid.

2. "Fine Combs, White, Amber and Shell, 4.50 and 5.25 per gross."

None of the combs thus described were made of amber or shell, but were made of celluloid in imitation of amber and shell in color only.

3. "Fancy Clocks, metal, celluloid and ivory, for every conceivable purpose."

None of the clocks thus described were made in whole or in part of ivory, but those referred to as "ivory" in the description were colored to give the appearance of ivory.

4. "SHAVING BRUSHES, Black and Ebony Wood Handles, White French Bristles . . . 10.-per gross."

The shaving brushes thus described were not made of ebony wood, but of some kind of wood painted black to give the appearance of ebony.

5. "Leather Bill Folds, American Pin Seal, Gold Plated Corners and Shield, packed one to Gold Blue Ribbon box (a corking \$1.00 Number) 5.50 per dozen."

The bill folds thus described were not made of pin seal, or the skin or the hide of a seal, but were made of some other material in imitation of seal.

PAR. 5. The false and misleading descriptions mentioned in paragraph 4 hereof, each has the capacity and tendency to deceive the purchasing public, and to induce them to purchase the articles described, in reliance upon the truth and accuracy of such description.

#### CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

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

made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, that the respondents David Jacoby and Morris Gottsegen do cease and desist from:

1. Doing business under the trade name "Mills Silver Works", or under any other trade name importing or indicating that the respondents are manufacturers, unless and until the respondents herein are, in fact, manufacturers.

2. Representing by means of advertisements or catalogues or by any other means whatever, that they are manufacturers, unless and until the respondents herein are, in fact, manufacturers.

3. Using the word "ivory" as a noun in advertising or describing any article offered for sale by them, unless that article be made of ivory.

4. Using the word "ivory" in any description or advertisement of an article offered for sale by them, in such way as to indicate that the article is made of ivory, unless such be the fact.

5. Using the word "amber" or "shell" in advertising or describing articles offered for sale by them, except in an adjective sense denoting color, unless such article be made from amber or shell as the case may be.

6. Advertising or describing any article as being "ebony wood" unless it be made from ebony wood.

7. Advertising or describing articles to be made of American Pin Seal unless said articles be made of sealskin.

8. Making any other untruthful advertisement or description of any article offered for sale by them.

*It is further ordered*, that the respondents David Jacoby and Morris Gottsegen shall, within 30 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

11 F. T. C.

## IN THE MATTER OF

DAVID A. HORN AND J. M. HYSON, COPARTNERS, DOING  
BUSINESS UNDER THE TRADE NAME AND STYLE OF  
THE TAMPA CIGAR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1326. Complaint, June 11, 1925—Decision, July 30, 1927*

Where cigars made in Tampa, Fla., and in the Tampa district for more than a quarter of a century had come to be widely known and referred to in the trade and by the cigar-purchasing public as Tampa cigars, and the word "Tampa" on containers of cigars or in the advertisements thereof had come to be understood by the cigar-purchasing public and the trade as meaning that such cigars had been manufactured in Tampa or in the immediately surrounding territory, and where the word "Havana" on such containers or in such advertising had come to be understood by said trade and public as meaning cigars manufactured from tobacco grown on the Island of Cuba; and thereafter a firm engaged at Red Lion, Pa., in the manufacture and sale of cigars composed of domestic tobacco only, and with no interest in any cigar factory in Tampa or the Tampa district,

- (a) Employed the words "Tampa cigar" as a part of their trade name and displayed the same on signs, on their business stationery, and in their advertising, and on the labels or containers of their cigars;
- (b) Caused the word "Havana" to be printed on the bands of one of their brands, and the legend "Made of the finest selected imported and domestic tobaccos," etc., to be printed on the labels and containers of another brand; and
- (c) Caused to be placed in gold letters upon the containers of another brand the phrase "Double Grand Prize St. Louis Exposition, 1904", together with a representation of a gold medal or prize at either end thereof, and underneath in small type the statement "Title and design registered by Tampa Cigar Co.," the fact being that no such prize was conferred on anyone at the exposition in question;

With the tendency and capacity to confuse, mislead and deceive the trade and cigar-purchasing public in respect of the place of manufacturing and composition of the aforesaid cigars, and into believing that the brand last above referred to had been awarded the "Double Grand Prize" by the exposition in question:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Charles Melvin Neff* and *Mr. Henry Miller* for the Commission.

*Mr. S. B. Meisenhelder*, of York, Pa., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

<sup>1</sup>Amended complaint, Oct. 2, 1925.



charged respondents, partners engaged in the Borough of Red Lion, York County, Pa., in the manufacture of cigars containing, with unimportant exceptions, no Havana tobacco, and in the sale thereof to wholesale and retail dealers in the various States, with using misleading trade name, advertising falsely or misleadingly and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, displayed their trade name including the word "Tampa" to the trade and public, on signs, on their business stationery, in their advertisements of their cigars, and on the labels of the containers thereof and otherwise, with the tendency and capacity to cause the cigar trade and public to believe that said cigars were made in the Tampa district, long possessed of a high repute and good will among the trade and members of the public as a district known to be one of the principal manufacturing centers in the United States for the manufacture of superior cigars, and with the result that many among said trade and public were confused, misled, deceived and defrauded thereby, in accordance with respondents' intent in the unnecessary choice of the word Tampa as a part of its trade name, to deceive the wholesale and retail cigar trade and members of the public into believing its cigars to have been made in the city or district of Tampa, and into purchasing the same in such belief, into so doing.<sup>2</sup>

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<sup>2</sup>The background and history of the cigar industry of Tampa, as related to this case, are set forth in the complaint as follows:

For many years, prior to the establishment of the cigar-manufacturing industry in the city and district of Tampa, Fla., the dominant center of the industry for the manufacture of cigars composed of Habana tobacco, both as regards the source of supply of the material of which they were composed and of the labor employed in their manufacture, was located in Cuba.

The said cigars, known by reason of the tobacco composing them as Habana cigars, were made by hand, almost exclusively, by what is known as the Spanish hand-made method in which the use of machinery, moulds or other mechanical aids was and is not employed, and in connection with the manufacture of said cigars there was developed in Cuba a large body of native labor of the highest skill in the use of the aforesaid Spanish hand method.

During the times mentioned and referred to herein, cigars made of Habana tobacco whether made in Cuba or in the United States are and have been made almost exclusively by the aforesaid Spanish hand method. A very substantial number of the said cigar trade and members of the public in the United States believed and now believe that Habana tobacco was and is superior in quality for the manufacture of cigars to tobacco grown elsewhere, and that cigars made either in Cuba or in the United States of Habana tobacco are and have been superior in quality to cigars made of other tobacco and by any other method or in any other way than by the said Spanish hand method.

"Vuelta Abajo" is the name of a district in the Island of Cuba in which tobacco is grown that has been and is considered by the said trade and public as the finest tobacco for use in the manufacture of cigars.

On or about 40 years prior to the time respondents engaged as copartners in their said business, the cigar-manufacturing industry was established in the city of Tampa, Fla., and the surrounding country known and referred to herein as the Tampa district. The

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Respondents further, as charged, labeled the boxes or containers of their cigars with brand names almost exclusively Spanish, together with pictures representing a Spanish cavalier or character, Spanish illustrations and decorations, the word "Havana", in the case of one of its brands, the legend, in the case of another, "Made of the finest selected Imported & Domestic Tobaccos Under Sanitary Conditions", the statement, in gold letters, in the case of another brand, "Double Grand Prize St. Louis Exposition 1904," and at either end of the phrase a representation of a gold medal or prize and underneath in small type "Title & Design registered by Tampa Cigar Co.," and the words on the label of another one of its brands, conspicuously and repeatedly, "Vuelta Abajo", and "Spanish Hand Made", and the phrase "Trade Mark and Design Owned by The Havencia Cigar Co.," a fictitious name; thereby falsely and knowingly representing and causing others to represent said cigars as composed entirely of Havana tobacco of the finest quality, and the manufacturer thereof as the fictitious firm or corporation named

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manufacturers and workmen engaged in the manufacture of cigars in the said Tampa district from the time of the establishment of the cigar-manufacturing industry in the said district, were and now are to a very large extent manufacturers and workmen, or their descendants, who came from the Island of Cuba, and the said workmen were and now are believed to be among those of the highest skill in the making of cigars by the said trade and public.

For a number of years beginning immediately upon the establishment of the cigar-manufacturing industry in the said Tampa district, and until on or about the year 1900, most of the cigars made there were known as Havana cigars, composed of Havana tobacco and made by the aforesaid Spanish hand method by the said cigar makers, native workmen of Cuba or their descendants, and during the said times cigars with which the word "Tampa" was associated became known throughout the United States and had a reputation as cigars of superior quality to cigars made in many other places in the United States.

Havana cigars made by the aforesaid Spanish hand method continued to be and now are made in large and important quantities in the city of Tampa and its immediate environs referred to herein as the Tampa district.

On or about 25 years prior to the date hereof, the cigar-manufacturing industry in the said Tampa district was extended to and has since included not only the manufacture of Havana cigars but also the manufacture of cigars made either wholly or partly of domestic tobacco and in large and important quantities, and in the manufacture of which the aforesaid cigar makers have been employed to a large extent.

Since the establishment of the cigar-manufacturing industry in the said Tampa district, on account of the foregoing facts; on account of the proximity of the said city and district to the source of supply of Havana tobacco, and on account of particular climatic conditions existing in the said district which are believed by a very substantial number of the cigar trade and the members of the public in the United States who purchase cigars for use and consumption, to correspond nearly to the climatic conditions in the Island of Cuba; and on account of the aforesaid character of the labor engaged in the manufacture of cigars made in the said Tampa district, cigars made in the said city of Tampa and the said Tampa district have acquired and now have a high reputation among the said trade and members of the said public as being cigars of a quality superior to that of cigars made in many other places in the United States, and the said city of Tampa and said district have acquired by reason thereof during the times mentioned and referred to herein among the said trade and the members of the said public a similar reputation and a good will as a city and district known to be one of the principal manufacturing centers in the United States for the manufacture of cigars of a superior quality as aforesaid.

The Havencia Cigar Co., and falsely representing one of their aforesaid brands as having been adjudged by the aforesaid exposition as of a higher grade or quality than other cigars in competition with it, the fact being that no prize or medal of any kind was so awarded respondents, and with the tendency and capacity in the use of the aforesaid brand names, as above set forth, almost exclusively in Spanish, the use of the word "Tampa," Spanish names, pictures, illustrations, words "Vuelta Abajo," "Spanish hand made," "Havana" and "imported," to confuse, mislead, deceive and defraud the trade and public into believing said cigars to have been made of Habana tobacco, that they were made in the city or district of Tampa, and that respondents were cigar manufacturers in said city or district, and into purchasing respondents' cigars in the aforesaid mistaken beliefs.<sup>a</sup>

Said acts and practices were, as charged, all to the prejudice of the public and respondents' competitors, some of whom manufacture cigars in said Tampa district and properly use the word Tampa in labeling, branding and advertising the same, and others of whom manufacture cigars elsewhere, without using the word "Tampa" as part of their trade name, or in the labeling, branding or advertising of their cigars.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon David A. Horn and J. M. Hyson, partners doing business under the firm name and style of "Tampa Cigar Company", charging them, and each of them, with the use of unfair methods of competition in violation of the provisions of said act.

Each of the respondents entered his appearance and filed an answer. Neither was represented by an attorney. A formal hearing was had, testimony and other evidence was introduced on behalf of the plaintiff and respondents, and a brief was filed by counsel for the Commission. None was filed by the respondents or either of them. Thereafter this matter having come on regularly for decision, and the Commission having considered the record in this case, and being now advised in the premises, makes this its report, stating its findings as to facts and its conclusions drawn therefrom:

<sup>a</sup> Among the brand names used by respondents for its cigars, as above set forth, were the following: "Fernando's El Kibbet C. T. Co." and the phrase, "Title and design registered by Tampa Cigar Co", "Flor De Alwin", "El Durbro", "El Scribe", "Unitus" and "Hurdle."

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## FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondents, David A. Horn and J. M. Hyson, are individuals residing in the borough of Red Lion, County of York, State of Pennsylvania, and that since 1916 they have been, as copartners, continuously and until December, 1925, engaged in the business of manufacturing and selling cigars, under the firm name and style of the "Tampa Cigar Company." In December, 1925, the respondents, under the laws of the State of Pennsylvania, organized and incorporated "The Federal Cigar Company", to take over and continue the business of the copartnership, the "Tampa Cigar Company."

PAR. 2. The respondents, since they have been in business, have made all their cigars in the city of Red Lion, Pa. They caused their cigars, when manufactured, to be packed for display in wooden boxes or other containers, knowing and intending that they would be displayed for sale and sold to individuals, firms and corporations, both wholesale and retail dealers in cigars, and to the public generally throughout the United States.

PAR. 3. The respondents caused such cigars when sold to be transported from the city of Red Lion, Pa., to and into and through other States of the United States and the District of Columbia to the purchasers thereof, and carry on said business in direct and active competition with other individuals, copartnerships and corporations similarly engaged in commerce.

PAR. 4. That for more than a quarter of a century cigars have been made in the city of Tampa, Fla., and in the territory immediately surrounding this city known as the "Tampa District". Such cigars are widely known and referred to in the trade and by the cigar purchasing public as "Tampa cigars".

PAR. 5. The word "Tampa", when used on the containers of cigars or in the advertisements thereof, is understood by the cigar purchasing public and the trade to mean that such cigars were manufactured in the city of Tampa, Fla., or in the territory immediately surrounding said city.

The word "Havana" when used on the containers of cigars or in the advertising thereof, is understood by the trade and the cigar purchasing public to mean that such cigars were manufactured from tobacco grown on the Island of Cuba.

PAR. 6. Respondents, since 1916, when they began their partnership trading under the name Tampa Cigar Co., have displayed their trade name including the word "Tampa" on signs, on their business stationery and in advertising their cigars, and on labels on the con-

tainers or boxes containing their cigars. Respondents, on their cigars branded "Flor de Alwin," caused the word "Havana" to be printed on the bands, and on respondents' cigars called "Federal Judge," they caused to be printed on the labels and the containers "Made of the finest selected imported and domestic tobaccos under sanitary conditions."

Respondents, though they have been manufacturers of cigars since 1916, have never owned, operated, controlled or had any interest in any cigar factory in the city of Tampa, Fla., or in the Tampa district. They have manufactured their entire output in Red Lion, York County, Pa., and made shipments of their products from said place.

None of the cigars manufactured by respondents have at any time contained and do not now contain any Havana tobacco. Respondents, in the manufacture of their cigars, used domestic tobacco only.

Among other cigars manufactured by respondents is the brand "El Durbro." On the boxes or containers displaying this brand, respondents caused to be placed in gold letters the phrase "Double Grand Prize St. Louis Exposition, 1904;" and at either end of said phrase respondents caused to appear a representation of a gold medal or prize, and underneath said label, in small type, the following statement: "Title and design registered by Tampa Cigar Company." There was no "Double Grand Prize" granted, nor was there conferred on anyone a prize or decoration known as a "Double Grand Prize" by the St. Louis Exposition, otherwise known as the Louisiana Purchase Exposition, in 1904, and the use by respondents of this representation tended to deceive and mislead the purchasing public and respondents' customers into believing that respondents' said brand of cigars had been awarded said prize.

PAR. 7. Respondents' use, from 1916 to December, 1925, of the word "Tampa" in their firm name and otherwise as set forth, had the capacity and tendency to cause the cigar trade and the cigar-purchasing public to believe that respondents' cigars were made in the city of Tampa, Fla., or in the Tampa district, when in truth and in fact respondents' cigars were not manufactured in said city of Tampa, Fla., or in the Tampa district, but were manufactured in Red Lion, Pa., as set forth above.

The use by respondents of the word "Havana" in connection with the cigars manufactured and sold by them, whether in advertising or upon cigar containers, or otherwise, had the tendency and capacity to confuse, mislead and deceive the trade and the cigar-purchasing public into believing that the respondents made their cigars of tobacco grown on the Island of Cuba.

The use by the respondents of the word "Imported" in connection with the cigars manufactured and sold by them, whether in advertising or upon cigar containers, or otherwise, had the tendency and capacity to confuse, mislead and deceive the trade and the cigar-purchasing public into believing that the respondents made their cigars of imported tobacco only.

PAR. 8. Among the competitors of the respondents engaged in the manufacture and sale of cigars in interstate commerce are a number of individuals, firms and corporations located in the city of Tampa, Fla., or in the Tampa district, who have been and now are properly using the word "Tampa" in labeling, branding and advertising the cigars they manufacture and sell.

Among said competitors of respondents are the individuals, firms and corporations manufacturing and selling cigars outside of the said city of Tampa, Fla., or in the Tampa district, who are not using and have not used the word "Tampa" as part of their trade name, or in the labeling, branding or advertising of their cigars.

PAR. 9. Respondents, from 1916 to December, 1925, conducted their partnership as above set forth under the firm name "Tampa Cigar Company". In December, 1925, respondents David A. Horn and J. M. Hyson caused to be incorporated under the laws of the State of Pennsylvania a corporation entitled the "Federal Cigar Company", under which name respondents are now operating. Respondents' place of business is still located at Red Lion, York County, Pa. The Federal Cigar Co. had a capital stock of \$150,000. Its officers are: Respondent David A. Horn, president, respondent J. M. Hyson, treasurer; Charles H. Horn, vice president; and Earl Grove, secretary.

#### CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondents and the testimony and the evidence, and the Commis-

sion having made its findings as to the facts, with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That respondents David A. Horn and J. M. Hyson, and each of them, their agents, servants, representatives and employees cease and desist—

(1) From using the word "Tampa" in or as a trade name under which to sell and distribute in interstate commerce any cigars which have not been manufactured in the city of Tampa, Fla., or in the Tampa district in the State of Florida;

(2) From using the word "Tampa", or any other word or words of similar import, alone or in conjunction with any other word or words in describing, advertising, labeling, branding, or otherwise representing any cigars sold and distributed in interstate commerce when such cigars have not been manufactured in the city of Tampa, Florida, or in the Tampa district in the State of Florida;

(3) From using the word "Havana," or word or words of similar import in describing, advertising, labeling, branding, or otherwise representing any cigars or parts of cigars sold and distributed in interstate commerce, unless such cigars or parts of cigars, respectively, as the case may be, are in truth composed wholly of tobacco grown on the Island of Cuba.

(4) From describing, advertising, labeling, branding or otherwise representing as imported any cigars or parts of cigars sold and distributed in interstate commerce unless such cigars or parts of cigars, respectively, as the case may be, have been imported into the United States from a foreign country.

(5) From representing in any manner whatsoever in connection with the sale and distribution of cigars in interstate commerce that respondents or any of such cigars have been awarded a "Double Grand Prize, St. Louis Exposition, 1904," or any other price, when such is not true in fact.

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

Complaint

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IN THE MATTER OF  
**PHILIP CAREY MANUFACTURING COMPANY, PHILIP  
 CAREY COMPANY**

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
 VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,  
 AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

*Docket 1184. Complaint, May 23, 1924—Decision, Aug. 4, 1927*

Where a corporation, and its subsidiary, engaged in the manufacture and sale of patented preformed bituminous expansion joints, and occupying a dominant position in the industry,

- (a) Sent spies under assumed names to the plants of competitors, to report on their facilities, capacities, and operations;
- (b) Used information thus acquired as a basis for representations to prospective customers of such competitors, to the effect that such competitors could not make extensive deliveries or fill orders of magnitude, notwithstanding the fact reports showed that they were taking care of all business which came to them, and were planning expansions with a view to taking care of additional business if and when obtained;
- (c) Circulated through their salesmen a statement, to the effect that a bankruptcy petition had been filed against a competitor, in such a way as to give prospective customers the impression of such competitor's bankruptcy, the facts being, among other things, that an involuntary petition in bankruptcy was filed against such competitor by a competitor of it, one of their own licensees, that a contract involving many thousands of dollars in joints was pending at the time, that the company against which such petition was filed, while at the time not strong financially, was solvent and meeting its obligations, and that the bankruptcy proceedings were never pressed; and
- (d) Represented to purchasers and prospective purchasers of the products herein concerned, that the product of competitors was unsuitable for the purposes intended and would not be passed or accepted;

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* for the Commission.

*Mr. Alfred C. Cassatt*, of Cincinnati, Ohio, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Philip Carey Manufacturing Co., an Ohio cor-



poration engaged in the manufacture and sale of asbestos and asphalt roofing materials, paving joints, and other asbestos and asphalt products, with principal office and place of business in Lockland, Ohio, and respondent Philip Carey Co. (its sales subsidiary), and a New Jersey corporation, but with principal office and place of business also in Lockland; engaged in the sale of the aforesaid products through distributors assigned certain territories exclusively and covering in the aggregate a large portion of the United States, occupying a dominant position in the business concerned, and manufacturing and marketing about 80 per cent of the paving joints marketed and distributed through the aforesaid distributors, with contracting on an exclusive and tying basis, with a tendency to substantially lessen competition, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, and with the effect of substantially lessening competition and intending to create a monopoly in the distribution and sale of paving joints in interstate commerce, in violation of section 3 of the Clayton Act; and with disparaging and misrepresenting competitors and their products, spying on competitors' business, threatening customers and prospective customers with infringement suits, not in good faith, and inducing breach of competitors' contracts with customers, and preventing the making thereof through threats, intimidations and disparagement, in violation of section 5 of the act first above referred to.

Respondents, as charged, in entering into contracts with distributors, to each of whom it had allotted exclusive territory for the sale by such distributor of its products, exclusively, and who sold said products to building contractors and other ultimate users, nearly all engaged in the building and allied trades, with a resulting outlet and market for its products and similar products of its competitors, largely restricted to the aforesaid contractors and users, and with practically none for said products through the usual channels of trade from manufacturer to wholesaler to retailer to ultimate purchaser, and in an even more restricted market and outlet for its paving joints, "used exclusively by persons engaged in the laying of concrete paving, including such building contractors as from time to time engaged in such business, which in large part is restricted to the paving of highways and streets, let by municipalities under competitive bids, said paving being done under the inspection and control of municipal authorities," denied to their competitors "access to the restricted means and channels of distribution of said products, and particularly of paving joints," and said practice of respondents tended "to substantially lessen competition in

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the sale of said products and particularly of paving joints in interstate commerce and to create a monopoly of such commerce in the hands of respondents," in violation of section 5, as above set forth, and, as regards distribution and sale of paving joints, had and have the effect of substantially lessening competition and tending to create a monopoly, in violation of section 3 of the Clayton Act.

Respondents further, as charged, for a number of years preceding the complaint, engaged and engage "in a campaign of persecution and harassment against competitors calculated and intended to prevent sales of said competitors' paving joints; in the course of which campaign and to carry out the purposes thereof respondents did and still do the following acts and things":

(a) Disparage paving joints of competitors to their customers and prospective customers, particularly to the effect that their quality is poor and that they will not successfully serve the purposes for which intended;

(b) Disparage such competitors' business methods, and especially their financial responsibility, size, output and ability to fulfill their contractual undertaking to supply paving joints in any considerable quantity at the times specified therein, or under any circumstance to supply substantial quantities thereof within a reasonable time;

"(c) Send their salesmen and other agents under assumed names and false pretexts and purporting to represent persons and business institutions other than respondents, to the manufacturing plants operated by said competitors or at which their products are manufactured to and they do obtain and report to respondents full information as to the capacity of said plants and the methods of making said competing paving joints, together with materials and the amount thereof entering into the composition of said competing paving joints. Respondents use the information thus obtained as the basis of disparaging attacks upon such competitors, including the statements referred to in specification (b) hereof.

"(d) Cause customers of said competitors to break existing contracts for the purchase of said competing paving joints and prevent prospective purchasers from contracting for or purchasing said competing paving joints in the first instance, by various threats and intimidations, including the disparaging statements before referred to in these specifications, and by making threats of infringement suits against such customers and prospective customers if they should purchase or continue to accept delivery of and use said competing paving joints; said threats of infringement suits being based upon the alleged ground that said competing joints are infringements of

respondents' products, and being made in bad faith without the intention of bringing any such suit or suits.

"Practically all the statements, assertions and threats made by respondents as referred to in the foregoing specifications are false and respondents have never instituted any infringement suit against any such competitors or the users of such competing joints although frequently threatening such suits, as set out in specification (d) thereof."

Said acts and things had the capacity and tendency to and did, as charged, cause competitors' customers to break their contract for paving joints and to forestall and prevent intended purchases by many persons of competing joints, sold for the most part at much lower prices than demanded by respondent for theirs; all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents above named, charging them and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of September 26, 1914, and further charging that said respondents and each of them had been and were entering into contracts for the sale of their products, containing terms and conditions, in violation of section 3 of said act of October 15, 1914.

Each of the respondents appeared and filed answer, whereupon hearings were duly had, testimony taken and evidence received, in support of the complaint, and on behalf of respondents, before an examiner for the Federal Trade Commission, theretofore duly designated for such purpose.

Thereupon this matter came on for decision and the Commission having considered the record and being advised in the premises, makes this, its report, stating its findings as to the facts, and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philip Carey Manufacturing Co., has been for many years last past, and now is, a corporation organized

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and existing under and by virtue of the laws of the State of Ohio, engaged in the manufacture, and sale in commerce among the various States of the United States as described herein, of composition roofing materials, insulating materials and preformed bituminous expansion joints, having its principal office and place of business in the city of Lockland in said State. It commenced to manufacture and sell preformed bituminous expansion joint in 1911, in accordance with the invention of an employee, for which it subsequently acquired a patent from the Government of the United States. This product is used to exclude foreign matter from crevices or spaces between sections or slabs of paving material, used in the construction of streets, roads and highways, and to provide and compensate for the contraction and expansion in the opposite or adjacent sides of such crevices or spaces. It consists, in general, of premoulded filler, of the necessary length, depth and thickness, composed primarily of bituminous products, reinforced with fiber, or otherwise adopted to the aforesaid purpose.

Until respondent, Philip Carey Manufacturing Co. began the manufacture and sale of preformed bituminous expansion joint in 1911, it had been the common practice to pour hot pitch or bitumen into the said crevices or spaces between the sections or slabs of paving material, and respondent, Philip Carey Manufacturing Co. had a monopoly in the sale of the preformed expansion joint for six years after it had placed such product on the market. Inventions of preformed expansion joints by others having no connection with respondents or either of them, followed by patents therefor, resulted in the entry of such products into competition with the preformed expansion joint of said respondent in 1917 and the several years following immediately thereafter. The amount of preformed bituminous expansion joint manufactured and sold in the United States now exceeds annually \$1,000,000 in value, and respondent Philip Carey Manufacturing Co., manufactures and sells 75 per cent of it, and occupies a dominant position in such industry. This respondent for a period of more than 25 years has offered for sale and sold all of its products, including preformed bituminous expansion joint since 1911, by and through respondent Philip Carey Co., which during said period has been, and now is, a corporation which respondent Philip Carey Manufacturing Co. caused to be organized, under the laws of the State of New Jersey, to serve as its medium or agency for the sale and distribution of its products. The general office and place of business of respondent Philip Carey Co. is the same office and place of business in the city of Lockland in the State of Ohio, maintained by respondent Philip Carey Manufacturing Co., and both of re-

spondent companies have the same officers. All of its stock, except several shares necessary to be held by certain directors in order that they may be eligible for such positions, is owned by the respondent Philip Carey Manufacturing Co., by which at all times heretofore, its affairs have been controlled and directed. Since its organization by respondent Philip Carey Manufacturing Co., respondent Philip Carey Co. has engaged continuously, directly and exclusively, and now so engages, under the supervision and direction of respondent Philip Carey Manufacturing Co., in the business of advertising, offering for sale and selling each and all of said products manufactured by Philip Carey Manufacturing Co., and causing them to be shipped from respondent's place of business through and into other States of the United States to the purchasers thereof.

PAR. 2. In the course and conduct of their said business respondents through their agents and employees have sent spies under assumed names to the plants of respondents' competitors to report on the facilities, capacities and extent of operation of such competitors and the information acquired was used thereafter as a basis for representations to prospective customers of such competitors that such competitors could not make extensive deliveries or fill orders of magnitude, though such reports showed that such competitors were taking care of all business coming to them and planning to expand so as to take care of more business if and when it was obtained.

PAR. 3. In the course and conduct of their said business, respondents through their agents and employees circulated through their salesmen, a statement that a bankruptcy petition had been filed against the Servicised Products Co., a competitor in preformed bituminous paving expansion joints, for use by such salesmen in connection with the sale of respondents' goods in competition, and such use was made by such salesmen of said statement, as to give prospective customers of such competitor the impression that such competitor was bankrupt. An involuntary petition in bankruptcy was filed against the Servicised Products Co. and Albert C. Fischer, on December 4, 1923, by the Pioneer Asphalt Co., for a claim of \$1,476, Brannum Lumber Co. for a claim of \$108 and J. L. Jones for a claim of \$70. The pioneer Asphalt Co. was a competitor of the Servicised Products Co. and made joints under a license from the Philip Carey Co. The Brannum Lumber Co. was a creditor of C. C. Hall, of the Banner Rock Products Co., which had manufactured joints for the Servicised Products Co. but was then a competitor of that concern in the expansion joint business. The bankruptcy proceedings were never pressed. There was pending at the time a contract involving about \$16,000 in joints for the Sewerage Disposal

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Plant in Chicago, Ill. Serviced Products Co. was at the time not strong financially but was solvent and meeting its obligations.

PAR. 4. In the course and conduct of their said business, respondents through their agents and employees have represented to purchasers and prospective purchasers of preformed bituminous expansion joints that such product of their competitors was unsuitable for the purpose intended and would not be passed or accepted.

PAR. 5. The statements and representations set forth in paragraphs 2, 3, and 4 above were literally untrue or so calculatingly misleading as to produce a false impression and were intended to injure competitors and were calculated to have that effect.

#### CONCLUSION

The methods of competition described in paragraphs 2, 3, 4, and 5 of the foregoing findings of facts, constitutes under the circumstances set forth therein, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission, upon the complaint of the Commission, answers of respondents, testimony and evidence, the trial examiner's report upon the facts and the exceptions thereto, briefs and oral arguments of attorneys for the Commission and respondents, and the Commission having made its report stating its findings as to the facts and its conclusion, that respondents have violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is therefore ordered*, That respondents, Philip Carey Manufacturing Co. and Philip Carey Co., their officers, agents and employees, cease and desist from directly or indirectly:

1. Employing or using any system of espionage whereby officers, agents, or employees of respondent corporations or either of them, obtain or seek to obtain information as to the facilities, capacities, operations or customers of any competitor;

2. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive

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or misleading statement concerning the ability of any competitor to fill orders or make deliveries;

3. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive or misleading statement of or concerning the acceptableness or adaptability for the use intended of the product of any competitor;

4. Circulating, representing or publishing or causing to be circulated, represented or published among purchasers or prospective purchasers of preformed bituminous expansion joint, any false, deceptive or misleading statement concerning the financial standing, the business or business methods of any competitor.

*It is further ordered,* That the charge set out in the complaint of a violation of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," be and the same is hereby dismissed.

*It is further ordered,* That respondents, Philip Carey Manufacturing Co. and Philip Carey Co. shall, within 45 days from and after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form of compliance therewith.

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IN THE MATTER OF  
MID-AMERICAN OIL AND REFINING COMPANY AND  
J. H. CRITES

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

*Docket 925. Complaint, Oct. 16, 1922—Decision, Aug. 16, 1927*

Where an oil company organized under a declaration of trust; in selling, for a commission and as fiscal agent and trustee, shares or units of interest (together with a bonus of its stock) in so-called syndicates, formed for the development, or alleged development, of particular rights or holdings conveyed by it to the syndicate trustees, and for the purpose of raising funds with which to carry on its business; (following its acquisition, for a large proportion of its stock, of the assets of another company, at the instance of an individual responsible for the promotion or organization of both companies); and said individual, who planned the formation of and sale of units in, such syndicates, to be represented as subsidiaries of the company;

- (a) Represented in circulars and other advertising matter that the company was the promoter of one of such syndicates and the owner of the leasehold interest, in units thereof, and that all units over and above the actual cost of the well to be drilled would be owned by and assigned to it, the fact being that the underlying contract providing for the organization of such syndicate made no provision for any such interest, but provided that the three contracting individuals were equal owners of the entire syndicate, and that such units as remained after providing for the expenses of organization and sinking the well should be divided equally between them;
- (b) Represented that in drilling the well in question, the contractor had agreed to take units for his work and that casing, tanks and hauling had been paid for with units, the fact being that the contractor's agreement provided for the assignment to him of \$10,000 in units, and the payment of specified amounts in cash for such drilling, that the casing was to be paid for in cash, that several thousand dollars were paid thereon, that \$30,000 in units were issued to the vendor thereof to secure such payment, and that, full payment never having been made, such units were never returned to the syndicate;
- (c) Represented that the company acting as trustee would purchase and hold for the benefit of purchasers of the fractional units sold by it, the whole unit of interest for every 10 fractional one-tenth subscriptions, the fact being that no such units were purchased or held by the company although many fractional units were sold, and that the company later admitted such fractional units to be valueless, and promised to exchange the same for similar units in a second syndicate;
- (d) Represented, in promoting the sale of units in a second "syndicate," projected by said individual, without the knowledge or consent of the other trustees, and never formally organized, that the same was a subsidiary of



## Complaint

the company, that the company would act as its trustee, that the company had purchased a valuable lease of 80 acres with one producing well and another on the sand, that the purchase price was \$50,000 in cash and a similar amount in the shares of the company, that the company was on a producing basis and guaranteed a return of the investors' money out of its production, and that the purchaser of units in such syndicate was guaranteed a return of his original investment 90 days after the beginning of the syndicate well, and was further guaranteed a dividend equal to his investment out of oil and gas then being produced out of said 80-acre lease, the fact being that the purchase price thereof was \$100,000, of which \$50,000 was to be paid in cash and a similar amount out of oil production from the property, that such lease was the only producing lease of the company, that it had only one producing well upon it, total daily production of which at the time of contract of purchase was 40 to 50 barrels, of which the owners of the land were entitled to one-eighth as royalty, and of which one-half of the balance was to apply upon the purchase price thereof, and that following the payment of \$8,500 on the purchase price thereof and after possession for some 60 days, default was made in payments, the contract was forfeited or cancelled, and the wells were not producing in paying quantities;

- (e) Represented, in promoting the sale of units in a third syndicate organized by said company and individual, for the purpose of completing a well drilled upon a certain tract, that the company had purchased a lease in the Mexia, Texas Oil Field and that units were being sold in the syndicate in question to make final payments on the lease and to complete drilling a well thereon, and that the investor was guaranteed the return of his original investment from the sale of 160 acres of the 240 acres purchased, to other large oil companies drilling in the vicinity, the fact being that only a nominal amount had been paid on the purchase of such a lease, no further payments were thereafter made, the well was abandoned as a dry hole and the lease later forfeited, and that no sale of any part of such acreage was made to other oil companies, and no attempt made on the part of said company and individual to refund to the purchasers of units in such syndicate any part of their original investment;

With the effect of misleading and deceiving a substantial portion of the public into purchasing shares or units in the aforesaid syndicates or one or more of them, together with shares in the company as a bonus:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson and Mr. John M. Burkett* for the Commission.

*Mr. Arthur Collins*, of Fort Worth, Tex., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Mid-American Oil and Refining Co., an unincorporated, voluntary association operating under a declaration of trust, organized for the purpose of dealing in oils, gas and other mineral lands and for producing, manufacturing and selling oil, gasoline and other

products, with principal place of business in Fort Worth, Tex., and respondent J. H. Crites, its organizer, with engaging in misleading and deceptive acts and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, made numerous false and deceptive statements and representations concerning the business, property, and prospects of respondent Mid-American Oil Co., and the value of its stock, in advertising the same in newspapers of general circulation throughout the United States and in letters, circulars, maps, prospectuses and advertising matter given such general circulation, such statements, made under the signature of respondent's president, but without his knowledge or consent, being to the effect, among other things, that respondent Mid-American guarantees the payment of 100 per cent in dividends on the original investment, from present production, the fact being that the only production in which it had any interest, was a well on a lease in the course of purchase, but which never was actually purchased; all with the capacity to mislead and deceive and with the natural and probable tendency and effect of misleading and deceiving the public.

Respondents further, as charged, after it appeared that the land and leases owned or controlled by respondent Mid-American Co., following its merger and consolidation with the O-Tex Production Co. and the Colonial Oil & Production Co., were not producing in paying quantities, and its stock was not being purchased, and that it was without funds, did certain false and misleading acts and things in connection with the creation of three subsidiary organizations, called syndicates, and the sale of shares or units therein, "for the avowed purpose of further developing said properties and of purchasing and developing additional oil and gas leases."

Said subsidiaries or syndicates, successively caused to be organized by respondent Crites, as unincorporated voluntary associations, were called the Mid-American Syndicate, Stevens County Syndicate, and the Mid-American Mexia Syndicate. Numerous false and deceptive statements were made in advertising the units of said syndicates for sale, in advertisements in newspapers of general circulation, letters, circulars, maps, prospectuses and other advertising matter given general circulation, said statements being under the signature of the president of respondent Mid-American Oil Co., but made without his knowledge or consent.

The matters referred to may be described or suggested as follows:

In the organization of the Mid-American Syndicate, with an authorized capital stock of \$100,000, divided into units of a par value of

## Complaint

\$100 each, respondent Mid-American Oil Co. and its president were made trustees of its property and assets. Respondent Crites caused respondent Mid-American Oil Co. to transfer to said syndicate certain acreages and leases, on the understanding that said last named respondent was to sell the units of the syndicate as a broker, giving as a bonus in the sale thereof certain shares of its own stock, and receiving, after sale of sufficient units to warrant the drilling of a well, one-third of the remaining units or the proceeds therefrom. "As a matter of fact, however, said respondent J. H. Crites had complete charge of the sale of the units of this said syndicate and acted as its fiscal agent and sold its units to the public for cash, and on a partial payment plan, it being understood under the said partial payment plan that the said respondent, Mid-American Oil & Refining Co. acted as trustee, holding the units until they were completely paid for when they were to be turned over to the purchasers thereof. However, the units were never actually issued to the said respondent, Mid-American Oil & Refining Co., although a large number thereof had been sold on the said partial payment plan."

In the sale of the units of said syndicate such false statements were made as that after payment of the cost of royalty to landowners and cost of completing a well, unsold units would be assigned to respondent Mid-American Co. as payment for its leases, the fact being that it was understood that two-thirds of the unsold units would go to trustees of respondent Mid-American individually and only one-third to such respondent itself; also that respondent Mid-American would act as trustee and that the syndicate would issue a unit for every 10 subscriptions at \$10, the fact being that the syndicate never issued any units on such plan and money paid on such plan never reached said syndicate.

Some five or six months thereafter, respondent Crites, without the knowledge of the other trustees of respondent Mid-American Co. attempted the organization of the Stevens County Syndicate, and to persuade those who had made partial payments for the units in the Mid-American to exchange such partial payment units for those in the new syndicate. Representations were also here made to the public that the respondent Mid-American would act as trustee of said last named syndicate, and numerous other false and misleading statements were made in advertising the units of said syndicate, relative to its purchases, leases, requirements and prospects, including the false statement that the purchaser of units was guaranteed the return of his original investment in 90 days and the dividend equal thereto from an 80-acre lease represented as having been purchased, the fact being that neither respondent Mid-American nor respondent's syndi-

cate had any right to oil or gas produced therefrom; all with the capacity to mislead and deceive and with the natural and probable tendency and effect of misleading and deceiving the public.

Mid-American Mexia Syndicate was formed in a manner similar to that of the syndicate last named, respondent Mid-American being trustee. Such syndicate was caused by respondents to sell its units by offering the public two, for the price of one. Advertising matter and literature used in the sale of the units contained false statements, with the capacity and tendency above set forth, such statements including one that the syndicate had purchased a lease on 240 acres in the Mexia, Texas, oil fields, that units were being sold therein to make final payment on such lease and complete drilling a well thereon and that the investor was guaranteed return of his original investment out of the sale of 160 acres of said 240 to other large companies in the vicinity, the fact being that only a nominal amount had been paid on said purchase, no further payments were made, the well was abandoned as a dry hole, and the lease forfeited, and no sales of acreage were made to other companies nor any attempt by respondents to refund to purchasers of such units any part of their original investment, and that after a large number thereof had been sold, respondent notified the unit holders that the syndicate had struck a dry hole and offered to exchange their units for stock of another oil company, represented as a successful firm, contingent upon their purchasing such new stock for cash.

“The acts and things performed by said respondents, Mid-American Oil & Refining Co. and J. H. Crites, and the representations made by them and each of them in the organization of and in the sale of the capital stock of the said respondent, Mid-American Oil & Refining Co., and the units of its said subsidiary syndicates as described in the foregoing paragraphs had the capacity to mislead and deceive and the natural and probable tendency and effect of them and of each of them was to mislead and deceive the purchasing public and induce numerous persons located throughout the several States to purchase the capital stock of the said respondent, Mid-American Oil & Refining Co. and units in its said subsidiary syndicates;” all to the prejudice of the public and respondent’s competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents charging them with the use of unfair methods of competition in violation of law.

Thereupon, respondents entered appearances, filed answers and formal hearing was had in the course of which testimony and evidence were introduced in support of the complaint and on behalf of the respondents. Thereafter, brief was filed by counsel for the Commission, and respondents having failed to file brief within the time prescribed, or at all, and this matter having come on for final decision and the Commission having considered the record and being advised in the premises makes this its report, stating its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, J. H. Crites, caused the organization of the said respondent, Mid-American Oil & Refining Company as an unincorporated, voluntary association under a declaration of trust dated May 1, 1920, with its principal place of business at Fort Worth, Tex., having authorized capital stock of \$1,000,000 divided into 1,000,000 shares with a par value of \$1 each, for the purpose of purchasing, leasing, selling and conveying lands supposed to contain oil, gas, and other minerals; drilling wells and producing crude petroleum, manufacturing refined oil, gasoline and other products; constructing, operating and maintaining refineries in the State of Texas and elsewhere. In July, 1920, he caused the said respondent Mid-American Oil & Refining Company to merge with the Colonial Oil & Production Company, and in October, 1920, he caused the O-Tex Production Company, which had also been promoted by him to transfer its assets to the respondent, Mid-American Oil & Refining Company, in consideration of a large proportion of its stock. None of this stock was sold for cash but such portion thereof as became the property of others than respondent J. H. Crites, and associates, was obtained either in said exchange for property of O-Tex Production Company or as a bonus for the purchase of shares or units in the various syndicates hereinafter described. After the merger with the Colonial Oil and Production Company and acquisition of the property of the O-Tex Production Company, there were available for respondents no funds with which to develop leases, drill wells, or conduct any other activities in the oil industry, or the oil fields of Texas, and no means by which funds for such purposes could probably be obtained from sale of the stock of respondent, Mid-American Oil & Refining Company. Respondent, J. H. Crites, conceived and put into active operation as a contrivance or device to win the confidence of prospective investors and to procure the use of their money for his enterprises, the formation of so-called syndicates to be represented to the public as sub-

subsidiaries of respondent, Mid-American Oil & Refining Company, and the sale of shares or units therein with the delivery therewith of shares in respondent company as a bonus to purchasers of shares or units in such syndicates as the initial step in the development or use of such device.

PAR. 2. The said respondent Crites caused to be organized the Mid-American Syndicate by a declaration of trust dated February 26, 1921, executed by the Mid-American Oil & Refining Company by its trustees, John T. Honea, Ennis Roberts and J. H. Crites, the Commerce Trust Company by J. E. Willis and by G. Graham, Sterling P. Clark, and John T. Honea. In said declaration of trust was recited the conveyance by the Mid-American Oil & Refining Company to Sterling P. Clark, John T. Honea, and G. Graham as trustees of a ten-sixteenth interest in a certain oil and gas lease covering city block 21 in the town site of Breckenbridge. The value of the trust estate was fixed at \$100,000 divided into 1,000 units of a par value of \$100 each. The Commerce Trust Company of Fort Worth, Tex., was constituted "Special Trustee" to receive and disburse money arising from pipe line runs of oil. The said conveyance of interest in block 21 and said declaration were made pursuant to a contract by and between Sterling P. Clark, John T. Honea, and G. Graham, dated January 21, 1921, setting forth the terms under which said conveyance and said declaration of trust would be executed, and providing among other things that the shares or units of said syndicate would be sold to the public, and that the Mid-American Oil & Refining Company would act in the capacity of fiscal agent in the sale thereof, receiving a commission of 15 per cent on the gross units sold for cash. It was also provided that the respondent company would act as trustee for the syndicate, opening an account against which checks were to be drawn by John T. Honea and countersigned by J. H. Crites. In carrying out the campaign of selling said units said respondent Crites had complete charge and sold units to the public for cash to the amount of about \$41,000. Said units were sold largely to the stockholders or shareholders of the respondent, Mid-American Oil & Refining Company, and there was given as a bonus to the purchaser of each unit in the Mid-American Syndicate, 25 shares of the respondent, Mid-American Oil & Refining Company. There was also sold by the said respondent Crites a large number of fractional units in multiples of one-tenth unit, for which receipt or assignment certificate was issued to purchaser, agreeing that for each whole unit represented by fractional multiples the respondent company would purchase and have issued to it to hold as trustee one unit or share of the syndicate

and registered on the books of the Commerce Trust Company as special trustees.

The whole units of the Mid-American Syndicate so sold were represented by certificates which were sent through the mail, or by other means of transportation, to purchasers thereof throughout the United States by the said respondents, Mid-American Oil & Refining Company and J. H. Crites. In the campaign to sell and the sale as aforesaid of the shares or units of the Mid-American Syndicate, the said respondents, with the active cooperation or acquiescence of John T. Honea, as president of said respondent, Mid-American Oil & Refining Company, prepared and circulated or caused to be prepared and circulated throughout the United States, circulars, letters, maps and other advertising matter which contained numerous false and misleading statements of and concerning the business, property and prospects of the respondent Mid-American Oil & Refining Company and the Mid-American Syndicate. Such false and misleading statements were to the effect that the respondent, Mid-American Oil & Refining Company, was the promoter of the Mid-American Syndicate and the owner of the leasehold interest, in units of the Mid-American Syndicate, and that all units over and above the actual cost of the well would be owned by and assigned to the respondent company; when in truth and in fact the contract by and between the trustees of the syndicate providing for the organization of the Mid-American Syndicate stated that the contracting parties were equal owners of the entire syndicate and entitled to receive each an equal one-third of the profits from the development of said lease, and the declaration of trust of said Mid-American Syndicate provided that after the sale of only that number of units of interest as should be necessary to provide funds to cover organization expense and the cost of sinking the well on the lease, the remainder of the units would be divided equally between the following named persons, to wit: Sterling P. Clark, John T. Honea, and G. Graham; also the statement that in drilling the well on block 21 Breckenridge the drilling contractor had agreed to take units for his work, and casing, tanks and hauling had been paid for with units; when in truth and in fact, the agreement with the contractor provided for the assignment to him of \$10,000 in units and the payment of \$4.50 per foot for drilling down to top of the line and \$150 a day for time necessary to drill the well in with \$100 a day for shut-down time caused by failure of the company to provide water, fuel or casing. The casing furnished for the well by E. Graham was to be paid for in cash, and three or four thousand dollars was paid. To secure the payment for the casing, approximately \$10,000, there were issued and de-

livered to E. Graham \$30,000 of units of the Mid-American Syndicate to be returned upon payment for the casing. Full payment was never made and the units were never returned to the syndicate.

The aforesaid circular letters and other advertising matter distributed as herein stated by respondents, Mid-American Oil & Refining Company and J. H. Crites, also contained the statement that the respondent, Mid-American Oil & Refining Company, acting as trustee would purchase and hold for the benefit of the purchasers of fractional units in the syndicate, the whole unit of interest in the Mid-American Syndicate for every 10 fractional one-tenth subscriptions of \$10 each, when in truth and in fact no such units were purchased or held by said respondent company, although many fractional units were sold by it.

Subsequently the respondent company notified the purchasers of fractional units that it had been its expectation to furnish such units from those which were to come to it from the one-third interest of the trustee, John T. Honea, in units remaining after the financing and completion of the well; that said well was not and probably never would be completed; that the fractional units were therefore absolutely valueless; that in exchange for such fractional interests represented by assignments of units issued in the name of the respondent company, units in an equal amount would be issued in the Mid-American Stevens County Syndicate.

In the latter part of December, 1921, the Mid-American Syndicate went into the hands of a receiver.

PAR. 3. On or about May 4, 1921, without the knowledge or consent of the other trustees of the said respondent, Mid-American Oil & Refining Company, the said respondent, J. H. Crites, undertook to organize a new syndicate known as the Mid-American Stevens County Syndicate for the alleged purpose of development of 40 acres out of a lease of an 80-acre tract in Stevens County which the respondent, J. H. Crites, had contracted to purchase for the Mid-American Oil & Refining Company. A large number of units to the extent of approximately \$26,000 in said Mid-American Stevens County Syndicate were either sold for cash or issued in exchange for fractional units of the Mid-American Syndicate. In the organization or attempted organization of said Stevens County Syndicate no formal organization was attempted or carried out, but the said syndicate was represented to the public as a subsidiary of the respondent, Mid-American Oil & Refining Company and it was also represented that said respondent company would act as trustee for the syndicate. In the sale of said units for cash there were given with each unit a bonus of 25 shares of stock of the respondent, Mid-American Oil & Refining



Company. The sale of units in the second syndicate was made by said respondents, Mid-American Oil & Refining Company and J. H. Crites, in a manner similar to the sale of units of the Mid-American Syndicate as aforesaid, and advertising matter and literature were sent out by the respondents into the various parts of the United States in connection with the campaign to sell, and the sale of, said units which contained many false and misleading statements. Among them were statements to the effect that the respondent, Mid-American Oil & Refining Company, had purchased a valuable lease of 80 acres with one producing well and another on the sand; that the purchase price was \$50,000 in cash and \$50,000 in shares of the respondent, Mid-American Oil & Refining Company; that respondent, Mid-American Oil & Refining Company was on a producing basis and guaranteed a return of the investor's money out of its production; that the purchaser of units of the Mid-American Stevens County Syndicate was guaranteed the return of his original investment 90 days after the beginning of the syndicate well and he was further guaranteed a dividend equal to his investment out of oil and gas then being produced for the said 80-acre lease, whereas in truth and in fact, the purchasing price of said lease was \$100,000 of which \$50,000 was to be paid in cash and \$50,000 out of oil production from the property; the said 80-acre lease was the only producing lease of said respondent company; there was only one producing well upon it, the total daily production from which, at the time contract was made for its purchase by the respondents, Mid-American Oil & Refining Company and J. H. Crites, was 40 to 50 barrels; of this production the owners of the land were entitled to one-eighth as royalty and one-half of the remaining seven-eighths was to apply upon the purchase price of the lease; \$8,500 was paid on the purchase price of said lease and after possession thereof for about 60 days from the date of the contract, default having been made in payments, the contract was cancelled or forfeited and at time of cancellation or forfeiture the wells on said lease were not in fact producing in paying quantities.

PAR. 4. The said respondents caused the organization of the Mid-American Mexia Syndicate on or about June 30, 1921, with a proposed capitalization of \$70,000, divided into 7,000 units with a par value of \$10 each. The said Mexia Syndicate was organized for the purpose of completing a well which had been drilled to a depth of approximately 3,000 feet upon an 80-acre tract, which was part of a 240-acre lease in the Mexia, Texas Oil Field, for the purchase of which the respondent, Mid-American Oil & Refining Company had an option. This syndicate was formed in a manner similar to the said Mid-American Stevens County Syndicate, with no articles of

incorporation or association, and with the said respondent, Mid-American Oil & Refining Company, as trustee. The said respondents caused the said Mid-American Oil & Refining Company to sell the units of the said syndicate to the public, to the extent of approximately \$7,000 by offering two units for the par price of one. The advertising matter and literature used in the sale of these units were distributed to the public in the same manner as that of the Mid-American Syndicate and the Mid-American Stevens County Syndicate, and contained false statements to the effect that the said respondent, Mid-American Oil & Refining Company, had purchased a lease on 240 acres in the Mexia, Texas Oil Field, and units were being sold in the said Mid-American Mexia Syndicate to make final payment on the lease and to complete drilling a well thereon; that the investor was guaranteed the return of his original investment out of the sale of 160 acres of the said 240 acres to other large oil companies drilling in that vicinity, when as a matter of fact only a nominal amount had been paid on the purchase of the said lease and no further payments were thereafter made, the well being abandoned as a dry hole and the lease later forfeited and no sale of any part of said acreage was made to other oil companies, and no attempt was made on the part of said respondents to refund to the purchasers of units in said Mid-American Mexia Syndicate any part of their original investment.

PAR. 5. Respondents, Mid-American Oil & Refining Company and J. H. Crites, offered for sale and sold the units or stock in the Mid-American Oil & Refining Company, the Mid-American Syndicate, the Mid-American Stevens County Syndicate, and the Mid-American Mexia Syndicate, in the various States of the United States in competition with individuals, partnerships, corporations and associations engaged in the sale of oil stocks in the various States of the United States, and caused certificates or other evidences of ownership to be transmitted from Fort Worth, Tex., to purchasers thereof at their points of location in the various States of the United States.

PAR. 6. The foregoing false and misleading representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of shares or units in the said so-called syndicates or one or more of them, and the acquisition of shares in respondent company as a bonus, for and on account thereof.

#### CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated, unfair

methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and evidence and the brief of counsel for the Commission, respondents having failed to file brief within the prescribed time, or at all, and the matter having come on regularly for decision and the Commission having made its report stating its findings as to the facts with its conclusion that respondents, Mid-American Oil & Refining Company and J. H. Crites, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is ordered*, That the respondents, Mid-American Oil & Refining Company and J. H. Crites, cease and desist from publishing, circulating or distributing, in interstate commerce, in connection with offering for sale or selling stock of the Mid-American Oil & Refining Company, the Mid-American Syndicate, Mid-American Stevens County Syndicate, the Mid-American Mexia Syndicate, or any other association, corporation or syndicate, magazines, pamphlets, prospectuses, newspapers, circulars, circular letters, or any other printed or written matter containing false or misleading statements or representations concerning the organization, management, financial condition, resources, production, properties, earnings, income, progress, or prospect of respondent, Mid-American Oil & Refining Company, or any of said syndicates, or of any other corporation, association or syndicate, whose stock or units are offered for sale or sold by respondents or either of them in interstate commerce.

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

IN THE MATTER OF  
THOMAS E. POWE AND F. C. HARRINGTON, PARTNERS,  
DOING BUSINESS UNDER THE FIRM NAME AND  
STYLE, THOMAS E. POWE LUMBER COMPANY<sup>1</sup>

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

*Docket 1281. Complaint, Feb. 12, 1925—Decision, Aug. 16, 1927*

Where the wood mahogany had long had a merited and enduring reputation associated with the word, was usually sold to lumber dealers and manufacturers under such names indicating origin as "Honduras Mahogany", "Mexican Mahogany", etc., and was usually dealt in in the retail furniture trade without such prefixes, and where furniture and other articles were customarily bought, dealt in, and purchased by buyers for large retail stores, by retail dealers, and by the public in reliance upon representations by the manufacturers and dealers respectively as to their composition and whether or not they were mahogany; and thereafter a firm engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others,

Represented and advertised certain Philippine hardwoods as "Philippine Mahogany", and induced others so to represent the same and products thereof, advising customers and prospective customers (including manufacturers of mahogany furniture who had begun to use other woods stained to imitate mahogany following the World War scarcity thereof), and the public generally, in advertisements and correspondence, that products made from such woods could be guaranteed as made of "Genuine Mahogany", and making such statements in circular letters as "Would you like to be in a position of guaranteeing to your trade that your products are made of GENUINE MAHOGANY?", "Can we interest you in mahogany lumber at a price that will allow you to use it along with quartered white oak, red birch and other domestic woods—and still give you real mahogany—a wood that needs no imitation—no false staining—and a genuine mahogany grain after it comes from the finishing room?", "\* \* \* our LAUAN MAHOGANY fills a long-felt want", "WHY IS LAUAN MAHOGANY? A ma-

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<sup>1</sup> Findings and orders were first issued as of July 15, 1926, in three of the group of six cases in which findings and orders are now issued as of August 16, 1927, involving the use of the term "Philippine Mahogany," such group being composed of the instant case, namely, the Thomas E. Powe Lumber Co., Docket 1281; Indiana Quartered Oak Co., Docket 1316; Kirschmann Hardwood Co., Docket 1323; Hammond Lumber Co., Docket 1324; Robert Dollar Co., Docket 1325; and The Jones Hardwood Co., Docket 1332. The cases referred to in which such findings and orders were first issued were the first two and the last, as above enumerated. (See 10 F. T. C. 280, 300, and 320, respectively.) The cases were reopened at the request of respondents and the Philippine Government, intervenor, for the purpose of considering additional relevant testimony, said not to have been available at the original trial of the cases. The effect of the new findings is to modify and enlarge those theretofore made, the orders remaining undisturbed. As to the other three cases, namely, the Kirschmann Hardwood, Hammond Lumber, and the Dollar cases, it was stipulated that the record of the evidence taken in the reopened cases should constitute the evidence upon which the Commission should proceed to make its report in such proceedings.

hogony cut exclusively in the Philippine Islands, imported by us direct. A mahogany of exceptional value, gaining popularity not only in the U. S., but other countries as well. \* \* \*", " \* \* \* the more you use of our stock—the more the saving we can effect you in your Mahogany purposes", and so sold said woods to furniture manufacturers, dealers and others by whom said woods or the products manufactured therefrom were resold to retailers and others as "Mahogany", "Genuine Mahogany" or "Solid Mahogany", and were in turn by them resold to the public as and for such products;

The fact being that the aforesaid woods (1) were not mahogany, either botanically or otherwise, (2) lacked many of the characteristics and virtues possessed by mahogany and were thereby unsuited for a variety of uses employed for mahogany, (3) were sold to the manufacturer for about two-thirds of the price of genuine mahogany, and were by the latter resold in the manufactured products, to dealers, at the price prevailing for mahogany products, (4) had long been known and traded in in the Philippines and in the United States under their native and trade names, "lauan" and "tanguile", and also under other native names such as "red lauan", "bataan", etc., (5) were imported under such names as to the greater proportion thereof imported, (6) were so dealt in in the United States by many of the importers and a substantial number of the lumber dealers, (7) were not what dealers, manufacturers, and ultimate purchasers had in mind when they wanted mahogany, or what they believed to be mahogany, (8) were named and sold as Philippine Mahogany in the face of official disapproval and practice, and without the sanction of local custom, and that (9) approximately 60 per cent of the retail lumber dealers in the United States, and ultimate purchasers of furniture and other products had never heard the term, with rare exceptions, in which instances it was believed to mean mahogany, and not a substitute;

With the effect of (1) causing manufacturers, dealers in furniture and other products, and consumers to purchase, sell or deal in said woods, and products made therefrom, as mahogany, (2) placing in the hands of its immediate customers an unlawful instrument enabling them to increase their profits by reselling the lumber so misnamed, either as such, or in the manufactured form, thereby lessening the market for true mahogany and for the honestly named Philippine hardwoods, (3) diverting business from and otherwise prejudicing competitors dealing in and able to supply lumber and other wood products, consisting of mahogany, rightfully and truthfully so represented by them, and competitors dealing in lauan, tanguile, and other Philippine hardwoods and the products manufactured therefrom, under appropriate or trade names, which did not import or imply that they were mahogany, and (4) of deceiving a substantial portion of the trade, and the purchasing public in substantial numbers, and inducing the ordinary purchaser of products made from such woods to purchase the same as and for mahogany, in whole or in part, to the injury and prejudice of the purchasing public and of honest competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. M. Markham Flannery and Mr. Stephen C. Van Fleet for the Commission.*

*Forbes & Daniels, of Washington, D. C., for respondents.*

## Findings

11 F. T. C.

*Maj. F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for Philippine Government, intervenor.

*Mr. Gilbert H. Montague*, of New York City, for Mahogany Association, Inc. (*Amicus Curiae*).

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a partnership engaged in the sale of lumber and other wood products to dealers in lumber and manufacturers of furniture, cabinet work and allied products, in the various States, and with place of business in St. Louis, with misrepresenting products and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, for more than one year prior to the complaint respondents offered and sold as and for mahogany, lumber and other wood products consisting of woods other than mahogany, though resembling it in general appearance, representing said lumber and other products as "mahogany," "lauan mahogany," and other purported species, and kinds of mahogany in advertisements, circular letters, and other correspondence with vendees and prospective vendees, and upon their letterheads, billheads, invoices, price lists and other trade literature, and representing the same as genuine mahogany to such vendees, with the effect of causing many such dealers and manufacturers to purchase said lumber and other products as and for mahogany, and to manufacture therefrom and to sell to wholesale and retail dealers articles of furniture, etc., as and for mahogany, and thus cause such dealers and eventually the consuming public to purchase the same as and for mahogany articles, and of diverting business from and otherwise prejudicing many competitors dealing in genuine mahogany lumber and mahogany products, "who do not include any other kind of wood than mahogany in their advertisements or representations of mahogany wood, and who otherwise properly and truthfully represent the lumber and other wood products which they offer for sale"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER <sup>1</sup>

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, Thomas E. Powe and F. C. Harring-

<sup>1</sup> See footnote on p. 248.

ton, partners, doing business under the firm name and style Thomas E. Powe Lumber Company, charging them with unfair methods of competition in commerce in violation of said act.

Respondents having entered their appearance by their attorney, and having filed their answer herein, and the Philippine government, intervenor, having entered its appearance by its attorney, and having filed special answer herein, hearings were held before an examiner of the Federal Trade Commission, heretofore duly appointed, and testimony was thereupon offered and received in support of the allegations of said complaint, and in support of the allegations of said answer of respondents, and thereupon this proceeding came on for decision, and the Commission having duly considered the record, and being fully advised in the premises, made its findings as to the facts and its conclusions drawn therefrom, and entered its order herein. Thereafter respondents and intervenor having declared that there was in existence additional relevant testimony which was not available to them at the trial, asked leave to introduce such testimony, which was granted, subject to the provisions of a stipulation entered into between respondents and the Commission, and said additional testimony, together with certain additional testimony offered in support of the complaint, was thereupon received pursuant to the provisions of said stipulation, and the Commission having again duly considered the record, including said additional testimony, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the firm name and style, Thomas E. Powe Lumber Company, with their principal place of business in the city of St. Louis, State of Missouri. They are engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others located at various points in the several States of the United States. They cause said commodities, when so sold, to be transported from their said place of business in the city of St. Louis, Mo., and from the point of origin of such commodities into and through other States of the United States to purchasers at their respective points of location in States other than Missouri and other than the points of location of such shipments.

PAR. 2. There are other individuals, partnerships, and corporations situated in the various States of the United States also engaged in the sale of hardwood lumber and hardwood products, who cause said commodities when sold to be transported from their respective

places of business into and through other States of the United States to purchasers located in States other than the State of origin, and into States into which respondents ship their hardwood products, with whom respondents were during the time mentioned in the complaint and now are competing in interstate commerce.

PAR. 3. A large and important part of the hardwood and hardwood products sold and transported by respondents in interstate commerce is called by respondents "Philippine mahogany", and is grown in and imported from the Philippine Islands. This wood has been known and traded in for years prior to the filing of the complaint herein both in the Philippines and in the United States under the names Lauan and Tanguile. Other trade names employed for these woods are red Lauan, white Lauan, Bataan, Lamao, Almon, Apitong, Orion, Batang, Bagaac, Batak, and Balachacan.

PAR. 4. About 85 per cent of the Philippine woods sold as "Philippine mahogany" imported through the Pacific coast ports is imported under the trade names set out in paragraph 3 above. Some importers sell these woods to lumber dealers, furniture manufacturers, and others under their native or trade names. Respondents and other importers sell it to furniture manufacturers, dealers and others as "Philippine mahogany". After sale by the importers last referred to, the manufactured products are sold by the said furniture manufacturers to retail furniture dealers and others as "mahogany", "genuine mahogany", or "solid mahogany". Such products are resold by retail furniture dealers to the public as and for products made of "mahogany", "genuine mahogany", or "solid mahogany".

PAR. 5. Many of the importers and a substantial number of lumber dealers in this country use and deal in woods of the type sold by respondents as "Philippine mahogany", but under the native or trade names in paragraph 3 set forth.

PAR. 6. The Lauan and Tanguile sold by respondents as "Philippine mahogany" are the product of the tree family scientifically known as Dipterocarpaceae. This tree family is not scientifically or botanically related to the tree family Meliaceae, the product of which constitutes true mahogany.

PAR. 7. The Philippine hardwoods sold by respondents and others, as hereinabove described, are the only woods derived from a tree family other than Meliaceae, to which the term mahogany has been applied. Of the genera of this family, only one, "Swietenia", produces true mahogany. There are five known species of Swietenia.

PAR. 8. The term "African mahogany" has been applied commercially to the product of "Khaya" of the genera of Meliaceae, of which there are about four known species.



PAR. 9. Trees of the *Swietenia* group producing true mahogany grow principally in the West Indies, Southern Florida, Southern Mexico, Central America, Venezuela, and Peru. No species of the genus *Swietenia* of this tree family grows in the Philippine Islands except as specially planted for decorative or experimental purposes.

PAR. 10. The Spanish words "Caoba des Filipinos", meaning "Philippine mahogany", are occasionally used in the Philippine Islands to designate native woods resembling mahogany in grain, texture and color. This term was known in the Philippines, but not used in connection with the sale of lumber. It does not appear that this expression was used prior to the American occupation. Prior to 1916 the Philippine Government, as represented by its director of forestry, opposed the practice of American importers in selling Philippine hardwoods as Philippine mahogany.

PAR. 11. When Philippine hardwoods leave the Philippine Islands for the United States, they are shipped under the native names, Lauan, Tanguile, etc. The invoices on which the taxes are levied are made out under the native names, this being by agreement with the Bureau of Customs, as well as the railroad companies, so that the shipping invoices will conform to the manifest on which the Government charge has been paid.

PAR. 12. Active opposition on the part of officials of the Philippine Government to the practice of selling Philippine hardwoods as "Philippine mahogany" abated about 1916, but a few months prior to the institution of the Federal Trade Commission's investigation of this matter a statement by the forester of the Philippine Government, published in a trade journal known as the *Hardwood Record*, deplored the selling of Philippine wood as true mahogany, "a practice which always will be opposed by the Bureau of Forestry of the Philippine Government, both because of the false pretenses and because of the fact that the Philippine woods have sufficient good qualities to stand on their own merits."

PAR. 13. The various kinds of woods are distinguished from one another by botanical properties or characteristics. Many woods of widely different kind have some properties and characteristics in common, but it is the differences in such properties and characteristics, be they great or small, that distinguishes one wood from another. The ultimate test consists in a comparison or contrast of such properties and characteristics.

PAR. 14. In commerce when a question arises as to whether wood is of one kind or another, the matter is submitted to a wood technologist for determination. A wood technologist authoritatively identifies

wood according to the species, genus, tribe and family of the tree, as classified, established and agreed upon by botanists.

PAR. 15. The United States Department of Agriculture in its Forest Products Laboratory at Madison, Wis., is regularly engaged in officially determining for those engaged in commerce the question whether wood is of one kind or another. Many samples of Philippine hardwood, such as sold by respondents, were identified by Mr. Arthur Koehler, wood technologist of said laboratory, as shorea—one of the genera of dipterocarpaceae.

PAR. 16. The United States Department of Agriculture on September 28, 1926, issued the following official statement:

The name "Philippine mahogany" as applied to Tanguile, Lauan, and other Philippine woods, has never been endorsed by the United States Department of Agriculture. Its use runs counter to the principles followed by the Forest Service in attempting to give to native American trees and woods standard names that do not deceive or mislead the public, according to a statement by Chief Forester W. B. Greeley in connection with recently published statements growing out of the Federal Trade Commission decision against the use of the name "Philippine Mahogany".

The Forest Service has been quoted as having endorsed the name "Philippine mahogany" in a letter written in 1914. This letter, however, according to the Forest Service statement, did not attempt to decide the specific question at issue, and was limited to stating the principles that should be followed in the nomenclature of woods.

In the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus *Swietenia*.

PAR. 17. Unschooling persons such as laborers in a lumberyard who readily distinguish between the different kinds of lumber by such criteria as grain, pore, scent, weight, or other identifying characteristics are guided by botanical properties and differences inherent in the wood as formed in the tree, and these characteristics correspond with like characteristics placed by nature in trees of the same species. Wood technologists by reason of their expert knowledge compare these and many other qualities and characteristics with such precise results as to satisfy the requirements of both science and commerce, and according to such identifications neither Lauan nor Tanguile are mahogany botanically or otherwise.

PAR. 18. In addition to the scientific and botanical distinctions used by wood technologists, many of the characteristics and virtues possessed by mahogany are lacking in the Philippine hardwoods sold by the respondents as mahogany under the name Philippine mahogany. The absence of such characteristics and virtues prevents such hardwoods from serving certain uses for which mahogany is particularly adapted. While there is conflict in the evidence, the

weight is to the effect that Philippine hardwoods are not suitable for the following uses, and the Commission so finds:

(a) Such woods are not suitable for cabinetmaking because of the great prevalence of wormholes which constitute serious defects in all Philippine woods.

(b) They are not suitable for the construction of lamps because they do not take a proper finish.

(c) They are too soft to be suitable for flooring.

(d) They are not susceptible to the finish required by piano manufacturers on the exposed surfaces of pianos.

(e) They are not suitable for carving.

(f) When used in furniture it is necessary to fill the wormholes before the wood is stained or varnished and polished. The filling at times sinks into these holes, destroying the even appearance of the surface.

(g) They do not retain the subsurface luster peculiar to mahogany, and unlike mahogany they do not beautify with age.

PAR. 19. Mahogany has a merited and enduring reputation, and is familiar to the average person, and the association of such reputation with the household word "mahogany" finds its origin in recollections of and association with objects of furniture and the like familiar to him since childhood, often handed down from generation to generation; and when such person is offered products made of so-called "Philippine mahogany" as and for mahogany, he is deceived by receiving furniture, interior trim for his house, boats, caskets, and the like made of lauan or tanguile, which is not mahogany.

PAR. 20. Ultimate purchasers of furniture and the other products mentioned in paragraph 19, with rare exceptions, never heard the term "Philippine mahogany"; but even when the term was mentioned such purchasers were led into the belief that it meant mahogany, not a substitute.

PAR. 21. In buying furniture the public usually depends upon representations made to them by the retail dealers from whom they purchase as to whether the furniture offered for sale is or is not made of mahogany wood.

PAR. 22. Persons engaged in buying furniture for large retail furniture stores in practically every city of the United States commonly depend on representations made to them by manufacturers as to the kind of wood entering into the furniture they purchase. Furniture purchased by retail dealers is ordered largely from photographs and catalogues, and at times from samples. If furniture is represented by the manufacturer to be made of mahogany wood and is invoiced as mahogany furniture, retail dealers in practically every

city of the United States sell such furniture to ultimate purchasers as mahogany furniture. Furniture is rarely represented to retail dealers as made of "Philippine mahogany", or sold by them under that description. Prefixes such as "Honduras", "San Domingo", and "Cuban", used by manufacturers and importers, are seldom if ever used in the retail furniture trade. But the purchasing public, having in mind the reputation which mahogany has borne for hundreds of years, depend on retail furniture dealers to supply mahogany if that is the kind of furniture asked for. Such buyers have seldom heard the term "Philippine mahogany".

PAR. 23. Many retail dealers of the class referred to in paragraph 22 hereof do buy furniture from such manufacturers as described in said paragraph, which furniture is made of Lauan, Tanguile, or other Philippine hardwoods, and is sold by said retail dealers to the public as and for mahogany. Among others, the proprietor of a retail furniture store at Cleveland, Ohio, in the regular course of business, purchases furniture from various manufacturing concerns, among which is a company located at Jamestown, N. Y. From the catalogue of this company he has in the past and does now purchase tables which are described therein as having "solid mahogany tops". From such catalogue he has, under the conditions just related, bought items of furniture, depending on the representations and descriptions shown in said catalogue in connection with each piece, and so relying thereon has sold said tables to customers as and for tables having tops of solid mahogany wood. Such table tops were not made of mahogany, but were made of Tanguile or Lauan.

PAR. 24. Another customer of the said manufacturer at Jamestown, a retail dealer at Boston, ordered from a catalogue circulated by said manufacturer a table therein advertised as a "solid mahogany sewing table". The retail dealer at Boston expected to receive "what is called mahogany; what the manufacturers list as mahogany", and which is "supposed to be the best mahogany wood used in the manufacture of better lines of furniture, and also cabinet-work". Samples were sawed from this table, submitted to the United States Products Laboratory, and there identified as belonging to the genus Shorea, which grows in the Philippine Islands, and is not mahogany.

PAR. 25. Another manufacturing company of Jamestown, N. Y., manufactured mahogany furniture for 50 years, and built up a reputation on the sale of mahogany. It began to use so-called "Philippine mahogany" about 10 years ago. It sells products which it manufactures therefrom as products made of "solid mahogany",

PAR. 26. A number of manufacturers engaged for the last few years in manufacturing furniture of Lauan or Tanguile, called "Philippine mahogany", have built up their reputation during periods of 18 to 40 years by manufacturing and selling to retail dealers furniture made of mahogany wood. This so-called "Philippine mahogany" is at times represented to manufacturers as mahogany which comes from the Philippine Islands. Some manufacturers who have over long periods of years built up a reputation by manufacturing furniture made of mahogany wood are now substituting Lauan and Tanguile therefor in the manufacture of such furniture. The manufacturing company at Jamestown, N. Y., referred to in paragraph 23, is engaged in manufacturing tables exclusively of so-called "Philippine mahogany", which it has been using since 1919. These tables it advertises and sells as "solid mahogany". This company has been in business for fifteen years, during thirteen of which it built up a reputation by manufacturing furniture out of mahogany wood. So-called "Philippine mahogany" is regarded by this company to be as good as mahogany in so far as looks are concerned. The ordinary dealer to whom it sells furniture made of so-called "Philippine mahogany" is not aware that he is receiving a substitute for mahogany, and does not know the difference after it is stained and finished.

PAR. 27. An ultimate purchaser located at Portland, Oreg., was acquainted with the reputation of mahogany and the fact that it takes a high polish and increases in beauty with age; said purchaser ordered mahogany lumber from a lumber dealer and expected to receive the mahogany with which he was acquainted; said purchaser was sold and received lumber which was not mahogany, since it was not of the Meliaceae or mahogany family, but was shorea, and was wood of the type sold by respondents as "Philippine mahogany", and of the type represented by them to be mahogany.

PAR. 28. A furniture manufacturer of Belleville, Ill., made inquiry, on or about May 1, 1925, for the purchase of mahogany lumber from a lumber company dealing in hardwoods in Kansas City, Mo.; said company agreed to sell said customer mahogany lumber and subsequently sold and delivered to said customer lumber which it designated "3-Star Philippine Mahogany"; said customer purchased and received said lumber, believing that he was purchasing and receiving the mahogany wood which he has known for over 25 years to be the wood with a reputation as a fine cabinet wood, which reputation has been maintained by mahogany for hundreds of years; thereafter said lumber warped and twisted contrary to said customer's former experience with mahogany wood. Said lumber was not mahogany since it was not of the meliaceae family but was shorea, and was of

the same type of wood sold by respondents as "Philippine Mahogany" and represented by them to be mahogany.

PAR. 29. Approximately 60 per cent of the retail lumber dealers in the United States had not heard the term "Philippine Mahogany" prior to the institution of this proceeding.

PAR. 30. Throughout the period covered in the complaint respondents have operated plants or mills and yards in the States of Missouri, Arkansas and Alabama and during part of this time they have purchased and sold annually more than three-quarters of a million feet of lauan and tanguile as "Philippine Mahogany". Said lumber was purchased from firms located in the State of New York and elsewhere, the same having been previously imported from the Philippine Islands.

PAR. 31. To induce the sale of lauan and anguile under the same "Philippine Mahogany", respondents advertised in other ways by means of circular letters and correspondence, which were sent by them to the trade generally. In such advertisements and correspondence, respondents advised customers and prospective customers and the public generally that products made from these woods could be guaranteed as products made of "genuine mahogany". One such circular letter, like many others of the same tenor, was broadly circulated throughout the several States, and reads in part as follows:

Would you like to be in a position of guaranteeing to your trade that your products are made of GENUINE MAHOGANY?

Can we interest you in mahogany lumber at a price that will allow you to use it along with quartered white oak, red birch, and other domestic woods—and still give you real mahogany—a wood that needs no imitation—no false staining—and a genuine mahogany grain after it comes from the finishing room?

\* \* \* our LAUAN MAHOGANY fills a long-felt want.

WHAT IS LAUAN MAHOGANY? A mahogany cut exclusively in the Philippine Islands, imported by us direct. A mahogany of exceptional value, gaining popularity not only in the U. S., but other countries as well. \* \* \*

\* \* \* the more you use of our stock—the more the saving we can effect you in your Mahogany purposes.

PAR. 32. A furniture manufacturer at Indianapolis purchased from respondents the Philippine wood so advertised, and manufactured it into products which products said manufacturer advertised and sold in the State of Ohio and other States, as and for products made of mahogany wood.

PAR. 33. A retail furniture dealer of Columbus, Ohio, made purchases from said manufacturer located at Indianapolis. One such purchase consisted of a sectional bookcase. This item was accompanied in said manufacturers' catalogue by information showing different prices for "Mahogany" and for "Imitation Mahogany".

The order was placed for the mahogany piece and a price higher than that asked for imitation mahogany was paid. After delivery samples were sawed from the bookcase so purchased and sent to the United States Department of Agriculture, Forest Service, Forest Products Laboratory, at Madison, Wis., and there identified as Shorea. Shorea is of the dipterocarpaceae tree family and is not mahogany. Other furniture advertised and sold as mahogany by said manufacturer at Indianapolis was not of mahogany but of lauan or tanguile, sold by respondents to said manufacturer as mahogany, in accordance with the letter hereinabove set out in paragraph 31.

PAR. 34. A lumber dealer located at Louisville, Ky., refused to continue to handle lauan and tanguile sold by respondents as "Philippine mahogany", because the name "Mahogany" applied to this wood which is not mahogany caused confusion in the minds of his customers.

PAR. 35. Due to the interruption of commercial shipping to and from Atlantic ports during the period of the World War, mahogany was difficult to secure. Manufacturers of mahogany furniture then began to use other woods, which they stained to imitate mahogany, and sold products made therefrom as mahogany products. When shipping conditions were relieved and they had gradually ceased to use these domestic woods as substitutes for mahogany letters such as referred to in paragraph 21 were circulated by respondents.

PAR. 36. Lauan, tanguile and other Philippine hardwoods sold by respondents under the name "Philippine mahogany" are not what dealers, manufacturers and ultimate purchasers have in mind when they want mahogany, or what they believe is mahogany.

PAR. 37. The aforesaid representations made by respondents have had and now have the capacity and tendency to, and did and do, cause many dealers in furniture and allied commodities to purchase said wood products in the belief that the same are mahogany wood and to sell to retail dealers articles of furniture and allied commodities as and for articles of mahogany wood, and thus to cause said dealers and eventually the consuming public to purchase furniture and other articles made of said lumber and wood products in the belief that the articles so purchased are made of mahogany wood.

PAR. 38. Respondents have represented their woods as being mahogany and have induced others to represent respondents' woods and woods of the type sold by respondents and the products thereof as being mahogany. Respondents' representations have resulted in causing dealers, manufacturers and consumers to purchase respondents' woods and products made therefrom in the belief that such woods and such products were mahogany.

PAR. 39. Mahogany usually is sold to dealers in lumber and to manufacturers under names indicating origin, such as "Honduras Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc. These prefixes in the form of geographical names are understood by the trade and by the public to mean that the particular mahogany so designated comes from the country thus prefixed. Likewise, the term "Philippine Mahogany," in cases where the geographical prefix is retained, indicates to the average purchaser that the wood is mahogany grown in the Philippine Islands.

PAR. 40. Lauan and tanguile, the woods sold by respondents as Philippine mahogany, are sold for about two-thirds of the price at which mahogany is sold. Products made from Lauan and tanguile, and sold as Mahogany, Genuine Mahogany, or Solid Mahogany are sold to retail dealers at the same or approximately the same prices as similar products made of mahogany.

PAR. 41. In thus selling their lauan, tanguile, etc., as Philippine Mahogany respondents not only practice deception on their immediate customers, but place in their hands an unlawful instrument which enables them to increase their profits by reselling the misnamed lumber either as lumber or in manufactured products, thereby lessening the market for true mahogany and for honestly named Philippine hardwoods.

PAR. 42. There are among the competitors of respondents in interstate commerce many who deal in and sell lumber and other wood products consisting of mahogany who rightfully and truthfully represent their said lumber and wood products to be composed of mahogany wood, and who are in position to supply the demand for mahogany. The above-described acts and practices of the respondents tend to and do divert business from and otherwise prejudice said competitors.

PAR. 43. There are among the competitors of respondents in interstate commerce also several who deal in and sell lauan, tanguile and other Philippine hardwoods, and the manufactured products thereof, under appropriate native or trade names which do not import or imply that such commodities are mahogany or the products of mahogany. The above-described acts and practices of the respondents likewise tend to and do divert business from and otherwise prejudice said competitors.

PAR. 44. The sale of lauan, tanguile and other Philippine hardwoods by respondents to their customers, and by them to the purchasing public, under the name "Philippine Mahogany" or mahogany as hereinbefore described, has the tendency and capacity to and does deceive a substantial portion of the trade and the purchasing public



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## Order

in substantial numbers and induces the ordinary purchaser of products made from such woods to purchase said products as and for products made of mahogany wood, or in part of mahogany wood, to the injury and prejudice of the purchasing public and of honest competitors.

## CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral arguments, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now, therefore, it is ordered,* That the respondents, Thomas E. Powe and F. C. Harrington, partners doing business under the firm name and style, Thomas E. Powe Lumber Co., their officers, directors, agents, employees and successors, do cease and desist from advertising, describing or otherwise designating or selling or offering for sale under the term "Mahogany", "Philippine mahogany", or any other term of similar import, woods known under the common or trade names, "red lauan", "white lauan", "tanguile", "narra", "apitong", "bataan", "lamao", "almon", "orion", "batang", "bagaac", "batak", and "balachacan", or any other wood, lumber or wood products, unless such wood or lumber, or the wood from which such products are made, is derived from the trees of the Mahogany or Meliaceae family.

*It is further ordered,* That the respondents Thomas E. Powe and F. C. Harrington, partners doing business under the firm name and style Thomas E. Powe Lumber Co., shall within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form

Memorandum

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in which they have complied with the order to cease and desist hereinbefore set forth.

*Memorandum by Chairman Hunt and Commissioners Myers and Nugent*

Commissioner Humphrey before leaving on his vacation in June asked that his vote be recorded against findings and orders in these cases, and that should findings and orders be voted by the majority the same be accompanied by the same dissenting opinion which he published when the original findings and orders were issued in July, 1926.<sup>1</sup>

The findings now made differ in important particulars from those issued a year ago; hence the majority deem it appropriate to point out that certain observations in the dissenting opinion have little or no bearing on the present findings.

An apparent inconsistency in certain statements issued by the Forest Service of the Department of Agriculture, the only Government agency which undertakes to pass on such questions, supported in a measure the claim of the dissenting opinion when first issued that "Government authorities have ruled that the term 'Philippine Mahogany' is correct." Since then the Forest Service has declared unequivocally that it has not indorsed the name "Philippine Mahogany" and that "in the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus 'Swietenia'." (Findings, par. 16).

The ruling of the Interstate Commerce Commission mentioned in the dissent merely was to group these Philippine hardwoods with certain other woods for rate-making purpose, and was not an authoritative decision on wood nomenclature. The dissenting opinion takes no account of the really significant feature of the proceeding before the Interstate Commerce Commission, namely, the lengthy and detailed testimony of the president of one of these respondents that so-called "Philippine Mahogany" is in no sense comparable with true mahogany. Ample support for the Federal Trade Commission's findings as to difference between "Philippine Mahogany" and true mahogany in the uses to which they can be put, may be found in that testimony.

Discussion of the distinctions between mahogany and so-called "Philippine Mahogany" drawn by wood technologists and botanists lends animation to the dissenting opinion. These, however, are the controlling distinctions in commercial practice when there is a dispute as to whether wood supplied under contract is of the variety

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<sup>1</sup> 10 F. T. C. 230.

ordered. In so far as the dissenting opinion implies that under the orders of the Commission the Philippine woods must hereafter be called by their botanical names, it goes too far. With the unlimited opportunities of the alphabet at their disposal respondents could have adopted or coined names for their wood which did not trade on the reputation of another and different wood high in public favor. The fact is that competitors of these respondents have adopted and successfully employed names for these Philippine hardwoods which do not import or imply that their woods are mahogany.

It may be that the term mahogany has expanded somewhat since the first tree of that genus was discovered; it may even be that woods other than the Philippine hardwoods are being sold unfairly under that name. The woods sold by respondents, unlike the "African Mahogany" mentioned by the dissenting commissioner, are not even of the same tree family as mahogany; and it would seem that if a line is ever to be drawn this is the outside limit at which to draw it. If respondents may call lauan and tanguile mahogany, there is no reason why birch, which can be finished in excellent imitation of mahogany, may not also be marketed as mahogany.

*Dissenting Opinion of Commissioner Humphrey*

I agree with the majority that the word mahogany should not be applied to the woods of that species from the Philippine Islands without the prefix "Philippine". This would be in accordance with the common usage, as in the trade it is customary to say "African Mahogany", "Honduras Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc.

If the majority is consistent, it appears to me that it will at once proceed against the Mahogany Association for using the term "African Mahogany", as this wood, like the Philippine product, is not mahogany botanically.

GOVERNMENT AUTHORITIES HAVE RULED THAT THE TERM "PHILIPPINE MAHOGANY" IS CORRECT

The Hardwood Lumber Association, in 1916, classified the wood in controversy as "Philippine Mahogany". The Forest Service of the United States, when the matter was submitted to them in September, 1914, after a thorough consideration of it, endorsed the use of the term "Philippine Mahogany". The Department of Commerce has long used the term "Philippine Mahogany" in its reports. The Interstate Commerce Commission, in a controversy involving the question, after full hearing on the record and brief in the case of,

Dissent.

11 F. T. C.

Indiana Quartered Oak Co. *v.* Atlantic City Ry. Co., approved the use of the term "Philippine Mahogany." The following quotations are from that decision:

The term mahogany applies to woods in two senses, the botanical sense and the commercial sense.

\* \* \* \* \*

Mahogany in the commercial sense includes chiefly (a) Mexican and Cuban mahoganies, which are true mahoganies in the botanical sense and very valuable woods; (b) African mahogany, which is not a true mahogany in the botanical sense, but which grows large and clear, has a fine figure and is suitable for veneers; (c) haywood, which is a true mahogany in the botanical sense but, on account of its soft inferior quality, less valuable than other species, and (d) Philippine mahogany, which is not a true mahogany in the botanical sense. Philippine mahogany, is classified by the United States Forestry Bureau as a commercial mahogany.

Apparently the majority is of the opinion that one of the chief functions of the Commission is to correct the opinions and rules of the other departments of the Government; more particularly to correct the errors made by the Agricultural Department, the Department of Justice, the Department of Commerce and the Interstate Commerce Commission. I am constrained to believe that Congress never intended the Federal Trade Commission to be a super court to reverse the rules of other departments, a power that the Supreme Court has decided neither it nor any other Court possesses. This is expressly declared in many decisions. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S. 479-487; *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495-502.

#### NO PUBLIC INTEREST

No public interest appears in this case. The reason of complaint herein is not because the user does not know what he is buying, but because he does know. It is a controversy entirely between the Mahogany Association and the users of Philippine Mahogany. There is no substantial evidence in the record that any ultimate consumer of Philippine Mahogany has either been deceived or has complained that he has been defrauded.

The "milk in the coconut" in this controversy is that Philippine Mahogany, being a product of one of our insular possessions, is admitted into this country free of duty, and this fact together with the fact that it grows in considerable bodies instead of single trees, as other mahoganies, enables it to be sold in the United States at a lower price than the other mahoganies, and its qualities are so appealing that it is becoming a serious competitor of the Mahogany Association.

To prevent the use of the term "Philippine Mahogany" in this case will not protect the public, because it is not injured and has not complained. Only its competitor objects to its use. It will not be in the public interest because it will tend to give the Mahogany Association a monopoly of the American markets; will tend to increase the price of mahogany to the consumer, and would greatly injure the Philippine mahogany industry in this country, and more greatly injure it in the Philippine Islands.

There is another fact, that while it is not a legal reason, should have consideration as bearing upon the public interest, and that is, the Philippine-mahogany industry both in this country and in the Philippines is conducted almost exclusively by Americans and is one of the chief products of the Philippine Islands, and one of the chief products making up the cargoes of American ships coming in from the Philippines to the United States.

#### WHAT IS MAHOGANY?

What is mahogany as applied to wood? Is it the wood from the tree botanically known as mahogany? It is. But to restrict it to such meaning is false and misleading. Mahogany wood or lumber, may or may not be produced from the tree botanically classified as mahogany. A tree is usually classified from its flower or seed botanically. A wood is classified according to its qualities—not from the botanical name of the tree from which it is produced. Botanically the wood in dispute is not mahogany—commercially it is. To apply its botanical classification to its commercial use is wholly misleading. Botanical classification has nothing whatever to do with the commercial classification of the wood in controversy. The botanical classification of this wood is not involved in the issues of this case, and the only result of discussing the botanical classification is to confuse and mislead. Below are cited some definitions as to what constitutes mahogany:

#### MAHOGANY

*Botanically:* A tropical American mellaceous tree (*Swietenia mahoganii*), with pinnate leaves and panicles of small greenish flowers. (Webster's Dictionary.)

The valuable hardwood of this tree, used extensively for furniture and cabinet work. (Webster's Dictionary.)

*Commercially:* Any of many trees related to, or resembling the mahogany; as in Australia, species of *Eucalyptus*; in India, various mellaceous trees of the genera *Soyimida*, *Chukrassia*, and *Tona*; in Africa, *Khaya senegalensis*; in the United States, *Rhus integrifolia*, species of *Cercocarpus*, etc. (Webster's Dictionary.) (Italic mine.)

Applied chiefly with qualifications to various woods resembling mahogany and to the trees producing them. (New English Dictionary and History of 1903.)

Mahogany, the popular name for timber of several unrelated trees, among which are various species of Eucalyptus. (Encyclopedia Americana, 1903 edition.)

I would be unable to describe the wood without calling it mahogany, because it has the looks, the appearance, the grain, and all of the things that go to make up mahogany. (Witness Sands—Seattle, Rec. p. 15.)

The furniture trade considers African, Mexican, Philippine and Honduras all mahogany. (Witness, Rec. p. 284.)

These authorities show the conclusive soundness of the rulings of the various departments of Government referred to herein.

#### DOES THE PHILIPPINE PRODUCT HAVE THE QUALITIES OF MAHOGANY?

Does the Philippine Mahogany, as Webster says, "resemble" mahogany? It seems to me that the Commission's attorneys are hardly in a position to deny that the Philippine Mahogany "resembles mahogany", and has all its necessary qualities, in view of the fact that on page 17 of their brief, they refer to the testimony of several witnesses who were experts, that bought and sold Philippine mahogany, thinking it was the mahogany of "our grandfathers", or as they term it, "the real mahogany". The examiner in paragraph 8 of his findings says:

The resemblance between the characteristics of genuine mahogany wood and the wood sold in interstate commerce as "Philippine Mahogany" is so close that it is difficult even for an expert wood technologist to distinguish between them without the aid of instruments usually employed by wood technologists in examining various wood specimens.

In the brief of the Commission, at page 10, it is said that the Horace E. Dodge Boat Works, at Detroit, Mich., represented their vessels made of the Philippine wood as constructed of the finest mahogany. These vessels were sold to their customers and there is no showing that any purchaser of these boats ever made any complaint or doubted the truth of these representations. In fact, there is no evidence, so far as any ultimate consumer is concerned, that when the seller represented his product as of the finest mahogany, that it was not strictly true.

It is useless to quote the evidence of various witnesses upon this proposition, for there is practically no dispute in the testimony of the witnesses on both sides of the controversy, that the statement in the examiner's findings above referred to is correct.

So it is practically admitted in this case that the wood in controversy has *every quality* necessary to justify it being classified *com-*

*mercially as mahogany.* It might be added, as shown by the record, that some of the true mahogany, botanically, is soft and spongy and has little value commercially. If this wood was placed on the markets as mahogany, undoubtedly there would be a great protest both from the Mahogany Association and from the public, and justly so, because while such wood would be *mahogany botanically*, it would not be *mahogany commercially*, and its sale as such would be a fraud upon the public.

No witness has been produced that has testified or even intimated that he has ever bought furniture because he thought it was made of wood botanically mahogany. But the entire evidence is that all purchasers bought what they thought contained the qualities of mahogany as defined commercially, and therefore were not deceived, and there is no showing in the record whatever *that any purchaser has complained* that the respondents have *deceived or defrauded them.*

The complaint is made that this wood sometimes contains wormholes, but this has nothing to do with the issue. This is a characteristic of all mahoganies in a more or less degree. Will it be contended that it is an unfair practice to call Hickory, or Oak, or Walnut, by their names because these woods sometimes contain wormholes? This question is entirely a matter of grading the lumber and not of determining the kind. Certainly it can hardly be contended that a hole changes the character of the wood in which it is.

The exhibitions before the Commission of two selected doors, one of the so-called genuine Mahogany and the other of Philippine Mahogany, at least in so far as appearance is concerned, decisively confute the evidence of all so-called experts as to the inferiority of the Philippine wood. In fact, the door of Philippine Mahogany was so much more beautifully figured and colored and in every appearance so much more desirable than the genuine, that most purchasers would prefer it. This exhibition conclusively demonstrated that the Philippine Mahogany possesses every desirable attribute that constitutes mahogany as defined by all the decisions and authorities.

#### THE NAME PHILIPPINE MAHOGANY NOT DECEPTIVE

The use of the words "Philippine Mahogany" is not deceptive. The trade and the people generally know exactly what they are buying when they buy Philippine Mahogany. This opposition to the use of the term comes, not because it is deceptive, but because it is not. We have again in this controversy the old story of the fight

against the new. Much has been said about the mahogany of our fathers—more forceful than weighty. The revered mahoganies of to-day are the despised mahoganies of yesterday. The history of the controversy is that mahogany was at first limited to the lumber produced from one tree only. Then, as this supply grew less, a new mahogany appeared. It was rejected at first but gradually came to be recognized; and so, in the future, the Philippine Mahogany will become the adored wood of our “grandfathers”, and probably in a fight to shut out some new contender for public favor.

It is impossible to describe the wood in controversy so that its qualities and value will be properly understood by the public, without the use of the word “mahogany.” To insist that it should be called Dipterocarpaceae, in order that the general public might not be deceived, would be just as absurd as to insist that the present monarch of England should be called, George Frederick Ernest Albert Windsor, instead of King George, in order that the people of England might not be misled as to the person referred to.

#### CLASSIFICATION OF WOODS BOTANICALLY MISLEADING AND DANGEROUS

If we are to lay down the rule that it is false and misleading to describe woods commercially other than what they are botanically, we will injure, if not destroy, one of the greatest industries in this country.

One of the finest woods in the world, that furnishes perhaps more of the timbers used in construction to-day than any other is the Douglas Fir of the Pacific Northwest. It is known by this name throughout the world and by this name its qualities are well understood. Botanically this wood that enters so largely into the commercial life of a nation is a false hemlock. There is a widespread prejudice against hemlock, because of the qualities of that wood in the east. For the lumber producers of the Northwest to be compelled to mark their product under its botanical name—False Hemlock, would be to work incalculable injury to the industry. More than 85 per cent of the wood shingles in the United States are the Red Cedar Shingles of the Pacific Northwest. The quality is well known and understood by the trade and people generally by the term “red cedar.” Botanically it is not cedar but juniper. It would cost millions of dollars to both the shingle industry and the Douglas Fir Industry to educate the people to where they would know what was meant by the botanical terms of these woods. In the East, one of the great lumber trees of commerce is the poplar. Botanically it is tulip.



To use the terms, Philippine Mahogany, Douglas Fir, Red Cedar and Poplar is to correctly define these woods commercially, and gives to the dealers and to the public generally the correct idea of their qualities and value. If you describe them botanically, it is safe to say that not 5,000 people in the United States would know what was meant. I can think of no proposition more absurd than to compel the use of the botanical names of these woods upon the theory that it will protect the public from false and misleading statements. Why should we use the restricted and scientific and highly technical name known by a few, and refuse to use the common, ordinary name, understood by all.

#### WHY THE PHILIPPINE MAHOGANY IS CHEAPER

The reason Philippine Mahogany is cheaper is not because it is less desirable, for it has all the qualities, and in its higher grades it is equal in beauty, if it does not surpass, the finest of other mahogany woods.

Philippine Mahogany is not taking a large portion of the market from the other mahoganies because of any deception, but because of its merits. As already stated, the reason that it is cheaper is because it comes in duty free and because it is more easily logged than other mahoganies.

I must enter my protest against the decision of the majority in the overruling of the classification of the Hardwood Association, the decisions of the Department of Agriculture, the Department of Commerce and the Interstate Commerce Commission, and action, I believe, will result in the overturning of the common usage and reversing common understanding; that will disrupt a great industry; that will establish a precedent that if followed will paralyze the lumber industry of the country; that will increase the price of mahogany and create a monopoly in the mahogany trade; that will injure the public and benefit only the Mahogany Association. Such decision in my judgment can be based only on the technical and stilted opinions of schooled but unlearned self-styled experts, who would, if consistent, insist that potatoes must be sold only as tobacco, because botanically they are of the same family, lest some dear old college professor might buy a package of cigarettes instead of a bag of "spuds".

The contention of the majority here is that if any person of common understanding wishes to buy this Philippine wood, that has all the beauty and durability of mahogany—in fact, all the best characteristics of mahogany—that it can not be described to him so as to reach the common understanding, by calling it "Philippine Mahogany", but in order to keep him from being deceived and so that he

may know exactly what he is getting, he must be told that it is either Lauan, Tanguile, Almon, Batan, Apitong, Lamao, Orion, Abatang, Bagaac, Batak, or Balachacan. This proposition, it seems to me, would be highly complimented by characterizing it as absurdly ludicrous.

The majority lay down the proposition that the buyer must be told the truth—a perfectly correct one and one that I indorse, but when you chase this common sense idea into the clouds of scientific nomenclature, until not one person in a million, without consulting an encyclopedia, a botanist and a chemist, would know whether a word used to describe the wood in a kitchen chair is the name of a seasick remedy, a new planet, or a divorcee screen star, it seems to me that the proposition in some slight degree “recoils upon itself”.

The sum of the Commission's case is that the purchaser of this wonderful and beautiful wood will be deceived and defrauded unless he is told that it is Dipterocarpaceae, a proposition so plain that only the intelligent will dispute it.

## Syllabus

IN THE MATTER OF  
INDIANA QUARTERED OAK COMPANY<sup>1</sup>

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

*Docket 1316. Complaint, May 21, 1925—Decision, Aug. 16, 1927*

Where the wood mahogany had long had a merited and enduring reputation associated with the word, was usually sold to lumber dealers and manufacturers under such names indicating origin as "Honduras Mahogany", "Mexican Mahogany", etc., and was usually dealt in in the retail furniture trade, without such prefixes, where furniture and other articles were customarily bought, dealt in, and purchased by buyers for large retail stores, by retail dealers, and by the public in reliance upon representations by the manufacturers and dealers respectively as to their composition and whether or not they were mahogany; and thereafter a corporation engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others,

Represented and advertised certain Philippine hardwoods as "Philippine Mahogany" and induced others so to represent the same and products thereof, advising customers and prospective customers and the public generally, in advertisements and in correspondence, that they could sell products made of the aforesaid lumber as mahogany products, and making such statements in their advertisements as "Philippine Mahogany is better than African for many purposes. We recommend it for boats [in the construction of which it had long been preferred for certain purposes], trim, patterns, boxes and door veneers. You can sell your product truthfully as Mahogany. Philippine Mahogany is classed with African as a 'Commercial Mahogany' by the United States Department of Commerce, Interstate Commerce Commission, and the trade generally," and so sold said woods to manufacturers of furniture, boats and caskets, and to dealers and others by whom said woods or the products manufactured therefrom were resold to retailers and others as "Mahogany", "Genuine Mahogany", "Solid Mahogany", or the "Finest Mahogany", and were in turn by them resold to the public as and for such products;

The fact being that the aforesaid woods (1) were not mahogany, either botanically or otherwise, (2) lacked many of the characteristics and virtues possessed by mahogany and were thereby unsuited for a variety of uses employed for mahogany, (3) were sold to the manufacturer for about two-thirds of the price of genuine mahogany, and were by the latter resold as manufactured products, to dealers, at prices prevailing for mahogany products, (4) had long been known and traded in in the Philippines and in the United States under their native and trade names, "lauan" and "tanguile", and also under other native names such as "red lauan", "bataan", etc., (5) were imported under such names as to the greater proportion thereof imported, (6) were so dealt in in the United States by many of the im-

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<sup>1</sup> See footnote to *Powe case*, p. 248.

## Complaint

11 F. T. C.

porters and a substantial number of the lumber dealers, (7) were not what dealers, manufacturers, and ultimate purchasers had in mind when they wanted mahogany, or what they believed to be mahogany, (8) were named and sold as Philippine mahogany in the face of official disapproval and practice, and without the sanction of local custom, and, (9) that approximately 60 per cent of the retail lumber dealers in the United States, and ultimate purchasers of furniture and other products had never heard the term (with rare exceptions, in which instances it was believed to mean mahogany, and not a substitute);

With the effect of (1) causing manufacturers, dealers in furniture and other products, and consumers to purchase, sell, or deal in said woods, and products made therefrom, as mahogany, (2) placing in the hands of its immediate customers an unlawful instrument enabling them to increase their profits by reselling the lumber so misnamed, either as such, or in the manufactured form, thereby lessening the market for true mahogany and for the honestly named Philippine hardwoods, (3) diverting business from and otherwise prejudicing competitors dealing in and able to supply lumber and other wood products, consisting of mahogany, rightfully and truthfully so represented by them, and competitors dealing in lauan, tanguille, and other Philippine hardwoods and the products manufactured therefrom, under appropriate or trade names, which did not import or imply that they were mahogany, and (4) of deceiving a substantial portion of the trade, and the purchasing public in substantial numbers and inducing the ordinary purchaser of products made from such woods to purchase the same as and for mahogany, in whole or in part, to the injury and prejudice of the purchasing public and of honest competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. M. Markham Flannery* and *Mr. Stephen C. Van Fleet* for the Commission.

*Forbes & Daniels*, of Washington, D. C., for respondent.

*Maj. F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for Philippine Government, intervenor.

*Mr. Gilbert H. Montague*, of New York City, for Mahogany Association, Inc. (*Amicus Curiae*).

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Indiana corporation engaged in the sale of lumber and other wood products to dealers in lumber and manufacturers of furniture, cabinet work and allied products, in the various States, and with principal office and place of business in Long Island City, N. Y., with misrepresenting products and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce,

in that, for about 18 years preceding the complaint, respondent offered and sold as and for mahogany, lumber and other wood products, consisting of woods other than mahogany, though resembling it in general appearance, representing said lumber and other products as "mahogany", "Philippine Mahogany" and other purported species and kinds of mahogany in advertisements, circular letters and other correspondence with vendees and prospective vendees, and upon its letterheads, billheads, invoices, price lists and other trade literature; with the effect of causing many such dealers and manufacturers to purchase said lumber and other products as and for mahogany, and to manufacture therefrom and sell to wholesale and retail dealers articles of furniture, etc., as and for mahogany, and thus cause such dealers and eventually the consuming public to purchase the same as and for mahogany, and of diverting business from and otherwise prejudicing many competitors dealing in genuine mahogany lumber and mahogany products, and rightfully and truthfully representing the same as mahogany; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Indiana Quartered Oak Co., a corporation, charging it with unfair methods of competition in commerce in violation of said act.

Respondent having entered its appearance by its attorney, and having filed its answer herein, and the Philippine government, intervenor, having entered its appearance by its attorney, and having filed special answer herein, hearings were held before an examiner of the Federal Trade Commission, heretofore duly appointed, and testimony was thereupon offered and received in support of the allegations of said complaint, and in support of the allegations of said answer of respondent, and thereupon this proceeding came on for decision, and the Commission having duly considered the record, and being fully advised in the premises, made its findings as to the facts and its conclusions drawn therefrom, and entered its order herein. Thereafter respondent and intervenor having declared that there was in existence additional relevant testimony which was not available to them at the trial, asked leave to introduce such testimony, which was granted, subject to the provisions of a stipulation entered into between respondent and the Commission, and said additional

testimony, together with certain additional testimony offered in support of the complaint, was thereupon received pursuant to the provisions of said stipulation, and the Commission having again duly considered the record, including said additional testimony, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of Indiana, with its principal office and place of business in the city of Long Island, State of New York. It is engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others located at various points in the several States of the United States. It causes said commodities, when so sold, to be transported from its said place of business in Long Island City, N. Y., and from the point of origin of such commodities into and through other States of the United States to purchasers at their respective points of location in States other than New York and other than the points of location of such shipments.

PAR. 2. There are other individuals, partnerships, and corporations situated in the various States of the United States also engaged in the sale of hardwood lumber and hardwood products, who cause said commodities when sold to be transported from their respective places of business into and through other States of the United States to purchasers located in States other than the State of origin, and into States into which respondent ships its hardwood products, with whom respondent was during the time mentioned in the complaint and now is competing in interstate commerce.

PAR. 3. A large and important part of the hardwood and hardwood products sold and transported by respondent in interstate commerce is called by respondent "Philippine mahogany", and is grown in and imported from the Philippine Islands. This wood has been known and traded in for years prior to the filing of the complaint herein both in the Philippines and in the United States under the names Lauan and Tanguile. Other trade names employed for these woods are red Lauan, white Lauan, Bataan, Lamao, Almon, Apitong, Orion, Batang, Bagaac, Batak and Balachacan.

PAR. 4. About 85 per cent of the Philippine woods sold as "Philippine mahogany" imported through the Pacific coast ports is imported under the trade names set out in paragraph 3 above. Some importers sell these woods to lumber dealers, furniture manufacturers, and others under their native or trade names. Respondent

and other importers sell it to furniture manufacturers, dealers and others as "Philippine mahogany". After sale by the importers last referred to, the manufactured products are sold by the said furniture manufacturers to retail furniture dealers and others as "mahogany", "genuine mahogany", or "solid mahogany". Such products are resold by retail furniture dealers to the public as and for products made of "mahogany", "genuine mahogany", or "solid mahogany".

PAR. 5. Many of the importers and a substantial number of lumber dealers in this country use and deal in woods of the type sold by respondent as "Philippine mahogany", but under the native or trade names in paragraph 3 set forth.

PAR. 6. The Lauan and Tanguile sold by respondent as "Philippine mahogany" are the product of the tree family scientifically known as Dipterocarpaceae. This tree family is not scientifically or botanically related to the tree family Meliaceae, the product of which constitutes true mahogany.

PAR. 7. The Philippine hardwoods sold by respondent and others, as hereinabove described, are the only woods derived from a tree family other than Meliaceae, to which the term mahogany has been applied. Of the genera of this family, only one, "Swietenia", produces true mahogany. There are five known species of Swietenia.

PAR. 8. The term "African mahogany" has been applied commercially to the product of "Khaya" of the genera of Meliaceae, of which there are about four known species.

PAR. 9. Trees of the Swietenia group producing true mahogany grow principally in the West Indies, Southern Florida, Southern Mexico, Central America, Venezuela, and Peru. No species of the genus Swietenia of this tree family grows in the Philippine Islands, except as specially planted for decorative or experimental purposes.

PAR. 10. The Spanish words "Caoba des Filipinos", meaning "Philippine mahogany", are occasionally used in the Philippine Islands to designate native woods resembling mahogany in grain, texture and color. This term was known in the Philippines, but not used in connection with the sale of lumber. It does not appear that this expression was used prior to the American occupation. Prior to 1916 the Philippine Government, as represented by its director of forestry, opposed the practice of American importers in selling Philippine hardwoods as Philippine mahogany.

PAR. 11. When Philippine hardwoods leave the Philippine Islands for the United States, they are shipped under the native names, Lauan, Tanguile, etc. The invoices on which the taxes are levied are made out under the native names, this being by agreement with the Bureau of Customs, as well as the railroad companies, so that

the shipping invoices will conform to the manifest on which the Government charge has been paid.

PAR. 12. Active opposition on the part of officials of the Philippine Government to the practice of selling Philippine hardwoods as "Philippine mahogany" abated about 1916, but a few months prior to the institution of the Federal Trade Commission's investigation of this matter a statement by the Forester of the Philippine Government, published in a trade journal known as the *Hardwood Record*, deplored the selling of Philippine wood as true mahogany, "a practice which always will be opposed by the Bureau of Forestry of the Philippine Government, both because of the false pretenses and because of the fact that the Philippine woods have sufficient good qualities to stand on their own merits".

PAR. 13. The various kinds of woods are distinguished from one another by botanical properties or characteristics. Many woods of widely different kind have some properties and characteristics in common, but it is the differences in such properties and characteristics, be they great or small, that distinguishes one wood from another. The ultimate test consists in a comparison or contrast of such properties and characteristics.

PAR. 14. In commerce when a question arises as to whether wood is of one kind or another, the matter is submitted to a wood technologist for determination. A wood technologist authoritatively identifies wood according to the species, genus, tribe and family of the tree, as classified, established and agreed upon by botanists.

PAR. 15. The United States Department of Agriculture, in its Forest Products Laboratory at Madison, Wis., is regularly engaged in officially determining for those engaged in commerce the question whether wood is of one kind or another. Many samples of Philippine hardwood, such as sold by respondent, were identified by Mr. Arthur Koehler, wood technologist of said laboratory, as shorea—one of the genera of dipterocarpaceae.

PAR. 16. The United States Department of Agriculture on September 28, 1926, issued the following official statement:

The name "Philippine mahogany" as applied to Tanguile, Lauan, and other Philippine woods, has never been indorsed by the United States Department of Agriculture. Its use runs counter to the principles followed by the Forest Service in attempting to give to native American trees and woods standard names that do not deceive or mislead the public, according to a statement by Chief Forester W. B. Greeley in connection with recently published statements growing out of the Federal Trade Commission decision against the use of the name "Philippine Mahogany".

The Forest Service has been quoted as having indorsed the name "Philippine mahogany" in a letter written in 1914. This letter, however, according to the Forest Service statement, did not attempt to decide the specific question



at issue, and was limited to stating the principles that should be followed in the nomenclature of woods.

In the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus *Swietenia*.

PAR. 17. Unschooled persons, such as laborers in the lumberyard who readily distinguish between the different kinds of lumber by such criteria as grain, pore, scent, weight or other identifying characteristics are guided by botanical properties and differences inherent in the wood as formed in the tree, and these characteristics correspond with like characteristics placed by nature in trees of the same species. Wood technologists by reason of their expert knowledge compare these and many other qualities and characteristics with such precise results as to satisfy the requirements of both science and commerce, and according to such identifications neither Lauan nor Tanguile are mahogany botanically or otherwise.

PAR. 18. In addition to the scientific and botanical distinctions used by wood technologists, many of the characteristics and virtues possessed by mahogany are lacking in the Philippine hardwoods sold by the respondent as mahogany under the name Philippine mahogany. The absence of such characteristics and virtues prevents such hardwoods from serving certain uses for which mahogany is particularly adapted. While there is conflict in the evidence, the weight is to the effect that Philippine hardwoods are not suitable for the following uses, and the Commission so finds:

(a) Such woods are not suitable for cabinetmaking because of the great prevalence of wormholes which constitute serious defects in all Philippine woods.

(b) They are not suitable for the construction of lamps because they do not take a proper finish.

(c) They are too soft to be suitable for flooring.

(d) They are not susceptible to the finish required by piano manufacturers on the exposed surfaces of pianos.

(e) They are not suitable for carving.

(f) When used in furniture it is necessary to fill the wormholes before the wood is stained or varnished and polished. The filling at times sinks into these holes, destroying the even appearance of the surface.

(g) They do not retain the subsurface lustre peculiar to mahogany and unlike mahogany they do not beautify with age.

PAR. 19. Mahogany has a merited and enduring reputation, and is familiar to the average person, and the association of such reputation with the household word "mahogany" finds its origin in recollections of and association with objects of furniture and the like familiar to him since childhood, often handed down from genera-

tion to generation; and when such person is offered products made of so-called "Philippine mahogany" as and for mahogany, he is deceived by receiving furniture, interior trim for his house, boats, caskets, and the like, made of lauan or tanguile which is not mahogany.

PAR. 20. Ultimate purchasers of furniture and the other products mentioned in paragraph 19, with rare exceptions, never heard the term "Philippine mahogany"; but even when the term was mentioned such purchasers were led into the belief that it meant mahogany, not a substitute.

PAR. 21. In buying furniture the public usually depends upon representations made to them by the retail dealers from whom they purchase as to whether the furniture offered for sale is or is not made of mahogany wood.

PAR. 22. Persons engaged in buying furniture for large retail furniture stores in practically every city of the United States commonly depend on representations made to them by manufacturers as to the kind of wood entering into the furniture they purchase. Furniture purchased by retail dealers is ordered largely from photographs and catalogues, and at times from samples. If furniture is represented by the manufacturer to be made of mahogany wood and is invoiced as mahogany furniture, retail dealers in practically every city of the United States sell such furniture to ultimate purchasers as mahogany furniture. Furniture is rarely represented to retail dealers as made of "Philippine mahogany," or sold by them under that description. Prefixes such as "Honduras," "San Domingo," and "Cuban," used by manufacturers and importers, are seldom if ever used in the retail furniture trade. But the purchasing public, having in mind the reputation which mahogany has borne for hundreds of years, depend on retail furniture dealers to supply mahogany if that is the kind of furniture asked for. Such buyers have seldom heard the term "Philippine mahogany".

PAR. 23. Many retail dealers of the class referred to in paragraph 22 hereof do buy furniture from such manufacturers as described in said paragraph, which furniture is made of Lauan, Tanguile, or other Philippine hardwoods, and is sold by said retail dealers to the public as and for mahogany. Among others, the proprietor of a retail furniture store at Cleveland, Ohio, in the regular course of business, purchases furniture from various manufacturing concerns, among which is a company located at Jamestown, N. Y. From the catalogue of this company he has in the past and does now purchase tables which are described therein as having "solid mahogany tops." From such catalogue he has, under the conditions just related, bought items of furniture, depending on the representations and descrip-

tions shown in said catalogue in connection with each piece, and so relying thereon has sold said tables to customers as and for tables having tops of solid mahogany wood. Such table tops were not made of mahogany, but were made of Tanguile or Lauan.

PAR. 24. Another customer of the said manufacturer at Jamestown, a retail dealer at Boston, ordered from a catalogue circulated by said manufacturer a table therein advertised as a "solid mahogany sewing table." The retail dealer at Boston expected to receive "what is called mahogany; what the manufacturers list as mahogany," and which is "supposed to be the best mahogany wood used in the manufacture of better lines of furniture, and also cabinet work." Samples were sawed from this table, submitted to the United States Products Laboratory, and there identified as belonging to the genus Shorea, which grows in the Philippine Islands and is not mahogany.

PAR. 25. Another manufacturing company of Jamestown, N. Y., manufactured mahogany furniture for 50 years, and built up a reputation on the sale of mahogany. It began to use so-called "Philippine mahogany" about 10 years ago. It sells products which it manufactures therefrom as products made of "solid mahogany".

PAR. 26. A number of manufacturers engaged for the last few years in manufacturing furniture of Lauan or Tanguile, called "Philippine mahogany," have built up their reputation during periods of 18 to 40 years by manufacturing and selling to retail dealers furniture made of mahogany wood. This so-called "Philippine mahogany" is at times represented to manufacturers as mahogany which comes from the Philippine Islands. Some manufacturers who have over long periods of years built up a reputation by manufacturing furniture made of mahogany wood are now substituting Lauan and Tanguile therefor in the manufacture of such furniture. The manufacturing company at Jamestown, N. Y., referred to in paragraph 23, is engaged in manufacturing tables exclusively of so-called "Philippine mahogany," which it has been using since 1919. These tables it advertises and sells as "solid mahogany." This company has been in business for 15 years, during 13 of which it built up a reputation by manufacturing furniture out of mahogany wood. So-called "Philippine mahogany" is regarded by this company to be as good as mahogany in so far as looks are concerned. The ordinary dealer to whom it sells furniture made of so-called "Philippine mahogany" is not aware that he is receiving a substitute for mahogany, and does not know the difference after it is stained and finished.

PAR. 27. An ultimate purchaser located at Portland, Oreg., was acquainted with the reputation of mahogany and the fact that it takes

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a high polish and increases in beauty with age; said purchaser ordered mahogany lumber from a lumber dealer and expected to receive the mahogany with which he was acquainted; said purchaser was sold and received lumber which was not mahogany, since it was not of the Meliaceae or mahogany family, but was Shorea, and was wood of the type sold by respondent as "Philippine mahogany," and of the type represented by them to be mahogany.

PAR. 28. A furniture manufacturer of Belleville, Ill., made inquiry, on or about May 1, 1925, for the purchase of mahogany lumber from a lumber company dealing in hardwoods in Kansas City, Mo.; said company agreed to sell said customer mahogany lumber and subsequently sold and delivered to said customer lumber which it designated "3-Star Philippine Mahogany"; said customer purchased and received said lumber, believing that he was purchasing and receiving the mahogany wood which he has known for over 25 years to be the wood with a reputation as a fine cabinet wood, which reputation has been maintained by mahogany for hundreds of years; thereafter said lumber warped and twisted contrary to said customer's former experience with mahogany wood. Said lumber was not mahogany since it was not of the Meliaceae family but was Shorea, and was of the same type of wood sold by respondent as "Philippine Mahogany" and represented by it to be mahogany.

PAR. 29. Approximately 60 per cent of the retail lumber dealers in the United States had not heard the term "Philippine Mahogany" prior to the institution of this proceeding.

PAR. 30. For about 18 years last past, respondent in the regular course of its business has offered for sale and sold as and for mahogany, lumber consisting of woods other than mahogany. During nearly all of this time respondent was the eastern distributor for the Insular Lumber Co., a concern which operates timber concessions in the Philippine Islands and there manufactures lumber which it invoices and ships to respondent Indiana Quartered Oak Co. as "Philippine mahogany", as Tanguile and Lauan. This lumber respondent invoices and sells as "Philippine mahogany" to manufacturers of furniture and of other wood products, and to wholesale and retail lumber dealers. This it ships to such customers located at points in States of the United States other than the State of New York.

PAR. 31. To induce the sale of Lauan and Tanguile under the name "Philippine mahogany", respondent, in advertisements and correspondence with vendees and prospective vendees, has represented said lumber as being "mahogany", and "Philippine mahogany", and advised said customers and prospective customers and the public generally that they could sell products made of said lumber as mahog-

any products. Among such advertisements is one which reads in part as follows:

PHILIPPINE MAHOGANY is better than African for many purposes. We recommend it for boats, trim, patterns, boxes and door veneers.

You can sell your product truthfully as Mahogany. Philippine Mahogany is classed with African as a "Commercial Mahogany" by the U. S. Dept. of Commerce, I. C. C. and the Trade generally.

PAR. 32. Customers of respondent did advertise and sell products made of lauan or tanguile as and for products made of "mahogany", the "finest mahogany."

PAR. 33. Mahogany was first used for building boats. In England and Spain, it was used for shipbuilding during the eighteenth century and was the chief wood employed in Europe for this purpose. It is still preferred to any other wood for the framework of small sailing vessels. Large sailing vessels with mahogany framework were sold for enormous prices and manufactured into fine furniture. The out-planking of American yachts is preferably of mahogany, although teak is still used for this purpose.

PAR. 34. Among the customers of respondent is a company located at Detroit, Mich., engaged in the business of constructing and selling motor boats. It purchased lauan or tanguile from respondent as "Philippine mahogany". This it used in the construction of boats. In purchasing this wood said company desired to obtain mahogany and relied on the representations of respondent in believing that it was obtaining mahogany wood. It used said wood in the construction of boats and thereafter sold such boats under the descriptions that they were constructed in part of the "finest mahogany", and so represented such wood to the purchasers of said boats.

PAR. 35. Another customer of respondent, located at Bayonne, N. J., builds and sells to the public, yachts, motor boats and house boats. Said customer purchased lauan or tanguile from respondent, which respondent invoiced and sold to said customer as "Philippine mahogany". Said customer used the same in the construction and finish of boats and in furniture placed therein. These boats said customer sold to the public through advertisements which set out the specifications showing how the boats were built and purported to show of what woods they were constructed, and advised the public that such boats were built in part of mahogany, when in fact the word "mahogany" as used in the advertisements of said customer, applied to the lauan or tanguile wood, purchased from respondent under the name, "Philippine mahogany".

PAR. 36. Another customer of respondent is the largest manufacturer of caskets in the United States. This customer purchased of respondent lauan or tanguile, invoiced by respondent to said cus-

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tomers as "Philippine mahogany". Said customer used from 250,000 to 300,000 feet of such wood annually. This it converted largely into caskets which were advertised and sold as and for "mahogany" and "solid mahogany" caskets. Said customer issued a catalogue which it distributed broadly, to funeral directors, or undertakers, throughout different sections of the United States. From illustrations and descriptions contained therein, ultimate purchasers selected the casket desired. Many of the caskets so illustrated and described as being made of mahogany, or solid mahogany, were made of lauan or tanguile purchased from respondent which respondent stated in its advertisements could be "truthfully" sold as mahogany. Said catalogue and the descriptions therein were depended upon by funeral directors or undertakers, and when ultimate purchasers order such caskets said purchasers depend upon the representations made by said funeral directors, and said funeral directors make such representations to said purchasers of caskets as accompanied the cuts shown in said catalogue. One such funeral director located at Newark, N. J., purchased caskets from the said customer of respondent but had never heard the term, "Philippine mahogany". He had a very definite idea of mahogany and would not knowingly sell a casket made of an imitation of, or substitute for, mahogany, as and for a casket made of mahogany wood.

PAR. 37. Lauan, tanguile and other Philippine hardwoods sold by respondent under the name "Philippine mahogany" are not what dealers, manufacturers and ultimate purchasers have in mind when they want mahogany, or what they believe is mahogany.

PAR. 38. The aforesaid representations made by respondent have had and now have the capacity and tendency to, and did and do, cause many dealers in furniture and allied commodities to purchase said wood products in the belief that the same are mahogany wood and to sell to retail dealers articles of furniture and allied commodities as and for articles of mahogany wood, and thus to cause said dealers and eventually the consuming public to purchase furniture and other articles made of said lumber and wood products in the belief that the articles so purchased are made of mahogany wood.

PAR. 39. Respondent has represented its woods as being mahogany and has induced others to represent respondent's woods and woods of the type sold by respondent and the products thereof as being mahogany. Respondent's representations have resulted in causing dealers, manufacturers and consumers to purchase respondent's woods and products made therefrom in the belief that such woods and such products were mahogany.

PAR. 40. Mahogany usually is sold to dealers in lumber and to manufacturers under names indicating origin, such as "Honduras

Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc. These prefixes in the form of geographical names are understood by the trade and by the public to mean that the particular mahogany so designated comes from the country thus prefixed. Likewise, the term "Philippine Mahogany", in cases where the geographical prefix is retained, indicates to the average purchaser that the wood is mahogany grown in the Philippine Islands.

PAR. 41. Lauan and tanguile, the woods sold by respondent as Philippine Mahogany, are sold for about two-thirds of the price at which mahogany is sold. Products made from lauan and tanguile, and sold as Mahogany, Genuine Mahogany, or Solid Mahogany are sold to retail dealers at the same or approximately the same prices as similar products made of mahogany.

PAR. 42. In thus selling its lauan, tanguile, etc., as Philippine Mahogany respondent not only practices deception on its immediate customers but places in their hands an unlawful instrument which enables them to increase their profits by reselling the misnamed lumber either as lumber or in manufactured products, thereby lessening the market for true mahogany and for honestly named Philippine hardwoods.

PAR. 43. There are among the competitors of respondent in interstate commerce many who deal in and sell lumber and other wood products consisting of mahogany who rightfully and truthfully represent their said lumber and wood products to be composed of mahogany wood, and who are in position to supply the demand for mahogany. The above-described acts and practices of the respondent tend to and do divert business from and otherwise prejudice said competitors.

PAR. 44. There are among the competitors of respondent in interstate commerce also several who deal in and sell lauan, tanguile and other Philippine hardwoods, and the manufactured products thereof, under appropriate native or trade names which do not import or imply that such commodities are mahogany or the products of mahogany. The above-described acts and practices of the respondent likewise tend to and do divert business from and otherwise prejudice said competitors.

PAR. 45. The sale of lauan, tanguile and other Philippine hardwoods by respondent to its customers, and by them to the purchasing public, under the name "Philippine Mahogany" or mahogany as hereinbefore described, has the tendency and capacity to and does deceive a substantial portion of the trade and the purchasing public in substantial numbers and induces the ordinary purchaser of products made from such woods to purchase said products as and for products made of mahogany wood, or in part of mahogany wood, to

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the injury and prejudice of the purchasing public and of honest competitors.

## CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral arguments, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now, therefore, it is ordered,* That the respondent, Indiana Quartered Oak Co., its officers, directors, agents, employees and successors, do cease and desist from advertising, describing or otherwise designating or selling or offering for sale under the term "Mahogany", "Philippine Mahogany", or any other term of similar import, woods known under the common or trade names, "red lauan", "white lauan", "tanguile", "narra", "apitong", "bataan", "lacao", "orion", "almon", "batang", "begaac", "batak" and "balachacan", or any other wood, lumber or wood products, unless such wood or lumber, or the wood from which such products are made, is derived from the trees of the Mahogany or Meliaceae family.

*It is further ordered,* That the respondent, Indiana Quartered Oak Co. shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

*Memorandum by Chairman Hunt and Commissioners Myers and Nugent*

Commissioner Humphrey before leaving on his vacation in June asked that his vote be recorded against findings and orders in these cases, and that should findings and orders be voted by the majority the same be accompanied by the same dissenting opinion which he



published when the original findings and orders were issued in July, 1926.

The findings now made differ in important particulars from those issued a year ago; hence the majority deem it appropriate to point out that certain observations in the dissenting opinion have little or no bearing on the present findings.

An apparent inconsistency in certain statements issued by the Forest Service of the Department of Agriculture, the only Government agency which undertakes to pass on such questions, supported in a measure the claim of the dissenting opinion when first issued that "Government authorities have ruled that the term 'Philippine Mahogany' is correct." Since then the Forest Service has declared unequivocally that it has not indorsed the name "Philippine Mahogany" and that "in the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus 'Swietenia.'" (Findings, par. 16.)

The ruling of the Interstate Commerce Commission mentioned in the dissent merely was to group these Philippine hardwoods with certain other woods for rate-making purpose, and was not an authoritative decision on wood nomenclature. The dissenting opinion takes no account of the really significant feature of the proceeding before the Interstate Commerce Commission, namely, the lengthy and detailed testimony of the president of one of these respondents that so-called "Philippine Mahogany" is in no sense comparable with true mahogany. Ample support for the Federal Trade Commission's findings as to difference between "Philippine Mahogany" and true mahogany in the uses to which they can be put, may be found in that testimony.

Discussion of the distinctions between mahogany and so-called "Philippine Mahogany" drawn by wood technologists and botanists lends animation to the dissenting opinion. These, however, are the controlling distinctions in commercial practice when there is a dispute as to whether wood supplied under contract is of the variety ordered. In so far as the dissenting opinion implies that under the orders of the Commission the Philippine woods must hereafter be called by their botanical names, it goes too far. With the unlimited opportunities of the alphabet at their disposal respondents could have adopted or coined names for their wood which did not trade on the reputation of another and different wood high in public favor. The fact is that competitors of these respondents have adopted and successfully employed names for these Philippine hardwoods which do not import or imply that their woods are mahogany.

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It may be that the term mahogany has expanded somewhat since the first tree of that genus was discovered; it may even be that woods other than the Philippine hardwoods are being sold unfairly under that name. The woods sold by respondents, unlike the "African Mahogany" mentioned by the dissenting commissioner, are not even of the same tree family as mahogany; and it would seem that if a line is ever to be drawn this is the outside limit at which to draw it. If respondents may call lauan and tanguile mahogany, there is no reason why birch, which can be finished in excellent imitation of mahogany, may not also be marketed as mahogany.

*Dissenting Opinion of Commissioner Humphrey*

I agree with the majority that the word "mahogany" should not be applied to the woods of that species from the Philippine Islands without the prefix "Philippine". This would be in accordance with the common usage, as in the trade it is customary to say "African Mahogany", "Honduras Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc.

If the majority is consistent, it appears to me that it will at once proceed against the Mahogany Association for using the term "African Mahogany", as this wood, like the Philippine product, is not mahogany botanically.

GOVERNMENT AUTHORITIES HAVE RULED THAT THE TERM PHILIPPINE MAHOGANY IS CORRECT

The Hardwood Lumber Association, in 1916, classified the wood in controversy as "Philippine Mahogany". The Forest Service of the United States, when the matter was submitted to them in September, 1914, after a thorough consideration of it, endorsed the use of the term "Philippine Mahogany". The Department of Commerce has long used the term "Philippine Mahogany" in its reports. The Interstate Commerce Commission, in a controversy involving the question, after full hearing on the record and brief in the case of *Indiana Quartered Oak Co. v. Atlantic City Ry. Co.*, approved the use of the term "Philippine Mahogany". The following quotations are from that decision:

The term "mahogany" applies to woods in two senses, the botanical sense and the commercial sense.

\* \* \* \* \*  
 Mahogany in the commercial sense includes chiefly (a) Mexican and Cuban mahoganies, which are true mahoganies in the botanical sense and very valuable woods; (b) African mahogany, which is not a true mahogany in the botanical sense, but which grows large and clear, has a fine figure and is suitable for veneers; (c) baywood, which is a true mahogany in the botanical sense but, on account of its soft inferior quality, less valuable than other species; and

(d) Philippine mahogany, which is not a true mahogany in the botanical sense. Philippine mahogany, is classified by the United States Forestry Bureau as a commercial mahogany.

Apparently the majority is of the opinion that one of the chief functions of the Commission is to correct the opinions and rules of the other departments of the Government; more particularly to correct the errors made by the Agricultural Department, the Department of Justice, the Department of Commerce, and the Interstate Commerce Commission. I am constrained to believe that Congress never intended the Federal Trade Commission to be a super court to reverse the rules of other departments, a power that the Supreme Court has decided neither it nor any other court possesses. This is expressly declared in many decisions. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S. 479-487. *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495-502.

#### NO PUBLIC INTEREST

No public interest appears in this case. The reason of complaint herein is not because the user does not know what he is buying, but because he does know. It is a controversy entirely between the Mahogany Association and the users of Philippine Mahogany. There is no substantial evidence in the record that any ultimate consumer of Philippine Mahogany has either been deceived or has complained that he has been defrauded.

The "milk in the coconut" in this controversy is that Philippine Mahogany, being a product of one of our insular possessions, is admitted into this country free of duty, and this fact together with the fact that it grows in considerable bodies instead of single trees, as other mahoganies, enables it to be sold in the United States at a lower price than the other mahoganies, and its qualities are so appealing that it is becoming a serious competitor of the Mahogany Association.

To prevent the use of the term "Philippine Mahogany" in this case will not protect the public, because it is not injured and has not complained. Only its competitor objects to its use. It will not be in the public interest because it will tend to give the Mahogany Association a monopoly of the American markets; will tend to increase the price of mahogany to the consumer, and would greatly injure the Philippine-mahogany industry in this country, and more greatly injure it in the Philippine Islands.

There is another fact, that while it is not a legal reason, should have consideration as bearing upon the public interest, and that is, the Philippine mahogany industry both in this country and in the

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Philippines is conducted almost exclusively by Americans and is one of the chief products of the Philippine Islands, and one of the chief products making up the cargoes of American ships coming in from the Philippines to the United States.

## WHAT IS MAHOGANY?

What is mahogany as applied to wood? Is it the wood from the tree botanically known as mahogany? It is. But to restrict it to such meaning is false and misleading. Mahogany wood or lumber, may or may not be produced from the tree botanically classified as mahogany. A tree is usually classified from its flower or seed botanically. A wood is classified according to its qualities—not from the botanical name of the tree from which it is produced. Botanically the wood in dispute is not mahogany—commercially it is. To apply its botanical classification to its commercial use is wholly misleading. Botanical classification has nothing whatever to do with the commercial classification of the wood in controversy. The botanical classification of this wood is not involved in the issues of this case, and the only result of discussing the botanical classification is to confuse and mislead. Below are cited some definitions as to what constitutes mahogany:

## MAHOGANY

*Botanically:* A tropical American mellaceous tree (*Swietenia mahoganii*), with pinnate leaves and panicles of small greenish flowers.—Webster's Dictionary.

The valuable hardwood of this tree, used extensively for furniture and cabinet work.—Webster's Dictionary.

*Commercially:* Any of many trees related to, or resembling the mahogany; as in Australia, species of *Eucalyptus*; in India, various mellaceous trees of the general *Soymida*, *Chrkrassia*, and *Tona*; in Africa, *Khaya senegalensis*; in the United States, *Rhus integrifolia*, species of *Cercocarpus*, etc.—Webster's Dictionary (*italics mine*).

Applied chiefly with qualifications to various woods resembling mahogany and to the trees producing them.—New English Dictionary and History of 1903.

Mahogany, the popular name for timber of several unrelated trees, among which are various species of *Eucalyptus*.—Encyclopedia Americana, 1903 edition.

I would be unable to describe the wood without calling it mahogany, because it has the looks, the appearance, the grain, and all of the things that go to make up mahogany.—Witness Sands—Seattle, Rec. p. 15.

The furniture trade considers African, Mexican, Philippine and Honduras all mahogany.—Witness—Rec. p. 284.

These authorities show the conclusive soundness of the rulings of the various departments of Government referred to herein.

## DOES THE PHILIPPINE PRODUCT HAVE THE QUALITIES OF MAHOGANY?

Does the Philippine Mahogany, as Webster says, "resemble" mahogany? It seems to me that the Commission's attorneys are hardly

in a position to deny that the Philippine Mahogany "resembles Mahogany", and has all its necessary qualities, in view of the fact that on page 17 of their brief, they refer to the testimony of several witnesses who were experts, that bought and sold Philippine Mahogany, thinking it was the mahogany of "our grandfathers", or as they term it, "the real mahogany". The examiner in paragraph 8 of his findings says:

The resemblance between the characteristics of genuine mahogany wood and the wood sold in interstate commerce as "Philippine Mahogany" are so close that it is difficult even for an expert wood technologist to distinguish between them without the aid of instruments usually employed by wood technologists in examining various wood specimens.

In the brief of the Commission, at page 10, it is said that the Horace E. Dodge Boat Works, at Detroit, Mich., represented their vessels made of the Philippine wood as constructed of the finest mahogany. These vessels were sold to their customers and there is no showing that any purchaser of these boats ever made any complaint or doubted the truth of these representations. In fact, there is no evidence, so far as any ultimate consumer is concerned, that when the seller represented his product as of the finest mahogany, that it was not strictly true.

It is useless to quote the evidence of various witnesses upon this proposition, for there is practically no dispute in the testimony of the witnesses on both sides of the controversy, that the statement in the examiner's findings above referred to is correct.

So it is practically admitted in this case that the wood in controversy has *every quality* necessary to justify it being classified *commercially as mahogany*. It might be added, as shown by the record, that some of the true mahogany, botanically, is soft and spongy and has little value commercially. If this wood was placed on the markets as mahogany, undoubtedly there would be a great protest both from the Mahogany Association and from the public, and justly so, because while such wood would be *mahogany botanically*, it would not be *mahogany commercially*, and its sale as such would be a fraud upon the public.

No witness has been produced that has testified or even intimated that he has ever bought furniture because he thought it was made of wood botanically mahogany. But the entire evidence is that all purchasers bought what they thought contained the qualities of mahogany as defined commercially, and therefore were not deceived, and there is no showing in the record whatever *that any purchaser has complained* that the respondents have *deceived or defrauded them*.

The complaint is made that this wood sometimes contains wormholes, but this has nothing to do with the issue. This is a characteristic of all mahoganies in a more or less degree. Will it be contended that it is an unfair practice to call Hickory, or Oak, or Walnut, by their names because these woods sometimes contain wormholes? This question is entirely a matter of grading the lumber and not of determining the kind. Certainly it can hardly be contended that a hole changes the character of the wood in which it is.

The exhibitions before the Commission of two selected doors, one of the so-called genuine Mahogany and the other of Philippine Mahogany, at least in so far as appearance is concerned, decisively confutes the evidence of all so-called experts as to the inferiority of the Philippine wood. In fact, the door of Philippine Mahogany was so much more beautifully figured and colored and in every appearance so much more desirable than the genuine, that most purchasers would prefer it. This exhibition conclusively demonstrated that the Philippine Mahogany possesses every desirable attribute that constitutes mahogany as defined by all the decisions and authorities.

#### THE NAME PHILIPPINE MAHOGANY NOT DECEPTIVE

The use of the words "Philippine Mahogany" is not deceptive. The trade and the people generally know exactly what they are buying when they buy Philippine Mahogany. This opposition to the use of the term comes, not because it is deceptive, but because it is not. We have again in this controversy the old story of the fight against the new. Much has been said about the mahogany of our fathers—more forceful than weighty. The revered mahoganies of to-day are the despised mahoganies of yesterday. The history of the controversy is that mahogany was at first limited to the lumber produced from one tree only. Then, as this supply grew less, a new mahogany appeared. It was rejected at first but gradually came to be recognized; and so, in the future, the Philippine Mahogany will become the adored wood of our "grandfathers", and probably in a fight to shut out some new contender for public favor.

It is impossible to describe the wood in controversy so that its qualities and value will be properly understood by the public, without the use of the word "mahogany". To insist that it should be called Dipterocarpaceae, in order that the general public might not be deceived, would be just as absurd as to insist that the present monarch of England should be called, George Frederick Ernest Albert Windsor, instead of King George, in order that the people of England might not be misled as to the person referred to.

## CLASSIFICATION OF WOODS BOTANICALLY MISLEADING AND DANGEROUS

If we are to lay down the rule that it is false and misleading to describe woods commercially other than what they are botanically, we will injure, if not destroy, one of the greatest industries in this country.

One of the finest woods in the world, that furnishes perhaps more of the timbers used in construction to-day than any other is the Douglas Fir of the Pacific Northwest. It is known by this name throughout the world and by this name its qualities are well understood. Botanically this wood that enters so largely into the commercial life of a nation is a false hemlock. There is a widespread prejudice against hemlock, because of the qualities of that wood in the East. For the lumber producers of the Northwest to be compelled to mark their product under its botanical name—False Hemlock, would be to work incalculable injury to the industry. More than 85 per cent of the wood shingles in the United States are the Red Cedar Shingles of the Pacific Northwest. The quality is well known and understood by the trade and people generally by the term "red cedar". Botanically it is not cedar but juniper. It would cost millions of dollars to both the shingle industry and the Douglas Fir industry to educate the people to where they would know what was meant by the botanical terms of these woods. In the East one of the great lumber trees of commerce is the poplar. Botanically it is tulip.

To use the terms, "Philippine Mahogany", "Douglas Fir", "Red Cedar", and "Poplar" is to correctly define these woods commercially, and gives to the dealers and to the public generally the correct idea of their qualities and value. If you describe them botanically, it is safe to say that not 5,000 people in the United States would know what was meant. I can think of no proposition more absurd than to compel the use of the botanical names of these woods upon the theory that it will protect the public from false and misleading statements. Why should we use the restricted and scientific and highly technical name known by a few, and refuse to use the common, ordinary name, understood by all?

## WHY THE PHILIPPINE MAHOGANY IS CHEAPER

The reason Philippine Mahogany is cheaper is not because it is less desirable, for it has all the qualities, and in its higher grades it is equal in beauty, if it does not surpass, the finest of other mahogany woods.

Philippine Mahogany is not taking a large portion of the market from the other mahoganies because of any deception, but because of

its merits. As already stated, the reason that it is cheaper is because it comes in duty free and because it is more easily logged than other mahoganies.

I must enter my protest against the decision of the majority in the overruling of the classification of the Hardwood Association, the decisions of the Department of Agriculture, the Department of Commerce and the Interstate Commerce Commission, and action, I believe, will result in the overturning of the common usage and reversing common understanding; that will disrupt a great industry; that will establish a precedent that if followed will paralyze the lumber industry of the country; that will increase the price of mahogany and create a monopoly in the mahogany trade; that will injure the public and benefit only the Mahogany Association. Such decision in my judgment can be based only on the technical and stilted opinions of schooled but unlearned self-styled experts, who would, if consistent, insist that potatoes must be sold only as tobacco, because botanically they are of the same family, lest some dear old college professor might buy a package of cigarettes instead of a bag of "spuds".

The contention of the majority here is that if any person of common understanding wishes to buy this Philippine wood, that has all the beauty and durability of mahogany—in fact, all the best characteristics of mahogany—that it can not be described to him so as to reach the common understanding, by calling it "Philippine Mahogany", but in order to keep him from being deceived and so that he may know exactly what he is getting, he must be told that it is either Lauan, Tanguile, Almon, Batan, Apitong, Lamao, Orion, Abatang, Bagaac, Batak, or Balachacan. This proposition, it seems to me, would be highly complimented by characterizing it as absurdly ludicrous.

The majority lay down the proposition that the buyer must be told the truth—a perfectly correct one and one that I indorse, but when you chase this common-sense idea into the clouds of scientific nomenclature, until not one person in a million, without consulting an encyclopedia, a botanist and a chemist, would know whether a word used to describe the wood in a kitchen chair is the name of a seasick remedy, a new planet, or a divorcee screen star, it seems to me that the proposition in some slight degree "recoils upon itself".

The sum of the Commission's case is that the purchaser of this wonderful and beautiful wood will be deceived and defrauded unless he is told that it is Dipterocarpaceae, a proposition so plain that only the intelligent will dispute it.



## Syllabus

IN THE MATTER OF  
KIRSCHMANN HARDWOOD COMPANY <sup>1</sup>

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

*Docket 1323. Complaint, June 2, 1925—Decision, Aug. 16, 1927*

Where the wood mahogany had long had a merited and enduring reputation associated with the word, was usually sold to lumber dealers and manufacturers under such names indicating origin as "Honduras Mahogany", "Mexican Mahogany", etc., and was usually dealt in in the retail furniture trade without such prefixes, and furniture and other articles were customarily bought, dealt in, and purchased by furniture buyers for large retail stores, by retail dealers, and by the public in reliance upon representations by the manufacturers and dealers respectively as to the composition thereof, and whether or not mahogany; and thereafter a corporation engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others,

Represented certain Philippine hardwoods as "Philippine Mahogany" and induced others so to represent the same and products thereof, and so sold the same to furniture manufacturers, dealers and others, by whom such hardwoods or the products manufactured therefrom were resold to retailers and others as "Mahogany", "Genuine Mahogany" or "Solid Mahogany", and were in turn by them resold to the public as and for such products, the fact being that the aforesaid woods (1) were not mahogany, either botanically or otherwise, (2) lacked many of the characteristics and virtues possessed by mahogany and were thereby unsuited for a variety of uses employed for mahogany, (3) were sold to the manufacturer for about two-thirds of the price of genuine mahogany, and were by the latter resold as manufactured products, to dealers, at the same prices prevailing for mahogany products, (4) had long been known and traded in in the Philippines and in the United States under their native and trade names, "lauan" and "tanguile," and also under other native names such as "red lauan," "bataan," etc., (5) were imported under such names as to the greater proportion thereof imported, (6) were so dealt in in the United States by many of the importers and a substantial number of the lumber dealers, (7) were not what dealers, manufacturers, and ultimate purchasers had in mind when they wanted mahogany, or what they believed to be mahogany, (8) were named and sold as Philippine Mahogany in the face of official disapproval and practice, and without the sanction of local custom, and (9) that approximately 60 per cent of the retail lumber dealers in the United States, and ultimate purchasers of furniture and other products, with rare exceptions, had never heard the term, believing it in such instances to mean mahogany, and not a substitute;

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<sup>1</sup> See footnote to *Powé case*, p. 248.

## Complaint

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With the effect of (1) causing manufacturers, dealers in furniture and other products, and consumers to purchase, sell, or deal in said woods, and products made therefrom, as mahogany, (2) placing in the hands of its immediate customers an unlawful instrument enabling them to increase their profits by reselling the lumber so misnamed, either as such, or in the manufactured form, thereby lessening the market for true mahogany and for the honestly named Philippine hardwoods, (3) diverting business from and otherwise prejudicing competitors dealing in and able to supply lumber and other wood products, consisting of mahogany, rightfully and truthfully so represented by them, and competitors dealing in lauan, tangile, and other Philippine hardwoods and the products manufactured therefrom, under appropriate or trade names, which did not import or imply that they were mahogany, and (4) of deceiving a substantial portion of the trade, and the purchasing public in substantial numbers, and inducing the ordinary purchaser of products made from such woods to purchase the same as and for mahogany, in whole or in part, to the injury and prejudice of the purchasing public and of honest competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. M. Markham Flannery* and *Mr. Stephen O. Van Fleet* for the Commission.

*Forbes & Daniels*, of Washington, D. C., for respondent.

*Major F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for Philippine Government, intervenor.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a California corporation engaged in the sale of hardwood lumber and other hardwood products to dealers in lumber and manufacturers of furniture, cabinetwork, and allied products in the various States, and with principal office and place of business in San Francisco, with misrepresenting or naming products misleadingly, and advertising falsely or misleadingly in violation of the provision of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, for about four years preceding the complaint, respondent sold certain hardwood lumber and other hardwood products not mahogany, under the name and designation "Philippine Mahogany" at wholesale and retail, to dealers and manufacturers as aforesaid, and in advertisements, circular letters and other correspondence with purchasers and prospective purchasers, and on letterheads, invoices, price lists and other trade literature represented, named and designated said lumber and other products as "Philippine Mahogany"; with the capacity and tendency to cause and with the effect of causing, many

dealers and manufacturers as aforesaid to purchase said lumber and products as and for mahogany and to manufacture therefrom and sell to wholesale and retail dealers furniture, cabinetwork and allied commodities as mahogany, and of causing said dealers and eventually the consuming public to purchase such various articles and products as mahogany, and of thereby diverting trade from and otherwise prejudicing competitors, many of whom deal in and sell hardwood lumber and other hardwood products, including mahogany, and do not include any other kind of hardwood than mahogany in their advertisements or representations of mahogany, and otherwise properly and truthfully represent the hardwood lumber and products dealt in by them; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Kirschmann Hardwood Co., a corporation, charging it with unfair methods of competition in commerce in violation of said act.

Respondent having entered its appearance by its attorney and having filed its answer herein, and the Philippine Government, intervenor, having entered its appearance by its attorney and having filed special answer herein, and a stipulation between respondent and the Commission concurred in by the intervenor having been made and entered of record whereby respondent agreed that the record of the evidence taken in complaints, dockets numbered 1281, 1316, and 1332, shall be taken as and in lieu of testimony in support of the charges stated in the complaint in this proceeding, or in opposition thereto, and shall constitute the evidence upon which the Commission may proceed to make its report in this proceeding, and state its findings as to the facts and enter its order disposing of said proceeding; thereupon this proceeding came on for decision, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of California, with its principal office and place of business in the city of San Francisco. It is engaged in the sale of hardwood

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lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others located at various points in the several States of the United States. It causes said commodities, when so sold, to be transported from its said place of business in San Francisco, Calif., and from the point of origin of such commodities into and through other States of the United States to purchasers at their respective points of location in States other than California and other than the points of location of such shipments.

PAR. 2. There are other individuals, partnerships and corporations situated in the various States of the United States also engaged in the sale of hardwood lumber and hardwood products, who cause said commodities when sold to be transported from their respective places of business into and through other States of the United States to purchasers located in States other than the State of origin, and into States into which respondent ships its hardwood products, with whom respondent was during the time mentioned in the complaint and now is competing in interstate commerce.

PAR. 3. A large and important part of the hardwood and hardwood products sold and transported by respondent in interstate commerce is called by respondent "Philippine mahogany," and is grown in and imported from the Philippine Islands. This wood has been known and traded in for years prior to the filing of the complaint herein both in the Philippines and in the United States under the names Lauan and Tanguile. Other trade names employed for these woods are red Lauan, white Lauan, Bataan, Lamao, Almon, Apitong, Orion, Batang, Bagaac, Batak and Balachcan.

PAR. 4. About 85 per cent of the Philippine woods sold as "Philippine mahogany" imported through the Pacific coast ports is imported under the trade names set out in paragraph 3 above. Some importers sell these woods to lumber dealers, furniture manufacturers, and others under their native or trade names. Respondent and other importers sell it to furniture manufacturers, dealers and others as "Philippine mahogany." After sale by the importers last referred to, the manufactured products are sold by the said furniture manufacturers to retail furniture dealers and others as "mahogany", "genuine mahogany", or "solid mahogany". Such products are resold by retail furniture dealers to the public as and for products made of "mahogany", "genuine mahogany", or "solid mahogany".

PAR. 5. Many of the importers and a substantial number of lumber dealers in this country use and deal in woods of the type sold by respondent as "Philippine mahogany", but under the native or trade names in paragraph 3 set forth.

PAR. 6. The Luan and Tanguile sold by respondent as "Philippine mahogany" are the product of the tree family scientifically known as Dipterocarpaceæ. This tree family is not scientifically or botanically related to the tree family Meliaceæ, the product of which constitutes true mahogany.

PAR. 7. The Philippine hardwoods sold by respondent and others, as hereinabove described, are the only woods derived from a tree family other than Meliaceæ, to which the term mahogany has been applied. Of the genera of this family, only one "Swietenia" produces true mahogany. There are five known species of Swietenia.

PAR. 8. The term "African mahogany" has been applied commercially to the product of "Khaya" of the genera of Meliaceæ, of which there are about four known species.

PAR. 9. Trees of the Swietenia group producing true mahogany grow principally in the West Indies, Southern Florida, Southern Mexico, Central America, Venezuela, and Peru. No species of the genus Swietenia of this tree family grows in the Philippine Islands, except as specially planted for decorative or experimental purposes.

PAR. 10. The Spanish words "Caoba des Filipinos," meaning "Philippine mahogany," are occasionally used in the Philippine Islands to designate native woods resembling mahogany in grain, texture, and color. This term was known in the Philippines, but not used in connection with the sale of lumber. It does not appear that this expression was used prior to the American occupation. Prior to 1916 the Philippine Government, as represented by its Director of Forestry, opposed the practice of American importers in selling Philippine hardwoods as Philippine mahogany.

PAR. 11. When Philippine hardwoods leave the Philippine Islands for the United States, they are shipped under the native names, Luan, Tanguile, etc. The invoices, on which the taxes are levied are made out under the native names, this being by agreement with the Bureau of Customs, as well as the railroad companies, so that the shipping invoices will conform to the manifest on which the Government charge has been paid.

PAR. 12. Active opposition on the part of officials of the Philippine Government to the practice of selling Philippine hardwoods as "Philippine mahogany" abated about 1916, but a few months prior to the institution of the Federal Trade Commission's investigation of this matter a statement by the Forester of the Philippine Government, published in a trade journal known as the *Hardwood Record*, deplored the selling of Philippine wood as true mahogany "a practice which always will be opposed by the Bureau of Forestry of the Philippine Government, both because of the false pretenses and be-

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cause of the fact that the Philippine woods have sufficient good qualities to stand on their own merits."

PAR. 13. The various kinds of woods are distinguished from one another by botanical properties or characteristics. Many woods of widely different kinds have some properties and characteristics in common, but it is the difference in such properties and characteristics, be they great or small, that distinguishes one wood from another. The ultimate test consists in a comparison or contrast of such properties and characteristics.

PAR. 14. In commerce when a question arises as to whether wood is of one kind or another, the matter is submitted to a wood technologist for determination. A wood technologist authoritatively identifies wood according to the species, genus, tribe, and family of the tree, as classified, established, and agreed upon by botanists.

PAR. 15. The United States Department of Agriculture, in its Forest Products Laboratory at Madison, Wis., is regularly engaged in officially determining for those engaged in commerce the question whether wood is of one kind or another. Many samples of Philippine hardwood, such as sold by respondent, were identified by Mr. Arthur Koehler, wood technologist of said laboratory, as shorea—one of the genera of dipterocarpaceæ.

PAR. 16. The United States Department of Agriculture on September 23, 1926, issued the following official statement:

The name "Philippine mahogany" as applied to Tanguile, Lauan, and other Philippine woods, has never been indorsed by the United States Department of Agriculture. Its use runs counter to the principles followed by the Forest Service in attempting to give to native American trees and woods standard names that do not deceive or mislead the public, according to a statement by Chief Forester W. B. Greeley, in connection with recently published statements growing out of the Federal Trade Commission decision against the use of the name "Philippine mahogany."

The Forest Service has been quoted as having indorsed the name "Philippine mahogany" in a letter written in 1914. This letter, however, according to the Forest Service statement, did not attempt to decide the specific question at issue, and was limited to stating the principles that should be followed in the nomenclature of woods.

In the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus *Swietenia*.

PAR. 17. Unschooling persons such as laborers in a lumberyard who readily distinguish between the different kinds of lumber by such criteria as grain, pore, scent, weight, or other identifying characteristics are guided by botanical properties and differences inherent in the wood as formed in the tree, and these characteristics correspond with like characteristics placed by nature in trees of the same species. Wood technologists by reason of their expert knowl-

edge compare these and many other qualities and characteristics with such precise results as to satisfy the requirements of both science and commerce, and according to such identifications neither lauan nor tanguile are mahogany botanically or otherwise.

PAR. 18. In addition to the scientific and botanical distinctions used by wood technologists, many of the characteristics and virtues possessed by mahogany are lacking in the Philippine hardwoods sold by the respondent as mahogany under the name Philippine mahogany. The absence of such characteristics and virtues prevents such hardwoods from serving certain uses for which mahogany is particularly adapted. While there is conflict in the evidence, the weight is to the effect that Philippine hardwoods are not suitable for the following uses, and the Commission so finds:

(a) Such woods are not suitable for cabinet-making because of the great prevalence of wormholes which constitute serious defects in all Philippine woods.

(b) They are not suitable for the construction of lamps because they do not take a proper finish.

(c) They are too soft to be suitable for flooring.

(d) They are not susceptible to the finish required by piano manufacturers on the exposed surfaces of pianos.

(e) They are not suitable for carving.

(f) When used in furniture it is necessary to fill the wormholes before the wood is stained or varnished and polished. The filling at times sinks into these holes, destroying the even appearance of the surface.

(g) They do not retain the subsurface lustre peculiar to mahogany, and unlike mahogany they do not beautify with age.

PAR. 19. Mahogany has a merited and enduring reputation, and is familiar to the average person, and the association of such reputation with the household word "mahogany" finds its origin in recollections of and association with objects of furniture and the like familiar to him since childhood, often handed down from generation to generation; and when such person is offered products made of so-called "Philippine mahogany" as and for mahogany, he is deceived by receiving furniture, interior trim for his house, boats, caskets, and the like, made of lauan or tanguile which is not mahogany.

PAR. 20. Ultimate purchasers of furniture and other products mentioned in paragraph 19, with rare exceptions, never heard the term "Philippine mahogany"; but even when the term was mentioned such purchasers were led into the belief that it meant mahogany, not a substitute.

PAR. 21. In buying furniture the public usually depends upon representations made to them by the retail dealers from whom they

purchase as to whether the furniture offered for sale is or is not made of mahogany wood.

PAR. 22. Persons engaged in buying furniture for large retail furniture stores in practically every city of the United States commonly depend on representations made to them by manufacturers as to the kind of wood entering into the furniture they purchase. Furniture purchased by retail dealers is ordered largely from photographs and catalogues, and at times from samples. If furniture is represented by the manufacturer to be made of mahogany wood and is invoiced as mahogany furniture, retail dealers in practically every city of the United States sell such furniture to ultimate purchasers as mahogany furniture. Furniture is rarely represented to retail dealers as made of "Philippine mahogany", or sold by them under that description. Prefixes such as "Honduras", "San Domingo", and "Cuban", used by manufacturers and importers, are seldom if ever used in the retail furniture trade. But the purchasing public, having in mind the reputation which mahogany has borne for hundreds of years, depend on retail furniture dealers to supply mahogany if that is the kind of furniture asked for. Such buyers have seldom heard the term "Philippine Mahogany."

PAR. 23. Many retail dealers of the class referred to in paragraph 22 hereof do buy furniture from such manufacturers as described in said paragraph, which furniture is made of Lauan, Tanguile, or other Philippine hardwoods, and is sold by said retail dealers to the public as and for mahogany. Among others, the proprietor of a retail furniture store at Cleveland, Ohio, in the regular course of business, purchases furniture from various manufacturing concerns, among which is a company located at Jamestown, N. Y. From the catalogue of this company he has in the past and does now purchase tables which are described therein as having "solid mahogany tops." From such catalogue he has, under the conditions just related, bought items of furniture, depending on the representations and descriptions shown in said catalogue in connection with each piece, and so relying thereon has sold said tables to customers as and for tables having tops of solid mahogany wood. Such table tops were not made of mahogany, but were made of Tanguile or Lauan.

PAR. 24. Another customer of the said manufacturer at Jamestown, a retail dealer at Boston, ordered from a catalog circulated by said manufacturer a table therein advertised as a "solid mahogany sewing table." The retail dealer at Boston expected to receive "what is called mahogany; what the manufacturers list as mahogany," and which is "supposed to be the best mahogany wood used in the manufacture of better lines of furniture, and also cabinet work." Samples were sawed from this table, submitted to the United States Products



Laboratory, and there identified as belonging to the genus *Shorea*, which grows in the Philippine Islands and is not mahogany.

PAR. 25. Another manufacturing company of Jamestown, N. Y., manufactured mahogany furniture for 50 years, and built up a reputation on the sale of mahogany. It began to use so-called "Philippine mahogany" about 10 years ago. It sells products which it manufactures therefrom as products made of "solid mahogany."

PAR. 26. A number of manufacturers engaged for the last few years in manufacturing furniture of lauan or tanguile, called "Philippine mahogany", have built up their reputation during periods of 18 to 40 years by manufacturing and selling to retail dealers furniture made of mahogany wood. This so-called "Philippine mahogany" is at times represented to manufacturers as mahogany which comes from the Philippine Islands. Some manufacturers who have over long periods of years built up a reputation by manufacturing furniture made of mahogany wood are now substituting lauan and tanguile therefor in the manufacture of such furniture. The manufacturing company at Jamestown, N. Y., referred to in paragraph 23, is engaged in manufacturing tables exclusively of so-called "Philippine mahogany", which it has been using since 1919. These tables it advertises and sells as "solid mahogany." This company has been in business for 15 years, during 13 of which it built up a reputation by manufacturing furniture out of mahogany wood. So-called "Philippine mahogany" is regarded by this company to be as good as mahogany in so far as looks are concerned. The ordinary dealer to whom it sells furniture made of so-called "Philippine mahogany" is not aware that he is receiving a substitute for mahogany, and does not know the difference after it is stained and finished.

PAR. 27. An ultimate purchaser located at Portland, Oreg., was acquainted with the reputation of mahogany and the fact that it takes a high polish and increases in beauty with age; said purchaser ordered mahogany lumber from a lumber dealer and expected to receive the mahogany with which he was acquainted; said purchaser was sold and received lumber which was not mahogany, since it was not of the *Meliaceæ* or mahogany family, but was *Shorea*, and was wood of the type sold by respondent as "Philippine mahogany", and of the type represented by it to be mahogany.

PAR. 28. A furniture manufacturer of Belleville, Ill., made inquiry on or about May 1, 1925, for the purchase of mahogany lumber from a lumber company dealing in hardwoods in Kansas City, Mo.; said company agreed to sell said customer mahogany lumber and subsequently sold and delivered to said customer lumber which it designated "3-Star Philippine Mahogany"; said customer purchased and

received said lumber, believing that he was purchasing and receiving the mahogany wood which he has known for over 25 years to be the wood with a reputation as a fine cabinet wood, which reputation has been maintained by mahogany for hundreds of years; thereafter said lumber warped and twisted contrary to said customer's former experience with mahogany wood. Said lumber was not mahogany since it was not of the Meliaceæ family but was Shorea, and was of the same type of wood sold by respondent as "Philippine Mahogany" and represented by it to be mahogany.

PAR. 29. Approximately 60 per cent of the retail lumber dealers in the United States had not heard the term "Philippine Mahogany" prior to the institution of this proceeding.

PAR. 30. Throughout the period covered in the complaint respondent has sold and is now selling lauan and tanguile to wholesale and retail dealers in lumber, manufacturers of furniture and others under the name and designation of Philippine Mahogany and causes said woods when so sold to be transported from its said place of business in San Francisco, Calif., to customers in other States of the United States.

PAR. 31. Lauan, tanguile and other Philippine hardwoods sold by respondent under the name Philippine mahogany are not what dealers, manufacturers and ultimate purchasers have in mind when they want mahogany, or what they believe is mahogany.

PAR. 32. The aforesaid representations made by respondent have had and now have the capacity and tendency to, and did and do, cause many dealers in furniture and allied commodities to purchase said wood products in the belief that the same are mahogany wood and to sell to retail dealers articles of furniture and allied commodities as and for articles of mahogany wood, and thus to cause said dealers and eventually the consuming public to purchase furniture and other articles made of said lumber and wood products in the belief that the articles so purchased are made of mahogany wood.

PAR. 33. Respondent has represented its woods as being mahogany and has induced others to represent respondent's woods and woods of the type sold by respondent and the products thereof as being mahogany. Respondent's representations have resulted in causing dealers, manufacturers and consumers to purchase respondent's woods and products made therefrom in the belief that such woods and such products were mahogany.

PAR. 34. Mahogany usually is sold to dealers in lumber and to manufacturers under names indicating origin, such as "Honduras Mahogany," "Mexican Mahogany," "Cuban Mahogany," etc. These prefixes in the form of geographical names are understood by the

trade and by the public to mean that the particular mahogany so designated comes from the country thus prefixed. Likewise, the term "Philippine Mahogany," in cases where the geographical prefix is retained, indicates to the average purchaser that the wood is mahogany grown in the Philippine Islands.

PAR. 35. Lauan and Tanguile, the woods sold by respondent as Philippine Mahogany, are sold for about two-thirds of the price at which mahogany is sold. Products made from lauan and tanguile, and sold as Mahogany, Genuine Mahogany, or Solid Mahogany are sold to retail dealers at the same or approximately the same prices as similar products made of mahogany.

PAR. 36. In thus selling its lauan, tanguile, etc., as Philippine Mahogany respondent not only practices deception on its immediate customers but places in their hands an unlawful instrument which enables them to increase their profits by reselling the misnamed lumber either as lumber or in manufactured products, thereby lessening the market for true mahogany and for honestly named Philippine hardwoods.

PAR. 37. There are among the competitors of respondent in interstate commerce many who deal in and sell lumber and other wood products consisting of mahogany who rightfully and truthfully represent their said lumber and wood products to be composed of mahogany wood, and who are in position to supply the demand for mahogany. The above-described acts and practices of the respondent tend to and do divert business from and otherwise prejudice said competitors.

PAR. 38. There are among the competitors of respondent in interstate commerce also several who deal in and sell lauan, tanguile and other Philippine hardwoods, and the manufactured products thereof, under appropriate native or trade names which do not import or imply that such commodities are mahogany or the products of mahogany. The above-described acts and practices of the respondent likewise tend to and do divert business from and otherwise prejudice said competitors.

PAR. 39. The sale of lauan, tanguile and other Philippine hardwoods by respondent to its customers, and by them to the purchasing public, under the name "Philippine Mahogany" or mahogany as hereinbefore described, has the tendency and capacity to and does deceive a substantial portion of the trade and the purchasing public in substantial numbers and induces the ordinary purchaser of products made from such woods to purchase said products as and for products made of mahogany wood, or in part of mahogany wood, to the injury and prejudice of the purchasing public and of honest competitors.

Memorandum

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## CONCLUSION

The practices of said respondent, under the circumstances and conditions described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and evidence submitted, in accordance with the stipulation in this proceeding, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now, therefore, it is ordered,* That the respondent, Kirschmann Hardwood Co., its officers, directors, agents, employees, and successors, do cease and desist from advertising, describing or otherwise designating or selling or offering for sale under the term "Mahogany", "Philippine Mahogany", or any other term of similar import, woods known under the common or trade names, "red lauan", "white lauan", "tanguile", "narra", "apitong", "bataan", "lamao", "almon", "orion", "batang", "bagaac", "batak" and "balachacan", or any other wood, lumber or wood products, unless such wood or lumber or the wood from which such products are made, is derived from the trees of the Mahogany or Meliaceæ family.

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

*Memorandum by Chairman Hunt and Commissioners Myers and Nugent*

Commissioner Humphrey before leaving on his vacation in June asked that his vote be recorded against findings and orders in these cases, and that should findings and orders be voted by the majority the same be accompanied by the same dissenting opinion which he

published when the original findings and orders were issued in July, 1926.

The findings now made differ in important particulars from those issued a year ago; hence the majority deem it appropriate to point out that certain observations in the dissenting opinion have little or no bearing on the present findings.

An apparent inconsistency in certain statements issued by the Forest Service of the Department of Agriculture, the only Government agency which undertakes to pass on such questions, supported in a measure the claim of the dissenting opinion when first issued that "Government authorities have ruled that the term 'Philippine Mahogany' is correct." Since then the Forest Service has declared unequivocally that it has not indorsed the name "Philippine Mahogany" and that "in the opinion of the Forest Service the name mahogany should be confined to the true mahoganies, which belong to the botanical genus 'Swietenia'". (Findings, par. 16.)

The ruling of the Interstate Commerce Commission mentioned in the dissent merely was to group these Philippine hardwoods with certain other woods for rate-making purpose, and was not an authoritative decision on wood nomenclature. The dissenting opinion takes no account of the really significant feature of the proceeding before the Interstate Commerce Commission, namely, the lengthy and detailed testimony of the president of one of these respondents that so-called "Philippine Mahogany" is in no sense comparable with true mahogany. Ample support for the Federal Trade Commission's findings as to difference between "Philippine Mahogany" and true mahogany in the uses to which they can be put, may be found in that testimony.

Discussion of the distinctions between mahogany and so-called "Philippine Mahogany" drawn by wood technologists and botanists lends animation to the dissenting opinion. These, however, are the controlling distinctions in commercial practice when there is a dispute as to whether wood supplied under contract is of the variety ordered. In so far as the dissenting opinion implies that under the orders of the Commission the Philippine woods must hereafter be called by their botanical names, it goes too far. With the unlimited opportunities of the alphabet at their disposal respondents could have adopted or coined names for their wood which did not trade on the reputation of another and different wood high in public favor. The fact is that competitors of these respondents have adopted and successfully employed names for these Philippine hardwoods which do not import or imply that their woods are mahogany.

It may be that the term mahogany has expanded somewhat since the first tree of that genus was discovered; it may even be that woods other than the Philippine hardwoods are being sold unfairly under that name. The woods sold by respondents, unlike the "African Mahogany" mentioned by the dissenting commissioner, are not even of the same tree family as mahogany; and it would seem that if a line is ever to be drawn this is the outside limit at which to draw it. If respondents may call lauan and tanguile mahogany, there is no reason why birch, which can be finished in excellent imitation of mahogany, may not also be marketed as mahogany.

*Dissenting opinion of Commissioner Humphrey*

I agree with the majority that the word "mahogany" should not be applied to the woods of that species from the Philippine Islands without the prefix "Philippine." This would be in accordance with the common usage, as in the trade it is customary to say "African Mahogany", "Honduras Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc.

If the majority is consistent, it appears to me that it will at once proceed against the Mahogany Association for using the term "African Mahogany", as this wood, like the Philippine product, is not mahogany botanically.

GOVERNMENT AUTHORITIES HAVE RULED THAT THE TERM "PHILIPPINE MAHOGANY" IS CORRECT

The Hardwood Lumber Association, in 1916, classified the wood in controversy as "Philippine Mahogany". The Forest Service of the United States, when the matter was submitted to them in September, 1914, after a thorough consideration of it, indorsed the use of the term "Philippine Mahogany". The Department of Commerce has long used the term "Philippine Mahogany" in its reports. The Interstate Commerce Commission, in a controversy involving the question, after full hearing on the record and brief in the case of, *Indiana Quartered Oak Co. v. Atlantic City Ry. Co.*, approved the use of the term "Philippine Mahogany". The following quotations are from that decision:

The term "mahogany" applies to woods in two senses, the botanical sense and the commercial sense.

Mahogany in the commercial sense includes chiefly (a) Mexican and Cuban mahoganies, which are true mahoganies in the botanical sense and very valuable woods; (b) African mahogany, which is not a true mahogany in the botanical sense, but which grows large and clear, has a fine figure and is suit-

able for veneers; (c) baywood, which is a true mahogany in the botanical sense but, on account of its soft inferior quality, less valuable than other species; and (d) Philippine mahogany, which is not a true mahogany in the botanical sense. Philippine mahogany is classified by the United States Forestry Bureau as a commercial mahogany.

Apparently the majority is of the opinion that one of the chief functions of the Commission is to correct the opinions and rules of the other departments of the Government; more particularly to correct the errors made by the Agricultural Department, the Department of Justice, the Department of Commerce and the Interstate Commerce Commission. I am constrained to believe that Congress never intended the Federal Trade Commission to be a super court to reverse the rules of other departments, a power that the Supreme Court has decided neither it nor any other court possesses. This is expressly declared in many decisions. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S. 479-487. *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495-502.

#### NO PUBLIC INTEREST

No public interest appears in this case. The reason of complaint herein is not because the user does not know what he is buying, but because he does know. It is a controversy entirely between the Mahogany Association and the users of Philippine Mahogany. There is no substantial evidence in the record that any ultimate consumer of Philippine Mahogany has either been deceived or has complained that he has been defrauded.

The "milk in the coconut" in this controversy is that Philippine Mahogany, being a product of one of our insular possessions, is admitted into this country free of duty, and this fact together with the fact that it grows in considerable bodies instead of single trees, as other mahoganies, enables it to be sold in the United States at a lower price than the other mahoganies, and its qualities are so appealing that it is becoming a serious competitor of the Mahogany Association.

To prevent the use of the term "Philippine Mahogany" in this case will not protect the public, because it is not injured and has not complained. Only its competitor objects to its use. It will not be in the public interest because it will tend to give the Mahogany Association a monopoly of the American markets; will tend to increase the price of mahogany to the consumer, and would greatly injure the Philippine mahogany industry in this country, and more greatly injure it in the Philippine Islands.

There is another fact, that while it is not a legal reason, should have consideration as bearing upon the public interest, and that is, the Philippine mahogany industry both in this country and in the Philippines is conducted almost exclusively by Americans and is one of the chief products of the Philippine Islands, and one of the chief products making up the cargoes of American ships coming in from the Philippines to the United States.

#### WHAT IS MAHOGANY?

What is mahogany as applied to wood? Is it the wood from the tree botanically known as mahogany? It is. But to restrict it to such meaning is false and misleading. Mahogany wood or lumber, may or may not be produced from the tree botanically classified as mahogany. A tree is usually classified from its flower or seed botanically. A wood is classified according to its qualities—not from the botanical name of the tree from which it is produced. Botanically the wood in dispute is not mahogany—commercially it is. To apply its botanical classification to its commercial use is wholly misleading. Botanical classification has nothing whatever to do with the commercial classification of the wood in controversy. The botanical classification of this wood is not involved in the issues of this case, and the only result of discussing the botanical classification is to confuse and mislead. Below are cited some definitions as to what constitutes mahogany:

#### MAHOGANY

*Botanically:* A tropical American mellaceous tree (*Swietenia mahoganii*), with pinnate leaves and panicles of small greenish flowers.—Webster's Dictionary.

The valuable hardwood of this tree, used extensively for furniture and cabinet work.—Webster's Dictionary.

*Commercially:* Any of many trees related to, or resembling the mahogany; as in Australia, species of *Eucalyptus*; in India, various mellaceous trees of the general *Soymida*, *Chrkrassia*, and *Tona*; in Africa, *Khaya senegalensis*; in the United States, *Rhus integrifolia*, species of *Cercocarpus*, etc.—Webster's Dictionary (italics mine).

Applied chiefly with qualifications to various woods resembling mahogany and to the trees producing them.—New English Dictionary and History of 1903.

Mahogany, the popular name for timber of several unrelated trees, among which are various species of *Eucalyptus*.—Encyclopedia Americana, 1903 edition.

I would be unable to describe the wood without calling it mahogany, because it has the looks, the appearance, the grain, and all of the things that go to make up mahogany.—Witness Sands—Seattle, Rec. p. 15.

The furniture trade considers African, Mexican, Philippine, and Honduras all mahogany.—Witness, Rec. p. 284.

These authorities show the conclusive soundness of the rulings of the various departments of Government referred to herein.



## DOES THE PHILIPPINE PRODUCT HAVE THE QUALITIES OF MAHOGANY?

Does the Philippine Mahogany, as Webster says, "resemble" mahogany? It seems to me that the Commission's attorneys are hardly in a position to deny that the Philippine Mahogany "resembles Mahogany", and has all its necessary qualities, in view of the fact that on page 17 of their brief, they refer to the testimony of several witnesses who were experts, that bought and sold Philippine Mahogany, thinking it was the mahogany of "our grandfathers", or as they term it, "the real mahogany". The examiner in paragraph 8 of his findings says:

The resemblance between the characteristics of genuine mahogany wood and the wood sold in interstate commerce as "Philippine Mahogany" are so close that it is difficult even for an expert wood technologist to distinguish between them without the aid of instruments usually employed by wood technologists in examining various wood specimens.

In the brief of the Commission, at page 10, it is said that the Horace E. Dodge Boat Works, at Detroit, Mich., represented their vessels made of the Philippine wood as constructed of the finest mahogany. These vessels were sold to their customers and there is no showing that any purchaser of these boats ever made any complaint or doubted the truth of these representations. In fact, there is no evidence, so far as any ultimate consumer is concerned, that when the seller represented his product as of the finest mahogany, that it was not strictly true.

It is useless to quote the evidence of various witnesses upon this proposition, for there is practically no dispute in the testimony of the witnesses on both sides of the controversy, that the statement in the examiner's findings above referred to is correct.

So it is practically admitted in this case that the wood in controversy has *every quality* necessary to justify it being classified *commercially as mahogany*. It might be added, as shown by the record, that some of the true mahogany, botanically, is soft and spongy and has little value commercially. If this wood was placed on the markets as mahogany, undoubtedly there would be a great protest both from the Mahogany Association and from the public, and justly so, because while such wood would be *mahogany botanically*, it would not be *mahogany commercially*, and its sale as such would be a fraud upon the public.

No witness has been produced that has testified or even intimated that he has ever bought furniture because he thought it was made of wood botanically mahogany. But the entire evidence is that all

purchasers bought what they thought contained the qualities of mahogany as defined commercially, and therefore were not deceived, and there is no showing in the record whatever *that any purchaser has complained that the respondents have deceived or defrauded them.*

The complaint is made that this wood sometimes contains wormholes, but this has nothing to do with the issue. This is a characteristic of all mahoganies in a more or less degree. Will it be contended that it is an unfair practice to call Hickory, or Oak, or Walnut, by their names because these woods sometime contain wormholes? This question is entirely a matter of grading the lumber and not of determining the kind. Certainly it can hardly be contended that a hole changes the character of the wood in which it is.

The exhibitions before the Commission of two selected doors, one of the so-called genuine Mahogany and the other of Philippine Mahogany, at least in so far as appearance is concerned, decisively confutes the evidence of all so-called experts as to the inferiority of the Philippine wood. In fact, the door of Philippine Mahogany was so much more beautifully figured and colored and in every appearance so much more desirable than the genuine, that most purchasers would prefer it. This exhibition conclusively demonstrated that the Philippine Mahogany possesses every desirable attribute that constitutes mahogany as defined by all the decisions and authorities.

#### THE NAME PHILIPPINE MAHOGANY NOT DECEPTIVE

The use of the words "Philippine Mahogany" is not deceptive. The trade and the people generally know exactly what they are buying when they buy Philippine Mahogany. This opposition to the use of the term comes, not because it is deceptive, but because it is not. We have again in this controversy the old story of the fight against the new. Much has been said about the mahogany of our fathers—more forceful than weighty. The revered mahoganies of to-day are the despised mahoganies of yesterday. The history of the controversy is that mahogany was at first limited to the lumber produced from one tree only. Then, as this supply grew less, a new mahogany appeared. It was rejected at first but gradually came to be recognized; and so, in the future, the Philippine Mahogany will become the adored wood of our "grandfathers", and probably in a fight to shut out some new contender for public favor.

It is impossible to describe the wood in controversy so that its qualities and value will be properly understood by the public, without

the use of the word mahogany. To insist that it should be called Dipterocarpaceae, in order that the general public might not be deceived, would be just as absurd as to insist that the present monarch of England should be called, George Frederick Ernest Albert Windsor, instead of King George, in order that the people of England might not be misled as to the person referred to.

#### CLASSIFICATION OF WOODS BOTANICALLY MISLEADING AND DANGEROUS

If we are to lay down the rule that it is false and misleading to describe woods commercially other than what they are botanically, we will injure, if not destroy, one of the greatest industries in this country.

One of the finest woods in the world, that furnishes perhaps more of the timbers used in construction to-day than any other is the Douglas Fir of the Pacific Northwest. It is known by this name throughout the world and by this name its qualities are well understood. Botanically this wood that enters so largely into the commercial life of a nation is a false hemlock. There is a widespread prejudice against hemlock, because of the qualities of that wood in the East. For the lumber producers of the Northwest to be compelled to mark their product under its botanical name—False Hemlock, would be to work incalculable injury to the industry. More than 85 per cent of the wood shingles in the United States are the Red Cedar Shingles of the Pacific Northwest. The quality is well known and understood by the trade and people generally by the term "red cedar." Botanically it is not cedar but juniper. It would cost millions of dollars to both the shingle industry and the Douglas Fir industry to educate the people to where they would know what was meant by the botanical terms of these woods. In the East, one of the great lumber trees of commerce is the poplar. Botanically it is tulip.

To use the terms, Philippine Mahogany, Douglas Fir, Red Cedar, and Poplar is to correctly define these woods commercially, and gives to the dealers and to the public generally the correct idea of their qualities and value. If you describe them botanically, it is safe to say that not 5,000 people in the United States would know what was meant. I can think of no proposition more absurd than to compel the use of the botanical names of these woods upon the theory that it will protect the public from false and misleading statements. Why should we use the restricted and scientific and highly technical name known by a few, and refuse to use the common, ordinary name, understood by all.

## WHY THE PHILIPPINE MAHOGANY IS CHEAPER

The reason Philippine Mahogany is cheaper is not because it is less desirable, for it has all the qualities, and in its higher grades it is equal in beauty, if it does not surpass, the finest other mahogany woods.

Philippine Mahogany is not taking a large portion of the market from the other mahoganies because of any deception, but because of its merits. As already stated, the reason that it is cheaper is because it comes in duty free and because it is more easily logged than other mahoganies.

I must enter my protest against the decision of the majority in the overruling of the classification of the Hardwood Association, the decisions of the Department of Agriculture, the Department of Commerce and the Interstate Commerce Commission, and action, I believe, will result in the overturning of the common usage and reversing common understanding; that will disrupt a great industry; that will establish a precedent that if followed will paralyze the lumber industry of the country; that will increase the price of mahogany and create a monopoly in the mahogany trade; that will injure the public and benefit only the Mahogany Association. Such decision in my judgment can be based only on the technical and stilted opinions of schooled but unlearned self-styled experts, who would, if consistent, insist that potatoes must be sold only as tobacco, because botanically they are of the same family, lest some dear old college professor might buy a package of cigarettes instead of a bag of "spuds."

The contention of the majority here is that if any person of common understanding wishes to buy this Philippine wood, that has all the beauty and durability of mahogany—in fact, all the best characteristics of mahogany—that it can not be described to him so as to reach the common understanding, by calling it "Philippine Mahogany", but in order to keep him from being deceived and so that he may know exactly what he is getting, he must be told that it is either Lauan, Tanguile, Almon, Batan, Apitong, Lamao, Orion, Abatang, Bagaac, Batak, or Balachacan. This proposition, it seems to me, would be highly complimented by characterizing it as absurdly ludicrous.

The majority lay down the proposition that the buyer must be told the truth—a perfectly correct one and one that I indorse, but when you chase this common sense idea into the clouds of scientific nomenclature, until not one person in a million, without consulting an encyclopedia, a botanist, and a chemist, would know whether a word used to describe the wood in a kitchen chair is the name of a seasick

## Memorandum

remedy, a new planet, or a divorcee screen star, it seems to me that the proposition in some slight degree "recoils upon itself."

The sum of the Commission's case is that the purchaser of this wonderful and beautiful wood will be deceived and defrauded unless he is told that it is Dipterocarpaceæ, a proposition so plain that only the intelligent will dispute it.

## MEMORANDUM

The Commission as of the same date, also made similar findings and orders, Commissioner Humphrey dissenting as above set forth, in the following cases (in which complaints issued on June 3, and on June 8, 1925, respectively):

## HAMMOND LUMBER Co. (Docket 1324.)

Appearances: *Mr. M. Markham Flannery* and *Mr. Stephen C. Van Fleet* for the Commission.

*Mr. R. L. Horton*, of Los Angeles, Calif., and *Forbes & Daniels*, of Washington, D. C., for respondent.

*Major F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for Philippine Government, intervenor.

## THE ROBERT DOLLAR Co. (Docket 1325.)

Appearances: *Mr. M. Markham Flannery* and *Mr. Stephen C. Van Fleet* for the Commission.

*Forbes & Daniels*, of Washington, D. C., for respondent.

*Major F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for Philippine Government, intervenor.

IN THE MATTER OF  
JONES HARDWOOD COMPANY<sup>1</sup>

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

*Docket 1332. Complaint, July 11, 1925—Decision, Aug. 16, 1927*

Where the wood mahogany had long had a merited and enduring reputation associated with the word, was usually sold to lumber dealers and manufacturers under such names indicating origin as "Honduras Mahogany", "Mexican Mahogany", etc., and was usually dealt in in the retail furniture trade without such prefixes, and furniture and other articles were customarily bought, dealt in, and purchased by furniture buyers for large retail stores, by retail dealers, and by the public, in reliance upon representations by the manufacturers and dealers respectively as to the composition thereof, and whether or not mahogany; and thereafter a corporation engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others,

Represented certain Philippine hardwoods as "Philippine Mahogany" and induced others so to represent the same and products thereof, and so sold the same to furniture manufacturers, dealers and others, by whom such hardwoods or the products manufactured therefrom were resold to retailers and others as "Mahogany", "Genuine Mahogany" or "Solid Mahogany", and were in turn by them resold to the public as and for such products, the fact being that the aforesaid woods (1) were not mahogany, either botanically or otherwise, (2) lacked many of the characteristics and virtues possessed by mahogany and were thereby unsuited for a variety of uses employed for mahogany, (3) were sold to the manufacturer for about two-thirds of the price of genuine mahogany, and were by the latter resold as manufactured products, to dealers, at the same prices prevailing for mahogany products, (4) had long been known and traded in in the Philippines and in the United States under their native and trade names, "lauan" and "tangulle", and also under other native names such as "red lauan", "bataan," etc., (5) were imported under such names as to the greater proportion thereof imported, (6) were so dealt in in the United States by many of the importers and a substantial number of the lumber dealers, (7) were not what dealers, manufacturers, and ultimate purchasers had in mind when they wanted mahogany, or what they believed to be mahogany, (8) were obtained by it, as to a part thereof, under contracts with importers under the native or trade names "lauan" and "tangulle", (9) were named and sold as Philippine mahogany in the face of official disapproval and practice, and without the sanction of local custom, and, (10), that approximately 60 per cent of the retail lumber dealers in the United States, and ultimate purchasers of furniture and other products, with rare exceptions, had never heard the term, believing it in such instances to mean mahogany, and not a substitute;

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<sup>1</sup> See footnote to *Powé case*, p. 248.

With the effect of (1) causing manufacturers, dealers in furniture and other products, and consumers to purchase, sell, or deal in said woods, and products made therefrom, as mahogany, (2) placing in the hands of its immediate customers an unlawful instrument enabling them to increase their profits by reselling the lumber so misnamed, either as such, or in the manufactured form, thereby lessening the market for true mahogany and for the honestly named Philippine hardwoods, (3) diverting business from and otherwise prejudicing competitors dealing in and able to supply lumber and other wood products, consisting of mahogany, rightfully and truthfully so represented by them, and competitors dealing in lauan, tanguile, and other Philippine hardwoods and the products manufactured therefrom, under appropriate or trade names, which did not import or imply that they were mahogany, and (4) of deceiving a substantial portion of the trade, and the purchasing public in substantial numbers, and inducing the ordinary purchaser of products made from such woods to purchase the same as and for mahogany, in whole or in part, to the injury and prejudice of the purchasing public and of honest competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. M. Markham Flannery* and *Mr. Stephen C. Van Fleet* for the Commission.

*Forbes & Daniels*, of Washington, D. C., for respondent.

*Maj. F. G. Munson*, Judge Advocate, United States Army, of Washington, D. C., for the Philippine Government, intervenor.

*Mr. Gilbert H. Montague* for the Mahogany Association, Inc., Amicus Curiae.

#### SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a California corporation engaged in the sale of hardwood lumber and other hardwood products to dealers, manufacturers of furniture, and others in the various States, and with principal office and place of business in San Francisco, with misrepresenting or naming product misleadingly and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, for more than a year prior to the complaint, respondent sold certain hardwood lumber and other hardwood products, not mahogany, under the name and designation "Philippine Mahogany", at wholesale and retail, to dealers in hardwood lumber, furniture, manufacturers, and others, and in advertisements, circulars, letters and other correspondence with purchasers and prospective purchasers, and on invoices, price lists and other trade literature, represented, named and designated said lumber and other products as "Philippine Mahogany"; with the effect of causing many dealers

to purchase said hardwood lumber and other products as and for mahogany, and of causing such dealers and eventually the consuming public to purchase furniture, cabinet work, and other articles made of said lumber and other hardwood products, as and for mahogany, and of diverting trade from and otherwise prejudicing competitors, many of whom deal in and sell hardwood lumber and other hardwood products, including mahogany, and do not include any other kind of hardwood than mahogany in their advertisements or representations of mahogany, and who otherwise properly and truthfully represent the hardwood lumber and other hardwood products dealt in by them; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Jones Hardwood Co., a corporation, charging it with unfair methods of competition in commerce in violation of said act.

Respondent having entered its appearance by its attorney, and having filed its answer herein, and the Philippine government, intervenor, having entered its appearance by its attorney, and having filed special answer herein, hearings were held before an examiner of the Federal Trade Commission, heretofore duly appointed, and testimony was thereupon offered and received in support of the allegations of said complaint, and in support of the allegations of said answer of respondent, and thereupon this proceeding came on for decision, and the Commission having duly considered the record, and being fully advised in the premises, made its findings as to the facts and its conclusions drawn therefrom, and entered its order herein. Thereafter respondent and intervenor having declared that there was in existence additional relevant testimony which was not available to them at the trial, asked leave to introduce such testimony, which was granted, subject to the provisions of a stipulation entered into between respondent and the Commission, and said additional testimony, together with certain additional testimony offered in support of the complaint, was thereupon received pursuant to the provisions of said stipulation, and the Commission having again duly considered the record, including said additional testimony, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:



## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of California, with its principal office and place of business in the city of San Francisco. It is engaged in the sale of hardwood lumber and hardwood products to wholesale and retail lumber dealers, manufacturers of furniture, and others located at various points in the several States of the United States. It causes said commodities, when so sold, to be transported from its said place of business in San Francisco, Calif., and from the point of origin of such commodities into and through other States of the United States to purchasers at their respective points of location in States other than California and other than the points of location of such shipments.

PAR. 2. There are other individuals, partnerships, and corporations situated in the various States of the United States also engaged in the sale of hardwood lumber and hardwood products, who cause said commodities when sold to be transported from their respective places of business into and through other States of the United States to purchasers located in States other than the State of origin, and into States into which respondent ships its hardwood products, with whom respondent was during the time mentioned in the complaint and now is competing in interstate commerce.

PAR. 3. A large and important part of the hardwood and hardwood products sold and transported by respondent in interstate commerce is called by respondent "Philippine Mahogany" and is grown in and imported from the Philippine Islands. This wood has been known and traded in for years prior to the filing of the complaint herein both in the Philippines and in the United States under the names Lauan and Tanguile. Other trade names employed for these woods are red Lauan, white Lauan, Bataan, Lamao, Almon, Apitong, Orion, Batang, Bagaac, Batak, and Balachacan.

PAR. 4. About 85 per cent of the Philippine woods sold as "Philippine Mahogany" imported through the Pacific coast ports is imported under the trade names set out in paragraph 3 above. Some importers sell these woods to lumber dealers, furniture manufacturers, and others under their native or trade names. Respondent and other importers sell it to furniture manufacturers, dealers and others as "Philippine Mahogany". After sale by the importers last referred to, the manufactured products are sold by the said furniture manufacturers to retail furniture dealers and others as "mahogany", "genuine mahogany" or "solid mahogany". Such products are resold by retail furniture dealers to the public as and for products made of "mahogany", "genuine mahogany" or "solid mahogany".

## Findings

11 F. T. C.

PAR. 5. Many of the importers and a substantial number of lumber dealers in this country use and deal in woods of the type sold by respondent as "Philippine Mahogany", but under the native or trade names in paragraph 3 set forth.

PAR. 6. The Lauan and Tanguile sold by respondent as "Philippine Mahogany" are the product of the tree family scientifically known as Dipterocarpaceae. This tree family is not scientifically or botanically related to the tree family Meliaceae, the product of which constitutes true mahogany.

PAR. 7. The Philippine hardwoods sold by respondent and others, as hereinabove described, are the only woods derived from a tree family other than Meliaceae, to which the term mahogany has been applied. Of the genera of this family only one, "Swietenia" produces true mahogany. There are five known species of "Swietenia."

PAR. 8. The term "African mahogany" has been applied commercially to the product of "Khaya" of the genera of Meliaceae, of which there are about four known species.

PAR. 9. Trees of the Swietenia group producing true mahogany grow principally in the West Indies, Southern Florida, Southern Mexico, Central America, Venezuela, and Peru. No species of the genus Swietenia of this tree family grows in the Philippine Islands, except as specially planted for decorative or experimental purposes.

PAR. 10. The Spanish words "Caoba des Filipinos," meaning "Philippine mahogany," are occasionally used in the Philippine Islands to designate native woods resembling mahogany in grain, texture and color. This term was known in the Philippines but not used in connection with the sale of lumber. It does not appear that this expression was used prior to the American occupation. Prior to 1916 the Philippine Government, as represented by its Director of Forestry, opposed the practice of American importers in selling Philippine hardwoods as Philippine mahogany.

PAR. 11. When Philippine hardwoods leave the Philippine Islands for the United States, they are shipped under the native names Lauan, Tanguile, etc. The invoices on which the taxes are levied are made out under the native names, this being by agreement with the Bureau of Customs, as well as the railroad companies, so that the shipping invoices will conform to the manifest on which the Government charge has been paid.

PAR. 12. Active opposition on the part of officials of the Philippine Government to the practice of selling Philippine hardwoods as "Philippine Mahogany" abated about 1916, but a few months prior to the institution of the Federal Trade Commission's investigation of this matter a statement by the forester of the Philippine Govern-

ment, published in a trade journal known as the *Hardwood Record*, deplored the selling of Philippine wood as true mahogany, "a practice which always will be opposed by the bureau of forestry of the Philippine Government, both because of the false pretenses and because of the fact that the Philippine woods have sufficient good qualities to stand on their own merits."

PAR. 13. The various kinds of woods are distinguished from one another by botanical properties or characteristics. Many woods of widely different kinds have some properties and characteristics in common, but it is the differences in such properties and characteristics, be they great or small, that distinguishes one wood from another. The ultimate test consists in a comparison or contrast of such properties and characteristics.

PAR. 14. In commerce when a question arises as to whether wood is of one kind or another the matter is submitted to a wood technologist for determination. A wood technologist authoritatively identifies wood according to the species, genus, tribe and family of the tree, as classified, established and agreed upon by botanists.

PAR. 15. The United States Department of Agriculture, in its Forest Products Laboratory at Madison, Wis., is regularly engaged in officially determining for those engaged in commerce the question whether wood is of one kind or another. Many samples of Philippine hardwood, such as sold by respondent, were identified by Mr. Arthur Koehler, wood technologist of said laboratory, as *Shorea*—one of the genera of *Dipterocarpaceae*.

PAR. 16. The United States Department of Agriculture on September 28, 1926, issued the following official statement:

The name "Philippine mahogany" as applied to Tanguile, Lauan, and other Philippine woods, has never been indorsed by the United States Department of Agriculture. Its use runs counter to the principles followed by the Forest Service in attempting to give to native American trees and woods standard names that do not deceive or mislead the public, according to a statement by Chief Forester W. B. Greeley, in connection with recently published statements growing out of the Federal Trade Commission decision against the use of the name "Philippine Mahogany."

The Forest Service has been quoted as having indorsed the name "Philippine mahogany" in a letter written in 1914. This letter, however, according to the Forest Service statement, did not attempt to decide the specific question at issue, and was limited to stating the principles that should be followed in the nomenclature of woods.

In the opinion of the Forest Service the name "mahogany" should be confined to the true mahoganies, which belong to the botanical genus *Swietenia*.

PAR. 17. Unschooling persons such as laborers in a lumber yard who readily distinguish between the different kinds of lumber by such criteria as grain, pore, scent, weight, or their identifying char-

acteristics are guided by botanical properties and differences inherent in the wood as formed in the tree, and these characteristics correspond with like characteristics placed by nature in trees of the same species. Wood technologists by reason of their expert knowledge compare these and many other qualities and characteristics with such precise results as to satisfy the requirements of both science and commerce, and according to such identifications neither lauan nor tanguile are mahogany botanically or otherwise.

PAR. 18. In addition to the scientific and botanical distinctions used by wood technologists, many of the characteristics and virtues possessed by mahogany are lacking in the Philippine hardwoods sold by the respondent as mahogany under the name "Philippine Mahogany." The absence of such characteristics and virtues prevents such hardwoods from serving certain uses for which mahogany is particularly adapted. While there is conflict in the evidence, the weight is to the effect that Philippine hardwoods are not suitable for the following uses, and the Commission so finds:

(a) Such woods are not suitable for cabinetmaking because of the great prevalence of wormholes which constitute serious defects in all Philippine woods.

(b) They are not suitable for the construction of lamps because they do not take a proper finish.

(c) They are too soft to be suitable for flooring.

(d) They are not susceptible to the finish required by piano manufacturers on the exposed surfaces of pianos.

(e) They are not suitable for carving.

(f) When used in furniture it is necessary to fill the wormholes before the wood is stained or varnished and polished. The filling at times sinks into these holes, destroying the even appearance of the surface.

(g) They do not retain the subsurface luster peculiar to mahogany, and unlike mahogany they do not beautify with age.

PAR. 19. Mahogany has a merited and enduring reputation, and is familiar to the average person, and the association of such reputation with the household word "mahogany" finds its origin in recollections of and association with objects of furniture and the like familiar to him since childhood, often handed down from generation to generation; and when such person is offered products made of so-called "Philippine Mahogany" as and for mahogany, he is deceived by receiving furniture, interior trim for his house, boats, caskets, and the like, made of lauan or tanguile which is not mahogany.

PAR. 20. Ultimate purchasers of furniture and the other products mentioned in paragraph 19, with rare exceptions, never heard the term "Philippine Mahogany"; but even when the term was men-

tioned such purchasers were led into the belief that it meant mahogany, not a substitute.

PAR. 21. In buying furniture the public usually depends upon representations made to them by the retail dealers from whom they purchase as to whether the furniture offered for sale is or is not made of mahogany wood.

PAR. 22. Persons engaged in buying furniture for large retail furniture stores in practically every city of the United States commonly depend on representations made to them by manufacturers as to the kind of wood entering into the furniture they purchase. Furniture purchased by retail dealers is ordered largely from photographs and catalogues, and at times from samples. If furniture is represented by the manufacturer to be made of mahogany wood and is invoiced as mahogany furniture, retail dealers in practically every city of the United States sell such furniture to ultimate purchasers as mahogany furniture. Furniture is rarely represented to retail dealers as made of "Philippine Mahogany," or sold by them under that description. Prefixes such as "Honduras," "San Domingo" and "Cuban," used by manufacturers and importers, are seldom if ever used in the retail furniture trade. But the purchasing public, having in mind the reputation which mahogany has borne for hundreds of years, depends on retail furniture dealers to supply mahogany if that is the kind of furniture asked for. Such buyers have seldom heard the term "Philippine Mahogany".

PAR. 23. Many retail dealers of the class referred to in paragraph 22 hereof do buy furniture from such manufacturers as described in said paragraph, which furniture is made of Lauan, Tanguile, or other Philippine hardwoods, and is sold by said retail dealers to the public as and for mahogany. Among others, the proprietor of a retail furniture store at Cleveland, Ohio, in the regular course of business, purchases furniture from various manufacturing concerns, among which is a company located at Jamestown, N. Y. From the catalogue of this company he has in the past and does now purchase tables which are described therein as having "solid mahogany tops." From such catalogue he has, under the conditions just related, bought items of furniture, depending on the representations and descriptions shown in said catalogue in connection with each piece, and so relying thereon has sold said tables to customers as and for tables having tops of solid mahogany wood. Such table tops were not made of mahogany, but were made of Tanguile or Lauan.

PAR. 24. Another customer of the said manufacturer at Jamestown, a retail dealer at Boston, ordered from a catalogue circulated by said manufacturer a table therein advertised as a "solid mahogany sewing table." The retail dealer at Boston expected to receive

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“ what is called mahogany; what the manufacturers list as mahogany,” and which is “ supposed to be the best mahogany wood used in the manufacture of better lines of furniture, and also cabinet work.” Samples were sawed from this table, submitted to the United States Products Laboratory, and there identified as belonging to the genus Shorea, which grows in the Philippine Islands and is not mahogany.

PAR. 25. Another manufacturing company of Jamestown, N. Y., manufactured mahogany furniture for 50 years, and built up a reputation on the sale of mahogany. It began to use so-called “ Philippine Mahogany ” about 10 years ago. It sells products which it manufactures therefrom as products made of “ solid mahogany ”.

PAR. 26. A number of manufacturers engaged for the last few years in manufacturing furniture of Lauan or Tanguile, called “ Philippine Mahogany ”, have built up their reputation during periods of 18 to 40 years by manufacturing and selling to retail dealers furniture made of mahogany wood. This so-called “ Philippine Mahogany ” is at times represented to manufacturers as mahogany which comes from the Philippine Islands. Some manufacturers who have over long periods of years built up a reputation by manufacturing furniture made of mahogany wood are now substituting Lauan and Tanguile therefor in the manufacture of such furniture. The manufacturing company at Jamestown, N. Y., referred to in paragraph 23, is engaged in manufacturing tables exclusively of so-called “ Philippine Mahogany,” which it has been using since 1919. These tables it advertises and sells as “ solid mahogany.” This company has been in business for 15 years, during 13 of which it built up a reputation by manufacturing furniture out of mahogany wood. So-called “ Philippine Mahogany ” is regarded by this company to be as good as mahogany in so far as looks are concerned. The ordinary dealer to whom it sells furniture made of so-called “ Philippine Mahogany ” is not aware that he is receiving a substitute for mahogany and does not know the difference after it is stained and finished.

PAR. 27. An ultimate purchaser located at Portland, Oreg., was acquainted with the reputation of mahogany and the fact that it takes a high polish and increases in beauty with age; said purchaser ordered mahogany lumber from a lumber dealer and expected to receive the mahogany with which he was acquainted; said purchaser was sold and received lumber which was not mahogany, since it was not of the Meliaceae or mahogany family, but was Shorea, and was wood of the type sold by respondent as “ Philippine Mahogany ”, and of the type represented by them to be mahogany.

PAR. 28. A furniture manufacturer of Belleville, Ill., made inquiry, on or about May 1, 1925, for the purchase of mahogany lumber from

a lumber company dealing in hardwoods in Kansas City, Mo.; said company agreed to sell said customer mahogany lumber and subsequently sold and delivered to said customer lumber which it designated "3-Star Philippine Mahogany"; said customer purchased and received said lumber, believing that he was purchasing and receiving the mahogany wood which he has known for over 25 years to be the wood with a reputation as a fine cabinet wood, which reputation has been maintained by mahogany for hundreds of years; thereafter said lumber warped and twisted contrary to said customer's former experience with mahogany wood. Said lumber was not mahogany since it was not of the Meliaceae family but was Shorea, and was of the same type of wood sold by respondent as "Philippine Mahogany" and represented by it to be mahogany.

PAR. 29. Approximately 60 per cent of the retail lumber dealers in the United States had not heard the term "Philippine Mahogany" prior to the institution of this proceeding.

PAR. 30. Throughout the period covered in the complaint respondent has sold and is now selling lauan and tanguile to wholesale and retail dealers in lumber, manufacturers of furniture and others under the name and designation of Philippine Mahogany and causes said woods when so sold to be transported from its said place of business in San Francisco, Calif., to customers at Portland, Oreg., and to points in other States of the United States. Respondent sells annually about \$30,000 worth of lauan and tanguile as Philippine mahogany.

PAR. 31. Said woods sold by respondent are obtained in part by it under contracts with some importers under the native or trade names lauan and tanguile.

PAR. 32. Lauan, tanguile and other Philippine hardwoods sold by respondent under the name "Philippine Mahogany" are not what dealers, manufacturers and ultimate purchasers have in mind when they want mahogany, or what they believe is mahogany.

PAR. 33. The aforesaid representations made by respondent have had and now have the capacity and tendency to, and did and do, cause many dealers in furniture and allied commodities to purchase said wood products in the belief that the same are mahogany wood and to sell to retail dealers articles of furniture and allied commodities as and for articles of mahogany wood, and thus to cause said dealers and eventually the consuming public to purchase furniture and other articles made of said lumber and wood products in the belief that the articles so purchased are made of mahogany wood.

PAR. 34. Respondent has represented its woods as being mahogany and has induced others to represent respondent's woods and woods

of the type sold by respondent and the products thereof as being mahogany. Respondent's representations have resulted in causing dealers, manufacturers and consumers to purchase respondent's woods and products made therefrom in the belief that such woods and such products were mahogany.

PAR. 35. Mahogany usually is sold to dealers in lumber and to manufacturers under names indicating origin, such as "Honduras Mahogany," "Mexican Mahogany," "Cuban Mahogany," etc. These prefixes in the form of geographical names are understood by the trade and by the public to mean that the particular mahogany so designated comes from the country thus prefixed. Likewise, the term Philippine Mahogany, in many cases where the geographical prefix is retained, indicates to the average purchaser that the wood is mahogany grown in the Philippine Islands.

PAR. 36. Lauan and tanguile, the woods sold by respondent as Philippine Mahogany, are sold for about two-thirds of the price at which mahogany is sold. Products made from lauan and tanguile, and sold as Mahogany, Genuine Mahogany, or Solid Mahogany are sold to retail dealers at the same or approximately the same prices as similar products made of mahogany.

PAR. 37. In thus selling its lauan, tanguile, etc., as Philippine Mahogany respondent not only practices deception on its immediate customers but places in their hands an unlawful instrument which enables them to increase their profits by reselling the misnamed lumber either as lumber or in manufactured products, thereby lessening the market for true mahogany and for honestly named Philippine hardwoods.

PAR. 38. There are among the competitors of respondent in interstate commerce many who deal in and sell lumber and other wood products consisting of mahogany who rightfully and truthfully represent their said lumber and wood products to be composed of mahogany wood, and who are in position to supply the demand for mahogany. The above-described acts and practices of the respondent tend to and do divert business from and otherwise prejudice said competitors.

PAR. 39. There are among the competitors of respondent in interstate commerce also several who deal in and sell lauan, tanguile and other Philippine hardwoods, and the manufactured products thereof, under appropriate native or trade names which do not import or imply that such commodities are mahogany or the products of mahogany. The above-described acts and practices of the respondent likewise tend to and do divert business from and otherwise prejudice said competitors.



PAR. 40. The sale of lauan, tanguile and other Philippine hardwoods by respondent to its customers, and by them to the purchasing public, under the name "Philippine Mahogany" or mahogany as hereinbefore described, has the tendency and capacity to and does deceive a substantial portion of the trade and the purchasing public in substantial numbers and induces the ordinary purchaser of products made from such woods to purchase said products as and for products made of mahogany wood, or in part of mahogany wood, to the injury and prejudice of the purchasing public and of honest competitors.

#### CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now, therefore, it is ordered,* That the respondent, Jones Hardwood Co., its officers, directors, agents, employees, and successors, do cease and desist from advertising, describing or otherwise designating or selling or offering for sale under the term "Mahogany," "Philippine Mahogany," or any other term of similar import, woods known under the common or trade names, "red lauan," "white lauan," "tanguile," "narra," "apitong," "bataan," "lamao," "almon," "orion," "batang," "bagaac," "batak" and "balachacan," or any other wood, lumber or wood products, unless such wood or lumber, or the wood from which such products are made, is derived from the trees of the Mahogany or Meliaceæ family.

*It is further ordered,* That the respondent, Jones Hardwood Co., shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail

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the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

*Memorandum by Chairman Hunt and Commissioners Myers and Nugent*

Commissioner Humphrey before leaving on his vacation in June asked that his vote be recorded against findings and orders in these cases, and that should findings and orders be voted by the majority the same be accompanied by the same dissenting opinion which he published when the original findings and orders were issued in July, 1926.

The findings now made differ in important particulars from those issued a year ago; hence the majority deem it appropriate to point out that certain observations in the dissenting opinion have little or no bearing on the present findings.

An apparent inconsistency in certain statements issued by the Forest Service of the Department of Agriculture, the only Government agency which undertakes to pass on such questions, supported in a measure the claim of the dissenting opinion when first issued that "Government authorities have ruled that the term 'Philippine Mahogany' is correct." Since then the Forest Service has declared unequivocally that it has not indorsed the name "Philippine Mahogany" and that "in the opinion of the Forest Service the name 'mahogany' should be confined to the true mahoganies, which belong to the botanical genus 'Swietenia'." (Findings, par. 16.)

The ruling of the Interstate Commerce Commission mentioned in the dissent merely was to group these Philippine hardwoods with certain other woods for rate-making purpose, and was not an authoritative decision on wood nomenclature. The dissenting opinion takes no account of the really significant feature of the proceeding before the Interstate Commerce Commission, namely, the lengthy and detailed testimony of the president of one of these respondents that so-called "Philippine Mahogany" is in no sense comparable with true mahogany. Ample support for the Federal Trade Commission's findings as to difference between "Philippine Mahogany" and true mahogany in the uses to which they can be put, may be found in that testimony.

Discussion of the distinctions between mahogany and so-called "Philippine Mahogany" drawn by wood technologists and botanists lends animation to the dissenting opinion. These, however, are the controlling distinctions in commercial practice when there is a dispute as to whether wood supplied under contract is of the variety ordered. In so far as the dissenting opinion implies that under the

orders of the Commission the Philippine woods must hereafter be called by their botanical names, it goes too far. With the unlimited opportunities of the alphabet at their disposal respondents could have adopted or coined names for their wood which did not trade on the reputation of another and different wood high in public favor. The fact is that competitors of these respondents have adopted and successfully employed names for these Philippine hardwoods which do not import or imply that their woods are mahogany.

It may be that the term "mahogany" has expanded somewhat since the first tree of that genus was discovered; it may even be that woods other than the Philippine hardwoods are being sold unfairly under that name. The woods sold by respondents, unlike the "African Mahogany" mentioned by the dissenting commissioner, are not even of the same tree family as mahogany; and it would seem that if a line is ever to be drawn this is the outside limit at which to draw it. If respondents may call lauan and tanguile mahogany, there is no reason why birch, which can be finished in excellent imitation of mahogany, may not also be marketed as mahogany.

*Dissenting Opinion of Commissioner Humphrey*

I agree with the majority that the word "mahogany" should not be applied to the woods of that species from the Philippine Islands without the prefix "Philippine". This would be in accordance with the common usage, as in the trade it is customary to say "African Mahogany", "Honduras Mahogany", "Mexican Mahogany", "Cuban Mahogany", etc.

If the majority is consistent, it appears to me that it will at once proceed against the Mahogany Association for using the term "African Mahogany", as this wood, like the Philippine product, is not mahogany botanically.

GOVERNMENT AUTHORITIES HAVE RULED THAT THE TERM "PHILIPPINE MAHOGANY" IS CORRECT

The Hardwood Lumber Association, in 1916, classified the wood in controversy as "Philippine Mahogany". The Forest Service of the United States, when the matter was submitted to them in September, 1914, after a thorough consideration of it, indorsed the use of the term "Philippine Mahogany". The Department of Commerce has long used the term "Philippine Mahogany" in its reports. The Interstate Commerce Commission, in a controversy involving the question, after full hearing on the record and brief in the case of *Indiana Quartered Oak Co. v. Atlantic City Ry. Co.*, approved the

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use of the term "Philippine Mahogany". The following quotations are from that decision:

The term "mahogany" applies to woods in two senses, the botanical sense and the commercial sense.

\* \* \* \* \*

Mahogany in the commercial sense includes chiefly (a) Mexican and Cuban mahoganies, which are true mahoganies in the botanical sense and very valuable woods; (b) African mahogany, which is not a true mahogany in the botanical sense, but which grows large and clear, has a fine figure and is suitable for veneers; (c) baywood, which is a true mahogany in the botanical sense but, on account of its soft inferior quality, less valuable than other species; and (d) Philippine mahogany, which is not a true mahogany in the botanical sense. Philippine mahogany is classified by the United States Forestry Bureau as a commercial mahogany.

Apparently the majority is of the opinion that one of the chief functions of the Commission is to correct the opinions and rules of the other departments of the Government; more particularly to correct the errors made by the Agricultural Department, the Department of Justice, the Department of Commerce, and the Interstate Commerce Commission. I am constrained to believe that Congress never intended the Federal Trade Commission to be a super court to reverse the rules of other departments, a power that the Supreme Court has decided neither it nor any other court possesses. This is expressly declared in many decisions. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S. 479-487. *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495-502.

#### NO PUBLIC INTEREST

No public interest appears in this case. The reason of complaint herein is not because the user does not know what he is buying, but because he does know. It is a controversy entirely between the Mahogany Association and the users of Philippine Mahogany. There is no substantial evidence in the record that any ultimate consumer of Philippine Mahogany has either been deceived or has complained that he has been defrauded.

The "milk in the coconut" in this controversy is that Philippine Mahogany, being a product of one of our insular possessions, is admitted into this country free of duty, and this fact together with the fact that it grows in considerable bodies instead of single trees, as other mahoganies, enables it to be sold in the United States at a lower price than the other mahoganies, and its qualities are so appealing that it is becoming a serious competitor of the Mahogany Association.

To prevent the use of the term "Philippine Mahogany" in this case will not protect the public, because it is not injured and has not complained. Only its competitor objects to its use. It will not be in the public interest because it will tend to give the Mahogany Association a monopoly of the American markets; will tend to increase the price of mahogany to the consumer, and would greatly injure the Philippine mahogany industry in this country, and more greatly injure it in the Philippine Islands.

There is another fact, that while it is not a legal reason, should have consideration as bearing upon the public interest, and that is, the Philippine mahogany industry both in this country and in the Philippines is conducted almost exclusively by Americans and is one of the chief products of the Philippine Islands, and one of the chief products making up the cargoes of American ships coming in from the Philippines to the United States.

#### WHAT IS MAHOGANY?

What is mahogany as applied to wood? Is it the wood from the tree botanically known as mahogany? It is. But to restrict it to such meaning is false and misleading. Mahogany wood or lumber, may or may not be produced from the tree botanically classified as mahogany. A tree is usually classified from its flower or seed botanically. A wood is classified according to its qualities—not from the botanical name of the tree from which it is produced. Botanically the wood in dispute is not mahogany—commercially it is. To apply its botanical classification to its commercial use is wholly misleading. Botanical classification has nothing whatever to do with the commercial classification of the wood in controversy. The botanical classification of this wood is not involved in the issues of this case, and the only result of discussing the botanical classification is to confuse and mislead. Below are cited some definitions as to what constitutes mahogany:

#### MAHOGANY

*Botanically:* A tropical American mellaceous tree (*Swietenia mahoganii*), with pinnate leaves and panicles of small greenish flowers.—*Webster's Dictionary*.

The valuable hardwood of this tree, used extensively for furniture and cabinet work.—*Webster's Dictionary*.

*Commercially:* Any of many trees related to, or resembling the mahogany; as in Australia, species of *Eucalyptus*; in India, various mellaceous trees of the general *Soymida*, *Chrkrassia*, and *Tona*; in Africa, *Khaya senegalensis*; in the United States, *Rhus integrifolia*, species of *Cercocarpus*, etc.—*Webster's Dictionary* (*italics mine*).

Applied chiefly with qualifications to various woods resembling mahogany and to the trees producing them.—*New English Dictionary and History of 1903*.

Mahogany, the popular name for timber of several unrelated trees, among which are various species of Eucalyptus.—*Encyclopedia Americana, 1903 edition*.

I would be unable to describe the wood without calling it mahogany, because it has the looks, the appearance, the grain, and all of the things that go to make up mahogany.—*Witness Sands—Seattle, Rec. p. 15*.

The furniture trade considers African, Mexican, Philippine and Honduras all mahogany.—*Witness, Rec. p. 284*.

These authorities show the conclusive soundness of the rulings of the various departments of Government referred to herein.

#### DOES THE PHILIPPINE PRODUCT HAVE THE QUALITIES OF MAHOGANY?

Does the Philippine Mahogany, as Webster says, "resemble" mahogany? It seems to me that the Commission's attorneys are hardly in a position to deny that the Philippine Mahogany "resembles" Mahogany, and has all its necessary qualities, in view of the fact that on page 17 of their brief, they refer to the testimony of several witnesses who were experts, that bought and sold Philippine Mahogany, thinking it was the mahogany of "our grandfathers", or as they term it, "the real mahogany". The examiner in paragraph 8 of his findings says:

The resemblance between the characteristics of genuine mahogany wood and the wood sold in interstate commerce as "Philippine Mahogany" are so close that it is difficult even for an expert wood technologist to distinguish between them without the aid of instruments usually employed by wood technologists in examining various wood specimens.

In the brief of the Commission, at page 10, it is said that the Horace E. Dodge Boat Works, at Detroit, Mich., represented their vessels made of the Philippine wood as constructed of the finest mahogany. These vessels were sold to their customers and there is no showing that any purchaser of these boats ever made any complaint or doubted the truth of these representations. In fact, there is no evidence, so far as any ultimate consumer is concerned, that when the seller represented his product as of the finest mahogany, that it was not strictly true.

It is useless to quote the evidence of various witnesses upon this proposition, for there is practically no dispute in the testimony of the witnesses on both sides of the controversy, that the statement in the examiner's findings above referred to is correct.

So it is practically admitted in this case that the wood in controversy has *every quality* necessary to justify it being classified *commercially as mahogany*. It might be added, as shown by the record,

that some of the true mahogany, botanically, is soft and spongy and has little value commercially. If this wood was placed on the markets as mahogany, undoubtedly there would be a great protest both from the Mahogany Association and from the public, and justly so, because while such wood would be *mahogany botanically*, it would not be *mahogany commercially*, and its sale as such would be a fraud upon the public.

No witness has been produced that has testified or even intimated that he has ever bought furniture because he thought it was made of wood botanically mahogany. But the entire evidence is that all purchasers bought what they thought contained the qualities of mahogany as defined commercially, and therefore were not deceived, and there is no showing in the record whatever *that any purchaser has complained* that the respondents have *deceived or defrauded them*.

The complaint is made that this wood sometimes contains worm-holes, but this has nothing to do with the issue. This is a characteristic of all mahoganies in a more or less degree. Will it be contended that it is an unfair practice to call Hickory, or Oak, or Walnut, by their names because these woods sometime contain worm-holes? This question is entirely a matter of grading the lumber and not of determining the kind. Certainly it can hardly be contended that a hole changes the character of the wood in which it is.

The exhibitions before the Commission of two selected doors, one of the so-called genuine Mahogany and the other of Philippine Mahogany, at least in so far as appearance is concerned, decisively confutes the evidence of all so-called experts as to the inferiority of the Philippine wood. In fact, the door of Philippine Mahogany was so much more beautifully figured and colored and in every appearance so much more desirable than the genuine, that most purchasers would prefer it. This exhibition conclusively demonstrated that the Philippine Mahogany possesses every desirable attribute that constitutes mahogany as defined by all the decisions and authorities.

#### THE NAME "PHILIPPINE MAHOGANY" NOT DECEPTIVE

The use of the words "Philippine Mahogany" is not deceptive. The trade and the people generally know exactly what they are buying when they buy Philippine Mahogany. This opposition to the use of the term comes, not because it is deceptive, but because it is not. We have again in this controversy the old story of the fight against the new. Much has been said about the mahogany of

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our fathers—more forceful than weighty. The revered mahoganies of to-day are the despised mahoganies of yesterday. The history of the controversy is that mahogany was at first limited to the lumber produced from one tree only. Then, as this supply grew less, a new mahogany appeared. It was rejected at first but gradually came to be recognized; and so, in the future, the Philippine Mahogany will become the adored wood of our “grandfathers”, and probably in a fight to shut out some new contender for public favor.

It is impossible to describe the wood in controversy so that its qualities and value will be properly understood by the public, without the use of the word “mahogany”. To insist that it should be called Dipterocarpaceae, in order that the general public might not be deceived, would be just as absurd as to insist that the present monarch of England should be called, George Frederick Ernest Albert Windsor, instead of King George, in order that the people of England might not be misled as to the person referred to.

#### CLASSIFICATION OF WOODS BOTANICALLY MISLEADING AND DANGEROUS

If we are to lay down the rule that it is false and misleading to describe woods commercially other than what they are botanically, we will injure, if not destroy, one of the greatest industries in this country.

One of the finest woods in the world, that furnishes perhaps more of the timbers used in construction to-day than any other is the Douglas Fir of the Pacific Northwest. It is known by this name throughout the world and by this name its qualities are well understood. Botanically this wood that enters so largely into the commercial life of a nation is a false hemlock. There is a widespread prejudice against hemlock, because of the qualities of that wood in the East. For the lumber producers of the Northwest to be compelled to mark their product under its botanical name—False Hemlock—would be to work incalculable injury to the industry. More than 85 per cent of the wood shingles in the United States are the Red Cedar Shingles of the Pacific Northwest. The quality is well known and understood by the trade and people generally by the term “Red Cedar”. Botanically it is not cedar but juniper. It would cost millions of dollars to both the shingle industry and the Douglas Fir industry to educate the people to where they would know what was meant by the botanical terms of these woods. In the East, one of the great lumber trees of commerce is the poplar. Botanically it is tulip.

To use the terms, “Philippine Mahogany”, “Douglas Fir”, “Red Cedar”, and “Poplar” is to correctly define these woods com-



mercially, and gives to the dealers and to the public generally the correct idea of their qualities and value. If you describe them botanically, it is safe to say that not 5,000 people in the United States would know what was meant. I can think of no proposition more absurd than to compel the use of the botanical names of these woods upon the theory that it will protect the public from false and misleading statements. Why should we use the restricted and scientific and highly technical name known by a few, and refuse to use the common, ordinary name, understood by all.

#### WHY THE PHILIPPINE MAHOGANY IS CHEAPER

The reason Philippine Mahogany is cheaper is not because it is less desirable, for it has all the qualities, and in its higher grades it is equal in beauty, if it does not surpass, the finest of other mahogany woods.

Philippine Mahogany is not taking a large portion of the market from the other mahoganies because of any deception, but because of its merits. As already stated, the reason that it is cheaper is because it comes in duty free and because it is more easily logged than other mahoganies.

I must enter my protest against the decision of the majority in the overruling of the classification of the Hardwood Association, the decisions of the Department of Agriculture, the Department of Commerce and the Interstate Commerce Commission, and action, I believe, will result in the overturning of the common usage and reversing common understanding; that will disrupt a great industry; that will establish a precedent that if followed will paralyze the lumber industry of the country; that will increase the price of mahogany and create a monopoly in the mahogany trade; that will injure the public and benefit only the Mahogany Association. Such decision in my judgment can be based only on the technical and stilted opinions of schooled but unlearned self-styled experts, who would, if consistent, insist that potatoes must be sold only as tobacco, because botanically they are of the same family, lest some dear old college professor might buy a package of cigarettes instead of a bag of "spuds".

The contention of the majority here is that if any person of common understanding wishes to buy this Philippine wood, that has all the beauty and durability of mahogany—in fact, all the best characteristics of mahogany—that it can not be described to him so as to reach the common understanding, by calling it "Philippine Mahogany", but in order to keep him from being deceived and so that he may know exactly what he is getting, he must be told that it is either

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Lauan, Tanguile, Almon, Batan, Apitong, Lamao, Orion, Abatang, Bagaac, Batak, or Balachacan. This proposition, it seems to me, would be highly complimented by characterizing it as absurdly ludicrous.

The majority lay down the proposition that the buyer must be told the truth—a perfectly correct one and one that I endorse, but when you chase this common sense idea into the clouds of scientific nomenclature, until not one person in a million, without consulting an encyclopedia, a botanist and a chemist, would know whether a word used to describe the wood in a kitchen chair is the name of a seasick remedy, a new planet, or a divorcee screen star, it seems to me that the proposition in some slight degree “recoils upon itself”.

The sum of the Commission’s case is that the purchaser of this wonderful and beautiful wood will be deceived and defrauded unless he is told that it is Dipterocarpaceae, a proposition so plain that only the intelligent will dispute it.

## Syllabus

## IN THE MATTER OF

J. H. CRITES, JOHN G. DEE, W. J. ROSS, M. W. McQUAID  
AND M. L. CHANDLERCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 785. Complaint, June 11, 1921—Decision, Aug. 19, 1927*

Where certain individuals, officers or trustees in an oil company organized by them under a so-called declaration of trust; in advertising, offering for sale, and selling its shares or stock,

- (a) Represented in newspaper advertisements, prospectuses, and other advertising matter that the company had holdings, amounting to hundreds, later increasing to thousands, of acres, situated in proven oil areas, and mostly in the very heart of the most wonderful oil-producing territory in the world, the fact being that only a small proportion of the company's holding was located in areas understood to be or considered as proven oil territory;
- (b) Represented that every acre of its holdings had increased in value by the bringing in of producing wells by other companies on near-by and surrounding tracts, that it owned 200 acres southeast of a certain well on the Ross Farm, surrounded on all sides by drilling wells, 160 acres in Stephens County, Tex., just north of Breckenridge, and offsetting the Humble deep test, with the Ranger Field lying north and west from the adjoining county, a tract in Block 45, Burkburnett, the "Wonder Field" with production on all sides, and sure of oils from various sands, and  $2\frac{1}{2}$  acres in said "Wonder Field" close in among the producers and lying just west of certain named wells, south of the "great Marine and Humble wells", the fact being that there was no production of oil nearer the tract southeast of the aforesaid farm than production 1 mile distant consisting of not more than 40 barrels a day; that no drilling operations were conducted nearer to the Stephens County holdings than from 8 to 10 miles, that the alleged Burkburnett tract was west of Burkburnett and one-half mile from any production whatever, dry holes had been drilled on all sides of it, there had been no production of any kind in its vicinity, and the company did not own the  $2\frac{1}{2}$  acres in question, but only an undivided one-third interest in a tract of  $7\frac{1}{2}$  acres of which the  $2\frac{1}{2}$  acres were a part; and that the well drilled on the tract in question proved to be a dry hole;
- (c) Represented that it was drilling four wells, "tapping" the heart of the proven field, the fact being that it drilled only one well in its entire history; and that it neither conducted nor commenced any drilling operations on its Stephens County holdings, but forfeited the lease; and
- (d) Represented that the company was a dividend-paying company and would devote 50 per cent of its production to such purpose, the fact being that at no time had said company had earnings or profits or production from or out of which dividends could have been legitimately paid, or prospects from which they could have believed or did believe that it would probably pay dividends;

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With the effect of misleading and deceiving a substantial portion of the public into purchasing the stock of the company in question in the belief that it owned producing oil properties, was on a dividend-paying basis, was devoting 50 per cent of its production to payment of dividends, and owned extensive leases in various oil-producing areas in the immediate vicinity of large producers, the proposed development of which would so expand the production of the company as greatly to enhance the value of the stock so purchased:

*Held*, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* and *Mr. John M. Burkett* for the Commission.

*Mr. J. A. Collins*, of Fort Worth, Tex., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting the public interest involved, the Commission charged respondent individuals with advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce, in that, in selling shares of stock in the O-Tex Production Co., a joint stock association, with principal place of business at Fort Worth, organized by them under a declaration of trust, they made numerous false and deceptive statements concerning the business, property, and prospects of said company, in their advertisements in newspapers of general circulation, and in circular letters and advertising matter circulated throughout the United States, such false and misleading statements including statements to the effect that the company owned leases on 752½ acres of land in proven oil territory, and had four wells in operation, the fact being that no oil had ever been produced from the lands in question and that the company had drilled but one well, which produced no oil, and made other statements of like false and misleading character, with the effect of misleading and deceiving the public and inducing numerous persons to purchase stock of such association, and calculated so to do.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon respondents, charging them with the use of unfair methods of competition in violation of law.

Thereupon all of the respondents entered appearances and filed answers by their attorney. Formal hearing was had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by the attorney for the Commission, the respondents failing to file brief within the time prescribed, or at all, and thereupon the matter having come on regularly for final decision and the Commission having considered the record and being advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. H. Crites, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler, are and at all times hereinafter mentioned, were residents of the city of Fort Worth, Tex. On or about February 10, 1919, respondent, J. H. Crites, in conjunction with respondents, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler, organized under a so-called declaration of trust, the O-Tex Production Co., with a capitalization of \$250,000 divided into 25,000 shares of stock at the par value of \$10 each. Respondents J. H. Crites, John G. Dee, and W. J. Ross became and during all of the time herein mentioned, were the trustees of said company. Respondent M. W. McQuaid for a brief period, and thereafter respondent, M. L. Chandler, acted as its secretary and treasurer.

PAR. 2. After the organization of the O-Tex Production Co., respondent, J. H. Crites, transferred to it in exchange for one-half of its capital stock, or 12,500 shares, oil and gas leases held by him of or on 752½ acres of land. The other half of its said capital stock, respondents, J. H. Crites, John G. Dee, W. J. Ross, and M. W. McQuaid, advertised, offered for sale and sold, in the various States of the United States, in competition with other persons, partnerships, corporations and associations engaged in the sale of oil stock and other securities in said commerce, and caused certificates of said stock sold to be transported from Fort Worth, Tex., to purchasers thereof in the various other States of the United States. In connection with advertising, offering for sale and selling said stock, and as inducement to its purchase, respondents caused to be transported by mail, and distributed among purchasers and prospective purchasers of stock and securities, in the various States of the United States, newspapers with advertisements published at the instance of respondents, prospectuses, leaflets, circulars, circular letters and other advertising matter containing, among others, the following false and misleading statements and representations: That the said company owned 752½

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acres of oil and gas leases which original holdings were later increased to 3,000 acres, all of them situated in proven oil areas and most of which had been proven to be in the very heart of the most wonderful oil-producing territory in the world; that every acre of the holdings had increased in value by the bringing in of producing wells by other companies on tracts near to and around leases of the O-Tex Production Co.; that the company was drilling four wells, "tapping" the heart of the proven field; that the company owned 200 acres southeast of the so-called Duke and Knowles well on the Ross Farm, surrounded on all sides by drilling wells, 160 acres in Stephens County, Tex., just north of Breckenridge, and offsetting the Humble deep test, with the Ranger Field lying north and west from the adjoining county; that it owned a tract in Block 45, Burkburnett, describing it as "The Wonder Field", with production on all sides, and sure of oil from various sands, and  $2\frac{1}{2}$  acres in the so-called "Wonder Field" close in among the big producers, and in fact lying just west of the Wichita Southern and Sibley-Taylor wells, south of the "great Marine and Humble wells"; and that the O-Tex Production Co. was a dividend-paying company and would devote 50 per cent of its production to this purpose; whereas, in truth and in fact, only a small proportion of the holdings of the O-Tex Production Co. was located in the areas understood to be or considered as proven oil territory; it drilled only one well in its entire history; there was no production of oil nearer its tract southeast of the Duke and Knowles well than 1 mile, consisting of no more than 40 barrels per day; the said company neither conducted nor commenced any drilling operations on the holdings in Stephens County, Tex., but forfeited the lease and, indeed, no drilling operations were conducted by others nearer to such holdings than from 8 to 10 miles; its alleged Burkburnett tract was west of Burkburnett and one-half mile from any production whatever; dry holes had been drilled on all sides of it and there had been no production of any kind in its vicinity. When the representations hereinbefore set forth<sup>e</sup> were made by respondents regarding this particular tract, the O-Tex Production Co. did not own the  $2\frac{1}{2}$  acres described as in the "Wonder Field" but only an undivided one-third interest in a tract of  $7\frac{1}{2}$  acres of which the said  $2\frac{1}{2}$  acres was a part. The other two-thirds were owned by the White Star Oil and Gas Co. and the Royal Duke Co. The well drilled on this tract proved to be a dry hole, and in any event the O-Tex Production Co. would have been entitled to only one-third of the profits therefrom, and at no time theretofore has said company had earnings or profits or production from or out of which dividends could have been legitimately paid, or prospects from which respondent could

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have believed or did believe that the O-Tex Production Co. would probably pay dividends.

PAR. 3. The above and foregoing false and misleading representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of stock of the O-Tex Production Co. in the belief that it owned producing oil properties, was on a dividend-paying basis, was devoting 50 per cent of its production to payment of dividends, and that it also owned extensive leases in various oil-producing areas in the immediate vicinity of large producers, the proposed development of which would so expand the production of the company as greatly to enhance the value of the stock so purchased.

## CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of respondents, the testimony and evidence, brief of counsel for the Commission, respondents having failed to file brief, and the matter having come on regularly for decision and the Commission having thereupon made its report stating its findings as to the facts with its conclusion that the respondents, J. H. Crites, John G. Dee, W. J. Ross and M. W. McQuaid, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondents, J. H. Crites, John G. Dee, W. J. Ross, and M. W. McQuaid, cease and desist from publishing, circulating or distributing in interstate commerce, in connection with offering for sale or selling the stock of the O-Tex Production Co. or of any other association, partnership, or corporation, any magazine, pamphlets, prospectuses, circulars, circular letters, or any other written or printed matter containing false or misleading statements or representations concerning the property, resources, assets, production,

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management or financial condition of the O-Tex Production Co. or of any corporation, association, or partnership, stock of which respondents, or either or any of them, are selling or offering for sale in interstate commerce.

*It is further ordered*, That the same be and hereby is dismissed as to respondent, M. L. Chandler.

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



## Syllabus

## IN THE MATTER OF

S. F. SHEPARD, ROCKWOOD BROWN, A. L. TODD, R. ALLYN LEWIS, R. J. WISWELL, D. M. LEOPOLD, H. P. HANSON, E. H. ESHLEMAN, F. L. MOORMAN, AND E. H. McARTHUR

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

*Docket 857. Complaint, Dec. 8, 1921—Decision, Aug. 19, 1927*

Where an individual interested in certain oil companies promoted and organized by him in pursuance of certain declarations of trust, to which companies he had conveyed their various holdings and leases in return for one-half of their capital stock, retaining a financial interest in the sale of the remaining stock, an interest in oil and gas produced from various properties so conveyed, and an interest in the management of the companies through his power under the so-called declarations of trust to name the trustees; in promoting the sale of the stock or shares in various companies organized by him as above set forth,

- (a) Represented said different companies, as the case might be, in prospectuses, and other advertising matter as owners of various specified holdings in the Texas "Burkburnett" oil-producing district, omitting from his aforesaid advertising and withholding and concealing from purchasers and prospective purchasers any and all information concerning the real origin of the companies so promoted by him, the source from and conditions or circumstances under which their various properties were acquired, the method of selecting trustees, officers or members, his own connection therewith, and the reservations, profits and advantages derived and to be derived by him from the sale of the several stocks, and from the development and production of the various properties represented by him as the valuable holdings of the company;
- (b) Represented that a certain  $2\frac{1}{2}$  acres of one of the companies was surrounded by producing wells and that another acre owned by it in a certain tract was in the center of big production, the fact being that such tracts were respectively not surrounded by production, and some distance from producing wells; and
- (c) Represented that "the officers and directors" of one of the companies specified, would "be elected by the stockholders, therefore, this company will be controlled by and for the benefit of the stockholders through men selected by themselves and not by promoters, as is usually the case with corporations", the fact being that the trustees to administer the affairs of all companies were selected by the aforesaid individual and were controlled and directed by him and were at no time controlled by or for the benefit of the stockholders;

With the effect of misleading and deceiving a substantial portion of the public into purchasing stock in the various companies in the belief that they owned valuable properties, the administration of which would be controlled by their stockholders, who would be entitled to the undivided earnings or profits of the companies, instead of only a part thereof:

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*Held*, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* and *Mr. John M. Burkett* for the Commission.

*Mr. Horace P. Babson*, of Fort Worth, Tex., for respondents, A. L. Todd and F. L. Moorman.

*Mr. Will C. Moody*, of Chicago, Ill., together with *Mr. Horace P. Babson*, of Fort Worth, Tex., for S. F. Shepard.

*Grimstad & Brown*, of Billings, Mont., for Rockwood Brown.

## SYNOPSIS OF COMPLAINT

Reciting the public interest involved, the Commission charged respondents with withholding and concealing material information, misrepresenting offerings, and advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The matters involved have to do, as charged, with the sale of stock in various voluntary unincorporated associations promoted and organized by respondent Shepard, namely, The Burkley Oil Co., the Burk Crest Oil Co., the Burk Bethel Oil Co., and the Gypsy Burk Oil Co., organized, according to the various declarations of trust, primarily for the development of oil and gas on the properties described in such instruments, which further recited that the stock should be so sold as to net the various estates not less than 85 cents (80 in the case of one) per share. Various respondent individuals were named trustees for the different companies or were associated therewith in the advertisement, offer and sale of their stock to purchasers and subscribers in the various States. In the course of organization and promotion of said companies respondent Shepard received and retained, with the consent of the trustees and in consideration of his transfer to the companies of properties described in the several declarations of trust, one-half of the capital stock of each and all of them, \$7,500 of the proceeds from the sale of the other one-half of their capital stock, with the exception of two, in which he received and retained \$20,000 out of the proceeds from the sale of their remaining one-half of their stock, and also received and retained by and with the active cooperation and consent of the various respondent trustees, the right to a substantial interest in all oils produced or to be produced from the properties.

Respondent Shepard, acting as promoter and organizer for the aforesaid companies, and in his and their behalf, and respondent individuals acting in conjunction with one another and for them-

selves and under the direction and control of respondent Shepard and in connection with the particular company or companies herein concerned, with the sale of stock in which they were particularly identified, "have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in said companies, by inducing it or them to purchase or contract to purchase such stock by means of false and misleading advertisements, false representations and false pretenses, and by making, publishing, advertising and circulating false and misleading reports, false statements and false representations regarding the plan of organization, assets, resources, business progress, good will and prospects of the various companies aforesaid, and of the standing, ability and integrity of respondent, S. F. Shepard \* \* \*."

The numerous false representations made by respondents in connection with the different companies may be suggested as follows:

*Burkley Oil Co.*—That it was the owner of three holdings in the Burkburnett oil-producing district of Texas, that a well in a certain specified place had been drilled to the oil sand, would be drilled in within a few hours, would produce approximately 1,500 to 2,000 barrels of oil a day; that it, the well was completed and swabbing at the rate of 1,800 barrels a day, the fact being that none of its properties was in the center of production of the Burkburnett oil fields, but were so far removed therefrom as to be of doubtful, if any real value and that it never had to exceed one oil well, which would not produce and was incapable of producing to exceed 5 barrels of oil a day and that the other statements relative to its well were false.

*Burk Crest, Burk Imperial, Burk Consolidated, and Gypsy Burk, Oil Companies.*—Similar false statements as to the location, value, production and prospects were made with reference to these various companies. For example, that the Burk Imperial Oil Co. owned two oil wells and seven holdings in the center of the famous Burkburnett oil fields, one of which had come in to the tune of about 3,000 barrels a day, shooting a 6-inch stream of oil 15 feet over the top of the derrick, and that 2,900 barrels of oil therefrom was on hand and in storage, the fact being that such company did not own two oil wells or any oil well producing sufficient oil to pay expenses of operation and that none of the properties were in the center of production of the famous Burkburnett oil fields, but were located far outside and were all in known dry territory or so far removed from known and proven oil territory as to be of little or no value.

Respondent Shepard, further, as charged, with the consent of the various trustees and in conjunction with the various respondents concerned "as associated with him in the organization or promotion

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of such particular company, deceived and defrauded the public or that portion of the public who purchased shares in the said companies or any of them by withholding and concealing material information, to wit, that the said S. F. Shepard had received such a large proportion of the capital stock of the said companies and of the proceeds from the sale of their remaining capital stock, and that the said companies and each of them would be compelled to share with him a substantial proportion of any production derived or to be derived from any of their several properties."

The complaint finally charged "that the respondents above named each for himself and in conjunction with each other, and particularly under the direction of respondent, S. F. Shepard, made false and misleading statements, false representations and false advertisements hereinbefore set forth and made numerous other false and misleading statements and false representations relative to the organization, assets, resources, business, progress, good will and prospects of said companies, and caused the same to be published in various magazines and other publications, and to be transported through the mails and by other means to prospective purchasers of stock in said companies, and by personal efforts and the efforts of their agents, committed numerous other acts of like character, knowing their falsity and tendency to deceive the public, with the effect of deceiving and misleading the public and causing the public to purchase stock and subscribe for stock in the said companies, and that numerous persons, relying upon said false and misleading statements, false representations and false advertisements, did buy stock and subscribe for stock in said companies, and each and all of them, to their injury and that of respondents' competitors."

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, charging them, and each of them, with the use of unfair methods of competition in violation of law.

Thereupon respondents, S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, E. H. Eshleman, and F. L. Moorman, filed answers and appeared by their attorney. Formal hearing was had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by counsel for the Commission, respondents having failed to file brief within the time prescribed, or at all, and this matter having come on regularly for final decision

and the Commission having considered the record and being now advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, S. F. Shepard, during the months of February, March, April, and May, 1919, promoted and caused to be organized under and in pursuance of certain declarations of trust, the Burkley Oil Co., the Burk Crest Oil Co., and the Burk Bethel Oil Co., each with a capitalization of 100,000 shares of the par value of \$1 each, and the Burk Imperial Oil Co. and the Burk Consolidated Oil Co., each with a capitalization of 150,000 shares of the par value of \$1 each. Respondent, A. L. Todd, was named as a trustee of the Burkley Oil Co. and of the Burk Crest Oil Co., while in connection with the Burk Imperial Co. he acted as trustee with respondent R. J. Wiswell, and in the same capacity with respondent, R. Allyn Lewis, in connection with the Burk Bethel Oil Co. The various declarations of trust under which these companies were organized provided, among other things, that the primary purpose of the several companies was the development of oil and gas, on property described in said respective instruments as the property of the company, to which they severally related. In the organization of these companies by respondent, S. F. Shepard, respondents, A. L. Todd and R. Allyn Lewis, were associated with him in connection with the Burkley Oil Co., respondents, A. L. Todd and R. J. Wiswell with the Burk Imperial Oil Co., respondents, D. M. Leopold and R. J. Wiswell, with the Burk Consolidated Oil Co., and respondents, A. L. Todd and R. Allyn Lewis, with the Burk Bethel Oil Co.

PAR. 2. After the organization of the companies mentioned in paragraph 1 hereof, respondent, S. F. Shepard, advertised, offered for sale and sold the stock of the Burkley, Burk Imperial, Burk Consolidated and the Burk Crest Oil companies, under the trade name and style of Shepard & Co., by means of prospectuses, pamphlets, circulars and circular letters, which he caused to be distributed in the various States of the United States, among prospective purchasers of stocks and securities, wherein were set forth, among others, the following misleading and deceptive statements and representations:

That the said Burkley Oil Co. was the owner of three holdings in what is known as the Burk-Burnett Oil Producing District of Texas; held leases of 5 acres each in blocks 10 and 11 of Knight's subdivision of block 72, Red River Valley lands, 2.5 acres in the so-called Maxwell tract, and 1 acre in the Van Cleave tract, all in Wichita County, Tex., and that the Burk Crest Oil Co. was the owner of oil leases on

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5 acres in block 8 of Knight's subdivision of the north half of block 72, Red River Valley lands, the east 2.5 acres of block 18 of Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands, the west 1 acre of block 8 of the Couch, Winfrey and Simmons subdivision in the so-called Hardin tract, 5 acres in block 68, Red River Valley lands, all in Wichita County.

That the said Burk Imperial Oil Co. was the owner of several holdings in the Burk-Burnett oil field, consisting of 25 acres, all located in or near the Burk-Burnett oil fields, being 2.5 acres out of the south end of block 86, Red River Valley lands, a drilling site in the Hardin tract, Dubois survey, adjoining the original town site of Burk-Burnett, 5 acres in block 65, Red River Valley lands, 2.5 acres out of block 18 of Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands; 5 acres out of block 19, in block 821, all located in Wichita County, Tex., and in addition thereto 10 acres in Tillman County, Okla.

That the Burk Consolidated Oil Co. was the owner of 5 holdings in the Burk-Burnett oil field, consisting of 2.5 acres out of the south end of block 86, northwest extension, and adjoining block 84; 2.5 acres out of the southwest corner J. B. Evans tract; 10 acres, being the south half of lot 3, block 5, Sam Sparks subdivision, all in the Wichita County, Tex.; and in addition thereto 5 acres in section 35; and 5 acres out of the northwest quarter of section 28, township 4, range 14 west, Tillman County, Okla.

Whereas, in truth and in fact the said oil companies acquired their interests in the leases or other lands hereinbefore described through assignment from the respondent, S. F. Shepard and in the instruments by which such interests were transferred to the several oil companies, said respondent, S. F. Shepard, reserved to himself the following, which he described as a consideration for the various transfers, to wit:

One-half of the capital stock of each and all of said companies, and the sum of \$7,500 of the proceeds from the sale of the other half of the capital stock, except that in the organization of the Burk Imperial and Burk Consolidated Oil Companies it was agreed that he was to receive \$20,000 out of the proceeds from the sale of the remaining half of the capital stock, and in truth and in fact said respondent, S. F. Shepard, as further consideration for his transfers of leases to the said companies, received or retained the right to a very substantial interest in the oil produced or to be produced from the properties or leases which he had so assigned to these companies, to wit:

A seven-sixteenths interest in all oil and gas produced from the following properties of the Burkley Oil Co.; 2.5 acres of the Maxwell tract, 5 acres in block 10, and block 72 as above described, and in connection with the Van Cleave tract there was a reservation of seven-sixteenths interest to a prior grantor other than S. F. Shepard, a grantor who is a stranger to this proceeding; seven-sixteenths interest of all oil and gas to be produced from the following holdings of the Burk Crest Oil Co.; lot 6 in block 72, 5 acres, and the west half of block 6 of the Couch, Winfrey and Simmons subdivision of the so-called Hardin tract, and seven-sixteenths of all oil and gas to be produced from the following property of the Burk Imperial Oil Co.; 2.5 acres out of the south end of block 86, Red River lands and 2.5 acres out of block 18, Knight's subdivision of blocks 96, 97 and 98, Red River Valley lands; and a seven-sixteenths interest in the following properties transferred by him to the Burk Consolidated Oil Co., to wit: 2.5 acres out of the southeast corner of the J. B. Evans tract, and six-sixteenths interest from 2.5 acres out of the south end of block 86, northwest extension, adjoining block 84, Red River Valley lands, two-sixteenths thereof having been reserved to a prior vendor who is a stranger to this proceeding; and in truth and in fact the principal drilling operations for oil, prosecuted by each of the said companies, were conducted at the instance of respondent, S. F. Shepard, upon those portions of their several holdings, in connection with which he had reserved a substantial interest, thereby enabling him, in addition to one-half of the capital stock received by him and the money consideration from each of the said companies, to procure development by them of holdings, in the production of which he would share with them the profits by means of his reserved interests of seven-sixteenths in such holdings.

Respondent, S. F. Shepard, omitted from all of the advertising matter used by him or Shepard & Co., in advertising and offering the various stocks of said companies for sale and in effect withheld and concealed from purchasers and prospective purchasers any and all information concerning the real origin of the companies so promoted by him, the source from and conditions or circumstances under which their various properties were acquired by them, the method of selecting trustees, officers or managers of the companies, his own connection therewith and the reservations, profits and advantages derived and to be derived by him from the sale of the several stocks and the development or production of the various properties represented by him as the valuable holdings of said companies.

It was further represented by respondent, S. F. Shepard through Shepard & Co., in the advertising matter circulated by him as afore-

said that 2.5 acres of the Burkley Oil Co. located in the so-called Maxwell tract in Wichita County, Tex., was surrounded by producing wells, and that its one acre in the so-called Van Cleave tract in the county and State aforesaid was in the center of big production.

Whereas, in truth and in fact the said lease of the Burkley Oil Co. in the so-called Maxwell tract was not surrounded by production. There was one producing well a mile and a quarter to the north and west of it, and one of the same distance to the south or southwest of it, while the Van Cleave tract was not in the center of big production, and there were no producing wells in any other direction therefrom except to the north and west, ranging from 600 feet to 2,000 feet from such tract.

It was further represented by respondent, S. F. Shepard, through Shepard & Co. in connection with the offering for sale of the stock of the Burkley Oil Co. as follows:

The officers and directors of the Burkley Oil Co. will be elected by the stockholders; therefore, this company will be controlled by and for the benefit of the stockholders through men selected by themselves and not by promoters, as is usually the case with corporations.

In truth and in fact, however, the trustees to administer the affairs of all of these companies were selected by the respondent, S. F. Shepard, and were controlled and directed by him, and were at no time controlled by or for the benefit of the stockholders.

PAR. 3. The stock of the several companies mentioned in the foregoing paragraphs hereof was offered for sale and sold by respondent, S. F. Shepard, as Shepard & Co., from Fort Worth, Tex., in competition with individuals, partnerships, corporations and associations engaged in the sale, in interstate commerce, of oil stocks and securities, and certificates therefor when sold, were transported by him, or at his instance or under his direction, to purchasers thereof in the various States of the United States. The prospectuses, leaflets, circulars and other advertising matter were distributed by him or under his supervision and direction and his correspondents herein had no connection with or responsibility for the false and misleading statements and representations set forth, as aforesaid, in the advertising literature used in selling the stocks hereinbefore mentioned in the various States of the United States.

PAR. 4. The false and misleading statements and representations concerning the location of certain leases of the Burkley Oil Co. on the Maxwell and Van Cleave tracts, and the control of the trustees by and for the stockholders, and each of them, and the concealment from prospective purchasers and purchasers of stock of the unusual interests of respondent, S. F. Shepard, in the properties of each and



all of said companies, and of his control and direction of them for the advancement of his individual interests, had the capacity and tendency to mislead and deceive and did mislead and deceive a substantial portion of the public into the purchase of stock in each of the several companies aforesaid in the belief induced by such representations, or one or more of them, that the said companies owned valuable properties, the administration of which would be controlled by their stockholders who would be entitled to the undivided earnings or profits of the said company instead of seven-sixteenths thereof.

#### CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts, constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answers of respondents, S. F. Shepard, Rockwood Brown, A. L. Todd, R. Allyn Lewis, E. H. Eshleman, and F. L. Moorman, the testimony and evidence and brief of counsel for the Commission, respondents having failed to file brief, and the matter having come on regularly for decision and the Commission having made its report stating its findings as to the facts with its conclusion that respondent, S. F. Shepard, operating under the trade name and style of Shepard and Company, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondent, S. F. Shepard, doing business under the trade name and style of Shepard & Co., individually, or otherwise, cease and desist from publishing, distributing or circulating among prospective purchasers of stocks and securities, magazines, newspapers, pamphlets, prospectuses, circulars, circular letters, or any other printed or written matter in connection with the sale of or offering to sell in interstate commerce, stock of the Burkley Oil Co., the Burk Crest Oil Co., the Burk Imperial Oil Co., or the Burk Consolidated Oil Co., or of any other corporation, association, or partnership, containing any false or misleading statement or representation, either expressed or implied, concerning his connection with or relationship to said companies, or any of them, or any other

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corporation, association or partnership, or the management, resources, properties, assets, production, income, progress or prospects of said companies, or any of them, or any other corporation, association, or partnership.

*It is further ordered,* That the complaint be and the same hereby is dismissed as to respondents, Rockwood Brown, A. L. Todd, R. Allyn Lewis, R. J. Wiswell, D. M. Leopold, H. P. Hanson, E. H. Eshleman, F. L. Moorman, and E. H. McArthur.

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

## Syllabus

## IN THE MATTER OF

**HENRY H. HOFFMAN, R. C. RUSSELL, J. H. CAIN, R. V. WILSON, B. BAERNSTEIN, THE RANGER-BURKBURNETT OIL COMPANY, THE RANGER-COMANCHE OIL COMPANY, AND THE UNION NATIONAL OIL COMPANY**

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

*Docket 865. Complaint, Jan. 26, 1922—Decision, Aug. 19, 1927*

Where an individual, in promoting the sale of the stock of several oil companies organized by him,

- (a) Used the name Union Trust Company as his trade name and displayed the same in his advertising matter and upon his letterheads, together with the words "Capital Stock \$500,000, Henry H. Hoffman, President", and solicited and secured subscriptions for and sold stock in said companies under the aforesaid name, through prospectuses, pamphlets, leaflets, circulars, newspapers and letters;
- (b) Made numerous false and misleading statements and representations in the aforesaid prospectuses, etc., relative to his alleged successful activities theretofore in the Texas oil industry, employing such phrases as "Hoffman's Past Enviably Record", "Hoffman Makes Good", together with such statements, variously captioned "RECORD NO. 2", "RECORD NO. 3", etc., as "The Banker's Oil and Gas Company is the second of 'HENRY HOFFMAN'S list of big successes, and has paid 100 per cent in dividends", "RECORD NO. 4, 1,100 PER CENT DIVIDENDS. The fourth on the list of 'HENRY HOFFMAN'S PREMIER ACHIEVEMENTS—Great Southern Oil Company—first paid shareholders 240 per cent dividends, and has since paid a total of 900 per cent dividends, and is still a good dividend producer," the fact being that said individual's connection with the companies referred to ceased after his organization and partial development thereof, and that in no instance, with one or two exceptions, were dividends paid or financial returns of any kind made to shareholders in any of the companies represented as his successes, while under his control, management or direction; and
- (c) Represented in his prospectuses, pamphlets and other advertising matter that a well had been brought in on a lease of one of the companies, producing 5,000 barrels daily, that it owned a lease of 12½ acres in the Burkburnett field, only a few hundred feet from "big gushers", that it owned many valuable leases comprising several thousand acres, for the development of which its stock was being sold to the public, and that another one of the companies herein concerned owned a 10-acre tract adjoining the so-called Goss Well, producing 500 barrels of oil daily, the fact being that the first named lease at no time averaged any such production, that the 12½-acre tract was not situated near "big gushers" nor within a mile and a half of any producing wells, that the many thousands of acres of so-called valuable leases were in "wild cat" territory and of no substantial or prospective value, and that the Goss Well was situated more than a mile from the 10-acre tract above referred to, and produced no oil whatever;

With the effect of misleading and deceiving a substantial portion of the public into purchasing the stock of one or more of the above companies in the belief that they owned valuable properties, and were and would be under the supervision, management and direction of one who had made an enviable record in the Texas oil fields, in the conduct or management of companies which had made large financial returns to their stockholders: *Held*, That such false and misleading advertising under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* and *Mr. John M. Burkett* for the Commission.

*Mr. J. E. Price*, of Houston, Tex., for respondents Henry H. Hoffman, J. H. Cain, B. Baernstein, Ranger-Comanche Oil Co., and Union National Oil Co.

*Mr. J. M. Gibson*, together with *Mr. J. E. Price*, of Houston, Tex., for R. V. Wilson.

#### SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondent individuals, and respondent oil companies with misrepresenting offerings, and advertising falsely or misleadingly in connection with the sale of oil stocks, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The matters involved have to do with the sale of stock by respondent Henry H. Hoffman, respondent R. C. Russell, respondent J. H. Cain, respondent R. V. Wilson, and respondent B. Baernstein in corporations organized and promoted by respondent Hoffman, as follows: The Hoffman Oil & Refining Corporation, the Ranger-Burkburnett Oil Co., The Ranger-Comanche Co., and The Union National Oil Co., the last three named joined as respondents.

Upon the organization of such companies respondent Hoffman, as charged, sold and assigned to each of them certain so-called oil leases or interests therein, receiving in return therefor from each of them, their entire capital stock, of which he thereupon donated to their treasuries one-half, more or less thereof, retaining and devoting to his own use the remaining shares of each and all of them. Such shares were thereafter sold to the public as and for treasury stock, said Hoffman also receiving a substantial percentage of the money derived by the various respondent companies from the sale of the shares donated as above set forth to their treasuries.

Respondent Hoffman, acting for himself and the respondent companies and the Hoffman Oil & Refining Corporation and "while acting as the promoter and organizer thereof" and the other respondent individuals, acting each for himself and also in conjunction with, and on behalf of and under the direction and control of respondent

Hoffman and in connection with the particular company or companies with the sale of whose stock he was particularly identified "have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in the said companies, or either or any of them, by means of false and misleading advertisements, false representations, false pretenses, and by making, publishing, advertising and circulating false and misleading reports, false statements and false representations regarding the plan of organization, assets, resources and business progress, good will and prospects of the various companies aforesaid, and of the standing, ability and integrity of respondent Henry H. Hoffman, and for such purpose the respondents so associated in respect to the said companies", represented, advertised and circulated a large number of statements and representations, all of which were false and misleading, in whole or in part, and thereby sold much of the stock of the aforesaid companies in various States and Territories.

As illustrative of the kind of statements made, in connection with the sale of stock in the different companies, the following are selected from the large number set forth in the complaint:

Hoffman Oil & Refining Corporation.—That this company had a 31-acre lease at Humble, Tex., with a producing well just brought in, in addition to other wells on the property, producing 75 to 100 barrels daily and that the company was managed by men of practical experience who had made millions for their stockholders and had never made a failure, that its efficiency department had estimated the cost of producing lubricating oil as 9 cents a gallon and that the company had already booked a large number of orders at 30 cents a gallon; that there were two more big gushers at Humble, one making 1,000 barrels and one 2,000 barrels and that the company was setting Strainer No. 10 and hoped to bring in another good well.

The facts were that the company referred to did not own said 31-acre tract or have any interest therein, that the producing well on such property yielded not more than 15 barrels a day, settled production, and that other wells consisted of a water well and a dry hole; that neither Hoffman nor his associates had any personal experience in refining oil; and that the company had no efficiency department, had never booked an order for oil and never owned any gushers or oil wells at Humble or elsewhere.

Numerous other false statements and representations of a similar tenor were made, such as alleged purchase or lease of tank cars, sale of refinery products, etc.

Ranger-Burkburnett Co.—That this company owned 12½ acres in the Burkburnett field only a few hundred feet from big gushers and

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that it had many valuable leases, the fact being that there were no big gushers near said tract and that its leases were, with one or two exceptions, valueless, and known to be so by respondents at the time when such representations were made; that respondent Hoffman had been very skillful in organizing oil companies, placing special emphasis on the success of certain companies, and had been the means of putting more than a million dollars in the pockets of investors, the fact being that the alleged success of the companies in question was in no way due to respondents or any of them.

Ranger-Comanche Oil Co.—That this company had brought in a well at Desdemona and that its Humble lease was worth hundreds of thousands of dollars, the fact being that the well in question was a dry hole and that, instead of the lease being worth hundreds of thousands of dollars, the company gave away 400 of the 500 acres.

Union National Oil Co.—Statements of the same character were employed in the sale of the stock of this company as were used in selling the stock of the Ranger-Comanche Co.

Respondent individuals, further, as charged, in selling stock in the various companies used the name "Union Trust Co." as one of their agencies, repeatedly employing such name in their circulars and other advertising matter in such a way as to indicate that "Union Trust Co." was a substantial and reputable going concern, actively engaged in the banking and trust business and in the sale of bonds, mortgages and stocks, placing upon the letterheads of said "Union Trust Co." the legend "Capital stock \$500,000; Henry H. Hoffman, president", the fact being that said Union Trust Co. was not incorporated, had no capital stock and no financial responsibility and was merely a device through and by means of which respondent Hoffman carried on its business of selling stock in the various respondent and other companies.

As charged by the complaint, "in the promotion and organization of The Hoffman Oil & Refining Corporation, the respondents Ranger-Burkburnett Oil Co., Ranger-Comanche Oil Co., and Union National Oil Co., neither the respondent Henry H. Hoffman, their promoter, nor any of their other officers or agents named as respondents herein contributed any money to, or purchased any stock in, any of said companies, for cash, but on the contrary, the said companies and each and all of them were used as agencies to enable the respondent Henry H. Hoffman, and the other respondents, to unload on the said companies certain oil leases owned by them at greatly excessive and fictitious prices, all of which leases, with the exception of one or two, were of doubtful or no value at all; and in the case of one or two of real value, the shareholders of said corporations were

not allowed by the said respondents to participate in profits derived therefrom, and the greater portion of the proceeds of the sale to the public of the stocks of the respondent oil companies was appropriated by the respondent Henry H. Hoffman and his associates for leases conveyed by them to the various companies, and their affairs were at all times conducted in the interest and for the benefit of the respondent Henry H. Hoffman and his associates, herein named as respondents, and against the interests of the other stockholders, who provided the respondent companies with all of the capital which they or any of them possessed."

Upon the foregoing complaint the Commission made the following

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

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, charging them with the use of unfair methods of competition in violation of law.

Respondents filed appearances and answers, hearings were had, testimony and evidence introduced in support of the complaint and on behalf of respondents, brief filed by counsel for the Commission, respondents having failed to file brief, and the matter now coming on for final decision, and the Commission having considered the record and being advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry H. Hoffman, is a resident of and has his principal office and place of business at Houston, Tex. In the years 1916, 1918, and 1919, he successively organized the Hoffman Oil & Refining Co., with a capitalization of 1,000,000 shares of the par value of \$1 each; the Ranger-Burkburnett Oil Co., with a capitalization of 500,000 shares of the par value of \$1 each; the Ranger-Comanche Oil Co., with a capitalization of 500,000 shares of the par value of \$1 each; and the Union National Oil Co., with a capitalization of 10,000,000 shares of the par value of 10 cents each.

PAR. 2. Immediately after the organization of respondent companies, respondent, Henry H. Hoffman, proceeded to advertise and offer for sale the stock of each and all of them except that of the Ranger-Comanche Oil Co., by and through the medium of the Union Trust Co., which was represented in its literature or advertising matter, including letterheads, as: "Union Trust Co., Capital Stock

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\$500,000, Henry H. Hoffman, president." This so-called company was unincorporated, had no capital stock, was owned and controlled by, and consisted entirely of, Henry H. Hoffman. It was the trade name under which he conducted his business of organizing and promoting oil companies, having none of the qualities and performing none of the offices, functions, or duties associated by the public with trust companies. In the name of said Union Trust Co., respondent, Henry H. Hoffman, solicited and procured subscriptions for, and sold stock of each of respondent oil companies, except the Ranger-Comanche Oil Co., by means of prospectuses, pamphlets, leaflets, circulars, newspapers, and letters, which he caused to be distributed among purchasers and prospective purchasers, in the various States of the United States, containing, as inducements to the purchase of such stock, numerous false and misleading statements and representations, among which were references to alleged successful activities of respondent, Henry H. Hoffman, in the oil fields or oil-producing industry in the State of Texas. These references were conspicuously displayed in such striking phrases as "Hoffman's Past Envious Record" and "Hoffman Makes Good," with specific statements of or concerning companies which the public was informed had made large returns to shareholders through the efficient management of respondent, Henry H. Hoffman, in the following form:

RECORD NO. 2  
HOFFMAN'S SECOND  
COMPANY

The Banker's Oil & Gas Co. is the second of HENRY HOFFMAN'S list of big successes, and has paid 100 per cent in dividends.

RECORD NO. 3

National Oil & Gas Co., operating in the Humble Field, was sold out, and full par value of the stock being paid to each and every shareholder.

RECORD NO. 4  
1100 PER CENT DIVIDENDS

The fourth on the list of HENRY HOFFMAN'S PREMIER ACHIEVEMENTS—Great Southern Oil Co.—first paid shareholders 240 per cent dividends, and has since paid a total of 900 per cent dividends, and is still a good dividend producer.

RECORD NO. 5  
MORE DIVIDENDS

The Hoffman Deep Well Co., organized in 1916, paid a dividend of 100 per cent in the fall of the same year; 50 per cent dividend in the following March; sold seven-eighths interest in holdings to Goose Creek for \$800,000 and the one-eighth remaining interest has already paid the shareholders nearly \$200,000



additional dividends, or nearly 50 per cent more, and is paying big dividends at present.

## RECORD NO. 6

## STILL MORE DIVIDENDS

The Hoffman Goose Creek Co. is the sixth on this list of RECORD-BREAKERS; sold property for \$140,000, leaving shareholders a one-eighth interest in approximately 400 acres of valuable oil lands. Paid initial dividend of 50 per cent and is now paying about 25 per cent annually in dividends to shareholders.

In truth and in fact, respondent, Henry H. Hoffman, organized the companies mentioned in said advertising matter and partially developed the properties of some of them, but his connection with them thereupon terminated. In no instances, except those of the Banker's Oil & Gas Co. and the National Oil & Gas Co., were dividends paid or financial returns of any kind made to shareholders in any of the companies represented as his successes, while under his control, management or direction. The prospectuses, pamphlets, circulars, and other advertising matter so published and distributed by respondent, Henry H. Hoffman, further contained, as inducement to the purchase of the stock of respondent oil companies, false statements and false representations to the effect that a well has been brought in on a lease of the Ranger-Burkburnett Oil Co. producing 5,000 barrels of oil daily, that it owned a lease of 12½ acres in the Burkburnett oil field only a few hundred feet from "big gushers" and that said respondent oil company owned many valuable leases, comprising several thousand acres, for the development of which its stock was being sold to the public, and that the respondent, The Ranger-Comanche Oil Co., owned a 10-acre tract adjoining the so-called Goss Well which produced 500 barrels of oil per day. In truth and in fact, the lease of the Ranger-Burkburnett Oil Co. at Burkburnett, at no time averaged 5,000 barrels of oil daily and during its active operation its daily production was far below such amount, the 12½-acre tract of said company in the Burkburnett oil field was not situated near "big gushers" and there were no producing wells of any kind within a mile and a half of such tract. The "many thousands of acres" of so-called valuable leases advertised as inducements to purchase Ranger-Burkburnett stock, were in so-called "wildcat" territory and of no substantial or prospective value, and the so-called Goss Well was situated more than a mile from the said 10-acre tract of the Ranger-Comanche Oil Co., and produced no oil whatever.

PAR. 3. Each and all of the above and foregoing false and misleading statements and representations had the capacity and tendency to

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mislead and deceive, and did mislead and deceive, a substantial portion of the public into the purchase of the stock of one or more of the several respondent companies, in the belief that they owned the valuable properties described in the advertising matter distributed among them by respondent, Henry H. Hoffman, and were and would be under the supervision, management and direction of one who had made an enviable record in the oil fields of Texas, in the conduct or management of companies which had made large financial returns to their shareholders.

PAR. 4. The stock of the several respondent oil companies advertised, offered for sale and sold by respondent, Henry H. Hoffman, under the name of Union Trust Co., was so advertised, offered for sale and sold, in competition with individuals, partnerships, corporations and associations engaged in the sale of stocks and securities, in commerce, among the various States of the United States, and certificates of stock sold, respondent, Henry H. Hoffman, caused to be transported to purchasers thereof, from Houston, Tex., at their points of location in the various States of the United States.

PAR. 5. The Ranger-Burkburnett Oil Co. on the 11th of April, 1921, was placed in the hands of a receiver by the District Court of the 11th Judicial District of Texas, sitting in and for the county of Harris, in the State aforesaid. The Ranger-Comanche Oil Co., and the Union National Oil Co. are inactive and no longer under the control or management of the respondent, Henry H. Hoffman. Respondents R. C. Russell, J. H. Cain, R. V. Wilson, and B. Baernstein, at no time had any responsible part or connection with the respondent companies or Henry H. Hoffman, in the effort to sell, or in connection with the sale of stock in said companies, or any or either of them, except as employees, acting at all times under the supervision and explicit direction of respondent, Henry H. Hoffman.

## CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of re-

spondents, the testimony and evidence and brief of counsel for the Commission, respondents having failed to file brief, and the Commission having made its report stating its findings as to the facts with its conclusion that the respondents, The Ranger-Burkburnett Oil Co., The Ranger-Comanche Oil Co., The Union National Oil Co., and Henry H. Hoffman, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondents, The Ranger-Burkburnett Oil Co., The Ranger-Comanche Oil Co., The Union National Oil Co., their officers, directors, employees, and agents, and respondent Henry H. Hoffman, individually, and as an officer or representative of any or either of said respondent companies, cease and desist from publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, circular letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of the stock of said respondent companies or any other stocks or securities, wherein it is printed or set forth any false or misleading statement or misrepresentation to the effect that the property or operation of any of said respondent companies, or of any other corporations, associations, partnerships, the stock of which is offered for sale, lies near or is surrounded by proven oil territory, or producing oil wells, or any other false or misleading statement or misrepresentation concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospects of any corporation, association, or partnership.

*It is further ordered,* That the complaint be and hereby is dismissed as to the respondents, R. C. Russell, J. H. Cain, R. V. Wilson, and B. Baernstein.

*It is further ordered,* That said respondents shall, within 60 days from the date of the service of this order, file with the Federal Trade Commission a report setting forth in detail the manner and form in which they have complied therewith.

## IN THE MATTER OF

A. W. PERRYMAN, DOING BUSINESS UNDER THE NAME  
AND STYLE PERRYMAN INVESTMENT COMPANY,  
ET AL.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 871. Complaint, Mar. 25, 1922—Decision, Aug. 19, 1927*

Where an individual, president and controlling spirit in a company organized by him under a declaration of trust; in promoting the sale of its stock or shares,

- (a) Represented through circular letters and other advertising matter that the aforesaid company was organized with sufficient funds to start development, was not dependent on the sale of stock for its operations, owned leases and holdings of great value in eleven great and proven fields and, in many instances, adjacent to producing wells, some of which were large producers, the fact being that the company was unable to complete the drilling of a well started by it, due to lack of funds, after expending thousands of dollars thereon, chiefly derived from the sale of stock, and was compelled to call upon another company to finish the same, that said well and other wells drilled for it under an arrangement entered into with said company were not successful, that none of its leases proved to be of real or permanent value, and that none were located in proven or producing portions of the oil fields concerned, but were located from three-fourths of a mile to four miles from producing wells or active operations, with the exception that one lease adjoined land with a gas well; and
- (b) Represented that the company was a joint association organized under the stringent laws of Texas, the fact being that the company was a so-called common-law trust, created by a deed and declaration of trust with full and absolute authority over its property lodged in the trustees, consisting of the aforesaid individual and two others associated with him;

With the effect of misleading and deceiving numerous persons into purchasing the stock of said company in the belief that it had sufficient funds with which to prosecute the development of leases owned by it in proven and productive oil fields, and that such stock was the stock of a joint association organized under the stringent laws of Texas:

*Held*, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson* and *Mr. John M. Burkett* for the Commission.

*Carothers & Brown*, of Houston, Tex., for respondents.

## SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondent A. W. Perryman, engaged under the name A. W. Perryman Investment Co. in a general stock brokerage business, with office and prin-

cipal place of business in Houston, Tex., and a trustee of Houston Oil & Refining Co., a so-called common law corporation created by a certain deed and declaration of trust, and respondents F. P. Penfield, C. S. Thomas, W. L. Diehl, and William M. Huff, individually and as trustees and officers of said company, with advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent Perryman, as charged, doing business as above set forth, and with the participation and assistance of the aforesaid other respondent individuals, disseminated circulars and other advertising matter and literature, soliciting the sale of the stock of the aforesaid company, and containing many false and misleading statements concerning the value thereof, the location and value of its oil leases, the nature, condition and prospects of its operations and business, and the experience and reliability of its officers.

Among such false and misleading statements the following may be mentioned:

That it had passed the stage of raising funds and was financially ready to commence and carry out drilling and other operation upon a moment's notice; that it owned leases and holdings of great value in eleven great proven oil fields and in many instances adjacent to producing oil wells, some of which were producing great quantities of petroleum; that it was headed by practical experienced men, and oil men of proven records, experts in their lines; that it would be managed in a prudent and careful manner; and that success had already crowned its drilling operations.

The facts, among others, were that the company at no time since its organization had sufficient funds for drilling operations and that respondent Perryman, doing business as above set forth, was engaged in selling stock for such purpose; that none of the company's leases ever was adjacent to or in proven oil fields or of substantial value, that the company had only two wells, each of which was wholly unsuccessful and produced no oil, and that it never had any interest in any producing oil well; that it was not subject, as alleged, to Texas laws regulating and controlling such corporations, and the conduct of their business; that its operations and business were controlled and managed solely by the respondents herein none of whom was experienced in the practical work of locating and drilling for petroleum or in the production and marketing thereof, and that an investment in its stock was not one from which financial gain or return was probable, and that the purchasers thereof never received any dividends thereon or any other profit or return therefrom.

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The complaint alleged, after the making of the allegations above indicated—

“That the aforesaid false and misleading statements made by respondent, Perryman, in the manner hereinbefore set out, and known by said respondent to be false and misleading, were and are calculated to create and did, and do create the belief on the part of the persons solicited by him as hereinbefore set out, that the Houston Oil and Refining Co. is a corporation organized under the laws of the State of Texas; that the operations and business of said company are regulated and controlled by the appropriate provisions of said laws, that the leases owned by said company are in proven oil producing territory and so located with reference to producing wells as to practically assure the discovery and production of petroleum in substantial and well paying quantities and to render probable the production of great quantities thereof, that said company had and has adequate funds to carry out drilling operations and would and will without delay proceed with such operations under an expert and experienced management which assured and assures the efficient and economical pursuit of such operations; that relying upon aforesaid statements and said belief thereby created, large numbers of the persons solicited as above set out have purchased stock of said company and continue to purchase same.”

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress (Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon all of the respondents except W. L. Diehl and William M. Huff, who could not be located.

Thereafter, A. W. Perryman, F. P. Penfield, and C. S. Thomas filed answers and entered appearances by their attorney. Formal hearing was had in the course of which respondents, W. L. Diehl and William M. Huff, appeared in person and participated therein. Testimony and evidence were introduced in support of the complaint and on behalf of the respondents. This matter having now come on for final decision and the Commission having considered the record and being advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, A. W. Perryman, is and for several years prior to this proceeding has been a resident of Houston, Tex., there engaged in the brokerage business under the name of Perryman Investment Co. His business has included the purchase, sale, exploitation and development of oil lands and oil leases, and the organization, direction, and management of corporations, associations, and trusts and the sale of their stock. On January 16, 1919, in association with respondents, F. P. Penfield and C. S. Thomas, he organized under a declaration of trust the Houston Oil & Refining Co. with a capitalization of 1,000,000 shares of the par value of \$1 each. A. W. Perryman became and during all of the time hereinafter mentioned was president, C. S. Thomas, first vice president, W. L. Diehl, second vice president, William M. Huff, third vice president, F. P. Penfield, secretary and treasurer. Respondents, F. P. Penfield, C. S. Thomas, W. L. Diehl, and William M. Huff, had merely nominal connection with the Houston Oil & Refining Co. and at no time exercised or had any control over its affairs, any direct, active or responsible connection with its management, or with the preparation, publication or circulation of the literature or advertising matter by or through which the sale of its stock was effected as hereinafter set forth.

PAR. 2. Respondent, A. W. Perryman, immediately after the organization of the Houston Oil & Refining Co., controlled and directed its affairs and, under the name of and acting through Perryman Investment Co., advertised, offered for sale and sold its stock to persons in the various States of the United States by means of circulars, circular letters and other advertising matter which he caused to be distributed in the various States of the United States among purchasers and prospective purchasers of stocks and securities, in competition with other individuals, partnerships and corporations engaged in the sale of stocks and securities in interstate commerce. In such circulars and circular letters and other advertising matter, respondent, A. W. Perryman, under the name and style aforesaid, represented that the Houston Oil & Refining Co. was organized with sufficient funds to start development, and was not dependent on the sale of stock for its operations; that the company owned leases and holdings of great value in eleven great and proven fields and, in many instances, adjacent to producing oil wells, some of which were then producing great quantities of petroleum; whereas in truth and in fact the Houston Oil & Refining Co. was organized with approximately \$9,000 in money in its treasury to which was added the sum of \$8,000 or \$9,000 loaned to the company by the

respondent, A. W. Perryman, and at the time the Houston Oil & Refining Co. began to drill its well, the company had on hand only between \$15,000 and \$20,000 to expend for the purpose and in drilling it to a depth of approximately 2,100 feet, expended between \$40,000 and \$50,000 in money, most of which was derived from the sale of stock. The company was unable to complete the well because of the lack of funds and thereupon entered into a contract with the Texas Oil Co. to complete it on a so-called fifty-fifty basis for distribution of any profits derived or to be derived therefrom. It was drilled by the Texas Co. to a depth of 2,800 feet, but was abandoned, or in the parlance of the industry it was "junked", by reason of the twisting off of a drill stem in the hole. Thereafter the Texas Co. drilled a second well about 500 feet from the No. 1 well to a depth of 2,600 feet into the salt and abandoned both wells and the lease. The Texas Co. expended in completion of well No. 1 and well No. 2, as aforesaid, approximately \$100,000. None of the leases of the Houston Oil & Refining Co. proved to be of real or permanent value and none of them were located in proven or producing portions of the various oil fields mentioned in the advertising matter, but were located from three-fourths of a mile to four miles from producing wells or active operations, except that a lease held by the respondent company in the county of Markham was located on land adjoining that on which a gas well was located.

It was further represented in such advertising matter by respondent in his efforts to sell the stock of the Houston Oil & Refining Co. that it was a joint association organized under the stringent laws of the State of Texas, whereas in fact the said company is a so-called common law trust, created by a deed and declaration of trust with full and absolute authority over its property lodged in the trustees who in this instance were respondents, A. W. Perryman, F. P. Penfield, and C. S. Thomas, as stated in the first paragraph hereof.

PAR. 3. The above and foregoing false and misleading representations had the capacity and tendency to mislead and deceive and did mislead and deceive numerous persons, in various States of the United States, into the purchase of the stock of the Houston Oil & Refining Co. in the belief that it had sufficient funds with which to prosecute the development of leases which it owned in proven and productive oil fields, and that the stock purchased was the stock of a joint association organized under the stringent laws of the State of Texas.

PAR. 4. The stock of the Houston Oil & Refining Co. advertised, offered for sale and sold by respondent, A. W. Perryman, under the name of Perryman Investment Co., was so advertised, offered for sale



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and sold in competition with individuals, partnerships, corporations and associations engaged in the sale of stocks and securities in commerce among the various States of the United States, and respondent, A. W. Perryman, under the name of Perryman Investment Co., caused certificates of said stock, when sold, to be transported from Houston, Tex., through and into other States of the United States to the purchasers thereof.

## CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, A. W. Perryman, doing business under the name and style of Perryman Investment Co., A. W. Perryman, F. P. Penfield, C. S. Thomas, individually and as trustees and officers of the Houston Oil & Refining Co., the testimony and evidence and brief of counsel for the Commission, respondents and each of them having failed to file brief, and the matter having come on regularly for decision, and the Commission having made its report stating its findings as to the facts with its conclusion that respondent, A. W. Perryman, doing business under the name and style of Perryman Investment Co., and individually, has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

*It is now ordered*, That respondent, A. W. Perryman, doing business under the name and style of Perryman Investment Co., or otherwise, cease and desist from publishing, distributing, or circulating any magazine, newspaper, pamphlet, prospectus, circular, circular letter, or any other printed or written matter, in connection with the offering for sale, or the sale, in interstate commerce, of the stock of the Houston Oil & Refining Co. or of any other corporation, association, or partnership, containing any false or misleading statement or representation concerning the organization, financial condition, resources, properties, production, income, or prospects of said Houston Oil & Refining Co., or of any other corporation, association or part-

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nership whose stock is sold or offered for sale by respondent in the course of said commerce.

*It is further ordered,* That the complaint be and the same hereby is dismissed as to respondents, F. P. Penfield, C. S. Thomas, W. L. Diehl and William M. Huff.

*It is further ordered,* That respondent shall file with the Federal Trade Commission a report within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

## Syllabus

## IN THE MATTER OF

RIGHT WAY ROYALTY SYNDICATE, E. L. CHAPMAN,  
H. F. MITCHELL AND A. J. CHAPMAN

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

*Docket 930. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927*

Where two individuals, trustees in a company organized by them under a declaration of trust, which provided, among other things that no certificate holder should have any rights in the management or control of its property, that the trustees should have authority to sell all or any part of its assets, at any time, and for any consideration which they might see fit, that any trustee should have the right, in his individual capacity, to sell to it royalties or other interests in oil and gas properties at a profit to such trustee individually, that such profit should be in addition to a commission of 10 per cent allowed the trustee individually for handling the transaction, that the trustees individually should receive a commission of 10 per cent of the proceeds from the sale of its assets, that the profits in excess of the par value received from the sale of securities should go to the trustee individually making the sale, and that the trustees might at any time dissolve, reorganize, incorporate, or merge the company; in offering and selling as stock or units of the company, their own individual stock, acquired by them in return for interests or properties sold by them to the company, under their powers under the aforesaid declaration, at prices fixed by themselves, substantially in excess of those paid by them for such interests or properties (in many cases resold by them, as trustees, after a brief period of ownership by the company, to another organization in which one of them was also trustee, at considerably lower prices than those paid therefor by the company);

- (a) Represented in advertisements in newspapers of general circulation, pamphlets and circulars, that the company had no salaried officers, no advertising expenses, paid no commission to agents to sell its stock or units, and incurred no expense beyond 10 per cent of the earnings, to the trustees for their services, under and by virtue of the articles of agreement and declaration of trust, the fact being that such individuals, in pursuance of the privilege of selling their various interests in oil and gas properties to it at prices far in excess of the cost thereof to them, received within a few months after its organization, \$150,000 more than the 10 per cent represented to purchasers and prospective purchasers as their sole compensation;
- (b) Omitted from advertisements and newspapers, pamphlets, circulars and all other advertising matter utilized by them for the sale of such stock, any information concerning those provisions of the aforesaid articles and declaration, which invested the trustees with absolute control of the operations of the syndicate and its finances, and which allowed them to sell their property to the syndicate at prices far exceeding their cost to the trustees, and thereafter to cause the sale or transfer of such interests at such prices and under such conditions as they might deem advisable; and

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- (c) Concealed from purchasers or prospective purchasers the essential and material fact that the stock offered for sale was the individual stock of said individuals, received by them for properties or royalty interests conveyed to it;

With the effect of misleading and deceiving a substantial portion of the purchasing public into believing that 10 per cent of the earnings of the company constituted their only commission or compensation as its trustees, and that the stock or units offered for sale were its property, and inducing them to purchase the same because of and in reliance upon such belief:

*Held.* That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson and Mr. John M. Burkett* for the Commission.

*Bouldin & Belle*, of Mineral Wells, Tex., and *Baskin, Eastus & Greines*, of Fort Worth, Tex., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Right Way Royalty Syndicate, organized in Texas under so-called articles of agreement and declaration of trust, ostensibly for the general purpose of dealing in royalty or other interests in oil and gas properties, and with principal office and place of business at Fort Worth, and respondents E. L. Chapman, H. F. Mitchell and A. J. Chapman, its trustees, organizers and promoters, and its officers as well as its board of trustees, with misrepresenting offerings, advertising falsely or misleadingly, and withholding from purchasers and prospective purchasers material and essential facts, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in marketing respondents syndicate's securities and as an inducement to purchasers and prospective purchasers to buy the same, in its advertisements in newspapers of general circulation, and in its prospectuses, circulars, etc., and through its agents and salesmen made "numerous false, misleading and deceptive statements and other representations of and concerning the business, management, operations, properties, prospects, etc., of respondent syndicate, and concerning the value of said securities, all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and do, mislead and deceive the said purchasers and prospective purchasers and thereby cause said purchasers to purchase said securities."

Among such false, misleading and deceptive statements and other representations, the following are mentioned as illustrative of the general tenor thereof:

The false statement that respondent E. L. Chapman was under good and sufficient bond for the faithful performance of his duties in connection with respondent syndicate.

That the syndicate had no salaried officers, no advertising expenses, no office expenses and paid no commissions to agents or employees to sell its securities, and incurred no expenses beyond the 10 per cent of its earnings allowed its trustees, which was false, the fact, further, being that the expenses referred to included advertising and office expenses and office salaries, and that the syndicate and respondent individuals paid commissions to agents or employees for selling its securities; and

That the syndicate paid monthly cash dividends and paid 66 per cent cash dividends in 12 months, the fact being that it did not pay monthly dividends and that funds or the greater part thereof, distributed to security holders as dividends were not earnings of the syndicate.

Respondents further, as charged, "concealed and withheld at all times herein mentioned, and still so conceal and withhold, from the aforesaid purchasers and prospective purchasers throughout the United States, numerous unusual, material and essential facts and circumstances concerning the value of said securities, the business, finances, management, operations, holdings, etc., of respondent syndicate, which concealing and withholding of said unusual, material and essential facts and circumstances were calculated and intended by respondent persons and respondent syndicate, and have the capacity and tendency, to, and did mislead and deceive the said purchasers and prospective purchasers into the belief that said unusual, material and essential facts and circumstances, and each of them, did not and do not exist and respondent persons and respondent syndicate thereby induced aforesaid purchasers to purchase said securities."

Among such practices and circumstances, thus concealed and withheld, the following are mentioned as illustrative:

That respondent persons had received large sums as individual profits in the management of respondent syndicate and other dealings therewith; that such profits exceeded the sum of \$147,000 and were in addition to the sums received as the trustees so-called 10 per cent commission; that they had individually sold interests in oil and gas properties to the syndicate at inflated and exorbitant prices at a large profit to themselves individually; and, among other things, that under the articles of agreement and declaration of trust no certificate holder of the syndicate had any right to manage or control any part of the syndicate property and that the trustees had full

authority to sell all or any portion thereof for any consideration at any time they saw fit.<sup>1</sup>

According to the complaint the practices, acts and conduct of respondents were all to the prejudice of the public and respondent's competitors and unfair methods of competition, within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914 (the Federal Trade Commission Act), the Federal Trade Commission issued and served upon the respondents its complaint, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereupon, respondents, E. L. Chapman, H. F. Mitchell, and A. J. Chapman, entered their appearances and filed answers. Formal hearing was had before an examiner of the Commission and thereafter briefs were submitted by counsel and the matter having come on regularly for decision, and the Commission having considered the record, and being advised in the premises, makes this its report in writing and states its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, E. L. Chapman, A. J. Chapman and H. F. Mitchell, on December 15, 1920, caused respondent, Right Way Royalty Syndicate, to be organized under and by virtue of so-called articles of agreement and declaration of trust, for the declared purpose of acquiring and dealing in oil and gas properties and royalty interests therein. Its authorized capitalization was \$500,000, divided into 50,000 shares or so-called units or divisional units, each of the par value of ten dollars. The individual respondents became and at all times hereinafter mentioned were the trustees and officers, and constituted the so-called board of trustees of the respondent syndicate, with principal office and place of business at Fort Worth, Tex. The so-called articles of agreement and declaration of trust contained, among others, the following provisions in substance, to wit:

That no certificate holder of respondent syndicate shall have any right to manage or control all or any portion of the respondent syndicate's property;

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<sup>1</sup> The substance of certain terms of the aforesaid articles and declarations are stated in the "Findings."

That said trustees of respondent syndicate shall have full authority to sell all or any portion of respondent syndicate's assets for any consideration and at any time they may see fit;

That any member of the said board of trustees shall in his individual capacity have the right to sell to respondent syndicate royalty or other interests in oil and gas properties at a profit to said member individually;

That said profit shall be in addition to the commission of 10 per cent to be allowed said trustee individually for handling the transaction with respondent syndicate;

That said trustee individually shall receive a commission of 10 per cent of the proceeds from the sale of respondent syndicate's assets;

That the profits in excess of the par value received from the sale of aforesaid securities shall go to the respective trustee, individually, making the said sale;

That the said board of trustees may at any time increase the authorized capital stock of respondent syndicate;

That the said trustee may at any time dissolve, reorganize, incorporate or merge said respondent syndicate.

PAR. 2. Immediately after the organization of respondent, Right Way Royalty Syndicate, respondents, E. L. Chapman and H. F. Mitchell, exercised the privilege of selling to respondent, Right Way Royalty Syndicate, from time to time, interests in various oil or gas properties at prices fixed by themselves as trustees of said respondent syndicate and which prices were at all times substantially in excess of the prices paid by them for such properties. They also initiated and followed the practice, authorized by said articles of agreement and declaration of trust, of selling and transferring, at a price considerably less than that paid them by the syndicate, or causing to be sold and transferred, such properties or some of them after a brief period of ownership by respondent, Right Way Royalty Syndicate, in most instances to the Mutual Oil Operators, another organization also formed under a declaration of trust and of which respondent, E. L. Chapman, was trustee. Respondents, E. L. Chapman and H. F. Mitchell, in the course of such practice sold to the respondent syndicate of which they were trustees, 54 various interests in oil or gas properties and received in payment therefor shares or units of said syndicate at their par value. All the interests owned or purchased by respondent, Right Way Royalty Syndicate, were purchased from respondents, E. L. Chapman and H. F. Mitchell.

PAR. 3. After respondents, E. L. Chapman and H. F. Mitchell, had acquired stock or units of the Right Way Royalty Syndicate, as described in paragraph 2, they thereupon offered for sale and sold such stock or units in commerce among the various States of the United States, as and for stock or units of respondent, Right Way Royalty Syndicate, in competition with individuals, partnerships, corporations and associations selling oil stocks and other securities in com-

merce between the States of the United States, by means of and through advertisements in newspapers of general circulation, circulars and pamphlets which they caused to be transported from Fort Worth, Tex., into and through other States of the United States and distributed among purchasers and prospective purchasers, containing the representations that the Right Way Royalty Syndicate had no salaried officers, no advertising expenses, paid no commission agents to sell said stock or units and incurred no expense beyond 10 per cent of the earnings of the syndicate to the trustees for their services, under and by virtue of the articles of agreement and declaration of trust. In truth and in fact, such trustees, respondents, E. L. Chapman and H. F. Mitchell, in pursuance of the privilege of selling their various interests in oil and gas properties to the respondent at prices far in excess of the cost of such properties to them received within a few months after the organization of the syndicate as described in paragraph 2 hereof, \$150,000 more than the 10 per cent represented to the purchasers and prospective purchasers as their sole compensation.

PAR. 4. Respondents, E. L. Chapman and H. F. Mitchell, omitted from advertisements and newspapers, pamphlets, circulars and all other advertising matter utilized by them for the sale of such stock or units any information concerning those provisions of the articles of agreement and declaration of trust which invested the trustees with absolute control over the operations of the syndicate and its finances and which allowed them to sell their properties to the syndicate at prices far exceeding their cost to the trustees and thereafter to cause the sale or transfer of such interest at such prices and under such conditions as they might deem advisable. Respondents also concealed from purchasers or prospective purchasers the essential and material fact that the stock or units offered for sale was the individual stock of said respondents, received by them for properties or royalty interest conveyed to the syndicate.

PAR. 5. The false and misleading statements or representations made by respondents, E. L. Chapman and H. F. Mitchell, as described in paragraph 4, in offering for sale and selling the stock or units of respondent, Right Way Royalty Syndicate, and their failure to advise purchasers or prospective purchasers of their powers, profits and financial advantages in connection with the promotion and management of said syndicate and the sale of its units, had the capacity and tendency to mislead and deceive and did mislead and deceive a substantial portion of the purchasing public into the belief that 10 per cent of the earnings of the Right Way Royalty Syndicate constituted the only commission or compensation of said respondents as its trustees, and that the stock or units offered for sale



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were the property of respondent, Right Way Royalty Syndicate, and induced them to purchase such stock or units because of and in reliance upon such belief.

PAR. 6. Respondents, E. L. Chapman and H. F. Mitchell, caused certificates of the stock or units of the Right Way Royalty Syndicate, when sold, to be transported from Fort Worth, Tex., through and into other States of the United States to the purchasers thereof.

#### CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and evidence and briefs of counsel for the Commission and for the respondents, and the Commission having made its report stating its findings as to the facts with its conclusion that respondents, E. L. Chapman and H. F. Mitchell, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondents, E. L. Chapman and H. F. Mitchell, cease and desist from publishing, circulating or distributing, in connection with the offering for sale or selling in interstate commerce, stock or units of respondent, Right Way Royalty Syndicate, or of any other corporation, association, or syndicate, magazines, prospectuses, pamphlets, newspapers, circulars, circular letters, or any other form of printed or written matter containing any false or misleading statement of representation concerning the organization, resources, income, management, profits, progress, or prospect of the corporation, association, or syndicate, whose stock or units are offered for sale or sold, and which does not contain full information regarding the powers and privileges of the person or persons engaged in the promotion, conduct or management of said respondent, Right Way Royalty Syndicate, or such other corporation, association or syndicate, and the commission, compensation, or any other profit or financial advantage derived or to be derived by such person or per-

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sons from or out of the business or property, or at the loss or expense of said respondent, Right Way Royalty Syndicate, or the particular corporation, association or syndicate whose stock or units are offered for sale.

*It is further ordered,* That the complainant be and the same hereby is dismissed as to respondent, A. J. Chapman.

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

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## IN THE MATTER OF

DISPATCH PETROLEUM COMPANY, PORTER OAKES  
AND JAMES T. CHILES

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

*Docket 932. Complaint, Nov. 20, 1922—Decision, Aug. 19, 1927*

Where an individual, in selling shares in a company organized under declaration of trust by himself and an associate, to which company the latter transferred oil and gas leases, and the other a "Sucker list", as agreed between them, it having been further agreed that the former should sell the company's stock to the public and receive 50 per cent of the proceeds as his proportion, and that the latter was to be paid from the proceeds of the other 50 per cent, \$110,000 for and on account of the leases transferred by him to the company; stated and represented in the prospectuses, pamphlets, and circular letters published and distributed by him among those prospective purchasers whose names appeared on the aforesaid list, and others, with the knowledge, consent and cooperation of his said associate that the company was earning large profits, was on a dividend paying basis, had two producing wells and a program of drilling 40 wells on a tract of 138 acres, and that the land was in proven territory where only shallow wells would be required to obtain oil, the fact being that the company was at all times after its organization indebted to said associate for the aforesaid leases, that so-called dividends distributed by the company consisted of money derived either from the sale of its stock, or borrowed by it, that at no time was it earning money applicable to payment of dividends, that it did not own two producing wells, and had only a seven-eighths interest in one well, which did not produce enough oil to enable it to pay any dividend, and had no program for drilling 40 wells on the land in question, and that such land was not in proven territory; with the effect of misleading and deceiving a substantial portion of the public into purchasing stock in said company in the belief that it owned two producing wells, earned profits from which it was paying and would pay dividends, and would prosecute a program of drilling 40 other wells on land known to be situated in proven territory.

*Held*, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. James M. Brinson and Mr. John M. Burkett* for the commission.

*Burns, Christian, Gumm & Gordon*, of Fort Worth, Tex., for Dispatch Petroleum Co.

*Mr. Charles S. Moore*, of Washington, D. C., for Porter Oakes.

*Mr. Grady Niblo*, of Niblo & Crawford, of Dallas, Tex., for James T. Chiles.

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## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Dispatch Petroleum Co., a joint stock association organized in Texas under so-called articles of agreement and declaration of trust for the purpose of dealing in oil and gas leases, and developing and operating oil and gas properties, and with principal place of business in Wichita Falls, and respondents Porter Oakes and James T. Chiles, its organizers, trustees, officers, promoters and agents, with misrepresenting offerings, advertising falsely or misleadingly, and concealing and withholding material and essential facts and circumstances, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in their advertising matter in newspapers, prospectuses, circulars, etc., and through their agents and salesmen made "numerous false, misleading and deceptive statements and other representations of and concerning the organization, business, management, operations, properties, earnings, prospects, etc., of respondent company, and concerning the value of said stock of respondent company all of which statements and other representations, and each of them, were calculated, have the capacity and tendency, to, and do mislead and deceive the said purchasers, prospective purchasers and the public, and respondents thereby induced said purchasers to purchase said stock."

Among such false and misleading and deceptive statements and representations set forth in the complaint the following may be mentioned as illustrative:

That the company was on a dividend paying basis and had paid large cash dividends, was operating successfully and earning large profits, all of which was false, the fact being, furthermore, that funds distributed as dividends were not properly applicable for the payment of dividends.

That the company had two producing oil wells, the fact being that only one was producing at the time; and that the company had under way a 40-well drilling program on its 138 acre proven shallow property, the fact being the property was not proven shallow property, and that respondents at no time contemplated or carried out a drilling program of more than four wells thereon.

Respondents, furthermore, as charged, concealed and withheld from purchasers, prospective purchasers and the public throughout the United States "numerous unusual, material and essential facts and

circumstances concerning the value of said stock of respondent company, and the business, finances, management, operations, earnings, holdings, etc., of respondent company, which concealing and withholding of said unusual, material and essential facts and circumstances, were calculated and intended by respondents, have the capacity and tendency to, and did mislead and deceive large numbers of said purchasers, prospective purchasers and the public into the belief that said unusual, material and essential facts and circumstances, and each of them, did not, and do not, exist, and respondents thereby induced large numbers of said purchasers to purchase said stock of respondent company."

Among the aforesaid facts and circumstances thus concealed and withheld, and set forth in the complaint the following may be mentioned:

That respondent company acting through respondent Oakes as its so-called president-trustee, agreed, at about the time of respondent's organization, to pay and did pay, from the proceeds of the sale of the company's stock, \$110,000 to respondent Oakes in his individual capacity, in consideration of oil and gas leases and options assigned or transferred to the companies, the prices so charged by and paid to respondent Oakes individually being inflated, excessive and exorbitant; and

That the "Union Trust Co." of which respondent Oakes claimed to be president, and which was so represented by respondents in their advertising matter, was at all times since the day of its organization, engaged principally in performing bookkeeping service for five oil concerns a number of which were organized, promoted or managed by said Oakes, and that said Union Trust Co. was never a financial institution of recognized standing in its community.

The aforesaid practices, acts and conduct of respondent were, as charged, all to the prejudice of the public and of respondents' competitors and constituted unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress (the Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, charging them with the use of unfair methods of competition in commerce, in violation of law.

Thereupon respondents, Porter Oakes and James T. Chiles, filed their answers, formal hearing was had at which said respondents

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appeared in person and by attorneys, testimony and evidence were introduced in support of complaint and upon behalf of respondents, and no briefs having been filed either by the attorney for the Commission or by respondents within the time prescribed therefor, or at all, and this matter having come on regularly for decision and the Commission having considered the record and being advised in the premises, makes this its report, stating this its findings as to facts and conclusion:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Porter Oakes and James T. Chiles, entered into an agreement, in the State of Texas, in September, 1920, under and by virtue of which they were to organize by a declaration of trust a company to be known as the Dispatch Petroleum Co., with assets consisting of certain oil and gas leases to be transferred to it by respondent, Porter Oakes, and a mailing list of prospective purchasers of stock, usually known and described as a "Sucker's List," to be furnished by respondent, James T. Chiles. In pursuance of this agreement, they did cause, on September 23, 1920, respondent, Dispatch Petroleum Co., to be so organized with a capitalization of \$200,000, divided into 20,000 shares of a par value of \$10 each, with place of business and principal office at Wichita Falls, Tex. Thereupon respondent, Porter Oakes, transferred the said leases and respondent, James T. Chiles, the said "Sucker's List" to said company.

It was agreed that the stock of the company should be offered for sale to the public by respondents acting directly through respondent, James T. Chiles, who would be entitled to receive 50 per cent of the proceeds therefrom, as his proportion, and that from the proceeds of the other 50 per cent, respondent, Porter Oakes, would be paid the sum of \$110,000 for and on account of the leases transferred by him to the company as aforesaid.

PAR. 2. Thereupon, respondent, James T. Chiles, with the knowledge, consent and cooperation of respondent, Porter Oakes, advertised, offered for sale and sold a large amount of the stock of respondent company by means of prospectuses, pamphlets, circulars and circular letters, which he caused to be distributed among the prospective purchasers, in the various States of the United States, whose names appeared on said "Sucker's list," and others, in competition with persons, partnerships, corporations and associations engaged in the sale of stock and securities in commerce among the States of the United States. As particular inducements to influence said persons to purchase the stock offered them, ostensibly as the stock of respondent, Dispatch Petroleum Co., respondents made the

following, among other, false and misleading statements and representations in the prospectuses, pamphlets, circulars, and circular letters published and circulated as aforesaid by respondent, James T. Chiles, with the knowledge, consent and cooperation of respondent, Porter Oakes: That respondent, Dispatch Petroleum Co., was earning large profits and was on a dividend-paying basis; that it had 2 producing wells and a program of drilling 40 wells on a tract of 138 acres; and that such land was in proven territory where only shallow wells would be required to obtain oil; whereas, in truth and in fact, the respondent, Dispatch Petroleum Co., was at all times, after its said organization, indebted to respondent, Porter Oakes, for the leases transferred to it by him as aforesaid, and the so-called dividends distributed by the company consisted of money derived either from sale of its stock or money borrowed by it, and the company at no time has been or is now earning money applicable to payment of dividends; it did not own 2 producing wells, and had only a seven-eighths interest in 1 well, which did not produce enough oil to enable a respondent company to pay any dividend, and it had no program for drilling 40 wells on said land nor was it in proven territory.

PAR. 3. The above and foregoing false and misleading statements and representations had the capacity and tendency to mislead and deceive, and did mislead and deceive, a substantial portion of the public into purchasing the stock of respondent, Dispatch Petroleum Co., in the belief that it owned 2 producing wells, earned profits from which it was paying and would pay dividends, and would prosecute a program of drilling 40 other wells on land known to be situated in proven territory.

PAR. 4. Respondents, Porter Oakes, James T. Chiles, and Dispatch Petroleum Co., caused certificates of the stock of the Dispatch Petroleum Co., when sold, to be transported from Wichita Falls, Tex., through and into other States of the United States to the purchasers thereof.

#### CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, Porter Oakes and James T. Chiles, the testimony and evidence, and having come on regularly for decision and the Commission thereupon having made its report stating its findings as to the facts with its conclusions that respondents, Dispatch Petroleum Co., Porter Oakes and James T. Chiles, have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

*It is now ordered,* That respondent, Dispatch Petroleum Co., its officers, agents, and employees, and respondents, Porter Oakes and James T. Chiles, as individuals and as officers, directors, shareholders, or agents of respondent, Dispatch Petroleum Co., cease and desist in connection with offering for sale or selling in interstate commerce stock of the Dispatch Petroleum Co., or of any other corporation, association or partnership, from publishing, circulating, or distributing any prospectus, pamphlet, magazine, newspaper, circular, circular letter, or any form of written or printed matter containing false or misleading statements or representations to the effect that respondent, Dispatch Petroleum Co., or any other corporation, association or partnership, owns producing oil wells from which it earns large profits and is on a dividend-paying basis, or in respect to the organization, history, resources, assets, production, income, progress or prospects of respondent, Dispatch Petroleum Co., or any other corporation, association, or partnership, stock of which respondents, or either of them, are offering for sale or selling to purchasers or prospective purchasers in the various States of the United States.

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



## Complaint

## IN THE MATTER OF

ROLLER OIL & REFINING COMPANY, INC., H. C. ROLLER,  
G. F. GIBBONS, PERCY C. WILIE AND E. H. DOUD

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

*Docket 963. Complaint, Feb. 1, 1923—Decision, Aug. 19, 1927*

Where several individuals, in selling stock in a corporation organized by them, falsely represented in prospectuses, pamphlets, circulars and circular letters that the corporation owned and controlled oil and gas leases on some 1,600 acres of land in McLennan County, Tex., on which it was drilling a well which was then 2,600 feet in depth, that it enjoyed an income of \$3,000 a day from wells situated on land owned by it, and that it was on a dividend paying basis, the fact being that it had no interest in such land or in any well being drilled thereon, except the right to acquire it on terms, which it neither fulfilled nor attempted to fulfill, owned no land, but merely a royalty interest in producing wells developed on certain land, averaging as income therefrom only \$4,000 a month instead of \$3,000 a day, and that it was at all times indebted to one of such individuals, its president, in the sum of \$600,000 or the major portion thereof, for and on account of certain royalty interests transferred by him to the company, and at no time was on a dividend paying basis or possessed of money applicable to such purpose; with the effect of inducing many persons to whom such representations were made, to purchase the corporation's stock in the belief that it owned the property so described, had an income of \$3,000 a day, and was on a dividend basis:

*Held*, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

*Mr. James M. Brinson* for the Commission.

*Mr. C. S. Bradley*, of Groesbeck, Tex., and *Mr. A. B. Rennolds*, of Mexia, Tex., for H. C. Roller.

*Mr. Joseph W. Bailey, jr.*, of Bailey, Nichols & Bailey, of Dallas, Tex., for Percy C. Wilie.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent company, a Delaware corporation with principal office and place of business in Mexia, Tex., and respondents Roller, Gibbons, Wilie, and Doud, its directors, and its president, vice president,

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treasurer, and auditor, respectively, with misrepresenting offers and advertising falsely or misleadingly, in offering and selling shares of stock in respondent company to the general purchasing public, acting individually and in their official capacities, and in collusion with one another, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in their advertising in newspapers of general circulation, in prospectuses, etc., and through agents, salesmen and brokers, made "numerous false, misleading and deceptive statements and other representations of and concerning the business, financing, management, operations, properties, productions, earnings, prospects, etc., of respondent company, and concerning the value of said shares of stock of respondent company, all of which statements and other representations, and each of them, were calculated, have and had the capacity and tendency to, and did mislead and deceive the said purchasers, prospective purchasers and the public, and thereby respondents induced large numbers of said purchasers to purchase said shares of stock of respondent company."

Among the aforesaid false, misleading and deceptive statements and other representations, set forth in the complaint, the following may be mentioned as illustrative:

That the company owns and controls oil and gas leases on 1,604 acres of land in McLennan County, Tex., on which it is building a deep test well, which was false in every respect.

That the company's income was approximately \$3,000 a day derived solely from its royalty interests in oil produced from lands to which it held the title direct from H. C. Roller, former owner, the fact being that it had at no time held title to any such land but had acquired from Roller, subject to a vendor's lien for \$600,000, his royalty interest in a certain oil and gas lease, respondents' sole producing property, and from which it at no period derived in excess of \$5,000 a month;

That it was on a dividend paying basis, and had sufficient production from its own properties to pay large monthly dividends for many months to come, the fact being that from its organization it was heavily indebted on the purchase price of its only producing property, and did not have production from its property or earnings or profits from which to pay any dividends at all, and did not declare or pay any regular monthly dividends.

The practices, acts and things done by respondents, as charged, were all to the prejudice of the public and respondents' competitors,

and constituted unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint the Commission made the following

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

Pursuant to the provisions of an act of Congress (Federal Trade Commission Act) approved September 26, 1914, the Federal Trade Commission issued and served upon all of the respondents except G. F. Gibbons, who could not be located, its complaint charging them with the use of unfair methods of competition in commerce in violation of said act.

Thereupon, respondents, H. C. Roller, Percy C. Wilie and E. H. Doud, entered appearance and filed answer. Hearing was duly had, briefs submitted and the matter having come on regularly for decision, and the Commission having considered the record and being advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. On February 7, 1922, respondent, H. C. Roller, G. F. Gibbons, Percy C. Wilie, and one L. W. Hagg, caused to be organized under the laws of Delaware, respondent Roller Oil & Refining Co., Inc., with an authorized capital of \$3,000,000 divided into 3,000,000 shares of the par value of \$1 each, for the declared purpose of developing leases for oil and engaging in the oil business generally. It had a statutory office at Wilmington in said State, and its principal office and place of business at Mexia, Tex. Respondent, H. C. Roller, became, and during the time hereinafter mentioned was, president of respondent company, respondent G. F. Gibbons, vice president, respondent Percy C. Wilie, treasurer, and said L. W. Hagg, secretary. On March 15, 1922, respondent E. H. Doud became auditor of respondent Roller Oil & Refining Co., Inc.

PAR. 2. After its organization, respondents H. C. Roller, G. F. Gibbons, Percy C. Wilie and said L. W. Hagg, as its officers and directors, caused respondent Roller Oil & Refining Co., Inc., to authorize its stock to be offered for sale, and in its name, and ostensibly at the instance and on behalf of said respondent company, the individual respondents, acting in conjunction with each other, offered for sale, and sold, such stock and transported and delivered the certificates therefor, when sold, to purchasers in various States of the United States, in competition with persons, partnerships and corporations engaged in the sale of stocks and securities in interstate commerce.

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PAR. 3. Said respondents offered for sale, and sold, said stock by means of advertisements in newspapers of general circulation, prospectuses, pamphlets, circulars and circular letters, which they caused to be transported into the various States of the United States and distributed among purchasers and prospective purchasers of stocks and securities, containing certain false representations, to wit: That the respondent Roller Oil & Refining Co., Inc., owned and controlled oil and gas leases on 1,604 acres of land in McLennan County, Tex., on which the company was drilling a well which was then 2,600 feet in depth; that said company enjoyed an income of \$3,000 per day from wells situated on land owned by it; and that it was on a dividend paying basis; whereas in truth and in fact respondent Roller Oil & Refining Co., Inc., had no interest in such land or in any well being drilled thereon, except the right to acquire it on terms which it neither fulfilled nor attempted to fulfill. It owned no land, but merely the royalty interest in producing wells developed on certain land, and averaged as income from such source only \$4,000 per month instead of \$3,000 per day. Respondent, Roller Oil & Refining Co., Inc., was at all times indebted to respondent, H. C. Roller, in the sum of \$600,000 or the major portion thereof, for and on account of certain royalty interests transferred by him to the company, and at no time was it on a dividend paying basis or possessed of money applicable to such purpose.

PAR. 4. The above and foregoing false and misleading representations had the capacity and tendency to induce and did induce many persons to whom they were so made by said respondents to purchase the stock of respondent, Roller Oil & Refining Co., Inc., in the belief that it owned the property described in paragraph 3 hereof, had an income of \$3,000 per day, and was on a dividend basis.

#### CONCLUSION

The acts and practices set forth in the foregoing findings as to the facts constitute under the circumstances therein stated unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents, H. C. Roller, Percy C. Wilie and E. H. Doud, testimony

and evidence, and briefs of counsel, and the Commission having made its report in writing stating its findings as to the facts, with its conclusion that the said respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That the respondent, Roller Oil & Refining Co., Inc., and respondents, H. C. Roller and Percy C. Wilie, as officers, shareholders or agents of said respondent Roller Oil & Refining Co., Inc., or as officers, shareholders or agents in any other corporation, association or partnership, or as individuals, do cease and desist from directly or indirectly publishing, circulating or distributing or causing to be published or distributed in connection with the sale or offering for sale in interstate commerce, stocks or securities of said respondent, Roller Oil & Refining Co., Inc., or any other corporation or association, any magazine, newspaper, pamphlet, prospectus, circular, circular letter, advertisement or any other printed or written matter whatsoever containing any false or misleading statement or representation concerning the organization, character, history, operation, management, resources, production, assets, earnings or income, dividends or prospect of said Roller Oil & Refining Co., Inc., or of any other corporation, association, partnership, or person the stock or securities of which they, or either of them, are selling or offering for sale in interstate commerce.

*It is further ordered*, That the proceeding be dismissed as to respondents, G. F. Gibbons and E. H. Doud, and that respondents, Roller Oil & Refining Co., Inc., H. C. Roller and Percy C. Wilie, shall within 60 days from the date of service of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist herein set forth.

Complaint

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IN THE MATTER OF

## C. A. LEITCH MANUFACTURING COMPANY

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

*Docket 1386. Complaint, May 13, 1926—Decision, Sept. 26, 1927*

Where the words "Natural Lake Asphalt" had for many years come to signify and to be understood by the purchasing public as meaning natural asphalt obtained from Trinidad Lake in the British West Indies; and thereafter a corporation engaged in the manufacture of a roofing paint or "fluid cement," containing no Natural Lake Asphalt, and in the sale thereof, labeled its said product as "prepared from a mixture of Natural Lake Asphalt and Gilsonite Asphalt \* \* \*," with the capacity and tendency to mislead and deceive the purchasing public in respect of the composition thereof, and thereby to divert trade from competitors truthfully representing their products:

*Held*, That the sale of products labeled as above set forth, constituted an unfair method of competition.

*Mr. Alfred M. Craven* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New Jersey corporation, engaged in the manufacture and sale of roofing paint and other roofing materials, with factory and principal place of business at Lincoln, N. J., with misrepresenting product, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent falsely described and offered a so-called fluid cement made by it for roofing purposes, as and for a composition of natural or Trinidad Lake asphalt and Gilsonite, with other substances, and falsely so labeled the containers thereof in which it delivered the same to its purchasers, and, when so requested, to the customers of said purchasers, who in turn so advertised, described, designated, offered, and sold the same, with the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving a portion of the purchasing public into believing the product in question to consist of material of higher quality and greater value than the actual ingredients, i. e., that it consisted of the "Natural Asphalt" obtained from Trini-

dad Lake, British West Indies, long identified by the purchasing public by the words "Natural Asphalt" or "Trinidad Asphalt", and Gilsonite asphalt, from a natural deposit in the State of Utah, both generally known as superior in quality and value to artificial asphalt, and with the capacity and tendency to divert and with the effect of diverting trade from competitors dealing in roofing paint and other roofing material containing natural or Trinidad Lake asphalt or Gilsonite or both, correctly described, and from those dealing in such materials containing neither; all to the injury and prejudice of the public and respondent's competitors.

Upon the foregoing complaint the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, C. A. Leitch Manufacturing Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act of Congress.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and on behalf of respondent before an examiner of the Federal Trade Commission theretofore duly appointed.

The respondent having waived filing of brief and oral argument, this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent C. A. Leitch Manufacturing Co. is and since 1919 has been a corporation organized, existing and doing business under the laws of the State of New Jersey, with its factory and principal place of business at Lincoln in said State and with an office in the City of New York, State of New York. The respondent is engaged and since its incorporation has been engaged in the manufacture of roofing paint, also called "Fluid Cement", and in the sale and distribution of same from its factory in the State of New Jersey in interstate commerce to purchasers in various other States of the United States.

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In the course and conduct of its business respondent is and has been in competition with many other individuals, partnerships and corporations likewise engaged in the manufacture of roofing paint and the distribution thereof in interstate commerce throughout the various States of the United States.

PAR. 2. Respondent for several years last past has placed and does now place upon the containers, in which its roofing paint or fluid cement is packed, shipped and delivered to its customers, labels upon which appear as descriptive of the contents of the containers the following statement:

Prepared from a Mixture of Natural Lake Asphalt and Gilsonite. Asphalt combined with other resisting gums and oils and a long staple asbestos fiber.

PAR. 3. The roofing paint or fluid cement thus advertised, labeled and described and sold by respondent as above set forth contains no Natural Lake Asphalt, and has never since the year 1922 contained any Natural Lake Asphalt. Natural Lake Asphalt is a brown to black solid bituminous substance obtained in its natural state from Trinidad Lake in the British West Indies, and the words "Natural Lake Asphalt" for many years have signified and have been understood by the purchasing public to mean the natural asphalt obtained from said Trinidad Lake.

PAR. 4. The representation and description of its roofing paint or fluid cement by respondent as set forth in paragraph 2 hereof is false and misleading and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the said roofing paint or fluid cement contains Trinidad Lake Asphalt when such is not the fact, and thus to divert trade from respondent's competitors truthfully representing their products.

#### CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the evidence introduced, and the Commission having



made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That the respondent C. A. Leitch Manufacturing Co., its officers, agents, and employees do cease and desist from representing by means of labels, or by any other means whatever, that roofing paint or fluid cement, or any other article offered for sale by it, contains as an ingredient Trinidad Lake Asphalt or Natural Lake Asphalt; unless such roofing paint, fluid cement or other article does actually contain in substantial amount Trinidad Lake Asphalt.

*It is further ordered,* That the respondent, C. A. Leitch Manufacturing Co., shall within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF  
FRANK P. SNYDER, TRADING UNDER THE NAME AND  
STYLE OF ALWAYS READY PRODUCTS COMPANY

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

*Docket 1477. Complaint, July 27, 1927—Decision, Oct. 15, 1927*

Where an individual engaged in producing a solution for use in electric storage batteries, and in the sale thereof to wholesale and retail dealers, purchasers, and members of the consuming public; in advertising the same,

- (a) Represented and stated that it (1) would instantly charge batteries, would do so in from 20 to 40 minutes, and without the induction of current from any other source, and when the batteries were "dead"; (2) would not injure, overheat or overcharge the battery or freeze; (3) would not rot or harm the separators thereof, but would keep the plates free from sulphation; (4) contained less sulphuric acid than other solutions on the market and in common use and caused less deterioration; and (5) in the foregoing and in other respects was superior to other solutions, the fact being that the solution in question would not charge batteries instantly, or at all without the induction of current from some other source, would freeze at temperatures frequently prevailing in various parts of the United States during the winter months, contained substantially the same amount and proportion of sulphuric acid as other solutions on the market and in common use, and in other respects produced results not substantially different from those of the other solutions;
- (b) Made such statements in circulars, leaflets, and printed matter describing said solution and distributed by him to wholesale and retail dealers and members of the consuming public as "Always-Ready battery solution solves the problem because it is easy to use and comes ready for instant service. No longer is it necessary to charge a battery for two to four days on a line. \* \* \* The modern battery Fluid. New life for your battery. Charges batteries quickly. No more long charging on the line", "Always Ready amazes automotive America. Charges batteries while you wait", "Remove battery from car, turn it upside down so as to empty all the liquid it contains. It is not necessary, but we advise washing the battery out with distilled water. Refill with 'Always Ready' so that the plates are completely covered, let stand for ten minutes and if the plates are in even fair condition, the battery will be fully charged", "Frequently Always Ready will completely charge a battery before you actually get it back into the car and wired up";

With the capacity and tendency to mislead and deceive purchasers and dealers and cause the same and members of the consuming public to purchase the solution in question in reliance upon the truth of the foregoing statements and representations, and with the effect of diverting business from and otherwise injuring competitors who do not misrepresent the nature, effect, or ingredients of their solutions;

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*Held*, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. E. J. Hornibrook* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, engaged in production of a battery solution for use on electric storage batteries, and in the sale thereof to wholesale and retail dealers, purchasers and members of the consuming public among the several States, and with principal place of business at Williamsport, Pa., with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, made the following statements, representations and advertisements, among others, concerning his said solution, namely, that it would instantly charge batteries, would charge them in from 20 to 40 minutes time, without the induction therein of electric current from any other source, would charge them when they were "dead," would not injure, overheat or overcharge the batteries, would not freeze, would not rot or harm the separators, would keep the plates free from sulphation, contained less sulphuric acid than other solutions on the market and in common use, caused less deterioration than caused by others, and in the foregoing and in other respects was superior to such other solutions; and in circulars and other matter distributed among wholesale and retail dealers and the consuming public made statements of a similar tenor, such as "Refill with 'Always Ready' so that the plates are completely covered. Let stand for 10 minutes and if the plates are in even fair condition the battery will be fully charged," "Always Ready amazes automotive America. Charges batteries while you wait"; the fact being that the solution in question did not instantly charge batteries, would not charge them with electricity without induction of current from any other source, would freeze at temperatures frequently prevailing in various parts of the United States during the winter, contained substantially the same amount in proportion of sulphuric acid as other commonly used solutions, and produced results not substantially different from those produced by such other solution.

Such false, deceptive and misleading statements and assertions, as charged, had the capacity and tendency to mislead and deceive purchasers and dealers, and to cause them and members of the consuming public to purchase respondent's solution in reliance upon the

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truth of such statements, assertions and representations, and also had the tendency and the effect of diverting business from and otherwise injuring competitors who do not misrepresent the nature, effect and ingredients of their solution.

Upon the foregoing complaint the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Frank P. Snyder, trading under the name and style of Always Ready Products Co., on July 27, 1927, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act, together with notice that answer should be filed within 30 days after service of the complaint unless extended by the Commission, and with a copy of the rules of practice of the Commission as to answers (Rule III).

Thereupon, this proceeding came on for decision, and respondent, having failed to answer within the time required by the rules (which has not been extended), or at all, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, pursuant to Rule of Practice III, subdivision 3, makes this its report, stating its findings as to the facts and conclusion:

**FINDINGS AS TO THE FACTS**

**PARAGRAPH 1.** Frank P. Snyder, the respondent herein, is an individual trading under the name and style of Always Ready Products Co., with his principal place of business at Williamsport, in the State of Pennsylvania. He is engaged in producing a battery solution for use in electric storage batteries, and in the sale of such solution to wholesale and retail dealers, purchasers and members of the consuming public among the several States. Respondent causes such solution to be transported from his said place of business to purchasers, vendees and others at their respective places of business among the several States of the United States.

**PAT. 2.** For the purpose of selling the solution so produced, the respondent devised and prepared and now uses certain statements, representations, and advertisements concerning said solution, and caused and causes the same to be printed, published, distributed, and circulated among the several States of the United States.

**PAR. 3.** Among the statements, representations, and advertisements so made and distributed by respondent concerning said solution and its nature and effect, are the following:

That said solution will instantly charge electrical storage batteries with electric current; that it will charge such batteries in from 20 to 40 minutes time; that it will so charge such batteries without the induction therein of electric current from any other source or in any other manner; that it will charge such batteries when the same are "dead," that is, when they will no longer produce electric energy; that said solution will not injure, overheat, or overcharge said batteries; that such solution will not freeze, and that it will not rot or harm the separators of such batteries and will keep the plates of such batteries free from sulphation; that said solution contains less sulphuric acid than other storage battery solutions on the market and in common use; that respondent's solution causes less deterioration in batteries than is caused by the use of other solutions for use in electric storage batteries; that in the foregoing and in other respects, respondent's solution is superior to other battery solutions upon the market and in common use.

PAR. 4. In the course of his business, as above described, respondent prepared certain circulars, leaflets, and other printed productions describing said solution and the nature and ingredients thereof, together with assertions regarding the results to be obtained from its use. The respondent distributes such circulars, leaflets, and printed matter to wholesale and retail dealers and to members of the consuming public among the several States. In such circulars, leaflets, and printed matter, the respondent makes false, deceptive and misleading statements regarding such solution and its nature, effect and ingredients, and among such statements are the following:

Always Ready battery solution solves the problem because it is easy to use and comes ready for instant service. No longer is it necessary to charge a battery for two to four days on a line. \* \* \* The modern battery fluid. New life for your battery. Charges batteries quickly. No more long charging on the line.

Always Ready amazes automotive America. Charges batteries while you wait.

Remove battery from car, turn it upside down so as to empty all the liquid it contains. It is not necessary, but we advise washing the battery out with distilled water. Refill with Always Ready so that the plates are completely covered, let stand for 10 minutes, and if the plates are in even fair condition, the battery will be fully charged.

Frequently Always Ready will completely charge a battery before you actually get it back into the car and wired up.

PAR. 5. The statements, representations, and advertisements described in paragraphs 2, 3, and 4 hereof, are false, deceptive, and misleading in the following and other respects, viz:

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Said solution does not instantly charge electric storage batteries with electricity; it will not charge such batteries with electricity without the induction of current from any other source; storage batteries in which said solution is used can be charged with electricity only by the induction of a current of electricity from a source other than said solution; said solution will freeze at temperatures frequently prevailing in various parts of the United States during the winter months; said solution contains substantially the same amount and proportion of sulphuric acid in relation to the other contents thereof as other electric storage-battery solutions on the market and in common use; and as regards other assertions hereinabove set out, said solution produces results not substantially different from the results produced by other solutions on the market and in common use in electric storage batteries.

PAR. 6. The false, deceptive, and misleading statements, assertions and advertisements hereinabove described have the capacity and tendency to mislead and deceive purchasers and dealers and to cause dealers and members of the consuming public to purchase the solution produced by the respondent in the belief that such statements, assertions and representations are true. Among the competitors of respondent are many persons who do not misrepresent the nature, effect and ingredients of the solutions prepared and sold by such competitors, and the false, deceptive, and misleading statements so made by respondent tend to and do divert business from respondent's competitors, and otherwise injure them.

## CONCLUSION

That the facts and things done by the respondent, Frank P. Snyder, as set out in the above findings as to the facts, constitute an unfair method of competition in interstate commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now, therefore, it is ordered,* That the respondent, Frank P. Snyder, his agents, servants, and employees, cease and desist—

1. From making either in advertisements, circulars, leaflets, or other printed form and from representing in any other manner, in connection with the sale of the battery solution manufactured by him for use in electric storage batteries, any of the following false statements, to wit, that such solution will instantly charge electric storage batteries with electric current; or that it will charge such batteries in from 20 to 40 minutes time; or that it will so charge such batteries without the induction therein of electric current from any other source or in any other manner; or that it will charge such batteries when the same are "dead", that is, when they will no longer produce electric energy; or that said solution will not injure, overheat, or overcharge said batteries; or that such solution will not freeze and that it will not rot or harm the separators of such batteries, and will keep the plates of such battery free from sulphation; or that said solution contains less sulphuric acid than other battery solutions on the market and in common use; or that said solution causes less deterioration in batteries than is caused by the use of other battery solutions on the market and in common use.

2. From making or using in circulars, leaflets, or other printed matter in connection with the advertising or sale of said battery solution, the following misleading statements; or other statements of similar import.

No longer is it necessary to charge a battery for 2 or 4 days on a line. The modern battery fluid. New life for your battery. Charges batteries quickly. No more long charging on a line. Always Ready amazes automotive America. Charges batteries while you wait. Remove battery from car, turn it upside down so as to empty all the liquid it contains. It is not necessary, but we advise washing the battery out with distilled water. Refill with Always Ready so that the plates are completely covered. Let stand for 10 minutes and if the plates are in even fair condition, the battery will be fully charged. Frequently Always Ready will completely charge a battery before you actually get it back into the car and wired up.

*It is further ordered,* That the respondent, Frank P. Snyder shall within 30 days after the date of the service upon it of this order, file with the Commission his report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF  
WASHINGTON CEREAL ASSOCIATION, ITS OFFICERS  
AND MEMBERS, OREGON CEREAL AND FEED ASSO-  
CIATION, ITS OFFICERS AND MEMBERS, AND PRES-  
TON-SHAFFER MILLING COMPANY

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

*Docket 1345. Complaint, Sept. 9, 1925—Decision, Oct. 27, 1927*

Where two associations composed of individuals, partnerships and corporations engaged in the milling of grain and/or the wholesaling of flour and other cereal products, and of feed and feed stuffs for cattle and poultry, in the states of Washington and Oregon, to wholesale and retail dealers, bakery and large quantity consumers in the aforesaid and other states and, together with a concern similarly engaged, manufacturing in the aggregate over 75 per cent and over 50 per cent, respectively, of the entire amount of flour produced annually in the two states, and over 60 per cent of the flour produced in Washington, Oregon, and Idaho; and the officers, members and committees thereof; in pursuance of an unlawful combination and conspiracy entered into with the intent and effect of suppressing competition in the sale of their products throughout the aforesaid and other states, and of fixing uniform prices, price levels, discounts, and terms and conditions of sale, distribution and delivery of said products in such territory, and acting within and through each association, and the membership thereof; and in conjunction and cooperation with said concern,

- (a) Agreed upon, fixed and abided by uniform prices, discounts, and terms and conditions of sale, distribution and delivery of the products involved for and in the territory served by the respective members;
- (b) Agreed to inform and informed the respective secretaries of contemplated changes in prices, discounts, terms and conditions sufficiently in advance of the taking effect thereof to enable them to advise other members of such contemplated changes by letters, bulletins, telegrams and otherwise in order that such members might put said changes into effect;
- (c) Took action through correspondence, association meetings, and their respective secretaries to eliminate the changes or rearrange the prices, discounts, terms and conditions in a manner agreeable to all;
- (d) Revised such uniform prices, discounts, etc., from time to time through association meetings and otherwise, but so that they remained uniform;
- (e) Supplied the respective members with lists compiled by the respective secretaries, of such uniform prices, etc.;
- (f) Supplied the respective memberships through exchanges by the respective secretaries, with copies of the lists of prices, etc. of the other association;
- (g) Agreed to and did abide by and observe prices, etc. of the other association in force and applying in its territory when doing business therein; and



(h) Reported to their respective secretaries and to one another departures from and infractions of the aforesaid uniform prices, etc., and through action by the respective secretaries, meetings of the respective associations, and otherwise sought to and did prevail upon the offending members to cease from such departures and infractions and thereafter to adhere to such uniform prices, etc.; and

Where the aforesaid associations and their members, all cooperating together and acting in concert, and with the corporation above set forth, and in pursuance of the aforesaid conspiracy,

(i) Held joint meetings to agree upon and fix and did agree upon and fix uniform prices, price levels, discounts and terms and conditions of sale, distribution and delivery for their products throughout the territory served in the aggregate by the members of both associations and abided by the same;

(j) Made and issued to each member of each association lists of the aforesaid uniform prices, etc., through the joint action of the respective secretaries and joint committees of the associations, for the use of all members in carrying out their aforesaid joint price agreement;

(k) Kept one another advised of changes in or revisions of the prices, etc., of each association, through exchange of association price lists, and correspondence between the respective associations and members, in order that each association might revise its prices, etc. to correspond to the aforesaid changes, etc.;

(l) Reported to and kept all the members advised of departures from and infractions of the aforesaid joint price agreement, and thereupon brought pressure to bear upon the offending members through the joint and several action of the two associations and their members, to refrain from such departures and infractions and adhere to and abide by the joint price agreement in the future; and

(m) Revised said joint price agreement from time to time through joint meetings of the associations and otherwise, but in such manner that the same remained uniform in its provisions;

With the result of suppressing competition in the sale and distribution of flour and other cereals and feeds and feed stuffs for cattle and poultry in the states of Oregon, Washington, Idaho and elsewhere, hindering and obstructing the free flow of said products in the channels of interstate trade, and denying to dealers and consumers therein those advantages in price and otherwise which they would obtain under conditions of normal and unobstructed competition in the absence of such acts and practices:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. G. Ed. Rowland* for the Commission.

*Palmer, Davis & Scott*, of Washington D. C., and *Battle, Hulbert & Helsell*, of Seattle, Wash., for Washington Cereal Association and officers and members thereof.

*Mr. H. Stanley Hinrichs*, of Washington, D. C., for Globe Grain & Milling Co.

*Mr. J. C. Allen*, of Seattle, Wash., for The Chas. H. Lilly Co.

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*Mr. Robert R. Rankin*, of Portland, Oreg., for Oregon Cereal & Feed Association and for Preston-Shaffer Milling Co. and association officers and members (together with *Palmer, Davis & Scott*, of Washington, D. C.)

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Washington Cereal Association, respondent Oregon Cereal & Feed Association, officers of said associations, the members thereof, and the Preston-Shaffer Milling Co., a Washington corporation with principal office and a plant in Waitsburg, Wash., and also with a plant and place of business in Athena, Oreg., with engaging in an unlawful combination and conspiracy affecting distribution in commerce of flour, cereal products, feed and feed stuffs, between and among the aforesaid and other States, with the intent and effect of suppressing competition in the sale of such products in said States and of fixing uniform prices, price levels, discounts and terms and conditions of sale, distribution, and delivery of said products in such territory.<sup>1</sup>

The conspiracy charged, in which it is alleged that respondent Preston-Shaffer Milling Co. cooperated in carrying out and making the same effective, relates both to intra-association activities and inter-association activities, as well as to activities of members of each association between themselves, and activities, such as interchange of price information, etc., taking place between various members of one association and those of the other association.

Methods charged by the complaint, as used by the associations and their members, included the following:

Agreeing upon, fixing and abiding by uniform prices, discounts, terms and conditions of sale, distribution and delivery for the products concerned in the territory served by the members;

Informing the secretary of each association, in advance, of contemplated changes in prices, discounts, etc., in order that the membership may be advised by him thereof and put the same into effect, and taking action through correspondence between themselves, association meetings, and the secretary "to eliminate such changes or

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<sup>1</sup> According to the complaint respondent members of the aforesaid associations manufacture, together with the aforesaid Preston-Shaffer Milling Co., "in the case of the first-named association, over 75 per cent of the flour produced annually in Washington, in the case of the second, over 60 per cent of the entire amount produced annually in Oregon, and, together, over 60 per cent of the entire amount produced in the States of Washington, Oregon, and Idaho."

rearrange such prices, discounts, terms and conditions in a manner agreeable to all ”;

Revising the uniform prices, discounts, etc., so that they remain uniform, from time to time, through association meetings and otherwise;

Supplying the membership of each association with price lists showing the prices, discounts, etc., and supplying the secretary of each association with the price lists of the other association;

Agreeing to abide and abiding by prices, etc., in force in the territory of each association, when a respondent concern, a non-member of the particular association, does business in the territory thereof;

Reporting to the secretaries and to each other departures from and infractions of the uniform prices, etc., and thereupon seeking through the respective secretaries, through association meetings, and otherwise, to induce and inducing, the offending members to desist from such infractions and thereafter adhere to the uniform prices, etc.;

Holding joint meetings of the two associations for the purpose of agreeing upon and fixing uniform prices, etc., “throughout the territory served in the aggregate by the members of both respondent associations” and thereafter abiding and adhering to the uniform prices, price levels, etc., so fixed;

Keeping the membership of the two associations advised through price lists, of the uniform prices, etc., so agreed upon and also, through exchange of association price lists, through correspondence between the association secretaries, and between members of the two associations, of changes in prices, discounts, etc., “in order that each association may revise its prices, discounts, terms and conditions to correspond to such departures, changes and revisions; and through the same means and methods”;

Reporting to and keeping the members advised of the departures from and infractions of the joint price agreements and bringing pressure to bear upon the offending members, through the joint and several actions of the two associations and their members to refrain from further offending in the matter; and

Revising such joint price agreements, “but in such manner that same remained uniform in its provision” from time to time through joint meetings of the association and otherwise;

“The effect and result of said combination and conspiracy and the acts and things done by respondents to carry out and effectuate the same, all as hereinabove set out, has been and now is to sup-

press competition in the sale and distribution of flour and other cereals, and feeds and feed stuffs for cattle and poultry in the States of Oregon, Washington, Idaho, and elsewhere; to hinder and obstruct the free flow of said products in the channels of interstate trade, and to deny to dealers in and consumers of said products in aforesaid States those advantages in price and otherwise which they would obtain under conditions of normal and unobstructed competition and in the absence of above alleged acts and practices of respondents. Wherefore, said acts and practices of respondents are all to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Upon the foregoing complaint the Commission made the following

• REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served upon the respondents above named<sup>2</sup> a complaint, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, together with notice that answer should be filed within 30 days after service of the complaint unless extended by the Commission, and with a copy of the Rules of Practice of the Commission as to Answers. (Rule III.)

The respondent, Globe Grain & Milling Co., entered its appearance herein and filed an answer setting up, among other things, that it had, on November 1, 1923, sold its mill located at Seattle, Wash., and had not since said date been engaged in the business of manufacturing flour in the States of Washington, Oregon, or Idaho.

Respondent, W. F. Jahn & Co., a corporation organized under the laws of the State of Washington, has not filed an answer to the complaint within the time required by the rules (which has not been extended), or at all.

Preston-Shaffer Milling Co., a corporation organized under the laws of the State of Washington, has not filed an answer to the complaint within the time required by the rules (which has not been extended), or at all.

Respondents F. B. Burke; Paul Knudson; Albers Bros. Milling Co.; Centennial Mill Co.; Coast Trading Co.; Crown Mills; Fisher Flouring Mills Co.; Galbraith & Co.; S. E. Hill and J. C. Hill;

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<sup>2</sup> The various respondents are set forth in paragraph 1 of the "Findings."

Kenworthy Grain & Milling Co.; M. J. Lehman; Magnolia Milling Co.; Novelty Mills Co.; Sperry Flour Co.; John B. Stevens & Co.; W. A. Farr; The Charles H. Lilly Co.; F. L. Shaw; A. V. Hemming; Columbia Milling Co.; Kerr, Gifford & Co., Inc.; Mason Ehrman & Co.; Northern Flour Mills Co.; Portland Flour Mills Co.; Rose City Flour Mills; and Wasco Warehouse Milling Co., appeared herein and filed an answer, stating that they were unwilling to contest the charges set out against them in the complaint, and that they had definitely and finally elected to refrain from contesting said charges. No other answer or return has since been filed by said respondents.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record, and being now fully advised in the premises, and pursuant to Rule of Practice III, subdivisions 2 and 3, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Washington Cereal Association is a voluntary unincorporated association of individuals, partnerships, and corporations engaged in the milling of grain and/or the wholesaling of flour and other cereal products and of feed and feed stuffs for cattle and poultry. Said members are banded together in said Association to promote and protect their common interests and business affairs. Respondents F. B. Burke and Paul V. Knudsen are, respectively, president and secretary of said association, in charge of administering and conducting its activities and affairs. The members of said association are as follows:

Respondent Albers Brothers Milling Co., a corporation organized under the laws of the State of Oregon, with its principal office and a grain-milling plant in the city of Portland, in said State, and with a branch office and a grain-milling plant at Seattle, Wash. This respondent is also a member of respondent Oregon Cereal & Feed Association, as hereinbelow appears.

Respondent Centennial Mill Co., a corporation organized under the laws of the State of Washington, with its principal office in the city of Seattle, in said State, and with a branch office and grain-milling plant in the city of Spokane, in said State. This respondent owns and controls the following grain-milling enterprises: Tacoma Grain Co., with a grain-milling plant at Tacoma, State of Washington; Seattle Flour Mills Co., with a grain-milling plant in the city of Seattle, in said State; Wenatchee Milling Co., with a grain-milling plant at Wenatchee, in said State; Ritzville Flouring Mills, with a grain-milling plant at Ritzville, in said State; Washington Grain &

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Milling Co., with a grain-milling plant at Reardan, in said State; Sprague Roller Mills, with a grain-milling plant in the city of Sprague, in said State; and the Columbia Milling Co., with a grain-milling plant in the city of Portland, State of Oregon.

Respondent Coast Trading Co., a corporation organized under the laws of the State of Washington, with its place of business in the city of Tacoma, in said State.

Respondent Crown Mills, a corporation organized under the laws of the State of Oregon, with its principal office and a grain-milling plant in the city of Portland, in said State, with a branch office in the city of Seattle, State of Washington, and with a grain and feed mill-plant in the city of Tacoma, State of Washington. This respondent is also a member of respondent Oregon Cereal and Food Association, as hereinbelow appears.

Respondent Fisher Flouring Mills Co., a corporation organized under the laws of the State of Washington, with its principal office and a grain-milling plant in the city of Seattle, in said State, and with a branch office and warehouse, from which it distributes its products, in the city of Portland, State of Oregon. This respondent is also a member of the Oregon Cereal & Feed Association, as hereinbelow appears.

Respondent Galbraith & Co., a corporation organized under the laws of the State of Washington, with its place of business in the city of Seattle, in said State.

Respondents S. E. Hill and J. C. Hill, partners, doing business under the trade name and style, Hill Cereal Co., with their place of business in the city of Tacoma, State of Washington.

Respondent Kenworthy Grain & Milling Co., a corporation organized under the laws of the State of Washington, with its place of business in the city of Tacoma, in said State.

Respondent M. J. Lehman, doing business under the trade name and style, Lehman Bros., with his place of business in the city of Seattle, Wash.

Respondent Magnolia Milling Co., a corporation organized under the laws of the State of Washington, with its place of business in the city of Seattle, in said State.

Respondent Novelty Mill Co., a corporation organized under the laws of the State of Washington, with its principal place of business in the city of Seattle, in said State.

Respondent Sperry Flour Co., a corporation organized under the laws of the State of California, with its principal office in the city of San Francisco, in said State, and with branch places of business and grain-milling plants in the cities of Tacoma and Spokane, State of Washington, and in the city of Portland, State of Oregon.

Respondent John B. Stevens & Co., a corporation organized under the laws of the State of Washington, with its place of business in the city of Tacoma, in said State.

Respondent W. A. Farr, doing business under the trade name and style, Tacoma Feed Co., with his place of business in the city of Tacoma, in said State.

Respondent The Charles H. Lilly Co., a corporation organized under the laws of the State of Delaware, with its place of business in the city of Seattle, State of Washington.

Each of said members sell aforesaid commodities to wholesale and retail dealers, bakers and other large quantity consumers located at points in the States of Oregon, Washington, Idaho, and other States of the United States, and causes said products, when so sold, to be transported from their respective places of business into and through other States of the United States to such purchasers located in States other than the States from which such shipments are made.

PAR. 2. Respondent Oregon Cereal & Feed Association is a voluntary unincorporated association of individuals, partnerships, and corporations engaged in the milling of grain and/or the wholesaling of flour and other cereal products, and of feed and feed stuffs for cattle and poultry. Said members are banded together in said association to promote and protect their common interests and business affairs. Respondents F. L. Shaw and A. V. Hemming are, respectively, president and secretary of said association, in charge of administering and conducting its activities and affairs. This respondent association was formed in the month of November, 1922, to consolidate into a single association and take over the activities and affairs of three preexisting associations, to wit: The Oregon Feed Dealers & Manufacturers' Association, the Oregon Cereal Manufacturers' Association, and the Flour Millers' Association. The members of said preexisting associations in the aggregate became, and now are, the members of respondent Oregon Cereal & Feed Association. Said members are as follows:

Respondent Albers Brothers Milling Co., a corporation organized under the laws of the State of Oregon, with its principal office and grain-milling plant in the city of Portland, in said State, and with grain-milling plants and branch places of business in the cities of Seattle, Tacoma, and Bellingham, State of Washington. This respondent is also a member of respondent Washington Cereal Association, as hereinabove appears.

Respondent Columbia Milling Co., a corporation organized under the laws of the State of Oregon, with its principal office and a grain-milling plant in the city of Portland, in said State. This respondent

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is owned and controlled by respondent Centennial Mill Co., a member of respondent Washington Cereal Association, as hereinabove appears.

Respondent Crown Mills, a corporation organized under the laws of the State of Oregon, with its principal office and grain-milling plant in the city of Portland, in said State, with a grain-milling plant in the city of Tacoma, State of Washington, and a branch office in the city of Seattle, State of Washington. This respondent is also a member of respondent Washington Cereal Association, as hereinabove appears.

Respondent Fisher Flouring Mills Co., a corporation organized under the laws of the State of Washington, with its principal office and a grain-milling plant in the city of Seattle, in said State, and with a branch office and warehouse from which it distributes its products in the city of Portland, State of Oregon. This respondent is also a member of the respondent Washington Cereal Association, as hereinabove appears.

Respondent Kerr Gifford & Co., Inc., a corporation organized under the laws of the State of Oregon, with its principal office in the city of Portland, in said State; with a number of grain-milling plants located at various points in the State of Oregon, and with branch offices in the State of Idaho.

Respondent Mason Ehrman & Co., a corporation organized under the laws of the State of Oregon, with its place of business in the city of Portland, in said State.

Respondent Northern Flour Mills Co., a corporation organized under the laws of the State of Oregon, with its principal office in the city of Portland, in said State, and with grain-milling plants in the cities of Vancouver and Walla Walla, in the State of Washington, and in the city of American Falls, in the State of Idaho.

Respondent Portland Flour Mills Co., a corporation organized under the laws of the State of Oregon, with its principal office and a grain-milling plant in the city of Portland, in said State, and with a number of milling plants at other points in the States of Oregon and Washington. This respondent is owned and controlled by respondent Sperry Flour Co., a member of respondent Washington Cereal Association, as hereinabove appears.

Respondent Rose City Flour Mills, a corporation organized under the laws of the State of Washington, with its principal office in the city of Portland, State of Oregon.

Respondent Wasco Warehouse Milling Co., a corporation organized under the laws of the State of Oregon, with its principal office and grain-milling plant in the city of The Dalles, in said State.



Each of said members is engaged in the sale of aforesaid commodities to wholesale and retail dealers, bakers and other large quantity consumers located at points in the States of Oregon, Washington, Idaho, and other States of the United States, and causes said products, when so sold, to be transported from their respective places of business into and through other States of the United States to such purchasers located in States other than the State from which such shipments are made.

PAR. 3. Respondent Preston-Shaffer Milling Co. is a corporation organized under the laws of the State of Washington, with its principal office and a grain-milling plant in the city of Waitsburg, in said State, and with a grain-milling plant and place of business in the city of Athena, State of Oregon. It is engaged in the milling of grain and the sale of cereal products so produced to wholesale and retail dealers, bakers and other large quantity consumers located at points in the States of Oregon, Washington, Idaho, and other States of the United States. It causes said products, when so sold, to be transported from its said places of business into and through other States of the United States to many aforesaid purchasers located in States other than the State from which such shipments are made.

PAR. 4. Those members of the Washington Cereal Association engaged in the milling of grain, together with respondent Preston-Shaffer Milling Co., manufacture in the aggregate over 75 per cent of the entire amount of flour produced annually in the State of Washington. Those members of respondent Oregon Cereal & Feed Association engaged in the grain-milling business, together with respondent Preston-Shaffer Milling Co., manufacture in the aggregate over 50 per cent of the entire amount of flour produced annually in the State of Oregon. Those members of respondents Washington Cereal Association and Oregon Cereal & Feed Association engaged in the milling of grain, together with respondent Preston-Shaffer Milling Co., manufacture in the aggregate over 60 per cent of the entire amount of flour produced annually in the States of Washington, Oregon and Idaho.

PAR. 5. For a period of about four years last past, respondent associations, their officers, members, and various committees, both among themselves within their respective organizations and all cooperating together, have been and still are engaged in an unlawful combination and conspiracy affecting the distribution in commerce between and among the States of Washington, Oregon, Idaho, and other States, of aforesaid products which they manufacture and/or sell—entered into with the purpose, intention and effect of suppressing competi-

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tion in the sale of said products throughout the States of Oregon, Washington, Idaho, and other States, and of fixing uniform prices, price levels, discounts and terms and conditions of sale, distribution and delivery of said products in such territory. In order to carry out and effectuate said combination and conspiracy and its said purposes, respondents have done and still do the following acts and things:

## I

Each respondent association and its respondent members acting within the association, at meetings of the association and otherwise.

(a) Agree upon and fix uniform prices, discounts and terms and conditions of sale, distribution and delivery of aforesaid products for and in the territory served by such members, and adhere to and abide by said prices, discounts, terms and conditions.

(b) The members agree to and do inform the secretary of the association of contemplated changes, in said prices, discounts, terms and conditions, at a time sufficiently in advance of the time said contemplated changes shall go into effect, to enable the secretary to, and he does, by letters, bulletins, telegrams and other means, advise the other members of said contemplated changes, in order that said other members may, and they do, put such changes into effect; and

(c) Take action through correspondence among themselves, through association meetings and through the secretary of the association, to eliminate such changes or to rearrange said prices, discounts, terms and conditions, in a manner agreeable to all.

(d) From time to time, through meetings of the association and otherwise, revise said uniform prices, discounts, terms and conditions, but in such manner that they remain uniform.

(e) The secretary compiles lists of such uniform prices, discounts, terms and conditions, and supplies a copy thereof to each member of the association.

(f) The secretary of each association supplies to the secretary of the other association copies of said lists of said prices, discounts, terms and conditions, in order that the secretary of the recipient association may, and he does, supply copies of such lists to each member of the recipient association.

(g) The members of each association agree to and do, when selling aforesaid products in the territory normally and habitually supplied by the members of the other association, abide by and observe the prices, discounts, terms and conditions of such other association in force and applying to such territory.

(h) The members of each association report to their secretary and to each other departures from and infractions of such uniform prices, discounts, terms and/or conditions, and thereupon, through

action by their respective secretary, by meetings of the respective associations and otherwise, seek to and do prevail upon the members so offending to cease from such departures and infractions, and in future to adhere to such uniform prices, discounts, terms, and/or conditions.

## II

Respondent associations and their members, all cooperating together and acting in concert:

(i) Hold joint meetings of the associations for the purpose of agreeing upon and fixing, and at such meetings do agree upon and fix uniform prices, price levels, discounts and terms and conditions of sale, distribution and delivery, hereinafter denominated joint price agreement, of said products throughout the territory served in the aggregate by the members of both respondent associations, and abide by and adhere to said uniform prices, price levels, discounts, terms and conditions.

(j) Through the joint action of the secretaries of respondent associations and joint committees thereof, make and issue to each member of each association lists of such uniform prices, price levels and discounts, terms and conditions, which all said members make use of by carrying out, abiding by and adhering to said joint price agreement.

(k) Through the exchange of association price lists referred to in specifications (f) hereof; through correspondence between the secretaries of respondent association and through correspondence between members of each association with members of the other, respondents keep each other advised of changes in, departures from, or revisions of the prices, discounts, terms and conditions of each association referred to in specification (f) hereof, in order that each association may revise its prices, discounts, terms and conditions to correspond to such departures, changes and revisions; and through the same means and methods,

(l) Report to and keep all the members advised of departures from and infractions of said joint price agreement, and thereupon, through the joint and several action of respondent associations and their members, bring pressure upon the members so offending to refrain from such departures and infractions and to adhere to and abide by said joint price agreement in the future.

(m) From time to time, through joint meetings of said associations and otherwise, revise said joint price agreement, but in such manner that same remains uniform in its provisions.

6. Respondent Preston Shaffer Milling Co. was a party to and engaged in all of the acts and practices set out in paragraph 5 hereof,

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and cooperated with and aided and abetted respondent associations and respondent members of said associations, in carrying out and making effective the aforesaid conspiracy and combination, and still is a party to and engages in, cooperates with, aids and abets said other respondents in said conspiracy and combination.

7. The effect and result of said combination and conspiracy and the act and things done by respondents to carry out and effectuate the same, all as hereinabove set out, has been and now is to suppress competition in the sale and distribution of flour and other cereals and feeds and feedstuffs for cattle and poultry in the States of Oregon, Washington, Idaho, and elsewhere; to hinder and obstruct the free flow of said products in the channels of interstate trade, and to deny to dealers in and consumers of said products in the aforesaid States those advantages in price and otherwise which they would obtain under conditions of normal and unobstructed competition and in the absence of the above alleged acts and practices of respondents.

#### CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the record, and the Commission having made its findings as to the facts and its conclusion that respondents, with the exception of Globe Grain & Milling Co. have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered*, That respondents, Washington Cereal Association, its officers and members, F. B. Burke, individually and as president of said association, Paul V. Knudson, individually and as secretary of said association, Albers Bros. Milling Co., Centennial Mill Co., Coast Trading Co., Crown Mills, Fisher Flouring Mills Co., Galbraith & Co., S. E. Hill and J. C. Hill, partners, doing business under the trade name and style, Hill Cereal Co., W. F. Jahn & Co., Kenworthy Grain & Milling Co., M. J. Lehman, doing business

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under the trade name and style, Lehman Bros., Magnolia Milling Co., Novelty Mills Co., Sperry Flour Co., John B. Stevens & Co., W. A. Farr, doing business under the trade name and style, Tacoma Feed Co., and The Charles H. Lilly Co., members of said association; and respondents, Oregon Cereal & Feed Association, its officers and members, F. L. Shaw, individually and as president of said association, A. V. Hemming, individually and as secretary of said association, Albers Bros. Milling Co., Columbia Milling Co., Kerr, Gifford & Co., Inc., Mason, Ehrman & Co., Northern Flour Mills Co., Portland Flour Mills Co., Rose City Flour Mills, Wasco Warehouse Milling Co., members of said association; and respondent Preston-Shaffer Milling Co.; their officers, directors, representatives and agents, acting either independently or as members of the Washington Cereal Association, Oregon Cereal & Feed Association, or any other association, in the sale and distribution of the products which they sell and distribute in interstate commerce, cease and desist from:

(1) Combining, agreeing or cooperating among themselves or with or among any of them, or others, either through correspondence, association meetings, the secretaries of the said associations, meetings of one or more of them, or otherwise, to fix, maintain or control uniform prices, discounts, terms and conditions of sale, distribution and delivery.

(2) Exchanging information among themselves or with others regarding contemplated changes in prices, discounts, terms and conditions of sale, distribution and delivery.

(3) Preparing and distributing among themselves or others of lists containing uniform prices, discounts, terms and conditions of sale, distribution and delivery which have been agreed upon.

(4) Agreeing to abide and be governed by the uniform prices, discounts, terms and conditions of sale, distribution, and delivery agreed upon by either association when selling in the territory of that association.

*It is further ordered*, That this proceeding as to respondent Globe Grain & Milling Co. be, and the same is hereby, dismissed.

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

Complaint

11 F. T. C.

IN THE MATTER OF  
CARLTON SOAP COMPANY, INC.

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

*Docket 1360. Complaint, Jan. 12, 1926—Decision, Nov. 14, 1927*

Where toilet and bath soaps manufactured in Great Britain had long enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, and were purchased by many thereof in preference to the domestic product; and thereafter a corporation engaged in the sale and distribution of toilet and bath soaps named and described a soap made for it by an American manufacturer, "British Bath," and sold the same to wholesale and retail dealers with said words conspicuously impressed upon each cake thereof and in containers resembling in general appearance those in which many British-made soaps are offered and sold throughout the United States, and bearing in large and conspicuous letters the phrase and slogan "BRITISH BATH, the bath and toilet soap de luxe," for display and sale by them to the consuming public, thus named, branded, and packed; with the capacity and tendency to mislead and deceive many of the consuming public into purchasing said soap as and for an imported British-made product, and to cause many dealers so to offer and sell the same, and with the effect of thereby placing in the hands of customer dealers the means, with or without further representations, of misleading the consuming public into purchasing said soap as and for a British product, and of diverting business from and otherwise injuring the business of competitors dealing in genuine imported British soaps and rightfully and truthfully so representing the same, and competitors dealing in domestic soaps and in no wise representing the same as imported from Great Britain or any other foreign country:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Charles Melvin Neff and Mr. Henry Miller for the Commission.*

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of toilet and bath soaps to retail dealers in various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition, in interstate commerce in that respondent for about five years preceding the complaint stamped in large and conspicuous let-

ters the designation "British Bath" upon each cake of certain soap dealt in by it, and so labeled the containers thereof, together with the words "the bath and toilet soap de luxe," notwithstanding the fact that said soap was manufactured in the United States and not in England, and was not a genuine English soap, long popular among the consuming public throughout the United States, among whom many believed bath and toilet soaps there manufactured to be superior to those made in the United States, and purchased the same in preference to the domestic product; with the capacity and tendency to mislead and deceive, and with the effect of misleading and deceiving many of the consuming public into believing said soap to have been manufactured in England and imported into the United States, and causing the purchase thereof in such belief, and with the effect of placing in the hands of others the instrument and means of committing a fraud upon the consuming public, by enabling unscrupulous dealers to represent, offer, and sell said soap as soap made in England, and with the tendency to divert and with the effect of diverting business from and otherwise injuring competitors, many of whom deal in genuine English soaps, rightfully and lawfully represented by them as such, and others of whom deal in domestic soaps without in anywise representing the same as manufactured in England; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Carlton Soap Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having failed to file an answer to said complaint, hearings were had upon due notice to respondent, and evidence and testimony was received in support of the allegations of the complaint before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon, this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Carlton Soap Co., Inc., is a corporation organized in July, 1920, and existing under and by virtue of the laws

## Findings

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of the State of New York with its principal office and place of business in the City and State of New York. It has at all times since the date of its organization been engaged in the business of selling and distributing toilet and bath soaps to wholesale and retail dealers throughout the several States of the United States, offering for sale and selling its soaps through and by means of traveling salesmen who, in respondent's employ, call upon and solicit trade from its customers and prospective customers throughout the New England, Middle West, Southern, and Pacific Coast States of the United States. In carrying on its said business and throughout the conduct thereof respondent caused its said soaps when so sold to be transported in commerce from its place of business in the city and State of New York through and into other States of the United States to the respective purchasers thereof in such other States; and in so carrying on its said business respondent has been and still is engaged in direct active competition with many individuals, partnerships, and other corporations similarly engaged in the sale and distribution of toilet and bath soaps in commerce between and among various States of the United States.

PAR. 2. Among the toilet and bath soaps sold and distributed by respondent among the various States of the United States, as set forth in paragraph 1 hereof, was a certain soap named, designated, described, and sold by respondent as "British Bath", which soap was manufactured for respondent at Camden, N. J., by an American manufacturer. Said so-called "British Bath" soap was marketed by respondent continuously for more than three years next preceding and including the year 1925. Its annual sales thereof amounted to approximately 300 gross cakes, which constituted about one-third of respondent's total volume of business. The retail prices to the consumers of said soap ranged from 18 cents to 25 cents per cake. Since the latter part of the year 1925 respondent has not marketed said so-called "British Bath" soap, but its contract with the manufacturer under which said soap was manufactured for respondent at Camden, N. J., is still in full force and effect. Respondent is in a position to resume the sale of said soap at any time, and there is no assurance that it will not again indulge in the use of the brand "British Bath" in connection with soap not manufactured in Great Britain. Each cake of said so-called "British Bath" soap when and as sold by respondent bore stamped and embedded therein in large and conspicuous letters the words "British Bath", which respondent caused to be placed thereon. Respondent also caused said soap to be packed in containers, holding 12 cakes each, upon which



it caused to be printed in large and conspicuous letters the phrase and slogan "BRITISH BATH, the bath and toilet soap de luxe". Respondent displayed, offered for sale, and sold said soap stamped and packed as above stated to its customers, wholesale and retail dealers; and in accordance with respondent's intention and in the regular course of business said soap was displayed, offered for sale, and sold to the consuming public still so stamped, packed, and branded and as, and under the name and description of, "British Bath" soap. Said packages of respondent's so-called "British Bath" soap were similar in general appearance to the typical packages or containers in which many British-made soaps are offered for sale and sold throughout the United States.

PAR. 3. Toilet and bath soaps manufactured in Great Britain or British-made soaps, have for many years enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, many of whom prefer bath and toilet soaps manufactured in Great Britain, or British-made soaps, to bath and toilet soaps manufactured in the United States. Many of the consuming public throughout the United States purchase bath and toilet soaps manufactured in Great Britain and imported into the United States in preference to bath and toilet soaps manufactured in the United States.

PAR. 4. The use by respondent of the word "British" in naming, describing, branding, and labeling its aforesaid soap as set out in paragraph 2 hereof was false and had the capacity and tendency to mislead and deceive many of the consuming public into, and to thereby cause purchasers to buy said soap in, the erroneous belief that said soap was British-made soap or soap manufactured in Great Britain and imported into the United States; whereas in truth and in fact said soap was not a British-made soap or soap manufactured in Great Britain but same was, as hereinbefore stated, manufactured wholly within the United States and by an American manufacturer.

PAR. 5. Respondent's use of the word "British" in packing, describing, branding, and labeling its soap, as set forth in paragraph 2 hereof, also had the capacity and tendency to cause many dealers to offer for sale and sell said soap to the consuming public as and for British-made soap or soap manufactured in Great Britain; and respondent thereby placed in the hands of its customer-dealers an instrument and the means by which they could, with or without further representations, mislead the consuming public into purchasing said soap as and for British-made soap.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who dealt in and sold in active competi-

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tion with respondent bath and toilet soaps manufactured in Great Britain and imported into the United States and who rightfully and truthfully represented said soaps to be British-made or soaps manufactured in Great Britain. There are also among said competitors of respondent many who dealt in and sold in competition with respondent bath and toilet soaps manufactured in the United States and who in nowise represented that such soaps were manufactured in or imported from Great Britain or any other foreign country. The use by respondent of the words "British Bath" in connection with its soap manufactured in the United States, as hereinbefore set forth, tended to and did divert trade from, and otherwise injured the business of, said competitors and were to the prejudice of the public.

## CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings were to the injury and prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence in respect thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That respondent Carlton Soap Co., Inc., its officers, directors, agents, servants, and employees cease and desist from using the word "British" or word or words of similar import, alone or in conjunction with the word "bath" or other word or words, in describing, advertising, branding, labeling, or otherwise representing any soap or similar product sold and distributed by respondent in interstate commerce, unless such soap was manufactured in Great Britain.

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

## Syllabus

IN THE MATTER OF  
**WHOLESALE GROCERS' ASSOCIATION OF NEW  
 ORLEANS, ITS OFFICERS AND MEMBERS**

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

*Docket 1343. Complaint, Aug. 6, 1925—Decision, Nov. 17, 1927*

Where an association of wholesale grocers; and the officers and members thereof; in pursuance of an agreement, understanding, or conspiracy to confine distribution of the products dealt in to the so-called regular and legitimate channels of trade, i. e., manufacturer to wholesaler to retailer to consumer, and to prevent irregular and illegitimate dealers, i. e., dealers doing both a wholesale and retail business, or a retail business only, and purchasing enterprises of retail dealers buying the products concerned in wholesale quantities directly from the manufacturer and producer, from so obtaining such products, and thereby to suppress competition;

- (a) Held meetings for the interchange of information and the discussion and adoption of plans and measures for the carrying out of their undertaking;
- (b) Notified manufacturers and producers thereof, and its purposes, and sought to procure and procured many of them to abide by and adhere thereto;
- (c) Sought to compel and compelled many of the aforesaid manufacturers and producers, by boycott and threats thereof, and by other means of intimidation and coercion, to sell their products only to regular and legitimate wholesalers, thereby practically confining their sales to members of the association, and to refrain from selling the same to irregular and illegitimate dealers;
- (d) Sought and secured names of irregular and illegitimate dealers and reported the same to the aforesaid manufacturers and producers, and induced and compelled the same by the means and methods above set forth to cease dealing with and refuse to open new accounts with such dealers;
- (e) Sought and ascertained instances of sales by said manufacturers and producers to irregular and illegitimate dealers, together with the names of the vendees, by means of espionage at wharves, freight stations, warehouses, and other places, and sought to compel and compelled them by boycott and threats thereof to refrain from selling and supplying their products to said dealers thereafter; and
- (f) Sought to induce and induced and compelled many brokers and agents, by abusive language, intimidation, threatened boycott, and other means of coercion to refrain in the future from soliciting business from and supplying products to irregular and illegitimate dealers, and induced and compelled many of them to urge and advise their principals so to do, many of whom thereafter did so refrain;

With the result that certain outlets in the territory concerned for the direct and immediate sale of groceries by manufacturers and producers in other States were closed; commerce was regulated by eliminating therefrom so-

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called irregular and illegitimate dealers, and manufacturers and producers selling thereto, and by restricting such commerce to those manufacturers as would and did abide by and aid the aforesaid plan and limitation; competition in such territory was substantially lessened and suppressed and the natural flow of commerce in the channels of interstate trade was obstructed; and dealers in and consumers of the commodities involved in such territory were denied those advantages in price and otherwise which they would obtain from the natural flow of commerce in such commodities under conditions of free and unobstructed competition;

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. A. R. Brindley* for the Commission.

*McCloskey & Benedict*, of New Orleans, La., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Wholesale Grocers' Association of New Orleans, a voluntary unincorporated association; its officers; and the members thereof, purchasing the products dealt in by them from manufacturers and producers located for the most part in States other than Louisiana (which manufacturers and producers in many instances negotiated the sale to respondent members and other dealers through brokers and other representatives in New Orleans), and naturally and normally in competition with one another in price and otherwise "but for the matters and things hereinafter alleged and set out," and in competition with others engaged in the purchase of groceries and allied products from the aforesaid manufacturers and producers; with uniting in a common course of action and cooperating and confederating together to confine distribution of groceries and allied products in Louisiana and neighboring States to the so-called regular legitimate channels of trade, to prevent irregular and illegitimate dealers from obtaining supplies directly from such manufacturers and producers, and thereby to suppress competition and especially competition in price in the aforesaid territory.<sup>1</sup>

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<sup>1</sup> According to the complaint "respondents regard and designate the channel of distribution commencing with the manufacturer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public as the only regular and legitimate channel of distribution of aforesaid products in which they deal and which is by them regarded and denominated the regular and legitimate channel of distribution. Channels of distribution originating with the manufacturer which do not flow through the wholesale dealer, but go direct to dealers doing both a wholesale and retail business or a retail business only, and to purchasing enterprises of retail dealers banded together to buy said products in wholesale or jobbing quantities directly from the manufacturer and producer, are by respondents regarded and designated as irregular and illegitimate channels of trade, and aforesaid dealers acquiring goods through said so-called illegitimate channels are by respondents regarded and designated irregular and illegitimate dealers."

“To carry out aforesaid mutual purposes respondents by joint action of various respondent members, have done and still do, among others, the following acts and things”:

Hold meetings for the interchange of information and the discussion and adoption of plans and measures;

Notify manufacturers and producers of their purpose and undertake and seek to induce and compel them by persuasion, intimidation and coercion, boycott and threats thereof, to refrain from selling to irregular and illegitimate dealers;

Seek and secure the names of the latter and report the same to manufacturers and producers and induce and compel them to refrain from dealing with dealers so reported;

By means of espionage at wharves, stations, and other places seek and ascertain instances of sales to irregular and illegitimate dealers and bring pressure, as above set forth, upon manufacturers and producers to refrain from further sales to said dealers;

Through their committee advise manufacturers' brokers and agents, and induce and compel them, by means of abusive language and other means of intimidation and coercion, as above set forth, to refrain from further supplying or dealing with objectionable dealers as above set forth, and also to advise and urge their principals to adopt the same course;

The effect and result of the above alleged acts and things done by respondents, as charged by the complaint, “has been and now is to close certain of the outlets within aforesaid territory served by respondents for the direct and immediate sale by manufacturers and producers in other States of groceries and allied products shipped by them into said territory; to regulate such commerce by eliminating therefrom said so-called irregular and illegitimate dealers and manufacturers and producers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by, adhere to and aid the plan and limitation of trade hereinbefore described; to substantially lessen, hinder, and suppress competition in the sale and distribution of groceries and allied products in the aforesaid territory served by respondents; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said territory those advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition; wherefore, said acts and practices are all to the prejudice of the public, of respondents' competitors and of manufacturers and dealers not complying with and adhering to the aforesaid plan and limitation of trade, and con-

stitute unfair methods of competition in commerce within the meaning and intent of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914".

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon Wholesale Grocers' Association of New Orleans and on each and all of the parties named in the complaint and in the caption hereof, and charged them with using unfair methods of competition in commerce in violation of the provisions of said act. Thereupon all the respondents named in the complaint and in the caption hereof<sup>2</sup> entered their appearance by their attorneys, filed their answers to the complaint, and admitted certain allegations therein and denied other allegations thereof.

Thereafter the respondents filed herein an amended or supplemental answer which is as follows:

No. 1343

In the matter of Wholesale Grocers' Association of New Orleans, Its Officers and Members.	}	Before the Federal Trade Commission, United States of America.
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And now before this Honorable Commission, under the above entitled and numbered cause, again come the Wholesale Growers' Association of New Orleans, its officers and members, and particularly the individuals referred to in its original answer, and for supplemental answer, say:

"That your respondents, the said Wholesale Grocers' Association of New Orleans, and its officers and members thereof, and the original defendants herein impleaded, do hereby formally withdraw the original answer by them filed, desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding, and hereby formally consent that the Commission may make, enter and serve upon your respondents and each of them, an order to cease and desist from the violations of the law alleged in the complaint; all in conformity to the law in such cases made and provided, and

<sup>2</sup> See pars. 1 and 2 of findings for enumeration.

agreeably to paragraph 2 of article 3 of the Rules of Practice and Procedure before the Federal Trade Commission, as amended June 30, 1927. Wherefore, they and each of them pray accordingly and for general relief."

The answer of the respondents, as above set out, was thereupon regularly considered and understood by the Commission and the Commission duly ordred that the respondents be allowed to withdraw their original answer in this proceeding, and that such amended answer be received and filed and made a part of the record herein as the answer of the respondents to the complaint. Thereafter this proceeding came on for decision and the Commission, having duly considered the record, now makes its report in writing and states its findings as to the facts and its conclusions therefrom in conformity to law.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Wholesale Grocers' Association of New Orleans is a voluntary unincorporated association of individuals, partnerships, and corporations with their respective places of business in the city of New Orleans, State of Louisiana, and is engaged in selling groceries and allied products at wholesale to retail dealers located at points in the State of Louisiana and in neighboring States. Said members are banded together in said association for the purpose of promoting and protecting their common interests and business affairs. George P. Thompson, C. W. Mackie, W. B. Sirera, and H. S. Herring are respectively president, first vice president, second vice president, and secretary of said association.

PAR. 2. The following named respondents are the members of said association: H. T. Cottam & Co., a corporation organized under the laws of the State of Louisiana; Schmidt & Zeigler, Ltd., a corporation organized under the laws of the State of Louisiana; George A. Weigand and A. C. St. Mark, partners doing business under the trade name and style of G. A. Weigand & Co.; J. & N. Schwabacher, a corporation organized under the laws of the State of Louisiana; Kohlman Bros. & Sugerma, Inc., a corporation organized under the laws of the State of Louisiana; Hugh McCloskey, Joseph McCloskey, and Harry B. McCloskey, partners doing business under the trade name and style, McCloskey Bros.; S. Pfeifer and A. B. Newman, partners doing business under the trade name and style of S. Pfeifer & Co.; H. Lochte & Co., a corporation organized under the laws of the State of Louisiana; Weiss-Frank & Co., a corporation organized under the laws of the State of Louisiana; Woodward, Wight & Co., a corporation organized under the laws of the State

of Louisiana; Charles Dennery, Inc., a corporation organized under the laws of the State of Louisiana; Interstate Wholesale Grocers, Inc., a corporation organized under the laws of the State of Louisiana; A. Adler & Co., Inc., a corporation organized under the laws of the State of Louisiana; Goodman-Beer & Co., a corporation organized under the laws of the State of Louisiana; and Albert Mackie Co., a corporation organized under the laws of the State of Louisiana. Said named members are hereinafter referred to as respondent members.

Respondents Harry Goodman, Harry Hyman, George A. Weigand, Charles W. Zeigler, E. J. Domerque, and C. P. Judkins are respectively officers of or financially interested in sundry of above-named members of respondent association.

PAR. 3. Respondent members purchase aforesaid products in which they deal directly and immediately from manufacturers and producers thereof located for the most part in States other than the State of Louisiana, and said manufacturers and producers ship said products when so purchased from their respective places of business in such other States to respondent members in the State of Louisiana. In many instances said manufacturers and producers negotiate sales of aforesaid commodities to respondent members and to other dealers located in said territory served by respondent members, through brokers and other representatives located in said city of New Orleans, and who act as agents for said manufacturers and producers in the premises. In the course and conduct of their aforesaid respective businesses respondent members but for the matters and things hereinafter alleged and set out would be naturally and normally in competition with each other in price and otherwise, and are in such competition with other individuals, partnerships, and corporations also engaged in the purchase of groceries and allied products from aforesaid manufacturers and producers and the resale thereof in the State of Louisiana. Respondents regard and designate the channel of distribution commencing with the manufacturer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public as the only regular and legitimate channel of distribution of aforesaid products in which they deal and which is by them regarded and denominated the regular and legitimate channel of distribution. Channels of distribution originating with the manufacturer which do not flow through the wholesale dealer, but go direct to dealers doing both a wholesale and retail business or a retail business only, and to purchasing enterprises of retail dealers banded together to buy said products in wholesale or jobbing quantities directly from the manu-



facturer and producer, are by respondents regarded and designated as irregular and illegitimate channels of trade, and aforesaid dealers acquiring goods through said so-called illegitimate channels are by respondents regarded and designated irregular and illegitimate dealers.

PAR. 4. For a period of about five years last past, respondents have united in a common course of action and have cooperated and confederated together and with each other to confine the distribution of groceries and allied products in aforesaid territory served by respondent members, to said so-called regular and legitimate channels of trade, and to prevent said so-called irregular and illegitimate dealers from obtaining groceries and allied products directly from such manufacturers and producers thereof, and thereby to suppress competition, and especially competition in price in the sale of said groceries and allied products in said territory served by respondent members. To carry out such mutual purposes respondents by joint action of various respondent members, have done and still do, among others, the following acts and things:

(a) Hold meetings for the interchange of information concerning and the discussion and adoption of plans and measures for the carrying out of their said undertaking.

(b) Notify aforesaid manufacturers and producers of said undertaking and its said purposes and seek to and do procure many said manufacturers to abide by and adhere thereto.

(c) By threats of boycott and boycott, and by other means of intimidation and coercion, seek to and do compel many aforesaid manufacturers and producers to sell the groceries and allied products in which they deal only to said so-called regular and legitimate wholesale dealers, thereby practically confining such sales to the members of respondent association, and to refrain from selling said products to said so-called irregular and illegitimate dealers.

(d) Seek for and secure the names of so-called irregular and illegitimate dealers and report said names to aforesaid manufacturers and producers, and by the means and methods in these specifications above set out, induce and compel said manufacturers to cease dealing with and to refuse to open new accounts with the dealers so reported.

(e) Through and by means of espionage at wharves, docks, freight stations and warehouses of common carriers, and at other places at which merchandise is unloaded, discharged, stored and delivered, and by and through other means, respondents seek for and ascertain instances of sales of said products by said manufacturers and producers to said so-called irregular and illegitimate dealers, together with the names of such vendees, and thereupon by threats of boy-

cott and by boycott seek to and do compel such manufacturers to refrain from selling and supplying said products to said dealers in future.

(f) In the month of January, 1924, a committee composed of respondents George P. Thompson, C. W. Mackie, W. B. Sirera, Harry Goodman, Charles W. Zeigler, E. J. Domerque, C. P. Judkins and Harry Hyman, acting for and on behalf of respondent association and its members, called before said committee many aforesaid brokers and other agents of said manufacturers and producers, and thereupon by means of abusive language, intimidation and other means of coercion, including threats of boycott, sought to and did induce and compel many of said brokers and agents to refrain in future from soliciting business from, and supplying aforesaid products to, said so-called irregular and illegitimate dealers, and induced and compelled many of said brokers and agents to urge and advise their said principals to refrain in future from selling and supplying said products to said so-called irregular and illegitimate dealers, with the result that many said principals have since said time refrained from so selling and supplying said products.

(g) Respondents use other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR. 5. The effect and result of the above acts and things done by respondents has been and now is to close certain of the outlets within aforesaid territory served by respondents for the direct and immediate sale by manufacturers and producers in other States of groceries and allied products shipped by them into said territory; to regulate such commerce by eliminating therefrom said so-called irregular and illegitimate dealers and manufacturers and producers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by, adhere to and aid the plan and limitation of trade hereinbefore described; to substantially lessen, hinder, and suppress competition in the sale and distribution of groceries and allied products in the aforesaid territory served by respondents; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said territory those advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition.

#### CONCLUSION

The acts, methods, and practices of the respondents as set forth in the foregoing findings as to the facts constitute unfair methods

of competition in commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding was heard by the Federal Trade Commission upon the complaint duly issued by the Commission and on the answer of the respondents thereto. Thereupon the Commission made its report in writing in which it stated its findings as to the facts and its conclusion that the respondents have been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

*Therefore, it is ordered,* That the Wholesale Grocers' Association of New Orleans, its officers and members and all other respondents named in the complaint and in the findings as to the facts, and their agents, representatives and employees, forthwith cease and desist from following a common course of action pursuant to any agreement, understanding, combination, or conspiracy among themselves or with persons not parties hereto for the purpose or with the effect, directly or indirectly, of lessening competition in the course of interstate trade or commerce in groceries or allied products by any of the following means or methods, viz:

(a) By holding meetings for the interchange of information concerning, and the adoption and discussion of plans and measures for, the carrying out the above described undertakings, or similar undertakings;

(b) By notifying manufacturers and producers of groceries or allied products of such undertakings and their purpose and effect, and by seeking to procure or procuring any manufacturers or producers to abide by such agreements or undertakings or similar agreements or undertakings on the part of respondents or any of them;

(c) Seeking by boycotts and by other means of intimidation and coercion to compel manufacturers and producers of groceries and allied products to sell the groceries and products in which they respectively deal only to wholesale dealers who are classified by respondents or any of them as so-called regular and legitimate dealers in groceries and allied products, and seeking to confine sales to the members of the respondent association, and seeking to restrain such manufacturers and producers from selling their respective products to so-called irregular and illegitimate dealers;

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(d) Seeking or securing the names of so-called irregular or illegitimate dealers in groceries and allied products, and reporting the names of such dealers to manufacturers and producers of groceries and allied products, and inducing or compelling such manufacturers and producers to cease dealing with or to refuse to deal with such dealers;

(e) By espionage at wharves, docks, freight stations and warehouses, and at other places at which merchandise is unloaded, discharged, stored and delivered, for the purpose of ascertaining sales of groceries and allied products by manufacturers and producers thereof to so-called irregular and illegitimate dealers, and by threats of boycott or by boycotting, seeking to induce manufacturers to refrain from selling or supplying such products to such dealers;

(f) By using any other cooperative, mutual or individual means to carry out any of the methods or undertakings herein described with the intent or effect of lessening competition in interstate trade or commerce in groceries and allied products.

*It is further ordered,* That the respondents, within 60 days from the date of this order, file with the Federal Trade Commission a report in writing stating the manner in which compliance with this order has been made.

## Complaint

## IN THE MATTER OF

MORTON F. BAUM AND MARCUS BAUM, COPARTNERS,  
DOING BUSINESS UNDER THE TRADE NAME AND  
STYLE MICHIGAN SAMPLE FURNITURE CO.

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

*Docket 1150. Complaint, Apr. 5, 1924—Decision, Nov. 28, 1927*

Where a firm engaged as retail furniture dealers in the sale and distribution of household furniture, and selling their furniture at substantially prevailing retail prices, including the costs and profits of the manufacturers, and of the wholesalers from whom they purchased said furniture, as well as their own costs and profit, and neither manufacturing any of such furniture nor selling the same direct from factory to consumer, nor eliminating middlemen who customarily participate in the marketing of furniture from manufacturer to retailer,

- (a) Represented, described, advertised, offered and sold large quantities of furniture made of woods other than walnut, chiefly gumwood, stained and finished so as to resemble walnut in general appearance and color, as and for walnut, with the effect of causing many of the consuming public to purchase the same as and for genuine walnut furniture; and
- (b) Represented in their advertising matter that they were selling their furniture at prices substantially lower than prevailing retail prices, and in some instances at manufacturer's cost, and direct from the manufacturer at wholesale prices;

With the capacity and tendency to mislead and deceive the consuming public into purchasing such furniture in reliance upon the truth of the aforesaid representations, and with the effect of so doing in the case of a substantial number, and of unfairly diverting trade from competitors engaged in the sale of genuine walnut furniture, under truthful representations, competitors engaged in the sale of furniture finished to resemble the same, but in nowise misrepresented, and competitors engaged in the sale and distribution of furniture at prevailing retail prices without representing the same as offered at less than such prices or at prices eliminating all profits and equal to manufacturing costs only, or as sold and distributed direct from manufacturer to consumer:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Henry Miller* for the Commission.

*Mr. Samuel J. Houston*, of Philadelphia, Pa., for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual,<sup>1</sup> engaged in the sale of furniture at retail to

<sup>1</sup> See second paragraph of "Report, Findings," etc., below.

## Findings

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purchasers in various States, and with place of business in Philadelphia, with advertising falsely or misleadingly in misrepresenting business status or affiliation, and product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, purchasing the furniture dealt in by him from manufacturers and wholesalers and reselling the same to the consuming public at a profit and at substantially prevailing retail prices, made such false and misleading statements and representations in his advertisements in newspapers of general circulation, as "Buy direct at wholesale prices," "We represent most of the good furniture factories of the country," "This is your chance to get a new bedroom suite at the factory cost of manufacturing," with the capacity and tendency to mislead and deceive many of the public into believing that respondent sold furniture at prices substantially below prevailing retail prices, and eliminated the profits of one or more middlemen, and in some instances, all profits, and to cause many to purchase the same in such belief.

Respondent further, as charged, in his aforesaid advertisements set forth depictions of certain furniture offered by him in connection with the word "Walnut," in a manner calculated to mislead and deceive and with the capacity and tendency of misleading and deceiving the public into believing the furniture so depicted, made of wood other than walnut, though imitating walnut, to be genuine walnut wood.

The aforesaid alleged acts and practices were, as alleged, all to the prejudice of the public and respondent's competitors, of whom there are a number of retail dealers selling their furniture at prevailing retail prices without in any manner representing the same as offered at substantially lower prices or at prices eliminating all profits and equaling cost of manufacture only, and of whom there are a number dealing in genuine walnut furniture and a number dealing in furniture made of other woods and not in imitation of walnut, who do not represent the same as made of walnut.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon respondent Morton F. Baum, an individual doing business under the trade name and style Michigan Sample Furniture Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Answer to said complaint was duly filed by Morton F. Baum and Marcus Baum, copartners doing business under the name and style of Michigan Sample Furniture Co., as respondents; and it appearing that said copartners are the owners and operators of the business of said Michigan Sample Furniture Co., Morton F. Baum and Marcus Baum entered of record herein their consent and agreement that said complaint may be considered as having been amended as of the date thereof, so that the parties respondent therein shall by its terms be "Morton F. Baum and Marcus Baum, doing business under the trade name and style of Michigan Sample Furniture Co.," in lieu of "Morton F. Baum, an individual doing business under the trade name and style Michigan Sample Furniture Co.," and that wherever in said complaint the respondent or Morton F. Baum is mentioned or referred to, it shall in lieu thereof be considered as mentioning or referring to Morton F. Baum and Marcus Baum, copartners doing business under the trade name and style Michigan Sample Furniture Co.; that wherever in said complaint the business of said Michigan Sample Furniture Co. is referred to, it may be considered as the business of Morton F. Baum and Marcus Baum; that said complaint as amended may be considered as having been duly and legally issued by the Federal Trade Commission on April 5, 1924, and to have been duly and legally served upon said Morton F. Baum and Marcus Baum as parties respondent therein; that said answer filed herein by Morton F. Baum and Marcus Baum may be considered as the answer of said parties respondent to said complaint as amended, and that the Federal Trade Commission may proceed to final conclusion and issue its orders herein upon said complaint as amended. A hearing for the taking of testimony was held before an examiner of the Federal Trade Commission, theretofore duly appointed, at which hearing a stipulation of facts in lieu of testimony, agreed upon by and between respondents and the attorney for the Commission, was entered of record, whereupon the privileges of filing briefs and presenting oral argument before the Commission was waived by counsel.

And thereupon this proceeding came on for decision; and the Commission having duly considered the record and being now fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom:

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondents Morton F. Baum and Marcus Baum are and have been for more than five years last past copartners trading under the name and style Michigan Sample Furniture Co., and engaged as retail furniture dealers in the business of selling and dis-

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tributing household furniture to the consuming public with their salesrooms and place of business in the city of Philadelphia, State of Pennsylvania. In carrying on said business respondents solicit trade from, and offer for sale and sell their furniture at retail to, the general consuming public through and by means of advertising leaflets, circulars, and advertisements published by them from time to time in daily newspapers of general circulation throughout several States, and also by means of credit agents, commonly known as purchasing agents, who solicit orders for respondents' furniture from the consuming public. Respondents cause their furniture, when so sold, to be transported in commerce from their said place of business in Philadelphia, Pa., through and into other States, particularly the States of Delaware and New Jersey, to the respective purchasers thereof in such other States; and in so carrying on their business they are, and at all times herein mentioned have been, engaged in interstate commerce, and in direct, active competition with many other individuals, partnerships, and corporations engaged in the business of selling and distributing household furniture in commerce among the several States and to the consuming public of the States of Pennsylvania, New Jersey, and Delaware. Respondents spend annually about \$6,000 in advertising their furniture to the public, and their gross annual sales of furniture amount to approximately \$85,000.

PAR. 2. In the course and conduct of their business as aforesaid, respondents represented, described, advertised, offered for sale and sold large quantities of furniture as and for "Walnut," and thereby caused many of the consuming public to believe said furniture to be composed of walnut wood, and to buy said furniture in such belief; whereas, in truth and in fact, said furniture was not composed of walnut wood, but was made of woods other than walnut, chiefly gumwood, stained and finished so as to resemble walnut in general appearance and color.

PAR. 3. In the course and conduct of their business respondents also represented to their customers and prospective customers, through their aforesaid advertising matter, that they, the respondents, were selling their said furniture at prices substantially less than prevailing retail prices, and in some instances, at prices equal in amount to the cost of manufacturing said furniture; that they were selling and distributing their furniture direct from the manufacturers thereof at wholesale prices, whereas, in truth and in fact, respondents sold said furniture at retail prices substantially the same as the retail price prevailing in the trade for furniture of the kind and quality similar to the furniture dealt in and sold by respondents; and respondents' prices included the costs and profits of the manufacturers and the



wholesalers from whom respondents purchased their furniture as well as the cost and a profit to respondents. Respondents did not manufacture any of their furniture, and the sale and distribution of their furniture was not direct from factory to consumer and did not eliminate the middlemen who customarily participate in the marketing of furniture from the manufacturer to the retailer.

PAR. 4. The representations made by respondents, as set forth in paragraphs 2 and 3 hereof, were misleading, and had the capacity and tendency to mislead and deceive the consuming public into the belief that said representations were and are true in fact, and thereby to cause persons to purchase said furniture in such erroneous belief; and in fact misled and deceived a substantial number of persons into purchasing their furniture in the belief that such representations were true.

PAR. 5. There are a number of competitors of respondents mentioned in paragraph 1 hereof who sell and distribute their furniture in interstate commerce at prevailing retail prices, and who do not in any manner represent that they offer for sale and sell their furniture at prices substantially less than prevailing retail prices, or at prices eliminating all profits and equal to the costs of manufacturing only, or that their furniture is sold and distributed direct from manufacturer to consumer. There are also many competitors of respondents who sell walnut furniture truthfully represented as walnut, and also many who sell furniture finished so as to resemble walnut but who in no wise represent that said furniture is, in fact, made of walnut. Respondents' above-mentioned acts and practices tend to and do unfairly divert trade from said competitors and are to the prejudice and injury of the public.

#### CONCLUSION

The acts and things done by respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission as amended by stipulation of respondents, the answer of respondents thereto, the testimony and agreed statement of facts, and the Commission having made its find-

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ings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That respondents Morton F. Baum and Marcus Baum, their agents, representatives, servants, and employees, cease and desist in connection with the sale and distribution of furniture in interstate Commerce:

(a) From advertising, labeling, describing, offering for sale, and selling as "walnut" any such furniture the exposed parts of which consist, in whole or in part, of wood other than walnut.

(b) From falsely or misleadingly representing in any manner whatsoever that respondents are the manufacturers of any such furniture, or that any such furniture so sold comes directly from the manufacturer to the purchaser, or that the sale price of any such furniture is the wholesale price thereof or is only equal to the cost of manufacturing same.

*It is further ordered,* That respondents Morton F. Baum and Marcus Baum shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

## Complaint

IN THE MATTER OF  
SCHOOL OF APPLIED ARTCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1485. Complaint, Oct. 19, 1927—Decision, Nov. 28, 1927*

Where a corporation engaged in conducting a correspondence school in applied art; in its advertisements, correspondence, and business literature,

- (a) Represented that it would give a special or extra discount of 20 per cent from the regular price of any of its courses to pupils enrolling within a stated limited time, the fact being that the purported reduced prices were its regular, usual prices; and
- (b) Represented that it would give free of charge to pupils taking any of its courses of instruction, an artist's outfit of tools, materials and appliances, to be used in connection with its courses of instruction, and to pupils completing its courses, a set of instruction books covering and relating to the same, the fact being that in both cases the price of the outfit and books was included in the price demanded and received by it for its said courses;

With the capacity and tendency to cause many of the public to subscribe for and purchase its courses in reliance upon the truth of the aforesaid representations, and to take its courses in preference to those of competitors, who do not make misrepresentations as to reductions in prices or the giving of outfits of tools and appliances, books or other things, with their courses, free of charge, and thus to divert business from and otherwise injure and prejudice such competitors:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Michigan corporation, engaged in giving courses of instruction in applied art by correspondence through the mail, and with principal office and place of business in Battle Creek, with advertising falsely or misleadingly in misrepresenting prices and in offering falsely as free, commodities or services charged for in price demanded, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, caused to be set forth in its advertisements, correspondence and business literature, false and deceptive statements and representations that it would give a special discount of twenty per cent from the regular price of any of its courses to pupils enrolling therefor in a stated limited time, would give free of charge to pupils taking any of its courses "an artist's outfit of tools, materials and appliances to be used in and about pursuing the courses of instruction taken", and that upon completion of any of such courses, it would give to the pupil free of charge a set of instruction books relating to the course so completed, the fact being that the prices at which it sells its courses, after deducting the purported discounts, are its regular prices, and that the outfits and instruction books represented as given free are included in the regular price for the course.

Such statements and representations, as alleged, had the capacity and tendency to cause many of the public to subscribe for and purchase its courses in reliance upon the aforesaid representations and to cause many of the public to subscribe for and purchase said courses in preference to those of competitors, who do not make such representations, and thus to divert business from and otherwise to injure and prejudice such competitors; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, School of Applied Art, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent filed its answer to the complaint and in said answer states that it waived hearing on the charges set forth in the complaint and refrained from contesting the proceeding.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and being fully advised in the premises, pursuant to subdivision (2) of Rule III of the Rules of Practice heretofore adopted by the Commission, makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Michigan with its principal office and place of business in the city of Battle Creek in said State. It is engaged in the business of giving courses of instruction in applied art by correspondence through the mail to persons hereinafter referred to as pupils residing at points in various States of the United States. In the course of its said business and in order to secure pupils therefor respondent causes advertisements to be inserted in magazines, periodicals and other publications of general circulation throughout the United States and in various sections thereof and sends to prospective pupils booklets, pamphlets, leaflets, and other like business literature describing its said courses of instruction and setting forth the prices for same and the conditions under which same are offered. Upon securing pupils through said means for its said courses of instruction respondent sends by mail from its said place of business in the city of Battle Creek, Mich., to such pupils at their respective places of residence in various States of the United States written lessons, instructions, and textbooks to be used by said pupils in and about pursuing and studying said courses of instruction, in consideration of which said pupils pay and remit to respondent certain agreed sums of money. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations also engaged in giving courses of instruction in applied art and in other arts, sciences and branches of knowledge by correspondence through the mails.

PAR. 2. In its aforesaid advertisements, correspondence, and business literature respondent causes to be set forth false, misleading and deceptive statements and representations to the effect:

(a) That respondent will give a special or extra discount of 20 per cent from the regular price of any of its said courses to pupils enrolling for any such course within a stated limited time. In truth and in fact said purported less prices at which said courses are thus offered are the regular prices of respondent's said courses, respectively, and said regular prices never have been and are not now greater in amount than said purported reduced prices.

(b) That respondent will give free of charge to pupils taking any of respondent's said courses of instruction an artist's outfit of tools, materials and appliances to be used in and about pursuing the courses of instruction taken. In truth and in fact said outfit is not given free of charge by respondent to its pupils but the price of said outfit is included in the price demanded and received by respondent for each of its said courses of instruction, respectively.

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(c) That upon completion of any of respondent's said courses of instruction respondent will give to the pupil free of charge a set of instruction books covering and relating to the course of instruction so completed. In truth and in fact said set of books is not given by respondent to the pupil free of charge but the price of such set of books is included in the price demanded and received by respondent for each of its said courses of instruction, respectively.

PAR. 3. Aforesaid false and misleading statements and representations concerning its said courses of instruction all as in paragraph 2 hereof set out have the capacity and tendency to cause many of the public to subscribe for and purchase respondent's said courses in the belief that said representations are true.

PAR. 4. There are among competitors of respondent referred to in paragraph 1 hereof many who do not, like respondent, make false and misleading statements and representations to the effect that the prices charged for said competitors' courses of instruction are reduced prices when such is not the case, or that said competitors give free with their said courses of instruction outfits of tools and appliances, books or other things when such is not the case. Respondent's acts and practices as found in paragraph 2 hereof have the tendency and capacity to cause many of the public to subscribe for and purchase respondent's said courses of instruction in preference to the courses offered by said competitors. Respondent's said acts and practices thus tend to divert business from and otherwise to injure and prejudice said competitors.

#### CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

*It is now ordered,* That the respondent, School of Applied Art, its officers, agents, and employees do cease and desist:

(1) From representing in advertisements, correspondence, or otherwise that respondent's courses of instruction or any of them are offered at a less price than the price therefor which the respondent usually receives, when such is not the fact; or, in any manner misrepresenting the regular and usual price of any such course of instruction.

(2) From representing in its advertisements, correspondence or otherwise that respondent gives or will give free of charge tools, appliances, books or other articles when in fact such articles are regularly included in the price of a course of instruction.

*It is further ordered,* That the respondent, School of Applied Art, shall within 30 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

## IN THE MATTER OF

## LEROY A. KLING, JOHN E. WEDDELL, WILLIAM R. DURGIN, CECIL WIDDEFIELD, COPARTNERS DOING BUSINESS UNDER THE TRADE NAMES AND STYLES DR. EAGAN MANUFACTORY, DR. S. J. EAGAN, DR. EAGAN LABORATORY, PHARMACEUTICAL PRODUCTS, LTD.; KLING-GIBSON COMPANY

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

*Docket 1352. Complaint, Oct. 23, 1925—Decision, Dec. 16, 1927*

Where a firm engaged in the sale of toilet preparations, purchased by it from manufacturers who prepared and compounded the same according to their own formulae, and neither associated in any way in the conduct of its business with a physician, nor operating any factory or laboratory whatsoever, and doing business under the trade names and styles "Dr. Eagan Manufactory", "Dr. S. J. Eagan", "Dr. Eagan Laboratory" and "Pharmaceutical Products, Ltd."; and a corporation engaged in the preparation and publication of its advertising, and in extending it financial aid, and sharing in its profits; in advertising said preparations in booklets, leaflets, trade literature, magazines, and periodicals of general circulation,

- (a) Featured the aforesaid trade names;
- (b) Falsely represented such preparations as made in accordance with the private formula of a Dr. S. J. Eagan, represented as a person of great ability, experience, and standing in his profession, and as compounded in their factory and laboratory under his direct supervision;
- (c) Falsely represented, among other things, that certain gloves offered and sold as "Dr. Eagan's Magic Gloves", were medicated with a marvelous solution prepared by such doctor and whitened, softened, etc., the hands through one night's wearing, and were renewed as to their aforesaid alleged virtues through the application thereto of a solution named by them "Rémedicator", and made false and misleading representations of a similar tenor concerning preparations respectively designated as "Dr. Eagan's Hand Tissue Builder", and "Dr. Eagan's Skin Whitener";
- (d) Represented that their "Dr. Eagan's Medicated Soap" contained the same ingredients as the gloves and skin whitener, and that their "Facial Film" contained "Neoplasma", worth \$5,000 a pound, and adrenalin, of a similar value, and that said facial film when applied to the face would, within a few hours or minutes, remove all wrinkles, blemishes, traces of age, etc., and renovate the face to a condition of youthful beauty by rebuilding the skin structure, and flesh beneath, the fact being that the first-named product contained no medicament whatsoever, that the so-called "Neoplasma" was purely fictitious, that adrenalin was worth about \$16 a pound, and that said facial film would not produce the results claimed for it; and



(e) Represented that their "Dr. Eagan's Lotion Depilatory" would remove all hair and traces thereof from the body by a process of dissolving the same, and contained no sulphide or other harming drug, the fact being that it only temporarily removed hair down to the surface of the skin and that the principal and active agent thereof was sulphide of hydrogen; With the intent to deceive and defraud the public and induce the purchase of said preparations in reliance upon such assertions and representations, and with the effect of so doing, and of diverting business from and otherwise injuring and prejudicing competitors engaged in the sale of toilet articles to dealers and the consuming public, without in any wise misrepresenting their origin, or nature or the results to be obtained from the use thereof:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Henry Miller* for the Commission.

*McCormick, Kirkland, Patterson & Fleming*, of Chicago, Ill., and *Mr. Vernon W. Van Fleet*, of Washington, D. C., for respondents.

#### SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent partners, engaged in the sale of cosmetics and other toilet preparations, and respondent Kling-Gibson Co., an Illinois corporation, with principal office and place of business in Chicago, and engaged in the preparation and publication of the aforesaid firm's advertising (in addition to being guarantor of its credit and associated with it otherwise through financial aid and a share in its profits), with advertising falsely or misleadingly in misrepresenting the composition and nature of the preparations advertised and with using misleading trade name, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, doing business, in the case of the partnership, under such trade names and styles as "Dr. Eagan Manufactory," "Dr. J. S. Eagan," and "Pharmaceutical Products, Ltd.," featured such names in all their advertisements, together with numerous false, fraudulent, and misleading statements and representations concerning their products, with the intent of deceiving and defrauding the public and inducing the purchase of the articles advertised by them in reliance upon such assertions and representations.

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Said statements and representations, included, among others, the following:

That all of the preparations, with the exception of one, were manufactured in accordance with a private formulæ of a purported Dr. S. J. Eagan, represented as a physician of great ability, high standing, etc., and were compounded in the factory and laboratory operated by them, under said doctor's direct supervision, the fact being that no physician was connected in any way with respondent's business and that respondents operated no factory or laboratory, but purchased the articles dealt in by them from the manufacturers, who prepared the same according to their own formulæ and not in accordance with those of any physician.

That "Dr. Eagan's Magic Gloves" were medicated with a marvelous solution, and when worn for one night would beautify and whiten the hands, etc., the fact being that they were not medicated and would not produce the results claimed.

That a solution furnished with the gloves, and termed "Remediator," would, when applied thereto, remediate the same so as to produce the results set forth in the first instance, the fact being that such solution would not impart any medicament whatsoever or cause the gloves to produce any such effects.

That "Dr. Eagan's Hand Tissue Builder" was a deep tissue builder rich in tissue nourishing properties, which would build up the hand, round out the contours thereof, etc., the fact being that it would not produce any of the aforesaid results.

That "Dr. Eagan's Skin Whitener" would remove all signs of tan, freckles, etc.

That "Dr. Eagan's Medicated Soap" contained the same medicaments as the gloves and skin whitener, the fact being that it contained no medicament.

That the product designated "Facial Film," would, when applied to the face, remove within a few hours or minutes all wrinkles, blemishes, traces of age, worry, and nervousness and renovate the face to a condition of youthful beauty; that it contained "Neoplasma," worth \$5,000 a pound or contained adrenalin, of an equal value, the facts being that it would not produce any of the results claimed; there was no such products as "Neoplasma," and adrenalin was worth about \$16 a pound.

That "Dr. Eagan's Lotion Depilatory," would, when applied to the body, remove all hair therefrom and traces thereof, and contained no sulphide or other harmful drug, the fact being that it would not remove hair from the surface of the skin, that hair re-

moved to such point, would regrow, and that the principal and active agent of the product was sulphide of hydrogen.

Such false, fraudulent, and misleading assertions and representations, as charged by the complaint, have the capacity and tendency to cause, and the effect of causing many of the consuming public throughout the United States to purchase such articles in reliance thereon, and to divert business from and otherwise injure and prejudice competitors who do offer articles to the dealers and the consuming public, without misrepresenting the origin, nature or character thereof or the results and effects to be obtained therefrom.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served upon the respondents above named a complaint charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents having entered their appearances and filed answers herein to said complaint, a hearing for the taking of testimony and evidence before an examiner of the Federal Trade Commission, theretofore duly appointed, was held and evidence in chief was received, but before the completion of the taking of testimony and other evidence in chief in support of the allegations of said complaint, said hearing was, at the request of counsel for respondents, suspended and, thereupon counsel for respondents filed of record herein, under Rule III of the Commission's rules of practice, their statement that respondents desire to and do waive a hearing herein on the charges set forth in the complaint and desire not to contest the complaint and that said respondents will refrain from contesting the proceeding and they and each of them consent that the Commission may make, enter and serve upon respondents an order to cease and desist from the alleged violations of law charged in the complaint.

Thereupon, this proceeding came on for decision; and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Leroy A. Kling, John E. Weddell, William R. Durgin and Cecil Widdefield are partners doing business under the trade names and styles "Dr. Eagan Manufactory" "Dr. S. J. Eagan", "Dr. Eagan Laboratory" and "Pharmaceutical Prod-

ucts, Ltd.", with their place of business in the city of Chicago, State of Illinois. They are engaged in the business of selling cosmetics, creams, lotions, and other toilet preparations for the treatment and dressing of the human skin and hair, hereinafter collectively referred to as toilet articles, direct to consumers residing at points in the various States of the United States. They cause said products when so sold to be transported from their said place of business in the city of Chicago, Ill., into and through other States in the United States to said vendees at their respective points of residence. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the business of selling toilet articles in commerce between and among various States in the United States.

PAR. 2. Respondents conduct their business in the following manner: They cause advertisements describing their said toilet articles and soliciting orders therefor by mail to be inserted in various magazines and periodicals of general circulation throughout the United States and in various sections thereof. Through said means, respondents obtain many orders for their aforesaid toilet articles from persons residing, respectively, in various States of the United States and upon receiving said orders respondents fill the same and complete the sales thus made by causing the toilet articles so ordered and sold to be transported from their said place of business in the city of Chicago, Ill., to such vendees at their aforesaid respective points of residence.

PAR. 3. Respondent, Kling-Gibson Co. is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. Said respondent composes and prepares aforesaid advertising for and on behalf of respondent partners and causes same to be published in aforesaid publications. Further, respondent corporation guarantees the credit of, and otherwise extends financial aid to, said partners and shares in the profits of their aforesaid business.

PAR. 4. In all their aforesaid advertisements, and in booklets, leaflets, and other trade literature which they send to customers and prospective customers, respondents variously cause their aforesaid trade names to be prominently set forth together with numerous false, fraudulent and misleading statements and representations concerning their said toilet preparations, the ingredients whereof same are composed and the results to be obtained from the use thereof. Said assertions and representations are made by respondents with the intent and purpose of deceiving and defrauding the public and of inducing the public to purchase respondents' said toilet articles in reliance upon said assertions and representations.

PAR. 5. Among the false, fraudulent, and misleading statements and representations made by respondents in their said advertising and trade literature referred to in paragraph 3 hereof, are the following:

(a) With regard to all aforesaid toilet articles, with the exception of a certain preparation denominated, advertised, and sold by respondents as "Facial Film", respondents represent that said toilet articles are made conformably and according to private formulæ of a purported Dr. S. J. Eagan, who is by respondents represented to be a physician of great ability, experience and high standing in the medical profession and that said articles are compounded in a factory and laboratory operated by respondents and that said articles are compounded under the direct supervision of said Dr. S. J. Eagan. In truth and fact, there is no physician whatsoever in anywise connected or cooperating with respondents in their said business and respondents operate no factory or laboratory whatsoever, but purchase the toilet articles in which they deal from others who manufacture same and said toilet articles are prepared and compounded conformably and according to formulæ originated and supplied by said manufacturers and in no instance to a formula supplied by respondents or by any physician.

(b) With regard to certain gloves offered for sale and sold by respondents under the name "Dr. Eagan's Magic Gloves", respondents represent that said gloves are medicated with a marvelous solution perfected by the famous Dr. S. J. Eagan; that when worn for one night said gloves will beautify, whiten, soften and make smooth the hands, will remove freckles and other blotches and discolorations from the hands and will make the hands fresh and young-looking. In truth and in fact said gloves are not medicated and will not cause or produce above named effects and results or any of them.

(c) With regard to a certain solution furnished by respondents with said gloves, and which is denominated by respondents "Remedicator", respondents represent that said solution when applied to said gloves will remedicate said gloves and cause same when worn upon the hands to produce all the effects and results in specification (b) hereof set out. In truth and in fact said "Remedicator" when applied to said gloves does not impart to same any medicament whatsoever, and will not cause said gloves to produce aforesaid effects and results or any of them.

(d) With regard to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Hand Tissue Builder", respondents represent that same is a deep tissue builder, rich in tissue nourishing properties, which will build up the hand, round out the contours thereof, and render the skin thereof fine and firm

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so as to develop the hands to a youthful fulness. In truth and in fact said hand tissue builder will not when applied to the hands nourish the tissues or skin thereof in any manner whatsoever and will not cause or produce the effects and results set out in this specification or any of them.

(e) With regard to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Skin Whitener", respondents represent that same will remove all signs of tan, freckles, moth patches, liver spots and other skin discolorations from the hands. In truth and in fact said skin whitener will not cause or produce the effects and results set out in this specification, or any of them.

(f) With regard to a certain soap offered for sale and sold by respondents under the name "Dr. Eagan's Medicated Soap", respondents represent that same contains the same medicaments as are contained in aforesaid Dr. Eagan's Medicated Gloves and aforesaid Dr. Eagan's Skin Whitener. In truth and in fact said soap contains no medicament whatsoever.

(g) With respect to a certain product offered for sale and sold by respondents under the name "Facial Film", respondents represent that when applied to the face said facial film will within a few hours or a few minutes time remove all wrinkles, furrows, blemishes, and all traces of age, worry, and nervousness, and renovate the face to a condition of youthful beauty by rebuilding the skin structure and flesh beneath the skin. In various said advertisements, respondents represent that said "Facial Film", contains "Neoplasma" worth \$5,000 per pound and in others of said advertisements, respondents represent that said "Facial Film" contains adrenalin and that adrenalin is of the value of \$5,000 per pound. In truth and in fact said "Facial Film" when applied to the face will not cause or produce the effects and results in this specification set out, nor any of them; that there is no such product as "Neoplasma" and that adrenalin is of the value of about \$16 per pound.

(h) With respect to a certain product offered for sale and sold by respondents under the name "Dr. Eagan's Lotion Depilatory", respondents represent that the same when applied to the human body will remove all hair therefrom and all traces thereof by a process of dissolving and that said product contains no sulphide or other harming drug. In truth and in fact said product will not remove human hair below the surface of the skin and such hair as is removed by said product to a point even with the surface of the skin will regrow upon that portion of the body to which said product has been applied. Further, said product contains as its principal and active agent sulphide of hydrogen.

## ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents thereto; and the Commission having made its findings as to the facts with its conclusion that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That, in connection with the sale and distribution in interstate commerce of cosmetics, creams, lotions, toilet articles, or any other preparation or product for the treatment or care of the human body, or in advertising matter designed and used to promote, advertise, or further the sale of any of said products or articles, respondent Leroy A. Kling, John E. Weddell, William R. Durgin, and Cecil Widdefield, their agents, representatives, servants, and employees, and respondent Kling-Gibson Co., a corporation, its officers, directors, agents, servants, and employees, cease and desist:

(1) From making or publishing or causing to be made or published through any means whatsoever any statement, assertions, representations or pictorial reproductions, with the purpose, intent or effect of thereby deceiving, defrauding or misleading the purchasing public;

(2) From using the names "Egan" (also spelled "Eagan"), "Dr. Egan", or "Dr. S. J. Egan", or the name or title of any doctor, physician or medical practitioner, real or fictitious, in the trade name, brand name, description or representation of the products heretofore sold and distributed by respondents as and under the names "Facial Film", "Neoplasma", "Magic Gloves", "Dr. Egan's Magic Gloves", "Dr. Egan's Medicator", "Medicator", "Remedicator", "Dr. Egan's Hand Tissue Builder", "Hand Tissue Builder", "Dr. Egan's Skin Whitener", "Skin Whitener", "Dr. Egan's Medicated Soap", "Medicated Soap", "Dr. Egan's Lotion Depilatory", and "Lotion Depilatory";

(3) From using the trade names or styles "Dr. Egan Manufactory", "The Egan Manufactory", "Dr. S. J. Egan", "Dr. Egan Laboratory", "The Egan Laboratory" or any other trade name containing the name "Egan", or the name or title of any doctor, physician or medical practitioner, real or fictitious;

(4) From representing in any manner whatsoever that a so-called "Dr. Egan" or any other fictitious or real medical practitioner or other professional or supposedly famous person has been or is in

any way connected or associated with the origin, discovery, preparation, application, or use of any of aforesaid products or articles when such is not true in fact;

(5) From representing in any manner whatsoever that said so-called "Magic Gloves" are medicated or that their use will beautify, whiten, soften, or make smooth the hands, or will remove freckles and other blotches and discolorations from the hands, or will make the hands fresh and young looking or will have any therapeutical effect whatever upon the hands;

(6) From representing in any manner whatsoever that said so-called "Medicator" or "Remedicator" contains or possesses, or when applied to aforesaid so-called "Magic Gloves", or any other gloves, will impart to such glove any medicinal or therapeutical properties whatever;

(7) From representing in any manner whatsoever that said so-called "Hand Tissue Builder" or similar product contains any tissue building or nourishing properties, or that when applied to the hands it will round out the contours thereof or render the skin thereof fine and firm so as to develop the hands to youthful fullness;

(8) From representing in any manner whatsoever that said so-called "Skin Whitener" contains any properties capable of removing, or when applied to the hands will remove, tan, freckles, moth patches, liver spots, or any other skin discolorations;

(9) From representing in any manner whatsoever that said so-called "Medicated Soap" is a medicated soap or that it contains any medicinal properties whatever;

(10) From representing in any manner whatsoever that there is a drug, biological or other product known as or called "Neoplasma" when such is not true.

(11) From representing in any manner whatsoever that aforesaid so-called "Facial Film", or similar product, when applied to the face will remove wrinkles, furrows, blemishes or any traces of age, worry and nervousness, or that it will in any way renovate the face, or rebuild the skin structure or flesh beneath the skin, or have any other effect whatever toward producing or aiding a condition of youthful beauty;

(12) From representing in any manner whatsoever that aforesaid "Lotion Depilatory" contains no sulphide or that when applied said lotion depilatory will permanently remove hair from the human body by a process of dissolving or otherwise;

(13) From representing in any manner whatsoever that any of the respondents are the manufacturers or the compounders of any of



the aforesaid products or articles, or that any of the respondents own, operate or control a factory or laboratory wherein or whereby any of aforesaid products or articles are manufactured or compounded, unless and until such respondents actually own and operate or directly and absolutely control a factory or laboratory wherein and whereby all of such products or articles so represented are manufactured or compounded.

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

IN THE MATTER OF  
**THE NEW YORK PHARMACEUTICAL CONFERENCE, INC.**

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

*Docket 1392. Complaint, July 7, 1926—Decision, Jan. 9, 1928*

Where a druggists' incorporated association, managed by delegates of affiliated associations, composed of a majority of the retail druggists and pharmacists of New York City and Westchester County, N. Y.; in seeking to induce the adoption by manufacturers and other vendors concerned of a "Distributor Plan" evolved by its Trade and Welfare Committee, which (1) was directed to remedying price demoralization in the territory involved, (2) had for its purpose the adoption and maintenance of suggested minimum resale retail prices, (3) stressed use of channels of distribution running from manufacturer to wholesaler to retailer to public as the correct and economically sound method of distribution, (4) defended maintenance of resale prices on trade marked and patented goods, and the manufacturer's and distributor's rights to select dealer vendees willing to cooperate, and to decline relations with price cutters, (5) condemned direct dealing between manufacturer and retailer and particularly the granting of special terms and discounts to chain, drug and department stores by the former, and (6) was called to the attention of, and urged upon, such manufacturers and vendors,

- (a) Issued to those manufacturers, wholesalers and jobbers, who satisfied its representatives as to their sales policies being in harmony with, and their own approval of, its aforesaid plan, "Courtesy Cards", for the use of their salesmen, with the result that those not supplied therewith encountered sales resistance and, in some cases, refusals to order or even to accord interviews;
- (b) Published in its trade monthly, current, revised lists of those concerns supplied with the aforesaid cards; and
- (c) Published articles in the aforesaid trade organ and elsewhere, and circulars, emphasizing and urging upon the members the desirability and necessity of adopting price standardization, "keeping to full resale prices," and cooperating with and bestowing their favor and patronage upon, those concerns whose names were listed as above set forth;

With the result that sale and distribution of merchandise by various manufacturers, wholesalers and jobbers engaged in interstate commerce in those articles usually kept for sale in retail drug stores, were impeded and interfered with to a substantial extent, certain manufacturers and vendors were induced to adopt price maintenance policies, and others to maintain such policies more strictly, price cutting was reduced, and retail prices accordingly enhanced:

**Held,** That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

*Mr. W. T. Chantland* for the Commission.

*Mr. S. A. Herzog*, of New York City, for respondent.

#### SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation, composed of representatives of local associations of retail druggists doing business in various sections of the city of Greater New York,<sup>1</sup> with undertaking to establish and enforce resale prices, through threats and intimidation, and boycott and threatened boycott of recalcitrant manufacturers and dealers and cutting off and threatened cutting off of latter's sources of supply, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, "through its officers, agents, and duly constituted committees, and particularly through its committee known as the trade committee, consisting of one delegate from each member of the conference, undertook to secure the adoption and maintenance by manufacturers, jobbers, and wholesalers engaged in selling and shipping their products and commodities from outside the State of New York, in the city of Greater New York, of resale prices for their respective products and commodities, consisting of drugs and sundries sold by druggists, and the adherence to such resale prices by retail druggists in its member associations; also to influence and induce the retail druggists, members of the local associations constituting the conference, not to purchase goods from manufacturers, jobbers, and wholesalers who fail to adopt such policy of resale price maintenance, and thereby to induce and coerce said manufacturers, jobbers and wholesalers to adopt such policy," seeking to effect the aforesaid purposes by the following methods:

Soliciting agreements by manufacturers to maintain resale prices, in some cases suggested by officers or agents of the conference, advocating cooperation among member associations and their druggist members by refusal to handle goods not sold under such policy, and promising manufacturers and dealers the assistance of the conference in resisting the cutting of resale prices;

Informing retail druggists in the city of those manufacturers, jobbers and wholesalers, who had adopted such resale price policy,

<sup>1</sup> According to the complaint, under respondent's by-laws each member of the association "is entitled to two delegates for the first hundred members or fraction thereof and one delegate for each additional hundred members of such local association, but not more than five delegates," and "the membership in August, 1925, consisted approximately of 61 delegates from 22 local associations, representing collectively 3,200 retail druggists."

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and issuing to those manufacturers, etc., who had agreed thereto "courtesy cards", designed and intended to influence and induce retail druggists in the city to buy only from holders thereof and to boycott those not possessing the same, the aforesaid trade committee refusing such cards to those manufacturers, etc., whose methods did not conform to its resale price maintenance policy;

Threatening recalcitrant retail druggists with investigation by the board of pharmacy, and the narcotic and prohibition authorities and with bodily harm, and with inability, should they fail to join and contribute to respondent conference, to purchase from manufacturers who had joined;

Publishing in its monthly periodical, The New York Pharmacist, circulated among retail druggists in the city, lists of the manufacturers, jobbers and wholesalers to whom cards had been issued; and

By using other methods to the same end.

Respondent, as charged, has, by the aforesaid methods and practices, "to a substantial extent procured the boycotting by retail druggists in the city of New York of manufacturers, jobbers and wholesalers engaged in selling and shipping their products and commodities from outside the State of New York in the city of Greater New York, who have not conformed to the policy of retail price maintenance advocated by it, \* \* \* and many retail druggists in New York City have refused and continue to refuse to purchase from such manufacturers, jobbers and wholesalers as the result of said methods and practices by the respondent," and have the effect of depriving manufacturers, etc., as above set forth, of sales to retail druggists in the city, "unless they conform to the practices as above set forth, and are an unlawful restraint of trade, in interstate commerce, and constitute unfair methods of competition under section 5 of the Federal Trade Commission Act."

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent charging it with unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, after certain testimony had been taken both for the Commission and for respondent, the counsel for the Commission and the counsel for the respondent agreed upon and tendered to the Commission the following as the proper findings of fact, and the Commission being fully advised in the premises makes said stipu-

lated findings its findings of fact, and makes its conclusions drawn therefrom as follows:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The New York Pharmaceutical Conference, Inc., is a corporation organized under the laws of the State of New York in June, 1924, having its principal place of business at 245 Fifth Avenue, New York City. Its business is conducted by delegates from its affiliated pharmaceutical associations, which affiliated associations were and are composed in the aggregate at various times from 1924 to 1927 of from 2,382 to about 3,200 retail druggists and pharmacists of the city of New York and Westchester County out of an average total of approximately 3,850, for the years 1924 to 1927, druggists and pharmacists in said territory.

PAR. 2. Said respondent, prior to incorporation, had existed for many years as a voluntary association with activities solely along legislative and administrative lines. Beginning about August, 1924, its activities were changed, and commercial and trade activities began. A so-called trade and welfare committee was organized (generally referred to as the "trade committee"), consisting of members from various of the affiliated associations, which devoted itself exclusively to the commercial and trade problems. This committee made a study and survey of the trade conditions of the retail druggists in its territory. As a result of such a study and survey and the price demoralization situation which it disclosed, which in turn the committee ascribed in part to illicit liquor dealings, several proposed plans of remedy were suggested and discussed.

PAR. 3. The plan finally adopted as the one to be urged upon manufactureres and vendors, was the one that came to be known as the "distributor plan". This plan was announced in circular letters sent to about 500 manufacturers and vendors of goods generally sold in retail drug stores, urging its adoption. Its adoption was urged also by officers of the conference in personal interviews with manufacturers and other vendors. Much of the time of one of such officers was daily devoted to such work for a period of about four months in 1923.

PAR. 4. The purpose of the plan was to procure the adoption of suggested minimum prices in resale at retail on the various articles covered, and the maintenance of such suggested minimum resale retail prices. The distributor plan was as follows:

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## THE DISTRIBUTOR PLAN

## NEW YORK PHARMACEUTICAL CONFERENCE, INC.

The New York Pharmaceutical Conference recognizes as fundamentally and economically sound the present scheme for the distribution of merchandise. In any discussion of this subject the rights and privileges and the necessity of—

1. The Manufacturer. 2. The Wholesaler. 3. The Retailer. 4. The Public. In this general scheme of distribution neither should be overlooked or evaded.

## MANUFACTURER

The manufacturer has well defined and valuable rights which when protected by trade-marks or patents is fairly entitled to the good-will accruing from the same. The conference believes that direct sale of such merchandise to either retailer or physicians is contrary to the generally accepted theory of merchandise distribution. Moreover, the conference believes that direct selling to retail dealers and so-called wholesalers at terms equal to or better than those offered to legitimate service jobbers is unfair discriminatory and demoralizing to the trade as a whole.

We believe in and urge the manufacturers to adopt the selective distributor plan for the marketing of their product through those wholesale organizations willing to cooperate with you and us, in so far as is legal, in urging the full resale price upon the retail pharmacists.

It is our opinion that when such exclusive rights are so given to the distributor in any territory that said distributor has the right to sell or not to sell any retail pharmacists whom in his judgment, may be injuring your good-will by the cutting of the price of your article.

## WHOLESALE

We believe that the wholesaler has a real place in the economic scheme of distribution and is indispensable to manufacturer and retailer. We believe that the legitimate service jobbers should be protected against that form and type of competition which recognizes no responsibility to either the manufacturer or retailer, and moreover, we believe that in the selection of your distributors care should be taken to select only those willing to cooperate with you in the proper and legitimate distribution of your products.

## RETAILERS

We are unalterably opposed to granting special terms and discounts to the chain drug and department stores by the manufacturers. We believe that with total retail pharmacist outlets of 51,000 that we are entitled to that degree of protection against the inroads this type of competition has made in the business of the pharmacists, particularly in the larger centers.

In brief, literally interpreted, we believe that the present agencies offer the most economic and scientific method of distribution, i. e., manufacturer to jobber to retailer to consumer.

PAR. 5. The three chief methods by which it was sought to induce manufacturers and other vendors of said goods to adopt and enforce

the distributor plan were, first, the use of a so-called "courtesy card"; second, the publication in the official organ of the conference, i. e., *The New York Pharmacist*, of a list of those manufacturers and wholesalers and jobbers to whom such courtesy card had been issued; and third, propaganda and publicity of which the distributor plan was one form.

PAR. 6. Prior to the issuance of courtesy cards for the use of salesmen of the manufacturers, wholesalers, and jobbers of such articles, the representatives of respondent required generally a complete statement orally or in writing signed by a responsible officer, of the sales policies of such concern, including the fact of suggested resale prices and good faith statements of attempts by each of said concerns to enforce same. The issuance of such cards was not entirely confined to those who had resale price policies. Manufacturers and other vendors were not advised by the conference of the issuance or requirement as to said courtesy cards, but discovered the fact through requests and sales resistance encountered by their salesmen when calling upon the trade immediately before and at the time of the adoption of said courtesy cards, and a few refusals to order, or even to interview salesmen who did not have and present such courtesy cards. One affiliated organization caused placards to be printed and posted in a number of the stores of its members bearing the following:

SALESMEN PLEASE PRESENT  
NEW YORK PHARMACEUTICAL CONFERENCE  
INTRODUCTORY CARD  
BEFORE INTERVIEW.

PAR. 7. Following such difficulties on the part of their salesmen, manufacturers, or their representatives, usually called upon officers of respondent to learn the requirement for obtaining such cards. At such conference the distributor plan was generally presented to them, and invariably discussed and, as above stated, request was made that such concerns present in writing, signed by a responsible party, a statement of their sales policy substantially in accord with such distributor plan, together, with their statement of the method by which they were attempting, or would attempt, in good faith to enforce such policy, including as therein set out, the "urging of full resale prices upon the retail pharmacist". In a few instances where the statement furnished was deemed insufficient, requests for a more definite and complete statement were made, and in a few instances statements of salesmen were refused and the persons responsible for the sales

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policies required to appear and discuss same. Such applications were generally considered and acted upon by the trade committee, and rejections made in the name of the trade committee of respondent. In some instances cards were issued to concerns of widely known, high standing as inducement to procure others to apply for cards, and adopt the desired policy. New cards were issued monthly, and changed in color with each issue so that the pharmacists would know that there had been no change in its status in relation to the conference.

PAR. 8. Ninety-eight concerns were issued courtesy cards as published in the May, 1925, issue of the Pharmacist, 143 in the June issue; 161 in the July issue; and 173 in the August issue, which was gradually increased to 282 in the October, 1926, issue.

PAR. 9. The list published in the New York Pharmacist was revised from month to month, or as issued. This official organ was circulated to all of the personnel membership of the affiliated organizations of respondent and to those manufacturers and other vendors whose names appeared upon the list therein. Articles published in said Pharmacist, or other papers and circulars issued by constituent associations of respondent, from time to time up to the present time, emphasized and urged the desirability and necessity of respondent's personnel membership adopting price standardization; "keeping to full resale prices", and cooperating with the concerns whose names appeared on said list, which should be favored and patronized.

PAR. 10. As an effect and result of the aforescribed plan, purposes and activities of respondent through the courtesy card and publication of the lists of those having it, the sale and distribution of merchandise by various manufacturers, wholesalers, and jobbers engaged in interstate commerce in those articles usually kept for sale in retail drug stores were impeded and interfered with to a substantial extent.

PAR. 11. As a result of the propaganda and publicity work carried on by respondent, certain manufacturers and vendors were induced to adopt price maintenance policies, and certain manufacturers who already had such policies were induced to maintain them more strictly.

PAR. 12. As a result of respondent's activities, price cutting was reduced and retail prices enhanced accordingly, during 1925.

## CONCLUSION

The practices of respondent and its officers, committees, and members, both association and individual members, as set forth in para-



graphs 3 to 11, inclusive, of the foregoing findings as to the facts, in the circumstances therein set forth, constitute and are systematic and concerted actions to enforce price maintenance and the standardization and adoption of price maintenance policies by makers and vendors, through coercion, intimidation, boycott and threats of boycott by said respondent and its members, and so said practices are to the injury and prejudice of the public and of manufacturers and of vendors both at wholesale and retail, including the competitors of the individual members of the constituent association of said respondent, and said practices constitute unfair methods of competition in commerce in violation of the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and stipulated and agreed facts, and upon briefs and oral argument submitted by respective counsel, and the Commission having made its findings as to the facts in harmony with said agreed facts, and having reached its conclusion that the respondent and its membership have violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Now therefore it is ordered*, That the respondent association, its officers, both individually and in their said official capacity, and its individual members, their agents, representatives and employees or any group of such respondents or their agents, either with or without the cooperation of persons not parties hereto, cease and desist from following a common course of action pursuant to mutual understanding, combination, agreement or otherwise reached, for the purpose or with the effect, directly or indirectly, of lessening competition in the course of trade in drugs, proprietaries, drug sundries, and other articles usually sold in retail drug stores or pharmacies, or any of them, entering the State of New York from other States, by all or any of the following methods, to wit:

(1) By compelling or attempting to compel makers or vendors of articles usually handled by retail druggists and pharmacists to establish and promulgate price standardization or suggested resale price of such merchandise at retail by all or any of the following means, to wit, coercion, intimidation, boycott or threat of boycott, or by any

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suggestion or intimation of boycott or of other retaliatory or prejudicial action in case such makers and vendors do not conform to the wishes of the respondents in respect of a resale price maintenance policy.

(2) By the issuance of the so-called "courtesy card" or any card of similar import, purpose or effect, to manufacturers, jobbers, or wholesalers or to or for their representatives, with the purpose or effect either expressly or impliedly of aiding in carrying out vendors' policies of retail resale price maintenance.

(3) By the publication in respondent's trade paper or any other publication, or promulgation in any other manner, or any list of maker or vendor concerns to whom have been issued the so-called "courtesy card", or any card of similar import, purpose or effect, or by the publication or promulgation of any list of similar import.

## Complaint

IN THE MATTER OF  
HEWITT BROTHERS SOAP COMPANY

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

*Docket 873. Complaint, Mar. 30, 1922—Decision, Jan. 16, 1923*

Where a corporation engaged in the manufacture and sale of soaps and washing compounds;

Named, labeled, and advertised as a naphtha soap, a laundry soap containing no petroleum ingredient other than the petroleum distillate, kerosene, amounting to less than one-sixth of 1 per cent by weight of such soap, designating and labeling the same as "Easy Task White Naphtha Soap," together with the legend "a pure white naphtha soap made of the highest grade soap materials by a \* \* \* combination of naphtha," etc., and featuring the word "naphtha" in customer brands when not sold direct to consumers; notwithstanding the fact that soap products containing a petroleum distillate amounting to 1 per cent or less by weight do not contain the same in an amount sufficient to be effective as a cleansing ingredient nor substantially to enhance the cleansing value of such products to the consuming public, and that the substantially cheaper kerosene is uniformly distinguished from naphtha by the trade and purchasing and consuming public;

With the effect of inducing said public to purchase such soap as and for a product containing genuine naphtha and in a sufficient amount to be effective as a cleansing ingredient, substantially enhancing the effectiveness and value of the soap, and of causing manufacturers of genuine naphtha soap, sold in competition with such product, loss of trade:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Eugene W. Burr and Miss Anna Boyle for the Commission.*

*McMahon, Corwin, Landis & Markham, of Dayton, Ohio, for respondent.*

## SYNOPSIS OF COMPLAINT

Reciting the public interest involved in such a proceeding by it, the Commission charged respondent, an Ohio corporation, engaged in the manufacture and sale of soaps and other commodities, either direct to the consuming public through its salesmen, or to chain store and other large retail establishments, and with principal place of business in Dayton, and with branch selling office in Chicago, with using unfair methods of competition in commerce, in naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act.

Respondent, as charged, designated a soap manufactured and sold by it and containing no naphtha but a petroleum distillate other than naphtha (to the extent, at the start, of 1 per cent or less of the whole constituent ingredients thereof, substantially all lost by volatilization before reaching the ultimate consumer, so as to then contain no appreciable amount thereof or so little as to be ineffective as a cleansing ingredient) as "Easy Task White Naphtha Soap," and imprinted said designation upon each cake thereof and upon the wrappers of such cakes, along with its own name and address, when sold to the consumer direct, together with the language, on the inside of the wrapper, "Hewitt Easy Task White Naphtha Soap. A pure white naphtha soap made of the highest grade soap materials by a new process and combination of naphtha, coconut oil and other cleansing ingredients," employed the designation "White Naphtha Soap" in referring to its said soap in handbills and coupons distributed by it from house to house, upon a large scale, offering a cake thereof free with each purchase of one package of its "Thrift Flakes," and, when sold to mail-order houses and other concerns, used the brand and label "White Naphtha Laundry Soap," or "White Naphtha Soap," together with the name of the vendee concern upon its aforesaid soap; with the capacity or tendency to mislead or deceive the purchasing public into believing such soap to contain a substantial amount of naphtha, a well-known cleansing ingredient.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," The Federal Trade Commission issued and served its complaint herein upon the respondent corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act:

The respondent filed its answer to the said complaint, and subsequently thereto the proceeding was ordered suspended by the Commission pending action of the United States courts upon Docket No. 852, being a proceeding by the said Commission against The Procter & Gamble Co., which involved in part the same issues as the instant proceeding. After denial of writ of certiorari to the United States

Circuit Court of Appeals, Sixth Circuit, by the Supreme Court of the United States,<sup>1</sup> the present proceeding, on the 21st day of June, 1927, was removed from the suspense calendar of the Commission, in order that it might proceed to such final disposition as might be ordered. Thereafter, negotiations were undertaken for the settlement of the instant proceeding without the expense incident to a trial thereof, and a stipulation as to the facts was entered into between counsel for the Federal Trade Commission and counsel for the respondent, subject, however, to final approval by the Federal Trade Commission, it being thereby stipulated that the statement of facts thus agreed upon might be taken in lieu of evidence before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the Commission might proceed further thereupon to make its report in the said proceeding and to enter its order disposing thereof.

Accordingly, the Commission having approved said stipulation and being now fully advised in the premises makes this its findings as to the facts and conclusion :

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Hewitt Brothers Soap Co., is a corporation organized in 1884 under the laws of the State of Ohio, with its principal place of business at Dayton, in said State, with a branch establishment, for sales purposes only, at Chicago, Ill. At the time of the issuance of the complaint herein, prior thereto, and since that time, the respondent has been engaged in the business of manufacturing laundry soaps, washing compounds and also a toilet soap.

PAR. 2. Respondent corporation sells and distributes these commodities direct to the consumer through house-to-house canvassing, employing for such purpose about fifty salesmen in various centers, including Cleveland and Detroit, and also sells to chain stores, mail order houses, jobbers, and canvassing houses, under brands selected by the respective purchasing concerns. It causes these commodities, either sold by it direct or through channels named above, to be transported, pursuant to prior negotiations and sales, to the purchasers thereof, from the State of Ohio, or from its branch office at Chicago, Ill., through and into other States of the United States, and carries on its business in direct and active competition with other persons, partnerships, and corporations also engaged in the manufacture,

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<sup>1</sup> 273 U. S. 717, 718.

negotiation for sale, sale and transportation of soap and soap products among the States.

PAR. 3. Respondent, in the course of the business described in paragraph 2 above, manufactures, and has manufactured since its incorporation, laundry soaps and compounds for household use, said laundry soap being designated by it "Easy Task White Naphtha Soap," together with other brands relating to soap manufacture having no relation to the charges in the complaint herein. It has caused the following to be printed upon the wrappers enclosing same:

Hewitt Easy Task White Naphtha Soap a pure white naphtha soap made of the highest grade soap materials by a new process and combination of naphtha, coconut oil and other cleansing ingredients.

Respondent corporation during portions of the time covered by the complaint, and subsequently, sold soap manufactured by it to the Victor Tea Co. of Cleveland, Ohio, the Jewel Tea Co. of Chicago, New York, New Orleans, and San Francisco, the Northern Jobbing Co. of Chicago, Ill., and to others, under the customers' brands, to wit, "Victor White Naphtha Laundry Soap," "Jewel White Naphtha Soap," "N. J. C. Brand Washing Powder, with Naphtha," respectively, and other cartons.

PAR. 4. Respondent company has incorporated in its laundry soap, designated as aforesaid, "Easy Task White Naphtha Soap," and designated in part as "naphtha" in brands made for customer concerns, as aforesaid, in the manufacture thereof, no other petroleum ingredient than a petroleum distillate in the amount of less than one-sixth of 1 per cent by weight of such soap. Representative samples comprising 30 cakes of respondent's "Easy Task White Naphtha Soap" in the form and condition in which it was then being offered for sale and being sold to the consuming public, were purchased in 1922 in the normal course of retail distribution, were analyzed by experts of the United States Bureau of Standards and found to contain a petroleum distillate in amounts ranging from not less than forty-seven thousandths of 1 per cent to not more than thirteen hundredths of 1 per cent by weight of such soap. Such soaps and soap products containing a petroleum distillate in an amount of 1 per cent or less by weight thereof, do not contain the same in an amount sufficient to be effective as a cleansing ingredient nor substantially to enhance the cleansing value of such soaps or soap products to the consuming public. Said petroleum distillate, however, was in each said case not naphtha, but kerosene. Kerosene is uniformly distinguished from naphtha by the trade and by the

purchasing and consuming public in the United States, which distinction existed during and through the period of the manufacture and sale of "Easy Task White Naphtha Soap" and of the soap manufactured by respondent and sold as aforesaid under customers' brands. The market price of kerosene is, and for a period greater than seven years last past has been, substantially less than that of naphtha.

PAR. 5. Respondent sells its "Easy Task White Naphtha Soap" with said brand conspicuously imprinted upon each cake of soap and conspicuously printed upon the wrapper enveloping the same, and by coupons and handbills, and otherwise, advertises its said soap as a naphtha soap, and formerly sold its said soap with the aforesaid customers' brands, including the word "naphtha," conspicuously printed upon the cartons containing the same, with the effect of inducing the public to purchase said soap and with the effect of causing the public to believe that such soap contains genuine naphtha and in an amount sufficient to be effective as a cleansing ingredient, and that the naphtha ingredient substantially enhances the cleansing power and the value of said soap. The description and designation of the aforesaid products of respondent as naphtha soap is a misrepresentation and deception upon the public purchasing such soap.

PAR. 6. There are producers of so-called "naphtha" laundry soaps in various States of the United States negotiating sales and selling, and in pursuance thereof transporting their products from the State of manufacture to other States, whose products contain genuine naphtha as an effective and substantial ingredient. These naphtha soaps are sold to the public in competition with the "Easy Task White Naphtha Soap" of the respondent and with the soap manufactured by respondent and sold as aforesaid under various brands of respondent's customers. The use of the term naphtha by respondent, while using kerosene as a substitute and in the minute quantities above stated, results in loss of trade by manufacturers of genuine naphtha soap. Certain consumers purchase the products of respondent in the belief that they are securing a product having genuine naphtha in substantial quantity incorporated therein as a cleansing ingredient.

PAR. 7. Petroleum distillates incorporated as ingredients in soaps or soap products have a tendency rapidly to volatilize and this tendency differs in rapidity among soaps and soap products of varying ingredients and properties.

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## CONCLUSION

The practices of the said respondent corporation, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having come before the Commission upon complaint, answer and stipulation as to the facts, and the Commission having made its report based upon said stipulation, in which it stated its findings as to the facts and reached the conclusion that respondent corporation has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*Now, therefore, it is ordered,* That the respondent, Hewitt Brothers Soap Co., its officers, agents, representatives, servants, and employees do cease and desist, in the course of commerce, as defined in the said act of Congress from:

Using the word "Naphtha," or its equivalent in the brand name of any soap or soap product offered for sale or sold by the respondent, either under respondent's own brand or under the brand name of any customer or customers of respondent, and from using the said word "Naphtha," in any manner incidental to the presentation of any of its soap or soap products by salesmen, in advertisements, or otherwise, if and when such soap or soap products contain a petroleum distillate known and sold as "Kerosene," and when the word "Naphtha" is so used to designate the addition of "Kerosene" to or its presence in such soap or soap product.

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

*It is further ordered,* That jurisdiction be, and the same is hereby retained, by this Commission to the end that if respondent corporation shall reconsider its present determination not to continue the manufacture and sale of any soap or soap product to be known, distributed or sold as "Naphtha" soap or soap product, and shall hereafter elect to resume the manufacture and sale of any such so-called "Naphtha" product, the Commission, either upon its own motion or pursuant to



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the filing with the Commission of respondent's notification of intention to resume, as specified and required by the aforesaid stipulation, may investigate and ascertain the following matters of fact:

(a) The rapidity of the volatilization of the naphtha content of such soap or soap product so to be manufactured by respondent as aforesaid, and,

(b) The length of time required in the normal course of the distribution of said soap or soap product from manufacture by respondent until sale to the ultimate consumer.

The Commission may thereafter enter an order, supplemental hereto, which shall define the minimum percentage of naphtha content which the respondent shall thereby be required to incorporate in its said "naphtha" soap or soap product, in such event to be manufactured and sold by respondent, to the end that an amount of naphtha in excess of 1 per cent by weight shall persist and be retained, in the said soap or soap product of respondent, at the time when the same, in the normal course of distribution, shall reach the ultimate consumer.

IN THE MATTER OF  
THE METEOR COAL COMPANY

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

*Docket 1447. Complaint, Mar. 23, 1927—Decision, Jan. 21, 1928*

Where a bituminous coal of high quality and value, mined exclusively in the southwestern portion of West Virginia, and contiguous Virginia, had long been known as "Pocahontas" coal, and enjoyed a widespread popularity among dealers and consumers, and was considered by many of the trade and consuming public as superior in quality and value to other competitive bituminous coals, and the best bituminous coal for certain purposes in the United States; and thereafter a corporation engaged in the sale of an inferior and cheaper coal produced at and near Pocahontas, Ill., named, designated, and conspicuously advertised said coal as "Pocahontas" in newspapers, trade journals, and other publications of general circulation, and otherwise so represented the same in the selling and marketing thereof; with the capacity and tendency to mislead, and with the effect of misleading many among the trade and consuming public with reference to the source of said coal, and of inducing the purchase thereof, as and for that first named, and with the tendency to divert business from and otherwise injure and prejudice competitors dealing in such coal and properly naming, designating and representing the same as "Pocahontas," and competitors dealing in other coals without so misrepresenting the same:

*Held*, That such misleading designation of product, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

*Mr. W. T. Chantland* for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the sale of coal to dealers and consumers in various States, and with principal place of business in St. Louis, with naming product misleadingly and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for about 10 years last past, called a coal dealt in by it as above set forth, "Pocahontas" coal, featured said name and designation in its advertisements thereof in newspapers, trade journals and other publications of general circulation throughout the United States and in sundry sections thereof, and otherwise represented the same as "Pocahontas" coal in connection with the sale and marketing thereof, notwithstanding the fact that the coal

in question was not that coal mined exclusively in southwestern West Virginia and contiguous Virginia, and marketed and sold throughout large areas and districts of the United States, including territory in which said corporation sold its coal, and for over 40 years widely and favorably known among the dealers and consumers in the areas and sections in which marketed, as "Pocahontas" coal, and by many thereof considered as superior in quality and value to other competitive bituminous coals, and to be the best bituminous coal for sundry purposes sold and marketed in the United States, but was a bituminous coal of substantially lower quality and value, mined in Illinois, and sold at prices substantially lower than prevailing prices for the other.

The use of such name and designation, as alleged, had the effect of misleading and deceiving many among the trade and consuming public into believing said coal to be the "Pocahontas" coal above set forth, and to cause many thereof to deal in and purchase said coal in such belief, and the capacity and tendency so to do, and to divert business from and otherwise injure and prejudice competitors dealing in and selling "Pocahontas" coal, as hereinabove set forth, and rightfully and lawfully naming, designating and representing their coal as "Pocahontas" coal, and competitors dealing in coal, not "Pocahontas" as above set forth, without in any manner representing the same as "Pocahontas"; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon respondent Meteor Coal Co., in which the Commission charged the respondent with using unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed an answer to said complaint admitting that it had been engaged in commerce in the sale of its coal since April 26, 1906, and setting forth other averments. Thereafter, respondent filed its amended answer as follows:

#### IN THE MATTER OF THE METEOR COAL COMPANY

Docket No. 1447

#### AMENDED ANSWER TO COMPLAINT

The Meteor Coal Co. in this amended answer withdraws its original answer under date of April 27, 1927, and admits the use of the words "POCAHONTAS COAL" in their advertising and selling. We are willing and intend, in good

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faith, to cease permanently using those words and in the future, in all matters relating to the advertising and sale of this said coal, the Meteor Coal Co. and its representatives will, in good faith, always designate and refer to it as "ILLINOIS POCAHONTAS COAL."

We further desire to waive hearing on the charges set forth in the complaint, and will not contest the proceedings, and by this answer we formally consent that the Commission may make, enter and serve upon us an order to cease and desist from the violation of the law alleged in the complaint in conformity to law, and to paragraph (2) of article III of the Rules of Practice and Procedure of the Federal Trade Commission, as amended June 30, 1927.

METEOR COAL COMPANY,

(Signed)

H. F. McDONALD, *President.*ST. LOUIS, MISSOURI, *December 29, 1927.*

The amended answer, as above set out, was thereupon received and regularly considered by the Commission, and the Commission duly permitted the respondent to withdraw its original answer, and the Commission ordered said amended answer to be filed and made a part of the record in said proceeding as the answer of the respondent to said complaint. Thereafter, upon the complaint and said amended answer, and in accordance with the law and rules of this Commission applicable, this proceeding came on for consideration and decision by the Commission, and the Commission, after due consideration and being fully advised in the premises, now makes its report in writing and states its findings as to the facts and conclusion therefrom in conformance with the law:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Meteor Coal Co., is a corporation organized under the laws of the State of Missouri, with its principal place of business in the city of St. Louis in said State. It is now and since April, 1906, has been engaged in the business of selling coal to dealers in same and to consumers of coal and to others, located and residing at points in various States of the United States. It causes said coal when so sold to be transported from coal mines in the State of Illinois, at and near the town of Pocahontas, where the coal in which respondent deals is produced, into and through other States of the United States to said vendees, at their respective points of location and residence. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the business of selling and distributing coal in commerce between and among various States of the United States.

PAR. 2. For over 40 years prior to the date hereof there has been marketed and sold throughout large areas and districts of the United

States, including the territory in which respondent markets its coal, a certain bituminous coal of high quality and value which said coal continuously has been and is now being marketed and sold under the name and designation "Pocahontas" coal. Said coal has during all said time enjoyed and now enjoys a widespread popularity and valuable good will among dealers in and consumers of coal throughout aforesaid areas and sections where the same is marketed and sold and many of said trade and many among the consuming public consider said coal superior in quality and value to other bituminous coals sold in competition with said "Pocahontas" coal and to be the best bituminous coal for certain purposes sold and marketed in the United States. Said coal is mined exclusively in the southwestern portion of the State of West Virginia and in contiguous territory in the State of Virginia.

PAR. 3. Among the coals sold and distributed by respondent in interstate commerce as set out in paragraph 1 hereof, is a coal named and designated by respondent "Pocahontas" coal. Said coal is not the "Pocahontas" coal described in paragraph 2 hereof, but is a bituminous coal substantially lower in quality and value than said "Pocahontas" coal described in paragraph 1 hereof, and is sold by respondent at prices substantially less than the prevailing prices at which said last-named coal is sold. Respondent's said coal is mined in the State of Illinois. Respondent causes advertisements offering its said purported "Pocahontas" coal for sale, to be inserted in newspapers, trade journals and other publications of general circulation throughout the United States and in sundry sections thereof, in which advertisements respondent causes said name and designation "Pocahontas" coal to be conspicuously printed and set forth as the name and designation of said coal, and respondent otherwise represents said coal to be "Pocahontas" coal in connection with the selling and marketing of same.

PAR. 4. The use by respondent of the name and designation "Pocahontas" in marketing and selling its said coal all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead and deceive many among the coal trade and many of the consuming public into the belief that respondent's said coal is "Pocahontas" coal described in paragraph 2 hereof, and to cause many among said trade and many of the consuming public to deal in and purchase respondent's said coal in that belief.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell said "Pocahontas" coal described in paragraph 2 hereof, and who rightfully and lawfully name, designate and represent their said coal to be

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"Pocahontas" coal. There are others of the competitors of respondent who deal in and sell bituminous coal which is not said "Pocahontas" coal described in paragraph 2 hereof, and who in no manner represent their said coal to be "Pocahontas" coal. The acts and practices of respondent all in this complaint before set out tend to divert business from and otherwise to injure and prejudice said competitors.

## CONCLUSION

The acts, methods and practices of the respondent as set forth in the foregoing findings as to the facts constitute unfair methods of competition in commerce in violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding was heard and considered by the Federal Trade Commission on the complaint duly issued by the Commission and served upon respondent and on the amended answer of the respondent thereto. Thereupon the Federal Trade Commission made its report in writing, in which it stated its findings as to the facts and its conclusion that the respondent has been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*Therefore, it is ordered,* That the respondent, Meteor Coal Co., its officers, agents, representatives, and employees forthwith and forever cease and desist from advertising, or selling, or offering for sale any coal of its mines located in Illinois under the name of "Pocahontas" coal, and in any manner referring to its coal mined at or near the town of Pocahontas, Illinois, as "Pocahontas" coal, when not accompanied by clear and unequivocal designation of the State of its origin.

*It is further ordered,* That the respondent, Meteor Coal Co., shall within 60 days from the date of service of this order, file with the Commission a report in writing setting forth in detail the manner and form in which compliance with this order has been made.

## Complaint

## IN THE MATTER OF

JAMES J. BRADLEY, DOING BUSINESS UNDER THE  
TRADE NAME AND STYLE OF JAMES J. BRADLEY &  
COMPANY

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

*Docket 1455. Complaint, Apr. 12, 1927—Decision, Jan. 21, 1928*

Where toilet and bath soaps manufactured in England had long enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, and had come to be considered by many as superior in quality and other desirable characteristics to the domestic product, and to be purchased by many in preference thereto; and thereafter an individual dealing in toilet and bath soaps, designated a certain soap, of uniform size and shape, manufactured for him by a domestic manufacturer, "English Tub Soap", and conspicuously so stamped each cake thereof, the individual wrappers thereof, and the containers in which packed, together with the words "Hanson-Jenks Limited London - New York", upon each cake, the words (following his trade name) "sole Agts. U. S. and Canada", upon said wrappers, and the phrase "The Original Hanson-Jenks Tub Soap", upon the said containers; with the capacity and tendency to mislead and deceive many retail dealer vendees and many of the purchasing public into believing the aforesaid soap to have been manufactured in England and imported into the United States, and into purchasing the same in such belief, and with the effect of so doing, and of placing in the hands of dealers a means of committing a fraud upon the public by so representing, offering and selling the aforesaid soap, and of diverting trade from competitors dealing in genuine English imported soaps, and rightfully and lawfully so representing the same, and competitors dealing in domestic soaps without misrepresenting the same as above set forth:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

*Schaffer & Lake*, of New York City, for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of toilet and bath soaps to retailers in sundry States, and with place of business in New York City, with misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged, for about five years last past caused a certain soap, made in the United States, but by him designated "English Tub Soap", to be conspicuously so stamped, together with the phrase "Hanson-Jenks, Limited, London—New York", caused the wrapper of each cake, stamped as above set forth, to be banded with a paper band bearing in large and conspicuous letters the words "English Tub Soap" and "James J. Bradley & Co., sole agent United States and Canada", and caused to be set forth conspicuously upon containers in which the aforesaid soap was packed the phrase "English Tub Soap".

Said stamping, banding, and packing had the effect, as alleged, of misleading and deceiving many of his retail dealer vendees, to whom said soap so stamped, banded and packed was delivered by respondent, and many of the consuming public, to whom said soap, so stamped, etc., was displayed, offered and sold by said dealers, into believing the aforesaid soap to have been manufactured in England and imported into the United States, i. e., to be an English soap, preferred and purchased by many, as superior to bath and toilet soaps made in the United States,<sup>1</sup> and had the capacity and tendency so to do, and the result of placing in the hands of the aforesaid dealers a means of committing a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell said soap as and for a soap made in England, and of diverting business from and otherwise injuring and prejudicing competitors, many of whom deal in and sell bath and toilet soap there made and imported into the United States and rightfully and lawfully represented by them as such a soap, and others of whom deal in and sell domestic bath and toilet soaps, without in any manner representing said soaps as made in England; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent James J. Bradley, charging him

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<sup>1</sup> As to the foregoing, paragraph 3 of the complaint alleges:

PAR. 3. Toilet and bath soaps manufactured in England have for many years enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, many of whom believe and consider that bath and toilet soaps manufactured in England are superior in quality and other desirable characteristics to bath and toilet soaps manufactured in the United States, and many of the consuming public throughout the United States purchase bath and toilet soaps manufactured in England and imported into the United States, in preference to bath and toilet soaps manufactured in the United States.



with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had before a trial examiner, theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto.

Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom :

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, James J. Bradley, is an individual doing business under the trade name and style of James J. Bradley & Co., with his principal place of business in the city and State of New York. He is now and has been for over five years engaged in the business of selling toilet and bath soaps manufactured for him by a factory at Camden, N. J., to retail dealers throughout the United States. Respondent causes said soap when sold to be transported in interstate commerce from the place of its manufacture in New Jersey and from respondent's principal place of business in the State of New York into and through other States of the United States to his said vendees at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations engaged in the sale of toilet and bath soaps both English and American in commerce between and among various States of the United States.

PAR. 2. The soap manufactured and sold by respondent is of a certain uniform size and shape and is designated by respondent "English Tub Soap". Upon each cake of said soap respondent causes to be stamped in large and conspicuous letters the phrases "English Tub Soap", and "Hanson-Jenks, Limited, London—New York". Respondent causes each cake of soap to be completely wrapped in tissue paper, and around said soap thus wrapped causes to be placed a paper band upon which is printed in large and conspicuous letters the phrases "English Tub Soap", and "James J. Bradley & Co., 1457 Broadway, New York City, sole agents United States and Canada". The soap is then packed by respondent in certain boxes holding six cakes, upon which boxes respondent causes to be printed in large and conspicuous letters the phrase, "English Tub Soap", and also the phrase "The Original Hanson-Jenks Tub

## Findings

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Soap". Respondent delivers said soap so stamped, described and packed to its aforesaid vendees, and said soap thus stamped, branded and packed is by said vendees displayed, offered for sale and sold to the consuming public, either by the box or by the cake. One of the purposes of the box or container of the six cakes of soap is to provide for an attractive display of the soap on the counters of the retail dealers. Such display is accomplished merely by opening the lid of the container or box.

PAR. 3. At the date of the hearing in this proceeding, June 30, 1927, respondent was having manufactured soap, upon which was stamped on one side "English Tub Soap", and on the other side "Hanson-Jenks Co. Made in U. S. A."

PAR. 4. Toilet and bath soaps, manufactured in England have for many years enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, many of whom believe and consider that bath and toilet soaps manufactured in England are superior in quality and other desirable characteristics to bath and toilet soaps manufactured in the United States, and many of the consuming public throughout the United States purchase bath and toilet soaps manufactured in England and imported into the United States, in preference to bath and toilet soaps manufactured in the United States.

PAR. 5. Respondent's use of the word "English" in the name or designation of the soap manufactured and sold by him and in stamping, packing and advertising said soap, as set forth in paragraph 2 hereof, has the capacity and tendency to and does mislead and deceive many retail dealers purchasing from him and many of the purchasing public into the belief that soap is manufactured in England and imported into the United States, and they purchase said soap in and on account of that belief. The use of said word in the designation, stamping, packing and advertising of said soap also places in the hands of dealers an instrument or means whereby dealers may commit a fraud upon the public by representing, offering for sale and selling respondent's soap as soap manufactured in England.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof, many who deal in and sell bath and toilet soap manufactured in England and imported into the United States and who rightfully and lawfully represent said soap to be such. There are others of said competitors who deal in and sell bath and toilet soaps manufactured in the United States and who in no manner whatsoever represent their said soaps to be manufactured in England. The use of the word "English" by respondent in connection with the sale of his soap, as hereinbefore set forth tends to and does divert trade from said competitors.

## CONCLUSION

The above and foregoing acts and practices of the respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in interstate commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

*It is now ordered,* That respondent James J. Bradley, his agents, servants, and employees do cease and desist from the use of the word "English" in the designation of, or in the advertising, branding, labeling, or description of soap sold and distributed by him in interstate commerce, unless said soap be manufactured in England.

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

Complaint

11 F. T. C.

## IN THE MATTER OF

UNION WOOLEN MILLS COMPANY, RACINE, WISCONSIN,  
UNION WOOLEN MILLS COMPANY, JACKSON,  
MICHIGAN, MAX COHENCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1375. Comp'aint, Mar. 31, 1926—Decision, Jan. 25, 1928*

Where an individual engaged in the manufacture of men's made to measure suits and overcoats in one of the large cities, and in the sale thereof in that and other cities in several near-by States, both directly and through the medium of organizations and corporations owned or controlled by him, and so operated in the matter of selection and purchase of supplies, keeping and handling of accounts, credits, payment of salaries, selection of sites, filling of orders, supervision, preparation of advertising, and otherwise, as to constitute, in effect, a single business, under his control and management; and said corporations; neither owning, operating, controlling nor having any interest in any mill manufacturing cloth, though engaged in competition with manufacturers having such mills, as also with others who did not employ the term "mills" in connection with the manufacture and sale of their products, used the words "Union Woolen Mills Company" as their corporate and trade name, and on their business signs, stationery, billheads, circulars, trade literature, and in their newspaper and other advertising, and in the labels attached to their garments, and on the containers thereof, together, in some instances, with the names of the aforesaid cities; with the capacity and tendency to mislead and deceive and with the effect of misleading and deceiving the consuming public into believing that they owned and operated mills manufacturing the cloth from which the suits and overcoats sold by them were made, and their customers into believing that in purchasing of them they were buying directly from the manufacturer of the cloth and thereby saving the profits of middlemen, and with the capacity and tendency to induce, and with the effect of, inducing many of the purchasing public to deal with them in such belief:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. E. J. Hornbrook* for the Commission.

*Mr. John J. Spear*, of Chicago, Ill., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Union Woolen Mills Co., of Racine, Wis., respondent Woolen Mills Co., of Jackson, Mich., Wisconsin and Michigan corporations, respectively, and respondent Max Cohen, organizer,

president, and treasurer of the aforesaid companies, with principal place of business at Chicago, but also doing business at Kenosha, Wis., as Union Woolen Mills Co., with adopting or using misleading corporate or trade names, misbranding or mislabeling, and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent corporations, as alleged, organized by respondent Cohen<sup>2</sup> for the purpose of jointly conducting with him an interstate business in the manufacture of men's clothing and in the sale thereof at retail; and respondent Cohen, at his said Kenosha business;<sup>3</sup> maintained at each of their places of business a sign conspicuously setting forth and displaying their aforesaid corporate or trade names, Union Woolen Mills Co., featured the same upon their letterheads, billheads, invoices and other business stationery and labeled the clothing so dealt in by them "Union Woolen Mills Co., Chicago, Milwaukee, Racine, Kenosha, Jackson," notwithstanding the fact that they neither owned, operated nor were interested in any woolen mills whatsoever and sold their clothing at substantially prevailing retail prices for comparable clothing.

Such practices, as alleged, had the effect of misleading and deceiving many of the public into believing that they were owners and operators of woolen mills manufacturing the cloth used by them in the making of their clothing, and that persons buying from them were purchasing directly from the manufacturers of both the cloth and the clothing, thereby saving the profits of middlemen, had the capacity and tendency to cause such effect and to cause many of the public to deal with them and purchase their clothing in such belief, had the result of diverting business from and otherwise injuring and prejudicing competitors, many of whom manufacture the materials from which their clothing is made and sell the same directly to the consumers and others of whom purchase the materials from which their clothing is made from manufacturers and jobbers without in anywise falsely representing themselves as owners or operators of woolen mills in which they manufacture such materials, and had the tendency so to do; all to the prejudice of the public and of respondents' competitors.

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<sup>2</sup> Engaged in the purchase from manufacturers and jobbers, of material for men's clothing, in the bolt, for transportation to the places of business of his aforesaid corporations for display by them for the making of clothes to the order of their customers, in the making of such clothes at Chicago upon orders and measurements there received from said corporations, and in the return of such clothes to them for delivery to such customers.

<sup>3</sup> Conducted along the same lines as employed in the case of the two corporations.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Union Woolen Mills Co., Racine, Wis., Union Woolen Mills, Jackson, Mich., and Max Cohen, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances by their representative, John J. Spear, esquire, thereupon, testimony of witnesses was submitted on behalf of the Commission, and by the respondents, before Henry P. Alden, an examiner for the Federal Trade Commission, duly appointed.

Thereupon, this proceeding came on for decision and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Max Cohen, is an individual, residing in the city of Chicago in the State of Illinois. In the year 1911 he began trading under the name and style of Union Woolen Mills Co. in said city. Under such trade name he is now and at all times since the year 1911 has been engaged in the business of manufacturing and selling men's suits and overcoats of the "made to measure" type in said city. Since the year 1920 he has been engaged in such manufacture and sale under said trade name in commerce, in the manner hereinafter set forth. He causes said clothing, when so manufactured, to be shipped from his said place of business to the other respondents for the purpose of distributing the same to purchasers thereof, who are located in States of the United States other than the State of Illinois.

PAR. 2. Respondents are in competition in interstate commerce with other firms, individuals, and corporations engaged in the manufacture, sale and distribution of men's suits and overcoats, which firms, individuals, and corporations do not use the term mill or mills in connection with the manufacture and sale of their said products. Respondents are also in competition in interstate commerce with makers of men's suits and overcoats who own the mills where the cloth, from which such suits and overcoats are made, is manufactured.

PAR. 3. Respondent, Max Cohen, for the purpose of the sale and distribution of the suits and overcoats manufactured by him as aforesaid, caused the respondent companies, Union Woolen Mills Co., of Racine, Wis., and the Union Woolen Mills Co., of Jackson, Mich., and also the Union Tailoring Co., of Milwaukee, Wis., and the Union Woolen Mills Co., of Chicago, Ill., to be incorporated and their capital stock to be distributed as follows:

The Union Woolen Mills Co., Racine, Wis., was incorporated in July, 1919, under the laws of the State of Wisconsin, with its principal place of business at Racine, Wis., in said State. Its capital stock is divided into 250 shares. Respondent, Max Cohen, owns 248 of such shares. The secretary of this company, one Otto Westergaard, owns one share of the capital stock in this company, for which he paid nothing. A brother-in-law of respondent Max Cohen, one A. J. Nussbaum, owns the other share. Respondent, Max Cohen, is the president and treasurer of this corporation.

The Union Woolen Mills Co., Jackson, Mich., was incorporated under the laws of the State of Michigan, in October, 1920. Its principal place of business is in the city of Jackson in said State. It was incorporated by respondent, Max Cohen, who is its president and treasurer. Its capital stock is divided into 100 shares, 48 of which are owned by respondent, Max Cohen, 48 shares by Robert Cohen, a brother of said respondent Max Cohen, and 4 shares by one A. J. Nussbaum, a brother-in-law of respondent Max Cohen. Respondent, Max Cohen, is the president and treasurer of this corporation.

The Union Tailoring Co., not made a respondent in this matter, is a corporation organized, existing and doing business under and by virtue of the laws of Wisconsin, with its principal place of business located at Milwaukee. It has adopted and uses the trade name of Union Woolen Mills Co. The said company is now and has been at all times, conducting its business in the same manner as hereinafter set forth with reference to the Racine corporation. Fifty-one per cent of the capital stock of this said company is owned by respondent Max Cohen, who is its president and treasurer, and 49 per cent is owned by A. C. Rich, a brother-in-law of respondent, Max Cohen.

The Union Woolen Mills Co., of Chicago, Ill., is not a party respondent in this matter. It was incorporated in the year 1920; it is now and has been conducting its business in the same manner as hereinafter set forth with reference to the Racine corporation. The capital stock of this company is divided into 200 shares of which 195 shares are owned by respondent, Max Cohen, who is its president and treasurer, and the balance is owned by Robert Cohen, brother of Max, and one Otto Westergaard, its secretary. The said Westergaard owns one share of the stock for which he paid nothing.

## Findings

11 F. T. C.

PAR. 4. Respondent, Union Woolen Mills Co., of Jackson, Mich., and the Union Tailoring Co., of Milwaukee, Wis., and the Union Woolen Mills Co., of Chicago, Ill., each now maintain a store at the cities of Jackson, Milwaukee, and Chicago, respectively. At each of said stores a stock of cloth in bolt, ranging in value from \$5,000 to \$12,000 is kept. The manner and method of conducting the business of these said stores are the same as those employed by the respondent, The Union Woolen Mills Co., of Racine, Wis., as is hereinafter set forth.

PAR. 5. The respondent, Union Woolen Mills Co., Racine, Wis., up until August, 1924, was engaged in the business of procuring orders for men's suits and overcoats from customers located within the State of Wisconsin, which orders, together with the measurements of the customers and the cloth selected by them were shipped from its said place of business in the State of Wisconsin to respondent Max Cohen, in the city of Chicago, for the manufacture by him, or by others under contract with him into suits or overcoats, as the case might be, which suits and overcoats, respondent Max Cohen, after such manufacture, caused to be shipped from the State of Illinois to the said respondent company in the State of Wisconsin for delivery by it to said customers. The usual custom of respondent, Max Cohen, upon receipt of an order from respondent, Union Woolen Mills Co., Racine, Wis., was for him to cut out the cloth in accordance with the measurements sent him and then deliver the same to some concern in Chicago for the actual sewing and making of the suit or overcoat, then such suit or overcoat was delivered to respondent, Union Woolen Mills Co., Racine, Wis., as aforesaid. The respondent, Union Woolen Mills Co., Racine, Wis., first required a deposit from a customer when an order was taken for a suit of clothes or overcoat, and upon delivery by it of said suit or overcoat it collected the balance due from the customer and deposited all such receipts in a local bank, subject to withdrawal only when a check was countersigned by respondent, Max Cohen, as president and treasurer. The charter of the Racine, Wis., company has not been surrendered, but the business thereof has been temporarily suspended with the intention of resuming the same under said name of Union Woolen Mills Co., using the methods hereinbefore described, as soon as business conditions will warrant. Respondent, Union Woolen Mills Co., Racine, Wis., maintained a store in said city, where bolts of cloth to be used in the manufacture of such suits or overcoats were kept. Usually the customer selected the cloth which he desired for a suit or overcoat at this store and the same was shipped to Chicago for manufacture as hereinabove set forth. It



frequently happened that respondent, Union Woolen Mills Co., Racine, Wis., did not have sufficient cloth in stock to make the garment desired by the customer. Each bolt of cloth in said store had a number and the manager of the store at Racine and respondent, Max Cohen, at Chicago, each knew the number of each bolt of cloth. Whenever there was not sufficient cloth of a certain number to make a garment desired by a customer, the number, together with the measurement of such customer, was sent on to Chicago to respondent, Max Cohen, who either took the cloth corresponding to such number from his own stock or went into the open market and purchased the same, and made or caused the same to be made into a garment and shipped back to respondent, Union Woolen Mills Co., Racine, Wis., as hereinabove described.

PAR. 6. Respondent, Max Cohen, until 1927, owned and operated a store at Kenosha, Wis., where men's suits and overcoats of the "made to measure" type were sold. The said store was conducted under the trade name and style of Union Woolen Mills Co., Kenosha, Wis., and the business of said store was in all respects conducted in the same manner as hereinabove set forth with respect to the Racine corporation. This store and business was not incorporated. This business is now temporarily suspended, but respondent, Max Cohen, intends to resume the operation of the same under the same name and to use the same methods in the operation thereof, as soon as conditions will warrant.

PAR. 7. Respondent, Max Cohen, has at all times exercised general supervision over the businesses of the said five stores, to wit: The stores at Racine, Jackson, Kenosha, Milwaukee, and Chicago, requiring and receiving from each of them daily reports and other reports setting forth in detail the business transacted by them, including a complete itemized list of sales, together with the names of customers to whom such sales were made. The books of account of respondent corporations and the Kenosha, Milwaukee, and Chicago stores together with the personal books of respondent, Max Cohen, are kept at the Chicago office of the last-named respondent. These books are kept by one Otto Westergaard. Respondent, Max Cohen, owns the store building in which these books are kept, and no rental is charged these said stores for the space in which their books and records are kept. The selection and supervision of advertising matter for the above-named stores is made by respondent, Max Cohen, at Chicago.

PAR. 8. Respondent corporation of Jackson, Mich., and the Milwaukee and Chicago corporations now maintain and respondent corporation of Racine, Wis., and the store at Kenosha, Wis., did main-

tain during the period of their operation, upon the outside of the store buildings of said stores, a sign upon which is conspicuously displayed the words or legend "Union Woolen Mills Co.," and such words or legend appears upon their letterheads, billheads, invoices, receipts and other business stationery. Each garment sold at said stores is, or was, as indicated, delivered to a customer in a box or container on which is, or was, as indicated, printed the words "Union Woolen Mills Co.". To each garment delivered to a customer, as hereinbefore set out, respondent, Max Cohen, causes to be attached on the inside breast pocket of the coat, labels bearing the legend "Union Woolen Mills Co., Milwaukee, Racine, Kenosha, Jackson," or the legend "Union Woolen Mills Co." with the address of one of the said stores. These labels are attached to the said clothes at the time of delivery to the purchaser, and placed therein at Chicago, at the direction of respondent, Max Cohen. In addition to the use of the words "Union Woolen Mills Co." as above set forth, respondents also advertise in local papers and in their advertisements they feature in conspicuous letters the words or legend "Union Woolen Mills Co." Respondents also make use of the word "mills" in circularizing their customers, and in circulars thus used by them they employ the words "Union Woolen Mills Co." in large letters. This circularization does not reach persons residing outside of the States wherein said stores are located. Each customer of said stores upon selecting a piece of cloth from which he desires a suit or overcoat made is required to make a deposit. When a deposit is made by a customer, he is given a receipt upon which the words or legend "Union Woolen Mills" are printed. Business cards bearing the name "Union Woolen Mills Co." are used by respondent corporations and were used by the Kenosha store and handed out to customers thereof.

PAR. 9. All of the cloth for each of these stores is selected, bought by and shipped to them by respondent, Max Cohen, and purchased in his own name from various manufacturers or jobbers, and credit in the purchase of said cloth is extended by the vendor thereof to Max Cohen personally. In the instances of purchase of cloth for the respondent corporations, the purchase price thereof is charged to the respondent corporations. These said stores were opened and established by respondent, Max Cohen, personally. He selected their various locations, entered into the various rental contracts therefor, and established a credit in the banks of the cities or towns in which said stores were located. Respondent, Max Cohen, visits said stores on an average of once a month, and once every three months said bookkeeper, Westergaard, visits said stores and checks up their stock of goods. The salaries of the managers of said stores are arranged

by agreement between the managers and respondent, Max Cohen. In one instance, the salary of the manager of the Jackson store was increased from \$35 to \$60 per week and the books of that corporation show no resolution providing for such increase. This increase was brought about by verbal agreement between respondent, Max Cohen, and his brother, Robert Cohen, manager of said store. In one instance, the salary of the bookkeeper, said Westergaard, was increased without resolution on the part of either of the respondent corporations.

PAR. 10. Respondent corporations have declared no dividends nor have they distributed any profits. Such dividends or profits are standing on the books of the companies as accumulated.

PAR. 11. All of the materials used by respondent, Max Cohen, respondent, Union Woolen Mills Co., Racine, Wis., respondent Union Woolen Mills Co., Jackson, Mich., and the Kenosha and other said stores, were and are purchased in the open market by respondent, Max Cohen, from others who manufacture them. None of said respondents ever owned, operated, controlled or had, or have, any interest in a mill in which cloth was, or is, manufactured.

PAR. 12. The use by respondents of the word "mills" in their corporate and trade names, and the use of the word "mills" on their signs, business stationery, billheads, circulars, labels, in newspaper and other advertising and trade literature, as hereinbefore set out, has the capacity and tendency to and does mislead and deceive the consuming public into the belief that respondents own and operate mills in which they manufacture cloth from which the said suits and overcoats sold by them are made, and customers purchasing clothing from respondents are led to believe by the use of the word "mills," as aforesaid, that they are buying directly from the manufacturer of said cloth, thereby saving the profits of middlemen, and such use of the word "mills" has the capacity and tendency to, and does, induce many of the purchasing public to deal with respondents in that belief.

#### CONCLUSION

The said practices of respondents under the circumstances set forth in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

Order

11 F. T. C.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion, that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

*It is now ordered*, That respondents Union Woolen Mills Co., Racine, Wis., Union Woolen Mills Co., Jackson, Mich., and respondent Max Cohen, and each of them, their officers, agents, representatives, servants, and employees, cease and desist:

(1) From using the word "mill" or "mills", or words of like import, in or as a trade or corporate name in the carrying on of the business of manufacturing, selling or distributing men's clothing in interstate commerce, until the said respondents actually own or directly control or operate a mill or mills in which the cloth from which said clothing is made is manufactured.

(2) From making, in connection with the sale and distribution of men's clothing in interstate commerce, representations through advertisements, circulars, business stationery, trade or corporate names, signs, or labels attached to such clothing, or in any manner whatsoever, to the effect that respondents are the manufacturers or makers of cloth from which such clothing is made, until such respondents actually own or directly control or operate a mill or mills in which such cloth from which such clothing is made, is manufactured.

*It is further ordered*, That respondent, Max Cohen, cease and desist from using or employing the word "mill" or "mills", or words of like import, as a part of the corporate or trade name for or in connection with any corporation, firm, association or store which he may organize or establish, or cause to be organized or established in the future, for the purpose of selling or distributing men's clothing in interstate commerce, until respondent, Max Cohen, or such corporation, firm, association, or store, actually owns or directly controls or operates a mill or mills, in which the cloth from which such clothing is made is manufactured.

*It is further ordered*, That respondents Union Woolen Mills Co., Racine, Wis., Union Woolen Mills Co., Jackson, Mich., and respondent, Max Cohen, shall within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

## ORDERS OF DISMISSAL

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H. S. CRUIKSHANK. Complaint, Jan. 14, 1926. Order, Nov. 9, 1926. (Docket 1361.)

Charge: Misrepresenting products; in connection with the sale of hay.

Dismissed, after answer and trial, on "recommendation of the chief counsel."

Appearances: *Mr. Henry Miller* and *Mr. Miles J. Furnas* for the Commission.

GRAND RAPIDS FURNITURE Co. Complaint, Jan. 16, 1925. Order, Dec. 18, 1926. (Docket 1258.)

Charge: Adopting and using misleading corporate name, advertising falsely or misleadingly, misrepresenting products offered, misrepresenting business identity and status and appropriating corporate name of competitor; in connection with the sale of furniture.

Dismissed, after answer and trial, by the following order:

*It is ordered*, That the complaint in the above-entitled proceeding be and the same is hereby dismissed upon the ground that the Commission has no jurisdiction because of lack of interstate commerce.

Commissioner Nugent dissented, with the statement that he would later file memorandum of dissent.<sup>1</sup>

Commissioner Humphrey made the following statement in connection with his vote:

I offered the motion to dismiss this case for lack of jurisdiction and voted for the motion for the following reasons: (1) Because there is no evidence in the record of interstate commerce to sustain an order to cease and desist; (2) the findings submitted by the chief counsel are not sufficient to sustain an order to cease and desist; (3) because from the records filed in this case it is apparent that had I made a motion to accept a consent decree agreed to by the respondent that the motion would either have been rejected or resulted in a tie vote thereby causing great delay in the case, in which I have been informed there are very urgent reasons for immediate action; and (4) it has been stated by the respondent in this case that if the Commission had accepted a consent decree there would have been no appeal by the respondent and no review of the order and therefore there would have been no hope of settlement of the legal question involved and I will not insist therefore upon a vote accepting a consent decree for the further reason it appears that the legal staff is still engaged in a somewhat laborious undertaking trying to secure authorities to show that the opinion of Judge White in the case of *Pacific Railway v. Ketchum*, 101 U. S. 289, is not sound and should be overruled.

Appearances: *Mr. Morgan J. Doyle* and *Mr. Alfred M. Craven* for the Commission; *Nash & Ahern* of Chicago, Ill., for respondent.

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<sup>1</sup> Never filed.

S. GOODMAN AND J. COHEN, partners, doing business under the trade name and style, Goodman, Cohen & Co. Complaint, May 20, 1925. Order, Jan. 8, 1927. (Docket 1314.)

Charge: Misrepresenting products offered and misbranding or mislabeling; in connection with the manufacture and sale of shirts.

Dismissed, after answer, without assignment of reasons.<sup>1</sup>

Appearances: *Mr. James M. Brinson* for the Commission.

THE WORRELL MANUFACTURING Co. Complaint, Aug. 6, 1923.<sup>2</sup> Order, Jan. 24, 1927. (Docket 1053.)

Charge: Commercial bribery; in connection with the sale of insecticides, disinfectants, and sanitary appliances.

Dismissed, after answer, by the following order:

This matter being at issue and coming before the Commission on memorandum from the chief counsel dated January 8, 1927, in which it is reported that respondent has subscribed to the resolution adopted at the Commission's trade practice conference with the Insecticide and Disinfectant Industry held November 10, 1926, and that respondent also signed an individual statement addressed to the Commission in which respondent subscribed to and agreed to abide by the resolution adopted at the trade practice conference, and the Commission being advised in the premises,

*It is hereby ordered,* That the complaint herein be and the same is hereby dismissed for the reason that respondent on December 30, 1926, subscribed to and agreed to abide by the resolution adopted at the trade practice conference for the Insecticide and Disinfectant Industry held at Indianapolis, Ind., on November 10, 1926.

Commissioner Myers dissenting.

Appearances: *Mr. Edward J. Hornibrook* and *Mr. Walter B. Wooden* for the Commission.

CIEMO Co. Complaint, Aug. 12, 1924. Order, Jan. 24, 1927. (Docket 1218.)

Charge: Commercial bribery; in connection with the manufacture and sale of disinfectants, insecticides, and soaps.

Dismissed, after answer and trial, by the following order:

This matter being at issue and coming before the Commission on memorandum from the chief counsel dated January 8, 1927, in which it is reported that respondent has subscribed to the resolution adopted at the Commission's trade practice conference with the Insecticide and Disinfectant Industry held November 10, 1926, and that respondent also signed an individual statement addressed to the Commis-

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<sup>1</sup> The order recites that the proceeding came before the Commission for consideration upon the recommendation of the chief counsel for dismissal of the complaint.

<sup>2</sup> Amended complaint, Dec. 14, 1923.

sion in which respondent subscribed to and agreed to abide by the resolution adopted at the trade practices conference, and the Commission being advised in the premises,

*It is hereby ordered,* That the complaint herein be and the same is hereby dismissed for the reason that respondent on December 29, 1926, subscribed to and agreed to abide by the resolution adopted at the trade practice conference for the Insecticide and Disinfectant Industry held at Indianapolis, Ind., on November 10, 1926.

Commissioner Myers dissenting.

Appearances: *Mr. Edward J. Hornibrook* and *Mr. Walter B. Wooden* for the Commission; *Mr. Edward F. Spitz*, of New York, N. Y., for respondent.

AMERICAN DISINFECTING Co., INC. Complaint, Oct. 15, 1926. Order, Feb. 17, 1927. (Docket 1428.)

Charge: Commercial bribery; in connection with the manufacture and sale of disinfectants, insecticides and germicides.

Dismissed, after answer, by the following order:

This matter being at issue and coming before the Commission on memorandum from the assistant chief counsel dated February 9, 1927, in which it is reported that respondent has subscribed to the resolution adopted at the Commission's Trade Practice Conference with the Insecticide and Disinfectant Industry held November 10, 1926, and that respondent also signed an individual statement addressed to the Commission in which respondent subscribed to and agreed to abide by the resolution adopted at the trade practice conference, and the Commission being advised in the premises,

*It is hereby ordered,* That the complaint herein be and the same is hereby dismissed for the reason that respondent on February 4, 1927, subscribed to and agreed to abide by the resolution adopted at the Trade Practice Conference for the Insecticide and Disinfectant Industry held at Indianapolis, Ind., on November 10, 1926.

Commissioner Myers dissenting.

Appearances: *Mr. Walter B. Wooden* for the Commission; *Mr. Edward F. Spitz*, of New York, N. Y., for respondent.

T. V. AARON, TRADING UNDER THE NAME AND STYLE OF HOME ART Co. Complaint, May 26, 1926. Order, Feb. 23, 1927. (Docket 1388.)

Charge: Advertising falsely or misleadingly; in connection with the sale of pictures.

Dismissed, after trial, "without prejudice for the reason that respondent has gone out of business."

Appearances: *Mr. Alfred M. Craven* for the Commission.

MORTIMER ALTMAN, ET AL., A COPARTNERSHIP DOING BUSINESS AS U. S. WOOLEN MILLS CO. Complaint, June 1, 1926. Order, Feb. 23, 1927. (Docket 1389.)

Charge: Using misleading trade name and advertising falsely or misleadingly; in connection with the sale of various kinds of sweaters, overcoats, mackinaws, blankets, hosiery, stag pants and shirts, flannel shirts, leather jackets, sheepskin lined coats, and like articles of merchandise.

Dismissed "for the reason that respondents have gone out of business."

Appearances: *Mr. William A. Sweet* for the Commission; *Brill & Maslon*, of Minneapolis, Minn., for respondents.

GOTHAM SILK HOSIERY Co., Inc. Complaint, Nov. 13, 1925. Order, Mar. 22, 1927. (Docket 1356.)

Charge: Resale price maintenance; in connection with the manufacture and sale of men's and women's silk hosiery.

Dismissed, after answer, for the reason that "respondent has gone out of the business of manufacturing and selling hosiery."

Appearances: *Mr. William A. Sweet* for the Commission; *Spiro, Abrams & Felstiner*, of New York, N. Y., for respondent.

NATHANIEL ABRAHAM AND ALBERT WHITE DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF ARMY AND NAVY SURPLUS WAREHOUSE. Complaint, Dec. 4, 1926. Order, Mar. 28, 1927. (Docket 1433.)

Charge: Using misleading trade name and advertising falsely and misleadingly; in connection with the sale of paint and other articles of merchandise.

Dismissed "for the reason that the respondents have gone out of business."

Appearances: *Mr. Robert O. Brownell* for the Commission; *Brownstone & Goodman*, of San Francisco, Calif., for respondents.

LIGHTNER PUBLISHING CORPORATION. Complaint, Feb. 5, 1927. Order, Apr. 18, 1927. (Docket 1437.)

Charge: Naming product misleadingly; misrepresenting business status, and advertising falsely or misleadingly; in connection with the publication of an agricultural magazine, and in the sale, distribution, and circulation thereof.

Dismissed without prejudice and without assignment of reason.<sup>1</sup>

Appearances: *Mr. Alfred M. Craven* for the Commission.

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<sup>1</sup> After consideration, "on the recommendation of the assistant chief counsel, that the same be dismissed."



CENTENNIAL MILL Co. ET AL. Complaint, Oct. 31, 1924. Order, Apr. 22, 1927. (Docket 1344.)

Charge: Combining or conspiring with the intent and effect of suppressing competition in price and otherwise; in connection with the sale of flour.

Dismissed without assignment of reasons.

Appearances: *Mr. G. Ed. Rowland* for the Commission.

*Palmer, Davis & Scott*, of Washington, D. C., and *Battle, Hulbert & Helsell*, of Seattle, Wash., for respondents generally; *Mr. Royal D. Mead*, of Washington, D. C., for American Factors (Ltd.), Alexander & Baldwin (Ltd.), Fred L. Waldron (Ltd.), Theo H. Davies & Co. (Ltd.), Castle & Cook (Ltd.), C. Brewer & Co., and Henry May & Co.; *Covington, Burling & Rublee*, of Washington, D. C., for American Factors (Ltd.), Fred L. Waldron (Ltd.), Theo H. Davies & Co. (Ltd.), and Henry May & Co.; *Douglas, Abear & Douglas*, of Washington, D. C., for Alexander & Baldwin (Ltd.), and C. Brewer & Co.; *Smith, Warren, Stanley & Vitousek*, of Honolulu, Hawaii, for Alexander & Baldwin (Ltd.), and C. Brewer & Co.; and *Robertson & Castle*, of Honolulu, Hawaii, for Castle & Cook (Ltd.).

ALLIED CHEMICAL & DYE CORPORATION. Complaint, Nov. 28, 1924. Order, May 19, 1927. (Docket 1247.)

Charge: Acquisition of stock of competing corporations, in violation of section 7 of the Clayton Act; in connection with the production and sale of roofing and building papers, roofing and paving pitch, ammonia, insecticides, disinfectants, and coal tar and chemical products.

Dismissed, after answer, without assignment of reasons. Commissioner Nugent dissenting.<sup>1</sup>

Appearances: *Mr. A. R. Brindley* for the Commission; *Miller & Otis*, of New York City, and *Mr. J. Harry Covington*, of Washington, D. C., for respondent.

THREE IN ONE OIL Co. Complaint, Nov. 17, 1923. Order, June 16, 1927. (Docket 1089.)

Charge: Maintaining resale prices; in connection with the manufacture and sale of lubricating oil.

Dismissed, after answer and trial, without assignment of reasons. Commissioner Nugent dissents.

Appearances: *Mr. William A. Sweet* for the Commission; *Stewart, Chapman & Moore*, of New York City, for respondent.

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<sup>1</sup> The order recites that the matter came on for "consideration upon the recommendation of the chief examiner for dismissal of the complaint."

LOREAN H. BASMADJIAN, doing business under the trade name and style H. BASMADJIAN & SONS. Complaint, Mar. 4, 1926. Order, June 29, 1927. (Docket 1368.)

Charge: Using misleading trade name, misrepresenting business, and advertising falsely or misleadingly, in connection with the purchase and sale of pistachio nuts.

Dismissed for the reason that "respondent has gone out of the business set forth in said complaint."

Appearances: *Mr. Henry Miller* for the Commission; *Mr. H. Van Denberg*, of New York City, for respondent.

THE AMERICAN TOBACCO CO. AND THE CHICAGO TOBACCO JOBBERS' ASSOCIATION, ITS OFFICERS AND MEMBERS. Complaint, Aug. 5, 1922. Order, July 6, 1927. (Docket 902.)

Charge: Agreeing, combining and conspiring to fix prices and resale prices, of the products dealt in by respondent jobbers, through refusal to sell and threats of refusal to sell, and through the aid of agreements with other wholesalers in other States; in connection with the manufacture and sale of cigars, cigarettes and other tobacco products.

Dismissed, after answer and trial, "by reason of the decision of the Supreme Court of the United States in the case of *Federal Trade Commission v. American Tobacco Company*, Docket No. 886." (47 Sup. Ct. Rep. 663; 274 U. S. 543.)

Appearances: *Mr. Edward L. Smith* and *Mr. Robt. N. McMillen* for the Commission; *Mr. Junius Parker*, of New York City, and *Mr. John Walsh*, of Washington, D. C., for American Tobacco Co.; *Sonnenschein, Berkson, Lautmann & Levinson*, of Chicago, Ill., for Chicago Tobacco Jobbers' Ass'n; *Mr. John A. Burke*, of Chicago, Ill., for Thomas Slader; *Pack & Busby*, of Washington, D. C., for Morris Cohen; and *Pack & Busby*, of Washington, D. C., also appeared along with *Pines & Newman*, of Chicago, Ill., for J. Pines & Sons.

WHOLESALE CONFECTIONERS' CLUB OF RICHMOND, VIRGINIA, ITS OFFICERS AND MEMBERS. Complaint, Mar. 12, 1927. Order, July 7, 1927. (Docket 1445.)

Charge: Cooperating and confederating together and with others to restrict channels of distribution to and through the dealer members, from the manufacturers and to fix and maintain prices, both on the part of member dealers, and competing nonmember dealers; in connection with the sale of confectionery and allied products.

Dismissed, after answer, "for the reason that a final decree was on the 13th day of April, 1927, rendered by the District Court of the United States for the Eastern District of Virginia in a proceed-

ing instituted by the United States of America against the respondents in above-entitled proceeding, by which decree the said respondents are perpetually enjoined and prohibited from doing the things against which the complaint herein is directed."

Appearances: *Mr. Alfred M. Craven* for the Commission.

HEYWOOD-WAKEFIELD COMPANY. Complaint, Apr. 4, 1925. Order, Aug. 4, 1927. (Docket 1299.)

Charge: Advertising falsely or misleadingly; in connection with the manufacture and sale of furniture, perambulators, and other like articles which consist in whole or in part of a woven fabric resembling wicker-work.

Dismissed, after answer, by the following order:

This matter being at issue and coming before the Commission on memorandum from the director of trade practice conferences and the assistant chief counsel dated July 29, 1927, in which it is reported that respondent has subscribed to the resolution adopted at the Commission's trade practice conference with the Woven Furniture Industry held at Chicago, Ill., on April 29, 1927, and that respondent also has signed an individual statement addressed to the Commission in which respondent has subscribed to and agreed to abide by the rules of the industry as approved by the Commission and as set forth in the statement issued by the Commission dated July 8, 1927, covering the said trade practice conference, and the Commission being advised in the premises,

*It is hereby ordered,* That the complaint herein be and the same is hereby dismissed for the reason that respondent on July 27, 1927, subscribed to and agreed to comply with the rules of the industry as approved by the Commission and as set forth in the statement issued by the commission dated July 8, 1927, covering the trade practice conference held for the Woven Furniture Industry at Chicago, Ill., on April 29, 1927.

Appearances: *Mr. Morgan J. Doyle* and *Mr. Charles Melvin Neff* for the Commission; *Allen & Barnes*, of Boston, Mass., for respondent.

J. R. SPEAL, ET AL. Complaint, July 18, 1924. Order, Sept. 20, 1927. (Docket 1201.)

Charge: Combining and cooperating together to eliminate competition in the purchase of supplies, and to exact and appropriate moneys paid therefor; in connection with the purchase and sale of strawberries.

Dismissed, after answer and trial, without assignment of reasons.<sup>1</sup>

Appearances: *Mr. G. Ed. Rowland* for the Commission; *Mr. John Walsh* and *Mr. L. A. Spiess*, of Washington, D. C., for respondents.

<sup>1</sup> Proceeding "considered by the Commission on the recommendation of the assistant chief counsel that same be dismissed."

**JULIUS KLORFEIN.** Complaint, Oct. 21, 1924. Order, Sept. 22, 1927. (Docket 1241.)

Charge: Misbranding or mislabeling, advertising falsely or misleadingly, and misrepresenting trade-mark rights; in connection with the manufacture and sale of cigars.

Dismissed, after answer and trial, by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation, and the Commission now being fully advised in the premises,

*It is ordered,* That the complaint herein be dismissed.

Appearances: *Mr. Edward E. Reardon* for the Commission; *Mr. George Frankenthaler*, of New York City, and *Mr. Louis H. Warner* and *Mr. Marvin Farrington*, of Washington, D. C., for respondent.

**WADOCH RIZCALLAH, SELIN KATIN AND BADIE KATIN, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE, W. RIZCALLAH & Co.** Complaint, Jan. 29, 1925. Order, Sept. 27, 1927. (Docket 1271.)

Charge: Naming product misleadingly and advertising falsely or misleadingly; in connection with the importation and sale of lace.

Dismissed, after stipulation, without assignment of reasons.<sup>1</sup>

Appearances: *Mr. A. R. Brindley* for the Commission; *Mr. A. M. Davis*, of New York City, for respondents.

**PACIFIC SOUTHWEST IMPORT Co.** Complaint, June 2, 1925. Order, Oct. 25, 1927. (Docket 1322.)

Charge: Naming product misleadingly and advertising falsely or misleadingly; in connection with the sale of hardwood lumber and other hardwood products.

Dismissed, after answer and trial, for the reason that respondent "has gone out of business."

Appearances: *Mr. M. Markham Flannery* and *Mr. Stephen C. Van Fleet* for the Commission; *Forbes & Daniels*, of Washington, D. C., for respondent; *Major F. G. Munson*, Judge Advocate, U. S. A., of Washington, D. C., for Philippine Government, intervenor.

**WESTERN MEAT Co. AND NEVADA PACKING Co.** Complaint, Nov. 24, 1919. Order, Oct. 29, 1927. (Docket 457.)

Charge: Eliminating competition through stock acquisition, and common director, in violation of sections 5 of the Federal Trade

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<sup>1</sup> The order recites that the proceeding came on "for consideration upon the recommendation of the assistant chief counsel for dismissal of the complaint."

Commission Act, and 7 and 8 of the Clayton Act, respectively; in connection with the slaughter of livestock and packing-house business.

Dismissed, after answer, stipulation and trial, without assignment of reasons.

Appearances: *Mr. J. A. Burdeau, Mr. W. T. Chantland and Mr. E. F. Haycraft* for the Commission; *Sullivan & Sullivan and Theo. J. Roche*, of San Francisco, Calif., for respondents.

MARION TOOL WORKS, INC. Complaint, Mar. 31, 1926. Order, Oct. 31, 1927. (Docket 1340.)

Charge: Naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of tools.

Dismissed, after answer, stipulation and trial, by the following order:

The above-entitled proceeding coming on for final determination, and the Commission now being fully advised in the premises,

*It is ordered*, That the complaint in the above proceeding be and the same is hereby dismissed, without prejudice to the right of the Commission to take such further action as may be appropriate in the public interest in case the respondent shall resume the use of the word "Steel" in connection with the manufacture and sale of the tools referred to in the complaint herein.

Appearances: *Mr. William A. Sweet* for the Commission; *Mr. John C. Gall*, of Washington, D. C., for respondent.

SANDOW-LEWIS, INC. Complaint, Oct. 18, 1927. Order, Oct. 31, 1927. (Docket 1484.)

Charge: Misrepresenting prices, misrepresenting business status, and advertising falsely or misleadingly; in connection with the sale by mail of courses in physical culture.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration on memorandum of October 24, 1927, from the director of trade practice conferences, advising that on September 23, 1927, the respondent signed an acceptance to the trade practice conference rules approved by the Commission for correspondence schools, and the Commission being fully advised in the premises,

*It is ordered*, That the complaint in the above-entitled proceeding be and the same is hereby dismissed, in view of the signing by respondent of an agreement to abide by the trade practice conference rules approved by the Commission for correspondence schools.

Appearances: *Mr. Alfred M. Craven* for the Commission.

WRIGHTSVILLE HARDWARE Co. Complaint, July 21, 1926. Order, Nov. 30, 1927. (Docket 1395.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of hammers made of malleable iron.

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for decision, and the Commission now being fully advised in the premises,

*It is ordered*, That the complaint in the above proceeding be and the same is hereby dismissed, without prejudice to the right of the Commission to take such further action as may be appropriate in the public interest in case the respondent shall resume the use of the word "Steel" in connection with the manufacture and sale of the tools referred to in the complaint herein.

Appearances: *Mr. William A. Sweet* for the Commission; *Mr. John C. Gall*, of Washington, D. C., for respondent.

JOHN H. DOCKMAN & SON. Complaint, June 5, 1926. Order, Dec. 5, 1927. (Docket 1390.)

Charge: Using a lottery scheme in merchandising; in connection with the manufacture and sale of candy specialties and punch board devices for use in the sale of its candy products.

Dismissed, after answer and trial, without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Harley, Whittle & Webster* and *Mr. John E. Cross*, of Baltimore, Md., for respondent.

OMAHA TANNING Co. AND W. C. KALASH. Complaint, July 25, 1927. Order, Dec. 7, 1927. (Docket 1475.)

Charge: Advertising falsely or misleadingly and misrepresenting business status or advantages; in connection with the business of tanning hides and manufacture and sale of harness, saddles and horse collars.

Dismissed by the following order:

The above-entitled proceeding coming on for consideration by the Commission, and it appearing that the subject matter of the complaint had been disposed of satisfactorily to the Commission by stipulation whereby the respondent agrees to cease and desist from the practices alleged in the complaint and not to resume the same, and the Commission now being fully advised in the premises,

*It is ordered*, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Johnson, Moorhead & Rine*, of Omaha, Nebr., for respondents.

J. W. ELWOOD, A. E. PARMALEE AND A. B. CARPENTER, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE NORTHWESTERN FUR Co. (Docket 1448), AND AS NORTHWESTERN SCHOOL OF TAXIDERMISTRY. Complaint, Apr. 1, 1927. Order, Dec. 10, 1927. (Docket 1449.)

Charge: Advertising falsely or misleadingly; in connection with teaching by correspondence the art and trade of furriery and taxidermy.

Dismissed by the following order:

The above-entitled proceedings coming on for consideration upon the recommendation of the director of trade practice conferences and the assistant chief counsel for dismissal for the reason that the respondents have accepted and agreed to abide by the trade practice conference rules adopted by correspondence schools on April 30, 1927, and approved by the Commission July 8, 1927, and the Commission having considered the same and being fully advised in the premises,

*It is ordered*, That the complaints in the above-entitled proceedings be and the same are hereby dismissed for the reason that the respondents have signified in writing their purpose to comply with the provisions of the Trade Practice Conference with correspondence schools.

Appearances: *Mr. Alfred M. Craven* for the Commission.

ABRASIVE PAPER AND CLOTH MANUFACTURERS' EXCHANGE, ITS OFFICERS AND MEMBERS. Complaint, Feb. 21, 1925. Order, Dec. 20, 1927. (Docket 1290.)

Charge: Combining or conspiring to fix uniform prices, terms and discounts at which abrasives manufactured by respondent members of respondent exchange, shall be sold, and to suppress competition in the sale and distribution thereof.

Dismissed, after answer, stipulation and trial, without prejudice and without assignment of reasons.

Appearances: *Mr. James M. Brinson* for the Commission; *McKercher & Link*, of New York City, for respondents.

CON-FERRO PAINT & VARNISH Co. Complaint, Sept. 22, 1925. Order, Dec. 20, 1927. (Docket 1346.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of paints.

Dismissed, after answer and trial, by the following order:

Additional evidence having been adduced by counsel for respondent in the form of an affidavit, and the same having been received and considered by the Commission, and the Commission being fully advised in the premises,

*It is now ordered*, That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Henry Miller* for the Commission; *Mr. Carl M. Dubinsky* and *Mr. Jerome F. Duggan*, of St. Louis, Mo., for respondent.

MALDEN KNITTING MILLS. Complaint, Apr. 12, 1927. Order, Dec. 22, 1927. (Docket 1454.)

Charge: Misbranding or mislabeling; in connection with the manufacture and sale of knitted garments.

Dismissed, after answer and trial, without prejudice and without assignment of reasons.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Guterman & Guterman*, of Boston, Mass., for respondent.

THE BENJAMIN BROOKS Co. Complaint, Dec. 9, 1927. Order, Jan. 14, 1928. (Docket 1488.)

Charge: Advertising falsely or misleadingly; in connection with the sale of sundry articles of merchandise.

Dismissed for the reason that respondent "has been adjudged a bankrupt and has discontinued business."

Appearances: *Mr. G. Ed. Rowland* for the Commission.

M. REA GANO, GANO MOORE Co., GANO, MOORE COAL MINING Co., INC. Complaint, Oct. 2, 1924. Order, Jan. 17, 1928. (Docket 1238.)

Charge: Disregarding without just cause contract obligations with foreign vendees; in violation of section 5 of the Federal Trade Commission Act as extended by section 4 of the Export Trade Act; in connection with the exportation of coal.

Dismissed, after answer and stipulation, without assignment of reasons.

Appearances: *Mr. Charles Melvin Neff* and *Mr. W. T. Chantland* for the Commission; *Mr. Walter A. Hall*, of New York City, and *Taylor, Caskey & Moore*, of Washington, D. C., for respondents.

W. R. MAXWELL. Complaint, May 23, 1927. Order, Jan. 28, 1928. (Docket 1463.)

Charge: Misrepresenting prices, misrepresenting product or service offered, and advertising falsely or misleadingly; in connection with the sale of a "Business administration course and service."

Dismissed, after answer, by the following order:

The above-entitled proceeding coming on for consideration by the Commission upon signed acceptance by the respondent, W. R. Maxwell, of the trade practice conference rules of correspondence schools and memorandum of the director of trade practice conferences dated January 5, 1928, reporting that the charges of the complaint are



amply covered by said rules and recommending that the complaint be dismissed, and it appearing that the respondent had agreed in writing to abide by the resolutions adopted by the industry and approved by the Commission in a trade practice conference held for correspondence schools and covered by the Commission's statement of July 21, 1927, and the Commission now being fully advised in the premises,

*It is ordered,* That the complaint herein be and the same is hereby dismissed.

Appearances: *Mr. Alfred M. Craven* for the Commission; *Langworthy, Stevens, McKeag & Hurley*, of Chicago, Ill., for respondent.

## DIGESTS OF STIPULATIONS PUBLISHED AFTER DELETING NAME OF RESPONDENTS<sup>1</sup>

### STIPULATION OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST

160. False or Misleading Advertising and Brands or Labels; Fictitious Prices—Jewelry, Toilet Sets, Containers, Watches, Sheffield Plate, Etc.—Respondent, a corporation, engaged in the wholesale mail-order jewelry business, selling and distributing its jewelry, including novelty and specialty supplies, in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, inserted advertisements in catalogues which catalogues it caused to be circulated in commerce between and among various States of the United States, and in which it advertised a line of jewelry, novelties, and specialty supplies, including presentation cases, canteen boxes, bags, overnight and fold cases, rings, traveling and manicure sets, clocks, fruit bowls, ice-cream sets, cake baskets, ear drops, bracelets, field and opera glasses, pen and pencil sets, and watches. Certain of the aforesaid presentation cases were described as "leather" or as "art leather"; said canteen boxes were described as "lizzard grain leather" or as "moleskin patent leather finish"; said bags were described as "morocco grain genuine leather"; said overnight cases were described as made of "du Pont leather"; said fold cases were described as made of "Spanish leather"; said rings were described as set with "ruby" or with "sapphire" or with "emerald"; and said manicure or toilet sets were described as "French grain ivory" or as "consisting of 21 pieces having white ivory celluloid handles," or as "pearl on amber"; said clocks were described as "genuine ivory pyralin" or as "2-toned amber and ivory," or as "Parisian ivory cases"; said fruit bowls, ice-cream sets, and bread trays were described as "Sheffield plate"; said ear drops and bracelets were described as "platinum finish"; said field and opera glasses were described as "Army and Navy field

<sup>1</sup> Published to inform the public of those unfair methods and practices condemned by the commission and to establish precedents that will serve to eliminate unfair business methods of interest to the public and injury to competitors.

The digests published herewith cover those accepted by the commission during the period covered by this volume, namely, Nov. 5, 1926 to Jan. 29, 1928. Digests of all previous stipulations of this character accepted by the commission—that is, numbers 1 to 159, inclusive—may be found in Vol. X at pp. 461 et seq.

or marine glasses," and had engraved on the tubes thereof "Army & Navy"; said pen and pencil sets were described and illustrated as "set up in fancy lined leatherette cover, steel gift case, per set \$6.50," the pen of said set bearing a ring label on which appeared the valuation figures "\$18.50" and the pencil of said set bearing a ring label on which appeared the valuation figures "\$3.75." The said watches hereinbefore mentioned were described as "hunting style, 16 size, 21-jewel movement, in open-face gold-filled case, price \$5.85." or as "green or white gold filled, the supreme grade, equal in appearance and quality to a 10-year case, fitted with 21-jewel movement, price \$6.30," or as "25-year white gold filled case, price \$4.45"; when in truth and in fact the said articles of merchandise described as "leather," or as "art leather," or as "lizzard grain leather," or as "moleskin patent-leather finish," or as "morocco grain genuine leather" or as "du Pont leather," or as "Spanish leather," contained no leather, a product prepared from the skins or hides of animals, but were made from a synthetic product finished to resemble leather; the said rings and articles of merchandise referred to as being ornamented with "ruby," or "sapphire," or "emerald" were not ornamented with said precious gems or any of them, but were ornamented with imitations thereof; the said traveling and manicure or toilet sets described as "French grained ivory," or as having "white ivory celluloid handles," or as "pearl on amber," and said clocks described as "ivory pyralin" or as "2-toned amber and ivory" or as "Parisian ivory" were not manufactured from the tusks of mammals, or of amber, but were made of a product which simulates ivory in appearance or finish, or were made of a product simulating amber in appearance or finish; the said fruit bowls, ice-cream sets, bread trays, and other articles of merchandise described as "Sheffield plate" were not made in Sheffield, England, and were not that product known to the trade and purchasing public as "Sheffield silverware or Sheffield plate, but were manufactured by a process other than that used in the manufacture of Sheffield silverware or Sheffield plate;" the said ear drops and other articles of merchandise described as "platinum finish" were not made of platinum metal, but were manufactured of metals other than platinum; the said field and opera glasses described as "Army and Navy field or marine glasses" or as "Army & Navy" were not products manufactured for the United States Government in accordance with Government requirements or specifications, and were not disposed of as surplus stock by the United States Government; the said fountain pen and pencil sets were labeled with various figures which were much in excess of the prices at which they were intended to be sold and much in excess of the actual prices at which they were sold in the usual course of wholesale and/or retail trade; the said watches described as having

21 jewels were not provided with the stated number of jewels, each and every one of which jewels served a mechanical purpose as a frictional bearing, and the cases of said watches described as being "gold filled" or as "25-year white gold-filled" were not of such quality as to justify the use of the aforesaid customary mark, brand, or label recognized as a warranty by the trade and purchasing public to designate products possessing the quality of wear for the period of time represented by said warranty, and were not manufactured so as to contain not less than three one-thousandths of an inch in thickness of gold on the outside of said case, and not less than one one-thousandths of an inch in thickness of gold on the inside of said case, the said proportions being recognized by the trade as the specified standard of thickness for the manufacture of watch cases sold to the trade and by the trade to the purchasing public as "gold-filled."

Respondent agreed to cease and desist forever from the use in its catalogues and other means of advertising circulated in interstate commerce, in soliciting the sale of and selling its products, of the words "leather," or "art leather" or "morocco" to describe products which are not made of leather, or of any other word or words which import or imply that the products to which they refer are made of leather, unless and until such time as the products so described are in truth and in fact made of leather; and from the use of the words "ruby," "sapphire," or "emerald" to describe products which are imitations of ruby, sapphire, or emerald; and from the use of the words "ivory," "French ivory," "Parisian ivory" to describe products which are made of imitation of ivory, and the word "amber" to describe articles made of imitation of amber; and from the use of the word "Sheffield" or "Sheffield plate," or "Sheffield silverware" to describe articles of merchandise not made in Sheffield, England, or in accordance with the process used in the manufacture of Sheffield, silverware or plate, and which are not of that quality which has been and is now associated with that grade of silverware known to the trade and purchasing public as "Sheffield silverware" or "Sheffield plate"; and from the use of the words "platinum" or "platinum finish" to describe products which do not contain platinum; and from the use of the words "Army," "Navy," or "Marine" either independently or in connection or conjunction with any other word or words, letters or insignia which import or imply that the products so marked, stamped, labeled, and/or advertised are made for the United States Government in accordance with Government specifications or requirements or that the said products have been disposed of by the United States Government as surplus stock; and to cease and desist from the illustration or description of fountain pens or other articles of jewelry or merchandise together with any false, fictitious, or misleading statements of or concerning the price of said articles of

jewelry or merchandise, or together with any false, fictitious, or misleading statements as to the value of said articles, or any of them; and to cease and desist from any and all methods of representing or describing watch cases sold by said respondent in interstate commerce as "25-year white gold-filled" as a brand or label for the said products, and from the use by it of any word or words, figures, letters, or characters that directly assert or import or imply that the said watch cases are gold filled or manufactured of gold in the specified standard of not less than three one-thousandths of an inch in thickness of gold on the outside of said case, and not less than one one-thousandths of an inch in thickness of gold on the inside of said case, or otherwise conform to that standard of quality known to the trade and purchasing public as "gold-filled," or the use by it of any other word or words, figures, letters, or characters that have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said watch cases are manufactured of gold in the aforesaid specified standard known to the trade and purchasing public as gold-filled and of such quality as would justify the use of the aforesaid customary marks, brands or labels used as a warranty by the trade and recognized by the purchasing public to designate a product of such quality as would wear for the period of time represented by said warranty, or until such time as said respondent does actually sell and distribute in commerce watch cases as represented and described by the aforesaid marks, brands or labels and manufactured of gold in the aforesaid specified standard so as to be properly advertised "gold-filled," and as such sold in commerce between and among various States of the United States; and respondent agreed to cease and desist from the use of the figures and word "21 jewels" or any other figures or words to describe watches or watch movements which do not in truth and in fact contain the stated number of jewels, each and every one of which serves a mechanical purpose as a frictional bearing.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 5, 1926.)

**161. False or Misleading Brands or Labels—Blankets.**—Respondent, a corporation engaged in the manufacture of blankets and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused tags, brands, or labels to be affixed to certain of its said blankets

containing the words "Wool Blanket" or "Woolen Blankets," when in truth and in fact the blankets so tagged, branded, or labeled and sold in interstate commerce were not manufactured wholly of wool, but were composed of approximately 50 per cent wool and 50 per cent cotton.

Respondent agreed to cease and desist forever from the use of the words "Wool" or "Woolen" as descriptive of its said products in its advertisements, or on its tags, brands, or labels used by it upon blankets sold and distributed in interstate commerce, unless the said blankets so advertised, labeled, tagged, or branded are made wholly of wool; or unless, when said blankets be manufactured partly of wool and partly of some other material or materials, the word "Wool" or "Woolen" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "Wool" or "Woolen" is printed indicating that the said blankets are not made wholly of wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 17, 1926.)

162. **False or Misleading Advertising—Shellac Compound or Substitute; Gasket Cement.**—Respondent, a corporation, engaged in the manufacture of automobile accessories and supplies and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, compounded and manufactured a chemical product used particularly in the automotive industry for cementing engine gaskets, which said product respondent in certain of its advertisements and advertising matter, circulated in interstate commerce in soliciting the sale of and selling said product, designated, defined, described, and referred to as "shellac" either independently or in connection or conjunction with another word or words, when in truth and in fact the said product so designated, defined, described, and referred to was not compounded or manufactured solely of genuine shellac gum cut in alcohol, but was compounded or manufactured in accordance with a formula which contained elements, ingredients, or material including gum other than shellac.

Respondent agreed to cease and desist forever from the use of the word "shellac" on its labels and in its advertisements or advertising matter used in soliciting the sale of and selling its product in interstate commerce, unless said product is 100 per cent shellac gum cut in

alcohol, and if the product contains less than 100 per cent shellac gum cut in alcohol, then the same shall be labeled, described or designated as "Shellac Compound," the word "Compound" to be in type as large and as conspicuous as the word "Shellac," and if there be no shellac gum in the product, then the product shall bear or be designated or described by some name, word or words not incorporating or including the word "shellac."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 24, 1926.)

**163. False or Misleading Advertising—Shellac Compound or Substitute; Gasket Cement.**—Respondent, an individual, engaged in the manufacture of polishes and gasket cement and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of his business, respondent manufactured a cement for use on gaskets, crank cases, and joints and on various other parts used in the automobile industry, and in the sale and distribution of the said product in interstate commerce. Respondent in certain of its advertising matter circulated in interstate commerce in soliciting the sale of and selling its said product designated, defined, described, and referred to said product as "shellac," either independently or in connection or conjunction with any other word or words likewise importing the said product was manufactured wholly of shellac; when in truth and in fact the said product so advertised, designated, described and referred to was not compounded or manufactured wholly of genuine shellac gum cut in alcohol, but was compounded or manufactured in accordance with a formula which contained elements, ingredients, or material including gum other than shellac.

Respondent agreed to cease and desist forever from the use of the word "Shellac" on its labels, in advertisements or advertising matter used in selling or soliciting the sale of its product in interstate commerce, unless the said product is 100 per cent shellac gum cut in alcohol, and if the product contains less than 100 per cent shellac gum cut in alcohol, then the same shall be labeled, described, or designated as "Shellac Compound," the word "Compound" to be in type as large and as conspicuous as the word "Shellac," and if there be no shellac gum in the product then the product shall bear or be designated or

described by some name, word or words not incorporating or including the word "shellac."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (November 24, 1926.)

164. **False or Misleading Advertising and Corporate Name—Hosiery.**—Respondent, a corporation, engaged in the sale and distribution of hosiery in wholesale and/or retail quantities in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, adopted a corporate or trade name containing the word "Manufacturing," which said corporate or trade name it used in advertisements inserted in newspapers and magazines, on its letterheads, and in its catalogue and other advertising and printed matter which it circulated or caused to be circulated in interstate commerce in soliciting the sale of and selling its product, also using in connection with the said corporate or trade name containing the word "Manufacturing" a pictorial representation of a large building or buildings, purporting to be the main office and factories of said respondent; when in truth and in fact the said respondent did not own, operate, or control a mill or factory for the manufacture of the products sold and distributed by it in interstate commerce, but filled orders for its products from stocks purchased by it from mills or factories which it neither owned, operated, or controlled. Respondent also caused advertisements to be inserted in publications having general circulation between and among various States of the United States, in which said advertisements its hosiery was represented, designated, referred to, and described as "rayon silk" or as "rayon silk hose knit of a fine quality fibre silk," when in truth and in fact the said products so represented were not made entirely of silk, the product of the cocoon of the silk worm, but were composed of fabrics or materials other than silk.

Respondent agreed to cease and desist forever from the use of the word "Manufacturing" as a part of or in connection or conjunction with its corporate or trade name in soliciting the sale of and selling its products in interstate commerce, in advertisements, on its letterheads, stationery, in its catalogues or other printed or advertising matter, and also to cease and desist from the use of a "cut" or pictorial representation of a factory building or buildings on its letterheads or other advertising matter circulated in interstate commerce, and any



other representation or a word or words that directly assert or import or imply that the said respondent is the manufacturer of the hosiery which it sells in interstate commerce, and the use of the word "Manufacturing" in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owns, operates, or controls a mill or factory for the manufacture of the products; or until such time as said respondent does actually own, operate, or control a mill or factory for the manufacture of the products sold by it in interstate commerce.

Respondent further agreed to cease and desist forever from the use of the word "Silk" either independently or in connection or conjunction with any other word or words that directly assert or clearly import or imply that the products sold by or for said respondent in interstate commerce are manufactured from silk, the product of the cocoon of the silkworm, or the use of any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products are made of silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 26, 1926.)

**165. False or Misleading Brands or Labels—Candlesticks.—** Respondent, a corporation, engaged in the business of selling plated ware in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, including candlesticks in commerce between and among various States of the United States, caused said candlesticks to be represented, described, labeled, or caused to be labeled "Sheffield," and with the aforesaid brand or label affixed thereto sold, shipped, and transported said product in interstate commerce, when in truth and in fact said product so represented, branded, or labeled was not made in Sheffield, England, and was not that product known to the trade and purchasing public as "Sheffield Silverware" or "Sheffield Plate" but was manufactured by a process other than that used in the manufacture of Sheffield silverware or Sheffield plate.

Respondent agreed to cease and desist forever from the use of the word "Sheffield" either independently or in connection or conjunction with the word "Silverware" or the word "Plate" as a stamp, brand, or label for its product sold in interstate commerce, or the use of the word "Sheffield" in any other way to define or describe its

product that directly assert or import or imply that the products sold by it were and are "Sheffield Silverware" or "Sheffield Plate" or made in Sheffield, England, or the use of any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products sold by said respondent were "Sheffield Silverware" or "Sheffield Plate"; or until such time as said respondent does actually sell and distribute in interstate commerce the product known to the trade and purchasing public as "Sheffield Silverware" or "Sheffield Plate" and made in Sheffield, England.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 1, 1926.)

166. **False or Misleading Brands or Labels—Cigars.**—Respondent, a corporation, engaged in the manufacture of cigars and in the sale and distribution of the same in wholesale and/or retail quantities in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused certain of its said cigars to be placed in containers which were conspicuously marked or stamped with a brand or label containing the word "Havana," and with the said brand or label stamped thereon said respondent sold its products between and among various States of the United States; when in truth and in fact the cigars so marked, stamped, and sold in interstate commerce under the brand or label containing the word "Havana" were not made of tobacco grown in the island of Cuba, known to the trade and purchasing public as "Havana" tobacco.

Respondent agreed to cease and desist forever from the use of the word "Havana" either independently or in connection or conjunction with any other word or words, letters, or figures to represent or describe the aforesaid products sold by it in interstate commerce, and from the use of the word "Havana" as a brand or label for its aforesaid cigars, and the use of the word "Havana" in any other way that directly asserts or clearly imports or implies that the said cigars sold by it were manufactured from tobacco grown in the island of Cuba, or the use of any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said cigars are manufactured from tobacco grown in the island of Cuba, or until such time as the said respondent does actually sell and distribute in interstate commerce cigars as

represented by the marks, brands, or labels which it uses on the cigars sold by it in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 1, 1926.)

**167. False or Misleading Advertising and Brands or Labels—Shellac Compound or Substitute; Gasket Cement.**—Respondent, a corporation, engaged in the manufacture or purchase of automotive supplies and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, compounded or manufactured a chemical product used in the automotive industry for cementing engine gaskets, which product respondent sold and distributed in interstate commerce under a label reading "Shellac," and in addition to the use of the said label, respondent distributed a booklet in interstate commerce in soliciting the sale of and selling its products, in which said booklet the said cement was referred to, described, designated, and defined as "Shellac," when in truth and in fact the product so labeled, defined, designated, described, and referred to was not manufactured wholly of genuine shellac gum cut in alcohol, but was compounded or manufactured in accordance with a formula which contained elements, ingredients, and materials other than shellac.

Respondent agreed to cease and desist forever from the use of the word "Shellac" on its labels, or in advertisements or advertising matter circulated in interstate commerce in soliciting the sale of and selling said product, unless the said product is 100 per cent shellac gum cut in alcohol; or, if the said product contains less than 100 per cent shellac gum, then the same shall be labeled, designated, and described as "Shellac Compound," the word "Compound" to be in a type as conspicuous as the word "Shellac," and if there be no shellac gum in the product, then the same shall bear or be designated or described by a name, word or words, not incorporating or including the word "Shellac."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 1, 1926.)

**168. False or Misleading Advertising; Fictitious Prices—Correspondence School.**—Respondent, a corporation, engaged in the business of operating a correspondence school soliciting the sale of and

selling in interstate commerce a course of instruction on ocean and coastwise navigation, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its product, caused to be printed advertisements, catalogues, letters, and pamphlets describing its course, which said advertisements and advertising matter containing the following representations it circulated in interstate commerce: "Furthermore, every man who has completed the course has been able to pass his examination for an officer's license and secure his rating"; "Special limited offer. This special offer means that you can procure a complete training in navigation at a saving of \$33.00," and on the enrollment blank appears the following: "I understand that I may have as long as I wish to complete the course, and that under no circumstances am I to be called upon to make any payments over and above the tuition charge of '\$120,' (marked out in red ink and '\$87.00' substituted). In a letter used in connection with the enrollment blank circulated in interstate commerce, the following appears: "The time limit of the special reduced course in navigation has expired. The enrollments at this exceedingly low price are so numerous I must close out on the offer. \* \* \* If you send in your enrollment blank by return mail you may catch one of these places. By acting quickly immediately you will save yourself \$33.00"; when in truth and in fact the regular customary price and tuition was not \$120; \$87 is the regular payment required of students.

Respondent agreed to cease and desist forever from representing, directly or indirectly, in advertisements or circulars or other printed matter circulated in commerce between and among the States of the United States that every man who has completed the course has been able to pass his examination for an officer's license and secure his rating unless and until such statement or similar statements are true; that a special reduction in price of the course offered has been made, when in truth and in fact there has been no reduction made and the course has been offered at the regular price; that special offer, limited in time as to their acceptance are being extended to prospective pupils for the course of instructions, when in truth and in fact there is no time limit to the acceptance of said offer.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 8, 1926.)

169. **False or Misleading Advertising—Clothing, Hosiery, Furs, Hats.**—Respondent, a corporation, engaged in the mail-order business,

the products sold by it consisting chiefly of men's and women's wearing apparel which it advertised extensively and sold in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, advertised for sale and sold in interstate commerce its products, including dresses, coats, suits, hosiery, shirts, union suits, hats, chokers, and scarfs, and various other articles of wearing apparel; certain of its said dresses being described in the said advertisements as "wool-finished serges," "genuine wool tweed," "wool velour," "genuine wool polo," or as "finest mixed wool, angora fur trimmed"; when in truth and in fact the said dresses so described and advertised were manufactured, respectively of cotton, or of a material having a cotton warp with a filling of wool, or of cotton, not a velour, or of a material having a cotton warp with a filling of wool and cotton, or of a material, the body of which is cotton with a trim of wool and cotton. Other garments advertised for sale and sold in interstate commerce by the said respondent were described in its catalogue as "genuine wool finish domet flannel," or as "genuine random wool"; when in truth and in fact the said garments were made of a material having warp and filling of cotton, and cotton with imitation finish, or of wholly cotton fabric. The said respondent also advertised in its catalogues, circulated between and among various States of the United States, other garments which were described as "pongee," "silk embroidered cr pe" or "tussah silk" and hosiery described as "rayon silk," "pure rayon silk," or "real silk"; when in truth and in fact none of the said hosiery or garments was made wholly of silk, the product of the cocoon of the silkworm. Respondent also advertised in its said catalogues other garments which were described therein as being trimmed with "natural muskrat fur" or "genuine Astrakhan" or "Manchurian fur" or "French coney fur" and chokers and scarfs illustrated and described as "rich Manchurian long, silky fur, scarf and muff to match. Both lined with good grade of extra heavy genuine rayon silk. Both for \$7.85," or as "real French coney, \$3.98," when in truth and in fact the said garments, chokers, and scarfs were not trimmed with or made from the skins or pelts of muskrats or of lambs of Astrakhan or of Manchurian fox, but were made of materials other than muskrat or Astrakhan lamb skins or pelts or Manchurian fur. And the said respondent also advertised in its said catalogues certain types of hats which were described therein as "toyo Panama," when in truth and in fact the said hats were not made of Panama straw, but were made of material or materials other than Panama straw.

Respondent agreed to cease and desist forever from the use of the word "wool" either independently or in connection or conjunction with any other word or words, letter or letters, in its advertisements or advertising matter as descriptive of its dresses or other garments sold and distributed in interstate commerce unless the said dresses and other garments so advertised are made wholly of wool, or unless, when said dresses or other garments are made partly of wool and partly of some other material or materials, the word "wool" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "wool" is printed, indicating that the said dresses or other garments are not made wholly of wool; and of the words "silk" or "pongee" in its advertisements, unless the products so advertised and described are made wholly of silk, the product of the cocoon of the silkworm, or unless, when said products are made partly of silk and partly of some other material or materials, the word "silk" or "pongee" shall be accompanied by a word or words, displayed in type equally as conspicuous as that in which the words "silk" or "pongee" are printed, indicating that the said products are not made wholly of silk; and of the words "muskrat," "astrakhan," "Manchurian fox," or "French coney" or either of them, independently or in connection or conjunction with any other word or words, to describe products which are made of skins or pelts other than those of the muskrat, astrakhan, Manchurian fox, or French coney; and of the word "Panama" either independently or in connection or conjunction with any other word or words to describe hats which are not made in Panama or made in accordance with the process used in the manufacture of Panama hats from the young leaves of the jipijapa.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 10, 1926.)

**170. False or misleading advertising and prices—Correspondence School.**—Respondent, a corporation, engaged in the business of operating a correspondence school and in the sale in interstate commerce of a course of instructions for the teaching of the business or trade of automotive mechanics and electricity, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, caused advertisements to be published in newspapers, magazines, and other periodicals having circulation between and among various States of the United States,

and also in its catalogues, letters, and pamphlets descriptive of the home-study course sold by it featured and made use of the following statements and representations: "Thousands of the men I have trained are to-day holding good jobs as factory experts, garage mechanics, and foremen, or are in business for themselves." "I have hundreds of calls from garages wanting trained mechanics and electrical experts \* \* \* No matter what your previous education or experience has been, we can teach you to qualify for one of these good-paying jobs." "I teach you to operate and repair any automobile truck, tractor, stationary engine, farm-lighting plant, or electric starter." "My special offer to you. I am going to give you a saving of \$37.50 on the cost of your training if you will give me just a little help. I want a student in your neighborhood who will be willing to send me the names of 10 of his friends who he thinks might become interested in taking this course of training. If you will do this for me I am going to give you \$37.50 credit, making the cost of the course to you only \$87.50 instead of \$125. You may send me \$10 with enrollment and pay the balance at the rate of only \$10 per month. Since I can make this special offer to only a limited number of men, it will be necessary for me to have your enrollment within a reasonable length of time in order for you to take advantage of this special offer." In a contract for the prospect to sign, under the heading "Special limited offer," appeared the following: "I agree to pay \$125.00 (marked out and \$87.50 substituted in red ink), as follows: \$25.00 (marked out and \$10.00 substituted in red ink), with this enrollment."

Respondent agreed to cease and desist forever from representing, directly or indirectly by advertisements, circular letters, or other printed matter circulated in interstate commerce, or otherwise, that "No matter what your previous education or experience has been, we can teach you to qualify for one of these good-paying jobs," or "I teach you to operate and repair any automoile, truck, tractor, stationary engine, farm-lighting plant, or electric starter"; or that "Thousands of the men I have trained are to-day holding good jobs as factory experts, garage mechanics, and foremen," or "I have hundreds of calls from garages wanting trained mechanics and electrical experts"; until such time as such statements are true, and from representing that there is a demand for the services of persons trained by respondent's course of instruction, at high salaries, until bona fide positions which pay high salaries are offered its graduates; or that respondent is making a special offer to prospective students at a saving on the cost of tuition; when in truth and in fact there is no such saving, and the prospective student is being offered the course of instruction at the usual, customary, and ordinary rate charged for said course; or that any certain offer is a "special limited

offer" and made only to a limited number of men, and that there is a time limit within which this offer must be accepted, unless and until such "Special limited offer" is in truth and in fact a special offer, carrying with it an actual time limitation; or from representing, directly or indirectly, in contracts or application blanks, that the course of instruction offered by respondent is usually and regularly given for a certain amount, but that a special reduced rate will be allowed to those taking the course, thus making an apparent substantial saving; when in fact, the so-called special rate is the regular and usual rate charged, and paid by pupils for such course.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 27, 1926.)

**171. False or misleading advertising and prices—Correspondence schools.**—Respondent, a corporation, engaged in the business of operating a correspondence school, soliciting the sale of and selling in interstate commerce a course of instruction in bricklaying, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its course of instruction in interstate commerce, caused to be printed and distributed in interstate commerce advertisements, catalogues, letters, and pamphlets descriptive of its said course in which said advertising matter it represented that the vice president of the said corporation was giving his personal attention to the instruction of pupils, and said respondent also in the said advertisements, catalogues, letters, and pamphlets, made use of the following statements and representations: "I am really interested in you. And every time you write me a frank, man-to-man letter you can count on one from me personally in return." "By my job-analysis method I can teach you this wonderful trade at home." "Just give me a chance and I'll put your name on a pay check that means something"; when in truth and in fact the said vice president was not active in correcting papers and guiding students, and was not the chief instructor, and rarely came in contact with the work done by the individual students. Respondent also in circular letters sent to prospective purchasers located in various States of the United States made representations of and concerning a "free scholarship" and throughout said circular letters the word "free" in connection with the word "scholarship" was frequently used; when in truth and in fact the scholarship was not free, but a charge of \$26.50 was made therefor. The following representations were made in connection



with the price at which the said course was given: "The regular price for this course ranges from \$70.00 to \$105.00 \* \* \* But I want every student who enrolls during the next twenty days to get his course for \$25.00 less than our usual price." To prospects to whom the offer was made a credit check or slip of \$25 was sent, when in truth and in fact no student was charged \$70 or \$105; the regular price was \$45 to \$80.

Respondent agreed to cease and desist forever from representing, directly or indirectly, by advertisements, pamphlets, circular letters, or other printed matter circulated in interstate commerce, that its vice president, or anyone else, is giving direct personal attention to the instruction of pupils until such personal attention is in fact given; and that the course of instruction offered by said respondent is given as a free scholarship, unless and until such course is actually given free; and that the course of instruction is offered at a reduced rate to those taking the said course, thus making a substantial saving, when in truth and in fact there is no reduction, and the rate offered is the regular and usual rate charged and paid by pupils for such course.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 27, 1926.)

172. **False and misleading brands or labels, and representations—Clothing, pants, coats, overalls.**—Respondent, a corporation, engaged in the business of manufacturing wearing apparel, including pants, coats, and overalls, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce caused certain of its products to be represented, marked, branded, or labeled in conspicuous type as "Union made"; when in truth and in fact said respondent did not employ artisans or workmen who were members of, or affiliated with, associations or organizations generally known, recognized, and referred to as "unions," and said products sold and distributed by said respondent in interstate commerce were not "union made"; that is to say, the said products were not made by artisans or workmen who were members of, or affiliated with, associations or organizations generally known, recognized, and referred to as "unions."

Respondent agreed to cease and desist forever from the use of the words "union made" either independently or in connection or con-

junction with any other word or words, in its advertisements or advertising matter, or as a stamp, brand, or label imprinted upon or attached to its products, or any of them, and the use of the words "union made" in any other way to define or describe its products that directly assert or import or imply that said products so advertised, stamped, or labeled are made or fabricated by artisans or workmen who are members of, or affiliated with associations or organizations generally known, recognized, and referred to as "unions," and the use of the words "union made" in any way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products sold in interstate commerce by said respondent were made or fabricated by artisans or workmen who are members of, or affiliated with, associations or organizations generally known, recognized, and referred to as "unions"; or until such time as said respondent does actually sell and distribute in interstate commerce products which are in truth and in fact manufactured or fabricated by artisans or workmen who are members of, or affiliated with, associations or organizations generally known, recognized, and referred to as "unions."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 10, 1927.)

**173. False or Misleading Advertising—Clothing; Scarfs; Blankets.**—Respondent, a corporation, engaged in the business of selling in interstate commerce men's, women's, and children's clothing, and accessories thereto, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its product, advertised for sale and sold in interstate commerce blankets described as "wool," "wool mixed," "brushed wool," "wool velour," "wool crêpe," and "wool serge"; when in truth and in fact the products so advertised and sold were manufactured from a fabric or fabrics other than wool. Respondent also advertised and sold certain of its products as "tan pongee" and "white pongee"; when in truth and in fact said products were made wholly of cotton. Respondent also advertised and sold products as "fibre silk" or "fibre silk and cotton crêpe," "silk Spanish lace," "silk Canton crêpe," and "silk finished alpaca mohair," when in truth and in fact said products were manufactured from a fabric containing no silk, the product of the cocoon of the silkworm. Respondent also advertised and sold in interstate commerce a scarf described as "Manchurian wolf"; when in truth and in fact said garment was made from the skin of a dog or goat.

Respondent agreed to cease and desist forever from the use of any of the words, "wool," "pongee," "silk," and "Manchurian wolf" either independently or in connection or conjunction with any other word or words, or in any other way in its advertising matter to describe respectively products not composed of wool or products not wholly composed of wool, unless accompanied by a word or words clearly indicating that such products are not made wholly of wool; products not wholly composed of pongee or of silk, the product of the cocoon of the silkworm, unless accompanied by a word or words clearly indicating that such products are not made wholly of silk, and products not manufactured from Manchurian wolf unless said product so described is the skin of a wolf as indicated.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 21, 1927.)

**174. False or Misleading Advertising—Sponges and Chamois Products.**—Respondent, a corporation, engaged in the business of buying sponge and chamois and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, purchases sponges and chamois products which it sells in interstate commerce to jobbers and dealers as well as to the consuming public located in various States of the United States. The said respondent caused to be printed and set forth in circulars and on its letterheads, envelopes, and other printed matter the following words, "Producers and Packers Sponges and Chamois" which circulars, letterheads, envelopes, and other printed matter containing said words said respondent caused to be circulated and distributed in interstate commerce among its purchasers and prospective purchasers located in various States of the United States; when in truth and in fact respondent neither owns, controls, or operates a factory or tannery for the manufacture of chamois leather, and does not own, control, or operate a vessel or vessels engaged in the sponge fishing or production industry and has no branch places of business or depots in connection therewith, but filled orders for chamois leather and sponges from products of that character purchased by it from others who manufacture and produce the same.

Respondent agreed to cease and desist forever from the use, in its circulars, on its letterheads, envelopes, and other printed matter circulated in interstate commerce, of the word "Producers" either independently or in connection or conjunction with any other word

or words that import or imply that said respondent either owned, controlled, or operated a factory or tannery for the manufacture of chamois leather, or operated or controlled a vessel or vessels or fishery engaged in the sponge fishing or production industry, and from the use of the word "Producers" in any other way in its advertising matter circulated in interstate commerce that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owned, controlled, or operated a factory or tannery for the manufacture of chamois leather, or owned, controlled, or operated a vessel or vessels or fishery engaged in the sponge fishing or production industry; or until such time as said respondent does actually own or operate a factory or tannery for the manufacture of chamois leather, and does actually own, control, or operate a vessel or vessels or fishery engaged in the sponge fishing or production industry.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 21, 1927.)

**175. False or Misleading Advertising and Trade or Corporate Name—Mill Ends; Cotton Goods.**—Respondent, an individual, engaged in the business of selling mill ends and cotton piece goods in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, caused his trade names containing the words "Mills" and/or "Works" to be used in advertisements in newspapers and periodicals having circulation between and among various States of the United States, and also in such advertisements made use of the following language: "Bargain sale. Mill remnants \* \* \* Direct from mill to you"; when in truth and in fact said respondent did not own, operate, or control at any time a mill or factory for the manufacture or fabrication of the cloth from which said products sold by him were made, and said respondent filled his orders for his products from cloth fabricated by mills or factories that he neither owned, controlled, nor operated.

Respondent agreed to cease and desist from the use of the words "Mills," "Mill," or "Works," as a part of, or in connection or conjunction with his trade name or names in the sale and distribution of his product in interstate commerce, and from the use of said words in advertisements inserted in newspapers and other periodicals having circulation between and among various States of the United States, and on his letterheads, order blanks, and other printed matter circu-

lated or distributed in interstate commerce in soliciting the sale of and selling his products so as to import or imply that he owned and operated a mill or works wherein is fabricated the products sold by him; also from the use of the words "Direct from mills to you," or any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owned, operated, or controlled a mill, mills, or works wherein the goods so advertised, sold, and distributed were actually manufactured or fabricated; or until such time as said respondent does actually own, operate, or control a mill or works wherein the said products are manufactured or fabricated.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 21, 1927.)

176. **False or Misleading Advertising—Jewelry.**—Respondent, a corporation, engaged in the business of selling and distributing jewelry, novelties, and specialty supplies in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products, caused advertisements to be inserted in catalogues circulated in commerce between and among various States of the United States, wherein it advertised a line of jewelry, novelty, and specialty supplies, including rings, bar pins and bracelets, scarfpins, charms, pendants, brooches, and emblems. Certain of the aforesaid articles were described in the said catalogues as being set or ornamented with a sapphire or sapphires described as "blue," "Oriental," "white," "pink," "round cut," "calibre cut," or "faceted," or as being set or ornamented with "ruby doublet," "bloodstone," "amethyst," "garnet," "moonstone," "sardonyx," "topaz," "aqua marine," "electric amber," or with "black or round cut onyx," "pearl," "solid pearl," or "pearl slug," or as being set with or ornamented with "electric cut calibre emeralds," "round cut emeralds," or "faceted emeralds," when in truth and in fact the aforesaid articles of merchandise, so advertised and described were not ornamented or set with sapphires, rubies, bloodstones, amethysts, garnets, moonstones, sardonyx, topaz, aqua marines, amber, onyx, pearls, or emeralds, but were set or ornamented with imitations of the particular gem or gems indicated by the said advertisements and descriptions.

Respondent agreed to cease and desist forever from the use in its advertisements or catalogues circulated in interstate commerce of

the words "sapphire," "ruby," "bloodstone," "amethyst," "garnet," "moonstone," "sardonyx," "topaz," "aqua marine," "amber," "onyx," "pearl," or "emerald," or any of them, either independently or in connection or conjunction with any other word or words that import or imply that the products are in truth and in fact the aforesaid stones as represented, and from the use of the said words or any of them in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the articles of merchandise are set or ornamented with the aforesaid stones or precious gems as indicated by the descriptions and advertising matter used, or until such time as the said respondent does actually use or employ the said stones or precious gems as settings or ornaments for its articles or merchandise.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 21, 1927.)

177. **False or Misleading Advertising, Trade or Corporate Name, and Brands or Labels—Cigars.**—Respondent, a corporation, engaged in the business of manufacturing cigars and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, adopted as a part of its corporate or trade name the word "Havana"; which said corporate or trade name containing the word "Havana" it used in advertisements inserted in trade journals having general circulation between and among various States of the United States, and on its letterheads and envelopes, and in its circulars, order blanks, and other printed matter which it circulated in interstate commerce in soliciting the sale of and selling its products, and to further promote the sale of its said cigars said respondent caused certain of its cigars to be packed in boxes bearing the brand or label "Habana" stamped, stenciled, or otherwise affixed to both the inside and outside of said boxes, each of the cigars within the boxes being banded with a brand or label containing the word "Havana," while certain other of the said products of its manufacture were caused to be incased in a foil wrapper, five cigars to the package, the said wrapper bearing the word "Havana" and each cigar within the said packages bearing a band-label containing the word "Havana"; when in truth and in fact the cigars so represented, described, advertised, and sold in interstate commerce under the brands or labels containing the word "Havana" or "Habana"

were not manufactured wholly of tobacco grown on the island of Cuba, generally known to the trade and purchasing public as "Havana" tobacco.

Respondent agreed to cease and desist forever in soliciting the sale of and selling its products in interstate commerce from the use of the words "Havana" or "Habana" either independently or in connection or conjunction with any other word or words that import or imply that the cigars to which the aforesaid words, or either of them, refer, are made of tobacco grown on the island of Cuba and known to the trade and purchasing public as "Havana" tobacco, and to cease and desist forever from the use of the words "Havana" or "Habana" either independently or in connection or conjunction with any other word or words that may have the capacity or tendency to confuse, mislead, and deceive the purchasing public into the belief that the aforesaid cigars sold by said respondent are manufactured from tobacco grown on the island of Cuba, or until such time as said respondent does actually sell and distribute in interstate commerce cigars which are in truth and in fact manufactured from Havana tobacco.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 7, 1927.)

178. **False or Misleading Advertising and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, manufactured cigars in a city and State other than the city of Tampa in the State of Florida which he referred to and described in advertisements and other printed matter circulated in interstate commerce in soliciting the sale of and selling the same as "Tampa" cigars, and also caused to be affixed to the containers in which the said cigars were sold a label containing the word "Tampa," when in truth and in fact the said cigars so represented, described, and referred to, advertised, labeled, branded, and sold in interstate commerce were not Tampa cigars and were not manufactured in the city of Tampa in the State of Florida.

Respondent agreed to cease and desist forever in soliciting the sale of and selling his products in interstate commerce from the use of the word "Tampa" on his labels, brands, containers, or in his advertising

matter circulated in interstate commerce, or in any manner so as to import or imply that the said products are actually Tampa cigars and made in the city of Tampa in the State of Florida.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (February 14, 1927.)

**179. False or Misleading Advertising, Brands or Labels, and Prices—Fountain Pens.**—Respondent, a corporation, engaged in the sale and distribution of fountain pens, through subsidiaries, in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, created two subsidiaries and through said subsidiaries advertised, sold, and distributed in interstate commerce fountain pens, upon which pens they caused to be placed a brand bearing the words and figures, on certain red pens, "Price \$7.50," and on certain green pens "Price \$8.25," and on certain other green pens "Price \$8.75," when in truth and in fact said fountain pens were never sold or intended to be sold for the marked prices, to wit, \$7.50, \$8.25, or \$8.75, but were advertised and sold in interstate commerce by the subsidiaries of said respondent for prices much under the prices marked upon the pens, said pens being usually advertised and sold by said respondent through its subsidiaries at \$3.75 or \$3.95.

Respondent agreed, for itself and for its subsidiaries, to cease and desist forever from advertising, selling, or distributing in interstate commerce fountain pens to which are affixed, or upon which may be stamped or marked, any false, fictitious, or misleading statements of or concerning the prices of said pens, or any false, fictitious, or misleading statement as to the value of said pens.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (February 14, 1927.)

**180. False or Misleading Advertising and Prices—Correspondence School.**—Respondents, a partnership, engaged in the business of operating a correspondence school and in soliciting the sale of and selling in interstate commerce a course of instruction in the art of drawing cartoons, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist for-



ever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business in soliciting the sale of and selling their course of instruction in interstate commerce, caused to be printed catalogues, letters, and pamphlets descriptive of their said course of instruction which they distributed in interstate commerce, and in which said advertising matter they made use of the following statements and representations: "Even if you never had a drawing pencil in your hand, you should quickly learn to draw cartoons that sell." "Only five days left of our amazing twenty-day offer. Save \$17.50 and gain the advantage of our special offer. Ten days only \* \* \*. Starts you \* \* \*. Enroll now. Save \$17.50," when in truth and in fact the regular price paid by all students was \$42.50. Respondents also represented that in collecting tuition from delinquent pupils letters were sent out signed "Capitol Collecting Agency," when in truth and in fact they used no collecting agency.

Respondents agreed to cease and desist forever from representing, directly or indirectly, by advertisements, circular letters, or otherwise, circulated in interstate commerce, that any certain offer is made only for a limited time unless and until such offer is in truth and in fact a special offer carrying with it an actual time limit; that the course of instruction offered is at a reduced rate, when in truth and in fact the rate charged is the regular and usual rate paid by pupils for such course; that collections from delinquent pupils are being made through a collecting agency when in truth and in fact no such agency is employed; that the art of drawing cartoons can be easily acquired.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 14, 1927.)

181. **False or Misleading Advertising and Trade or Corporate Name—Granite Monuments.**—Respondents, copartners, engaged in the manufacture of monuments and memorials of granite and in the sale and distribution of same, as well as rough granite in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business adopted and used a trade name including the name of a city or district known and recognized by the trade and purchasing public as a section or territory renowned for its granite quarries and quality of granite taken therefrom, and said respondents used said trade name including

the name of said city or district in their advertisements and advertising matter, on their letterheads, order blanks, circulars, and other printed matter distributed in interstate commerce in soliciting the sale of and selling their products, when in truth and in fact said respondents did not own, control, or operate a granite quarry located in the said city or district, but obtained the granite from which they manufactured their products from a quarry or quarries located in a city or district other than that indicated by said trade name. Respondents made use of various words, groups of words, and phrases in their advertisements and advertising matter circulated in interstate commerce which tended to convey the impression that said respondents were the proprietors of a certain famous, well-known quarry, when in truth and in fact said respondents did not own, control, or operate said famous and well-known quarry and did not obtain the granite used by them in the fabrication of their products from said famous and well-known quarry.

Respondents agreed to cease and desist forever from the use, in advertisements, advertising and other printed matter distributed in interstate commerce, of words which import or imply that the products sold by them in interstate commerce were made or obtained from the quarry or quarries recognized by the trade as the certain well-known and famous quarry, and which was other than the quarry or quarries from which said respondents did actually obtain the granite used by them in the fabrication of their products. Said respondents further agreed to cease and desist forever from the use as a part of or in connection with their trade name, in soliciting the sale of and selling their products in interstate commerce, the name of any city or district other than that in which said quarry or quarries are located, known, and recognized by the trade and purchasing public as a section or territory renowned for its granite and granite quarries.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (February 28, 1927.)

182. **False or Misleading Brands or Labels—Paints.**—Respondent, a corporation, engaged in the manufacture of paints and in the sale and distribution of the same through subsidiary companies in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused certain of its paints to be placed in containers which were conspicuously marked or stamped with brands or labels containing the words

"Battleship" and "Government," and with said brands or labels stamped thereon said respondent sold said products through a subsidiary company between and among various States of the United States, when in truth and in fact the said paint so labeled and sold in interstate commerce as aforesaid was not manufactured in accordance with United States Army or Navy specifications or Government requirements, and was not paint which had been declared by the United States Government as surplus stock or by it sold as such.

Respondent agreed to cease and desist forever from the use of labels or advertising matter containing the words "Battleship" and "Government," either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the product so labeled or advertised were manufactured in accordance with Army or Navy specifications or Government requirements, or had been declared by the United States Government as surplus stock or by said Government sold as such; respondent also further agreed to cease and desist from the use of the words "Battleship" and "Government" in any other way to describe the said products sold in interstate commerce which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the products so described were manufactured in accordance with Government specifications or requirements, or had been declared by the United States Government as surplus stock or by the said Government sold as such.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 2, 1927.)

183. **False or Misleading Advertising and Brands or Labels—Tools, Hammers, Hatchets, Etc.**—Respondent, a corporation, through subsidiaries, caused to be sold and distributed in interstate commerce a general line of hardware including hammers, hatchets, and various small tools, and in the sale of the same was in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in the course and conduct of its business, in soliciting the sale of and selling its products through subsidiaries issued illustrated catalogues in which said catalogues various hammers, hatchets, and other tools were set forth and described and which said catalogues said respondent caused to be circulated through said subsidiary corporations among customers thereof in various States of the United States. The said products were caused to be represented, described, and referred to as "New-process converted steel," or as "One-piece

forged steel," or as "Special tool steel," and the said products were also caused to be marked, stamped, branded, and labeled as "Bay State New-Process Converted Steel," or as "Bay State, Forged From One-Piece High-Grade Tool Steel, Carefully Hardened and Tempered"; when in truth and in fact the products so represented, described, referred to, stamped, and labeled were not made of steel, but were composed in whole or in part of a metal or metals other than steel.

Respondent agreed to cease and desist forever from using and causing said subsidiary companies, or any of them to use the word "steel" or any modification thereof either independently or in connection or conjunction with any other word or words in its catalogues, circulars, or advertising matter, or as a stamp or label descriptive of its product, or any of them; and the use of the word "steel" or any modification thereof either independently or in connection or conjunction with any other word or words, or in any other way to define or describe its products that directly assert or import or imply that the said products sold by said respondent, or by it through any subsidiary corporations, are made of steel, and from the use of the word "steel" in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said products are made of steel; or until such time as the products so advertised and sold by said respondent, or by it through subsidiary companies, are in truth and in fact made of steel as indicated by the stamps or labels affixed thereto, or by the descriptive matter used in reference thereto.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 14, 1927.)

184. **Lottery Scheme—Candy.**—Respondent, a corporation, engaged in the manufacture of candy and specialties in "bar goods" and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, packed a certain kind of assortment of its candies in boxes or cartons which it sold to jobbers and wholesalers located in various States of the United States, the said jobbers and wholesalers, in turn, disposing of the said products so purchased by them to the retail and other trade engaged in the sale of candy to the general public, in accordance with the following plan, to wit: Within each of the aforesaid boxes or cartons were placed 24 bars of candy, each separately wrapped in a piece of paper bearing the price of said candy and which wrapper also inclosed

a coupon upon which was printed either the word "Winner" or one of the letters of respondent's corporate name. Coupons bearing the letters of respondent's said corporate name were promiscuously distributed among the candy bars, except that a certain "key letter" necessary to complete the words of the said corporate name was placed beneath the wrapper of but 1 bar in every 24,000 bars of candy, while a coupon bearing the word "Winner" accompanied 1 bar of every 240 bars of candy. A premium or "Grand prize" consisting of either an "Apollo Motorbike" or a Remington portable typewriter was given to that person who delivered to respondent sufficient coupons obtained wholly by lot or chance from the purchases of said bars, which coupons contained the necessary letters, when placed together, to spell the words of respondent's said corporate name, while to the purchaser of the said candy bar who secured by lot or chance a coupon bearing the word "Winner" was awarded a "Regular prize" in the form of a baseball bat, baseball, fielder's glove, doll, fountain pen, and the like. An advertising poster was furnished by the said respondent with the aforesaid boxes or cartons, for display purposes and as an aid to the merchandising plan above outlined. The said poster contained, with other words or statements, the following: "A grand prize given absolutely free to any person sending in 17 coupons with letters spelling (respondent's corporate name). If coupon is marked 'Winner' in place of a letter you will receive any one of the 6 regular prizes. You will find a coupon wrapper around each candy bar, on which is printed a letter or the word 'Winner.'"

Respondent agreed to cease and desist forever from the use in interstate commerce of any scheme, plan, or method of sale or promoting the sale of its candy products which involves or includes the use of any gift enterprise, lottery, or any scheme of chance whereby any article is given as a prize or premium for, or in consideration of the purchase of any other article; and respondent also agreed to cease and desist forever from using and from transporting in interstate commerce any advertising matter for the use of local dealers in soliciting the sale of said products by means of any gift, enterprise, lottery, or scheme of chance, whereby any article is offered as a prize or premium for, and in consideration of the purchase of, any other article.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 23, 1927.)

185. **False or Misleading Advertising and Trade or Corporate Name—Knitted Clothing.**—Respondent, a corporation, engaged in the sale and distribution of knitted clothing in wholesale quantities in interstate commerce, and in competition with other corporations,

firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused its corporate or trade name containing the word "Knitting" or "Knit" to be used in advertisements inserted in trade journals having circulation between and among various States of the United States, and also caused its said corporate or trade name containing the word "Knitting" or "Knit" to be used in connection or conjunction with the words "Manufacturers of" on its labels, order blanks, letterheads, and envelopes which it circulated in interstate commerce in soliciting the sale of and selling its products; when in truth and in fact the said respondent did not own, operate, or control a mill or factory manufacturing the knitted clothing which it sold and distributed in interstate commerce; and said respondent filled its orders from clothing manufactured or knitted by a mill or factory which it neither owned, controlled, or operated.

Respondent agreed to cease and desist forever from the use of the word "Knitting" or "Knit" either independently or in connection or conjunction with any other word or words, syllables or letters, as part of, or in connection or conjunction with its corporate or trade name in the sale and distribution of its products in interstate commerce; or the use of the word "Knitting" or "Knit" in advertisements inserted in trade journals or other publications having circulation between and among various States of the United States in such manner as to import or imply that the aforesaid corporation either owns, operates, or controls a mill or factory manufacturing the product sold by it in interstate commerce; and the use of the words "Knitting," "Knit," or "Manufacturers" either independently or in connection or conjunction with its corporate or trade name or with any other word or words, on its order blanks, letterheads, labels, or other stationery or advertising matter circulated and distributed in interstate commerce in soliciting the sale of and selling its products in any way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owns, operates, or controls a mill or factory engaged in the manufacture of knitted clothing which it sells in interstate commerce; or until such time as said respondent does actually own, control, or operate a mill or factory for the manufacture of knitted clothing which it sells and distributes in commerce between and among various States of the United States.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may

be used in evidence against it in the trial of the complaint which the commission may issue. (March 23, 1927.)

186. False or Misleading Brands or Labels—Shoes.—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its shoes in interstate commerce, caused the said products to be marked, stamped, branded, and labeled so as to simulate the brands and labels as used by manufacturers of shoes made in accordance with Army specifications under Government contract and in addition thereto caused the name of an inspector to be stamped on the soles of its shoes as is usually and customarily done by the Government or Army officials when inspecting shoes for the United States Army; and in accordance with such policy said respondent marked, stamped, branded, or labeled said shoes on the soles thereof as "(U. S.) Army Shoes" or as "U. S. Army Shoe"; and said respondent caused certain of its shoes branded or labeled as aforesaid to be packed in boxes for shipment in interstate commerce, said boxes bearing labels on which were pictorially represented a troop of marching soldiers and which labels contained a shield and the words "U. S. Army Shoe," when in truth and in fact said shoes so marked, stamped, branded, or labeled and sold in interstate commerce were not manufactured for the United States Army in accordance with Army specifications or Government requirements and were not subject to inspection by any United States Army or Government official.

Respondent agreed to cease and desist forever from the use, in the sale and distribution of its products in interstate commerce, of the words "U. S. Army" either independently or in connection or conjunction with the name of an inspector, or with any other word or words, pictorial representations or insignia which import or imply that the products so marked, stamped, branded or labeled are made in accordance with United States Army specifications or Government requirements and have been passed upon or approved by a Government inspector, or which may have the capacity or tendency to mislead and deceive the purchasing public into the belief that said products so marked, stamped, branded or labeled were manufactured for the United States Army in accordance with Army specifications or Government requirements, or that said products had been declared and sold as surplus stock by the United States Army or Government; respondent further agreed to cease and desist forever from using as an advertising medium circulated in interstate commerce the words

"U. S. Army" or any pictorial representations or insignia looking to the sale of its products between and among various States of the United States unless and until such time as the products of its manufacture so marked, stamped, branded, or labeled are made under contract for the United States Army or in accordance with Army specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (March 23, 1927.)

187. **Operation of Secret Subsidiary and Sale Below Cost—Ice Cream.**—Respondent, a corporation, engaged in the manufacture of ice cream and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused a bogus independent company to be organized and incorporated for the ostensible purpose of manufacturing ice cream to be sold and distributed in interstate commerce, the said company being financed principally through a trust fund created by the principal officers and directors of the respondent, and which trust fund was not an asset of the respondent over which said respondent, as a legal entity, had control. The said company, while owned and controlled by the aforesaid officers and director, of said respondent corporation, was operated without any disclosure to the public or to competitors of the fact that three officers of the respondent, together with a director thereof, were in fact the owners of said company, and care was exercised to prevent discovery of any connection existing between the respondent or the said officers and director, and the said bogus independent company; and the said bogus independent company was held out and represented to the public and to competitors of respondent as being an actual competitor of respondent. Shortly after beginning operations the said bogus independent company entered into a campaign of cutting prices of its products in territories where the principal competitors of respondent were active, and sold the products of its manufacture at and below cost, thereby forcing competitors of the respondent to sell their products below cost of production and delivery. This said policy was vigorously pursued under the name of said bogus independent company for two or more years, at the expiration of which time the said company was dissolved.

Respondent, as a corporate entity, and the aforesaid mentioned officers and director, acting as individuals, in the course and conduct of their business described above, agreed to cease and desist forever:



(a) From combining and conspiring in the operation of a concealed and bogus independent, or undisclosed, secret subsidiary, with the purpose and effect of forcing a reduction in the price of ice cream, so that the product of competitors could no longer be manufactured and sold at a profit, or of substantially lessening competition in the manufacture and sale of ice cream;

(b) From operating a subsidiary or controlled company, or companies, and at the same time holding out and representing such owned or controlled company or companies to be independent concerns, for the purpose and with the effect of injuring the business of a competitor or competitors, or substantially lessening competition in the manufacture and sale of ice cream.

Respondent, as a corporate entity, and the aforesaid officers and director, as individuals, also agreed that if it or they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it or them in the trial of the complaint which the commission may issue. (March 23, 1927.)

188. **False or Misleading Price Advertising—Correspondence School.**—Respondent, an individual, engaged in the business of operating a correspondence school, soliciting the sale of and selling in interstate commerce a course of instruction in wrestling and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his course of instruction, caused to be printed and distributed in interstate commerce advertisements, catalogues, letters, and pamphlets descriptive of his correspondence course, in which he featured and made use of the following statements and representations, to wit: "Tuition fee reduced from \$35 to \$15. Special offer. \$35.00 course for \$15.00. That tells the story of this remarkable offer. Thousands and thousands have cheerfully paid the regular fee of \$35.00 and been delighted with their investment. But you, under this SPECIAL OFFER, are able, through the fortunate selection of your name, to now enroll for the complete course for ONLY \$15.00." "This page explains my real special offer to you. Now this offer is one that will SAVE MONEY for you if you enroll promptly. It gives you a clean cut of \$20.00 from the regular price of \$35.00. This offer is for a LIMITED TIME, and to a LIMITED NUMBER, so I want to ask you to give it your most careful attention and let me hear from you by return mail"; when in truth and in fact no students were charged \$35; \$15 was the regular payment required of students.

Respondent agreed to cease and desist forever from representing directly or indirectly by means of advertisements, circular letters, or

pamphlets circulated in interstate commerce in soliciting the sale of and selling his course of instruction, first, that any certain offer is made only for a limited time, unless and until such offer is, in truth and in fact, a special offer, carrying with it an actual time limitation; and second, that the course of instruction offered by respondent is at a special reduced rate which will be allowed to those taking the course, thus making an apparent substantial saving, when in truth and in fact the so-called "reduced rate" is the regular and usual rate charged and paid by pupils for such course.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (March 30, 1927.)

189. **False or Misleading Advertising—Garments; Clothing.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of men's, women's, and children's clothing and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, offered for sale and sold its products in interstate commerce and as a means of promoting its said business, caused its products to be advertised in newspapers and magazines having circulation between and among various States of the United States, and in its catalogues and other printed matter distributed in interstate commerce. In such advertising matter certain of its garments and materials were described by respondent as "wool-finished cotton yarn," "wool-finished 2-tone tweed," "wool-spun cotton yarn," and "wool-spun cotton serge"; when in truth and in fact said products were not made of wool but were made of a material or materials other than wool. Products described as "wool-mixed velour flannel," "wool-mixed blanket," "wool-mixed yarns," and "wool-mixed suiting" were not made wholly of wool, but were made in part of a material or materials other than wool. Products described as "printed pongee," "pongee blouse," "pongee shirt," or as "all silk rayon," "rayon silk," "all silk fabric," "silk Spanish scarf," or "silk Spanish lace," "silk mixed brocade," or "silk mixed poplin," were not made of silk, the product of the cocoon of the silk worm, but were made of a material or materials other than silk. Products described as "silk caracul fur cloth," or as "silk caracul fur" were not made of fur but were made of a material or materials other than fur. Products described as "Manchurian fox" were not derived from the fox, but were derived from an animal other than the fox. Products described as "white ivory" were not

made of dentine obtained from the tusks of certain mammals but were made of a material other than ivory.

Respondent agreed to cease and desist from the following acts and practices:

(a) From the use of the word "wool" or "woolen" to describe or define its products unless the articles so described and advertised are made wholly of wool, or unless when said articles are made partly of wool and partly of some other material or materials, and the word "wool" or "woolen" is used to describe said products, it shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "wool" or "woolen" is printed, indicating that the said articles are not made wholly of wool;

(b) From the use of the word "pongee" or the word "silk" to describe or define its products, unless the said products so described and advertised are made wholly of silk, the product of the cocoon of the silkworm; or unless, when said products are manufactured partly of silk, and the word "pongee" or the word "silk" is used to describe said products, it shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the word "pongee" or the word "silk" is printed indicating that the said products are not made of silk;

(c) From the use of the word "fur" in connection or conjunction with the word "caracul" or "astrakhan" as descriptive of a garment or material made of textile fabric and not made of a fur-bearing skin of the lamb;

(d) From the use of the word "fox" in conjunction with the word "Manchurian" or any other word, when the skin so described is not the skin of the fox;

(e) From the use of the word "ivory" as descriptive of articles so as to import or imply that the same are made in whole or in part of dentine, that constitutes the greater part of the tusks of certain mammals.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 8, 1927.)

190. Price Maintenance—Radio Receivers and Accessories.—Respondent, a corporation, engaged in the business of manufacturing radio receiving sets, parts, accessories, and tubes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold in interstate commerce products of its manufacture to individuals, firms, partnerships, and corporations doing business as distributors in various States of the United States, said distributors in turn selling products obtained by them from respondent to retail dealers located in different States of the United States. Respondent caused the said distributors to enter into written contracts designated "DISTRIBUTOR'S CONTRACTS" with the said respondent and which contracts contained the following provision, among others, to wit: "The products herein enumerated shall not be sold except at the price designated by respondent for the sale of said products to dealers and current (a) at the time of the purchase of the said products by the distributor and (b) for the territory in which the sale is made by the distributor, or shall not be sold with or as any donation, discount, rebate, premium, or bonus \* \* \*. The distributor agrees to render on the 10th of each month a report showing the purchases of the products herein enumerated made by dealers from the distributor during the preceding calendar month and the names of the dealers purchasing the same." Respondent, with the cooperation of its aforesaid distributors caused retail dealers who purchased products from the said distributors to enter into written contracts designated "AUTHORIZED RETAILERS CONTRACT" or as "AUTHORIZED ACCESSORIES RETAILERS CONTRACT," and which contracts contained the following provision, among others, to wit: "The products herein enumerated shall not be sold except at the published list price designated by respondent for sale of said products to the public and current (a) at the time of purchase of said products by the dealer and (b) for the territory in which the sale is made by the dealer, or shall not be sold with or as any donation, discount, rebate, premium, or bonus \* \* \*." Respondent also caused to be attached to the products of its manufacture sold, shipped, or transported in commerce a notice reading in part: "This article shall not be sold except at the manufacturer's price designated for the class of purchaser buying same and current (a) at the time of the purchase of this article by the purchaser and (b) for the territory in which the sale is made by the purchaser." Respondent further, in the course and conduct of its business, maintained a system of fixing a schedule of resale prices at which products purchased from it by distributors should be sold by said distributors to retail dealers, the said distributors being caused to maintain such resale prices by threat that the said respondent would refuse to sell products to any distributor who failed or refused to observe such resale prices; and in addition to the system of fixing prices at which products purchased from respondent by distributors should be resold, said respondent, with the assistance and cooperation of the said distributors, further maintained a system of fixing prices at which retail

dealers who sold products purchased by them from said distributors should resell products to the consuming public, and as a part of this scheme of maintaining such resale prices respondent caused (1) the distributors to whom it sold products to refuse to sell such products to retail dealers who failed or refused to sell such products to the consuming public at the specified selling price fixed and determined by respondent as aforesaid; and further as a means of enforcing observance of such resale prices by retail dealers who handled the products sold by respondent, said respondent at all times refused to sell products manufactured or handled by it to distributors who resold same to retail dealers who would not observe the resale prices fixed by it; (2) adopted and used a system of maintaining suggested resale prices by means of cooperative methods employed by it. Said respondent in conjunction with its authorized distributors and retailers had in its service salesmen and representatives who investigated instances of price cutting which had been reported to respondent by its authorized distributors and retailers, which salesmen and representatives, pursuant to instructions, traced and ascertained the identity of dealers from which price cutters had purchased respondent's products; and (3) did thereafter threaten to refuse or refused to supply such dealers with its products, whether such dealers were themselves cutting the suggested resale prices or were selling to dealers cutting such resale prices; and (4) threatened such price cutters with the penalty of either having their contracts with respondent canceled or with suits for breach of contract, or both.

Respondent agreed to cease and desist forever from directly or indirectly (1) entering into contracts, agreements, or understandings with dealers, whether distributors, jobbers, wholesalers, or retailers, to the effect that such dealers, or any of them, in reselling the products sold by respondent, will adhere to any system of prices fixed or established by said respondent; (2) securing contracts, agreements, or understandings from such dealers to the effect that said dealers will adhere to any such system of resale prices; (3) threatening with civil or other suits or refusing or threatening to refuse to sell to any such dealer because of failure to adhere to any such system of resale prices; (4) cooperating with other individuals, firms, partnerships, or corporations in refusing or threatening to refuse to sell to any distributors, jobbers, or wholesalers because such said distributors, jobbers, or wholesalers resold said respondent's products to retailers who have failed to maintain the resale prices fixed by respondent; (5) securing or seeking to secure the cooperation of its distributors or other dealers in maintaining or enforcing any system of resale prices whatsoever.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be

used in evidence against it in the trial of the complaint which the commission may issue. (April 8, 1927.)

191. **False or Misleading Advertising and Brands or Labels—Fountain Pens.**—Respondent, an individual, engaged in the business of selling jewelry and specialty supplies in wholesale and/or retail quantities in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

In the course and conduct of his business in soliciting the sale of and selling his products, respondent caused advertising matter to be distributed among the retail and other trade located in various States of the United States; said advertising matter being in the form of (a) Posters or placards designed and used for public display in the business establishments of retailers and other trade, and which posters and placards contain, among others, the following words: "Pens solid 14 K. gold \$1.48 guaranteed. Regular price \$5.00," and (b) Advertisements for insertion and which were inserted by said retailers and other trade in local newspapers, which advertisements featured the illustration of a fountain pen together with the selling price "\$1.48," and the words "Sold elsewhere for \$5.00." And said respondent caused the fountain pens so advertised, sold, and distributed by him in interstate commerce to bear a ring label on which appeared the words and figures: "Price \$5.00"; when in truth and in fact the ring labels encircling the said pens and bearing the words and figures "Price \$5.00," and the advertising matter containing the words and figures "Sold elsewhere for \$5.00," indicated a fictitious price which was much in excess of the price at which the aforesaid pens were sold or contemplated to be sold, and much in excess of the actual price at which the said pens were sold in the usual course of wholesale and/or retail trade.

Respondent agreed to cease and desist forever from advertising, illustrating, describing, or labeling the aforesaid fountain pens with any false, fictitious, or misleading statements of or concerning the price of said fountain pens, or with any false, fictitious, or misleading statements as to the value of said fountain pens; and the said respondent further agreed to cease and desist forever from putting into the hands of retail dealers or other persons advertising matter containing any false, fictitious, or misleading statements of or concerning the price or value of said fountain pens.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (April 13, 1927.)

192. **Price Maintenance—Stoves.**—Respondent, a corporation, engaged in the manufacture of stoves and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted and enforced a system of fixing and maintaining a specified standard price at which the products sold by it in interstate commerce to retail and other dealers under a certain trade name should be sold by said dealers to the consuming public, and as a means of enforcing and effecting maintenance of its said system, respondent used the following methods, to wit:

(a) Caused it to be generally known to the trade by letters, personal interview, and by other means, that it expected and required its customers to maintain and enforce the specified standard resale price fixed by it;

(b) Solicited and secured from its customers reports of the names of dealers who failed to observe and maintain such resale price, and, upon obtaining such reports, urged the offenders to cease selling below said price;

(c) Threatened to refuse to sell, and did refuse to sell its products to customers or dealers who failed to observe and maintain said resale price or who sold to others who failed to maintain in the same;

(d) Exacted promises and assurances from such offenders that they would thereafter maintain said resale price as a condition of further supplying them with its product;

(e) Caused certain notations to be entered on its sales-card records which it kept for the purpose, among others, of listing those customers or dealers who did not maintain, or who were alleged not to have maintained its resale price and who were not to be supplied with its products until they gave assurances or other satisfaction that they would maintain the same in the future;

(f) Requested and secured the cooperation of its customers to maintain the resale price, through the holding of "schools" and "conventions" at which such cooperation is sought and obtained, and by other means.

(g) Urged dealers to enter into agreements among themselves to maintain such resale prices.

Respondent agreed to cease and desist forever from—

(a) Securing or attempting to secure assurances from its customers that they will observe the resale price on its products as fixed by it;

(b) Soliciting and securing from its customers reports of the names of dealers failing to observe and maintain said resale price fixed by it;

(c) Exacting promises and assurances from offending price cutters that they will thereafter maintain said resale price fixed by it as a condition of further supplying them with its product;

(d) Causing notations, or other entries, to be made on sales-card records kept by it for the purpose of listing undesirable purchasers who are not to be supplied with its products unless and until they furnish satisfactory assurances of their purpose to maintain its resale price in the future;

(e) Securing, or seeking to secure, by personal solicitation or by other equivalent means, the cooperation of its customers to maintain and enforce any system of resale prices whatsoever;

(f) Urging dealers to enter into agreements among themselves to maintain said resale price, and attempting to establish and enforce its resale price by any other equivalent cooperative means.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 13, 1927.)

**193. False or Misleading Advertising and Brands or Labels—Mattresses.**—Respondent, a corporation, engaged in the manufacture of mattresses and in the sale and distribution of the same in wholesale and/or retail quantities in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused certain of its mattresses, sold by it in commerce between and among various States of the United States, to be designated, represented, and referred to as "dark cotton" or as "colored cotton" and represented the same in its circulars and other printed matter as "dark cotton" and as "combination dark cotton and felt"; and the said respondent also caused to be affixed to said mattresses brands and labels as follows: "Colored Cotton Mattresses Guaranteed 100% New Material," and with the aforesaid brands and labels affixed thereto sold said mattresses in commerce between and among various States of the United States; when in truth and in fact the said mattresses so designated, represented, described, labeled, and sold in interstate commerce were not manufactured of, and did not contain filling which was made wholly of cotton or of strictly all new material, but were composed in varying quantities of fabrics or materials which were neither cotton nor 100 per cent new material.



Respondent agreed to cease and desist forever from the use, in its circulars or other printed matter in soliciting the sale of and selling its aforesaid products in interstate commerce, of the word "cotton" or the words "new material" either independently or in connection or conjunction each with the other, or with any other word or words as a brand or label for its aforesaid products which directly assert, or clearly import or imply that the said products sold by the said respondent are manufactured of cotton and/or new material, and from the use of the word "cotton" and/or the words "new material" or any other word or words which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said products are manufactured wholly of cotton and/or new material; or until such time as the said respondent does actually sell and distribute in interstate commerce mattresses manufactured from cotton and/or new material as represented and described in its circulars and other printed matter and on the aforesaid labels affixed to the products.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 22, 1927.)

194. **False or Misleading Advertising and Brands or Labels—Blankets.**—Respondent, a corporation, engaged in the manufacture of blankets and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent manufactured blankets composed partly of wool and partly of cotton, which product it advertised in interstate commerce and sold and distributed between and among various States of the United States. Each of the said blankets bore a label, some of which labels were in words and design selected by respondent, others in words and design selected by its customers, but affixed to the blankets by said respondent. Among the blankets so labeled, sold, and distributed in interstate commerce were blankets bearing the following labels: "Wool-Mixed Blankets," "Fine Wool-Mixed Plaid Blanket," "Fine Wool Blankets," or "Fine Wool." Also on some of the brands and labels used on the products manufactured, sold, and distributed in interstate commerce by respondent were pictorial representations of a lamb or sheep, or the head of such animal; when in truth and in fact none of the said blankets above mentioned and to which were affixed the aforesaid brands, labels, and pictorial representations contained more than 65 per cent, and some as low as 5 per cent of wool.

Respondent agreed to cease and desist forever from the use in interstate commerce, in its advertisements, or on its labels, tags, or brands of the word "wool" either independently or in connection or conjunction with any other word, words, or pictorial representations to represent, describe, or define its products not made of wool, or the use of any other word or words or pictorial representations that import or imply that the aforesaid products are made of wool; and respondent also agreed to cease and desist from the use, in its advertisements or advertising matter circulated in interstate commerce, and on its brands or labels affixed to products not made of wool, of the word "wool" or any other word or words or pictorial representations that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the products so advertised, branded, and sold in interstate commerce are made of wool; or unless, when said products be manufactured partly of wool and partly of some other material or materials, and the word "wool" is used to designate the product, in which case there shall be used in combination with the word "wool" a word or words in a type equally as conspicuous as the word "wool" or by a word or words otherwise clearly indicating that the said product is not made wholly of wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (April 22, 1927.)

195. **False or Misleading Brands or Labels—Hats.**—Respondent, a corporation, engaged in the sale and distribution of hats in wholesale and/or retail quantities in interstate commerce and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold and distributed hats manufactured by its subsidiary, and upon the sweatbands of which the said company stamped or caused to be stamped the words "Genuine Beayer," and with the said words affixed thereto sold and distributed said hats in commerce between and among various States of the United States, when in truth and in fact the said hats were not manufactured of beaver fur but were manufactured in varying quantities of a fur or furs, material or materials other than beaver fur.

Respondent agreed, in its behalf and in behalf of its subsidiary, to cease and desist forever from the use of the word "beaver" either independently or in connection or conjunction with any other word or words as a label or brand upon the aforesaid hats sold and distributed by it in interstate commerce so as to import or imply that

the said hats are made of beaver fur, and the said respondent also agreed in its behalf and in behalf of its subsidiary to cease and desist forever from the use of the word "beaver" either independently or in connection or conjunction with any other word or words, or in any other way, as a label or brand for its hats, or in the advertisements thereof which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said hats are made of beaver fur; or unless, when said hats are composed partly of beaver fur and partly of some other fur or furs, material or materials, the word "beaver" if used to designate the hats, shall be employed in combination with some other word or words which shall be displayed in type equally as conspicuous as the word "beaver" or which otherwise clearly indicate that such hats are not made wholly of beaver fur.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 3, 1927.)

**196. False or Misleading Brands or Labels—Woolen Blankets.—** Respondent, a corporation, engaged in the manufacture of blankets and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business in soliciting the sale of and selling its products in interstate commerce, caused labels to be affixed to its said blankets, some of which labels were supplied by the purchasers and others provided by the respondent. Approximately 90 per cent of the blankets made, sold, and distributed in interstate commerce by said respondent were all wool and in some instances were so labeled. The remaining 10 per cent of the blankets manufactured, sold, and distributed by respondent were manufactured so as to contain a large per cent both of cotton and wool, which said products were labeled and described as follows: "Woolen Blankets," "Fine Wool Blankets Manufactured Expressly for the Finest Retail Trade," and "Fine Woolen Blankets Made From Selected Stock."

Respondent agreed to cease and desist forever from the use in interstate commerce, in its advertisements or on its labels, tags, or brands, of the words "Wool" or "Woolens" either independently or in connection or conjunction with any other word or words to represent, describe, or define its products not made of wool, or the use of any other word or words that import or imply that the aforesaid products are made of wool; and the said respondent also agreed to cease and desist forever from the use, in its advertisements or

advertising matter circulated in interstate commerce, and on its brands or labels affixed to products not made of wool, of the word "Wool" or "Woolens" or any other word or words that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so advertised, branded, and sold by it are made of wool; or unless, when said products be manufactured partly of wool and partly of some other material or materials, and the word "Wool" or "Woolens" is used to designate the product, in which case there shall be used in combination with the word "Wool" or "Woolens" a word or words printed in a type equally as conspicuous as the word "Wool" or "Woolens" or by a word or words otherwise clearly indicating that said product is not made wholly of wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 3, 1927.)

197. **False or Misleading Brands or Labels—Shellac Compound or Substitute; Gasket or Rim Cement.**—Respondent, a corporation, engaged in the manufacture of leather, rubber, and gasket cements, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured or compounded a chemical product used in the automotive industry for cementing gaskets, crank cases, and parts of internal-combustion and other engines, which said product it sold and distributed in interstate commerce under a label reading "Rim and Gasket Shellac"; when in truth and in fact the said product so labeled, designated, and referred to and sold in interstate commerce was not manufactured or compounded solely of genuine shellac gum cut in alcohol, but was manufactured or compounded in accordance with a formula which contained elements, ingredients, and materials, including gum other than shellac.

Respondent agreed to cease and desist forever from the use of the word "shellac" to designate or describe its product on its labels or in its advertising matter of whatsoever character in selling or soliciting the sale of its product in interstate commerce, unless the said product is 100 per cent shellac gum cut in alcohol; and if the product contains less than 100 per cent shellac gum and the word "shellac" be used to designate or describe said product, then the same shall be accompanied by the word "compound" printed in type equally as conspicuous as the word "shellac"; or if the product contains no shellac

gum and the word "shellac" be so used, it shall be accompanied by the word "substitute" printed in type equally as conspicuous as the word "shellac."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 13, 1927.)

198. **False or Misleading Advertising—Radio Cabinets.**—Respondent, a corporation, engaged in the manufacture of radio sets and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals, likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold and distributed in interstate commerce radio sets manufactured by it, some of which were equipped with cabinets which were designated and described by the said respondent as "Beautifully finished mahogany," and, in soliciting the sale of and selling its products in interstate commerce, the said respondent caused its cabinets to be so advertised by means of representations inserted in publications having general circulation in and among various States of the United States; and in pamphlets, circulars, and other printed matter made the following representations: "Built with mahogany legs," "Installed in a beautifully finished cabinet of solid mahogany," and "Beautifully finished mahogany cabinet," and with the said descriptive phraseology contained therein caused said pamphlets, circulars, and other printed matter to be distributed to prospective purchasers located in various States of the United States; when in truth and in fact the said cabinets, described as above, were not manufactured of mahogany but were manufactured of a wood or woods, other than mahogany, finished to simulate mahogany.

Respondent agreed to cease and desist forever from the use of the word "mahogany" or the words "mahogany finish" or "finished mahogany" either independently or in connection or conjunction each with the other, or with any other word or words which import or imply that the said products so designated, described, or advertised in interstate commerce are manufactured from mahogany, and from the use of the aforesaid words, either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said cabinets are in truth and in fact manufactured from mahogany; or in case, where the words "mahogany finish" are used in connection with the advertisement and sale in interstate commerce of said cabinets, in that event they shall be

used only as a description thereof designating color to be followed by the name of the wood or woods of which said cabinets are actually made.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 13, 1927.)

**199. False or Misleading Brands or Labels—Shellac Compound or Substitute; Gasket Shellac.**—Respondent, a corporation, engaged in the sale and distribution in interstate commerce of automotive supplies and accessories, including a product intended for use as a substitute for gasket shellac, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, engaged in the sale and distribution in interstate commerce of a product intended to be used in the automotive industry for cementing gaskets, crank cases, and parts of internal combustion and other engines, and which product the said respondent branded or labeled as "Gasket Shellac" and including therewith the following printed representations: "Gasket shellac should not be confused with orange shellac as it is different, having many advantages over the latter for use by the automobile trade"; "Gasket shellac is most useful for tightening connections of cylinder heads, radiators, carburetors, gear and crank cases, etc.," and with the aforesaid brand or label and printed representations affixed thereto the said respondent sold said product in commerce between and among various States of the United States; when in truth and in fact, the said product so branded or labeled was not manufactured or compounded of genuine shellac gum cut in alcohol, but was manufactured or compounded from elements, ingredients, and materials including a gum other than shellac gum.

Respondent agreed to cease and desist forever from the use of the word "shellac" to designate or describe its product on its brands or labels or in its advertising matter of whatsoever character in selling or soliciting the sale of said product in interstate commerce, unless said product is 100 per cent shellac gum cut in alcohol; or if the product contains less than 100 per cent shellac gum, and the word "shellac" be used to designate or describe said product, it shall be accompanied by the word "compound" printed in type equally as conspicuous as the word "shellac"; or if the product contains no shellac gum, and the word "shellac" be so used; it shall be accompanied by the word "substitute" printed in type equally as conspicuous as the word "shellac."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 20, 1927.)

200. **False or Misleading Advertising—Clothing, Shirts, Dresses, Hats, Hosiery, Women's Suits, etc.**—Respondent, a corporation, engaged in the mail-order business, the products sold by it in interstate commerce consisting chiefly of men's and women's wearing apparel, in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, advertised and sold in interstate commerce products including negligee, shirts, dresses, jackets, scarfs, ties, hosiery, shirt waists, straw hats and ladies' suits. Certain of said shirts, dresses, jackets, scarfs, ties, and hosiery being described in said advertising matter as "rayon silk" or as "rayon silk mixed" or as "pure rayon silk" or as "pongee," or as "cotton pongee"; when in truth and in fact none of the said garments were made wholly of silk, the product of the cocoon of the silkworm; while certain other of said garments advertised for sale and sold in interstate commerce by said respondents were described as "wool finish," when in truth and in fact such garments were not made of wool but were made of a material or materials other than wool; and said straw hats advertised and sold in interstate commerce by said respondent as "silk visca" were not made of silk, the product of the cocoon of the silkworm, but were made of a material or materials other than silk.

Respondent agreed to cease and desist forever from the use (a) of the words "silk" or "pongee" in its catalogues or other advertising matter circulated in interstate commerce in soliciting the sale of and selling its products, unless the products so designated are made wholly of silk, the product of the cocoon of the silkworm; or unless when the products are made partly of silk and partly of some other material or materials the words "silk" or "pongee" shall be accompanied by a word or words displayed in type equally as conspicuous as that in which the words "silk" or "pongee" are printed, indicating that the said products are not made wholly of silk; and (b) of the word "wool" either independently or in connection or conjunction with any other word or words, letter, or letters in its advertisements as descriptive of its dresses or other garments sold and distributed in interstate commerce unless the said dresses or other garments are made wholly of wool; or unless, when said dresses or garments are made partly of wool and partly of some other material or materials, the word "wool" shall be accompanied by a word or words dis-

played in type equally as conspicuous as that in which the word "wool" is printed, indicating that the said dresses or other garments are not made wholly of wool.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (May 27, 1927.)

**201. False or Misleading Advertising and Brands or Labels—Oleomargarine.**—Respondent, a corporation, engaged in the manufacture of oleomargarine and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of, selling, and promoting the sale of its products in interstate commerce, caused its advertising matter consisting of display signs and placards containing the words, "Country Style Rolls" in connection or conjunction with such phrases as "Fresh Churned Rolls," "Creamy Richness—Can't be Beat," "Fresh From the Churn," and "Churned Fresh Daily" to be circulated in interstate commerce among dealers handling its said products for use by the said dealers in advertising said products for sale to the consuming public, when in truth and in fact the said products so advertised, described, labeled, and sold in interstate commerce were not the product known to the trade and purchasing public as creamery butter, but were a manufactured product composed in substantial part of ingredients or substitutes other than those of which creamery butter is made.

Respondent agreed to cease and desist forever from the use, in soliciting the sale of and selling its aforesaid products in interstate commerce, of the words "Country Style Roll" either independently or in connection or conjunction with the phrases "Fresh Churned Rolls," "Creamy Richness—Can't be Beat," "Fresh from the Churn," "Fresh Churned Daily," or any of them, or in connection or conjunction with any other word or words which import or imply that the products so advertised, labeled, and shipped or transported in interstate commerce are the products known to the trade and recognized by the purchasing public as creamery butter, and the said respondent further agreed to cease and desist forever from using and putting into the channels of interstate trade for use by others, in soliciting the sale of and selling the said products, advertising matter containing the aforesaid quoted words and phrases, or in any other way to describe and advertise said products which may have the



capacity and tendency to mislead and deceive the purchasing public into the belief that the said products are creamery butter.

It is also understood and agreed that if said respondent should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 10, 1927.)

202. **False or Misleading Advertising and Trade or Corporate Name—Garments, Sweaters, Underwear, Hosiery.**—Respondent, a corporation engaged in the sale and distribution of garments, sweaters, underwear, and hosiery in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce through agents or representatives located in various States of the United States who canvassed their respective territories soliciting orders from consumers, adopted as a part of its corporate or trade name the word "mills," which said corporate or trade name it used on its letterheads, envelopes, and other advertising matter circulated in commerce, together with such statements as "Direct from mill to wearer," or "By selling exclusively direct from mill to wearer through a trained force of thoroughly reliable sales people who are permanent residents of your city, we can sell at prices so much lower than if you were to buy at the retail stores"; when in truth and in fact the said respondent did not own, operate, or control a mill for the knitting or fabrication of the cloth from which the garments sold by it were made, but filled its orders for garments from cloth knit or fabricated by mills that it neither owned, operated, nor controlled. Certain of the aforesaid garments sold by respondent were advertised and sold in interstate commerce as "silk garments"; when in truth and in fact the said garments were not made of silk, the product of the cocoon of the silk-worm, but were made of material or materials other than silk.

Respondent agreed to cease and desist forever in soliciting the sale of and selling its products in interstate commerce from the use of the word "mills" as part of, or in connection or conjunction with, its corporate or trade name, and the use of its said corporate or trade name containing the word "mills" in advertisements, circulars, catalogues, or on envelopes circulated between and among various States of the United States in soliciting the sale of and selling its products; or the use of the word "mills" in any other way that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owns, operates, or controls a mill for the knitting or fabrication of the cloth from which its

products are made; and to cease and desist from the use of the words "From mill to wearer," or any other similar phrase or slogan which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products so represented and sold in interstate commerce are, in fact, sold "Direct from the mill to wearer" without the intervention of middlemen; or until such time as the said respondent does actually own, operate, or control a mill or plant for the knitting or fabrication of the cloth from which are made the products its sells and distributes in interstate commerce. Respondent also agreed to cease and desist forever from the use of the word "silk" either independently or in connection or conjunction with any other word or words on its mailing envelopes, in its catalogues, circulars, letterheads, or other advertising matter circulated in interstate commerce in soliciting the sale of or selling its said products which directly assert or import or imply that the products so designated as "silk" are made wholly of silk, the product of the cocoon of the silkworm, and the use of the word "silk" in any other way descriptive of the said products that may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products sold by said respondent are made of silk; or unless, where the product is made in substantial part of silk, and the word "silk" is used to designate said product, the said word "silk" must be accompanied by another word or words in type equally as conspicuous as the word "silk" is printed so as to indicate that the said product is not made wholly of silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 21, 1927.)

203. **False or Misleading Brands or Labels—Church Candles.**—Respondent, a corporation, engaged in the manufacture of candles for altar use in churches, and in the sale and distribution of the same in wholesale and/or retail quantities in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

"Altar" candles are candles used by various religious denominations and churches in religious ceremonies and are made so as to conform to certain ecclesiastical requirements.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused certain of its candles to be branded or labeled as "Beeswax Church & Alter Candles," or as "Wax Church & Altar Candles," and with the said brands and labels affixed thereto sold said candles in com-

merce between and among various States of the United States; when in truth and in fact the candles so branded or labeled and sold in interstate commerce were not manufactured wholly of beeswax; and/or did not conform to the ecclesiastical requirement so as to be properly and accurately designated "altar" candles.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its candles in interstate commerce, from the use of the word "Beeswax" and/or the word "Wax" either independently or in connection or conjunction with any other word or words as a brand or label for its candles, or in its advertising matter used in soliciting the sale of and selling its candles, which directly assert or clearly import or imply that the said candles are manufactured wholly of beeswax; or the use of the word "Beeswax" or the word "Wax" in any other way which has the capacity and tendency to mislead and deceive the purchasing public into the belief that the said candles are made of beeswax; or unless, when said candles are composed partly of beeswax and partly of some other material or materials, the word "Beeswax" or the word "Wax" if used to designate the candles shall be employed in connection or combination with some other word or words which shall be displayed in a type equally as conspicuous as that in which the word "Beeswax" or the word "Wax" is printed, or which otherwise clearly indicates that such candles are not made wholly of "Beeswax"; and the said respondent also agreed to cease and desist forever, in the sale of its candles in interstate commerce, from the use of the word "altar" either independently or in connection or conjunction with any other word or words to define, represent, or describe its candles unless the candles so represented, designated, and referred to are made to conform to established ecclesiastical requirements so as to be properly and accurately represented, designated, and referred to as "Altar" candles.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (June 21, 1927.)

204. **False or Misleading Advertising and Trade Name of Product—Lingerie and Women's Outerwear.**—Respondent, a corporation, engaged in the manufacture of lingerie and outerwear for women and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in the course and conduct of its business in soliciting the sale of and selling its product, caused advertisements to be inserted in catalogues and booklets, which said catalogues and book-

lets were circulated between and among various States of the United States through the medium of traveling salesmen, and wherein said corporation caused certain of its products to be designated, represented, and referred to as "Rosesilk," and made use of such descriptive phraseology as "Rosesilk quality," and sold said products so designated, described, represented, and referred to in commerce between and among various States of the United States, when in truth and in fact the said products so advertised and sold in interstate commerce were not manufactured either in whole or in part from silk, the product of the cocoon of the silkworm, but were manufactured from a product which did not contain silk either in whole or in part.

Respondent agreed to cease and desist from the use of the word "Rosesilk" either independently or in connection or conjunction with any other word or words in its catalogues, booklets, or other advertising matter, and the use of the word "silk" either independently or in connection or conjunction with any other word or words, letter or letters to represent or describe said products so as to import or imply that said products were manufactured either in whole or in part from silk, the product of the cocoon of the silkworm, and from the use of the word "Rosesilk" or the word "silk," in any other way that may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that said products were manufactured from silk; or until such time as the said products so advertised and sold by respondent are manufactured from silk, the product of the cocoon of the silkworm.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (July 11, 1927.)

**205. Combinations or Conspiracies to Limit Distribution to "Regular" Dealers—Candy and Confections.**—Respondents, members of a voluntary, unincorporated trade organization or club, consisting of two individuals, one partnership and two corporations, engaged, respectively, in the purchase of candy and confections in wholesale and/or job lots, and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their respective businesses, purchased candy and confections in wholesale and/or job-lot quantities from manufacturers located in various States of the United States, and sold and distributed the same in interstate commerce to

the retail and other trade. On or about June 17, 1924, and at divers other times before and after said date, the said respondents entered into an agreement or mutual understanding having as its objects: (1) The limiting of wholesalers and/or jobbers of candy or confections in the vicinity in which said respondents are located, and (2) the cutting off of the supplies of candy and confections from all other wholesalers and jobbers in the said vicinity by refusing to buy from any and all manufacturers of said commodities who sold to such other wholesalers and jobbers; and the said respondents furnished to the various manufacturers of candy and confections lists of the so-called "legitimate" jobbers and lists of the so-called "illegitimate" jobbers located in the said vicinity, and notified said manufacturers that said respondents had jointly and/or severally decided to "discontinue handling the products of any manufacturer, regardless of who he is or what he manufactures," who sold or sells to any of the so-called "illegitimate" jobbers; and said respondents sought to secure, and did secure, the cooperation of various manufacturers of candy and confections to either refuse to sell their said products, or to limit the period of discounts, or to reduce the amount of discounts theretofore allowed by said manufacturers to the so-called "illegitimate" jobbers of such commodities.

Respondents agreed to cease and desist forever from (1) combining and conspiring among themselves, or with others, and from using any scheme or device or means whatsoever, directly or indirectly, to accomplish the result of hindering, obstructing, or preventing any of their jobber competitors or others engaged in similar business from freely purchasing and obtaining in interstate commerce the commodities or products handled by such competitors or others, or from otherwise freely competing in interstate commerce with the said respondents or any of them, and (2) from combining and conspiring among themselves or with others to give, and from giving directly or indirectly verbal, written, or other notices or communications to manufacturers having the purpose, tendency or the effect of inducing, coercing or compelling such manufacturers to refuse to deal with or to sell to any of their jobber competitors or others engaged in similar business upon the same terms and conditions usually accorded by said manufacturers to the said respondents, or any of them, and (3) from combining and conspiring among themselves, or with others, or from using any scheme or device or means whatsoever to accomplish the result directly or indirectly of hindering, obstructing, or preventing manufacturers from dealing with their jobber competitors, or others engaged in similar business upon as favorable terms and conditions as those usually accorded by said manufacturers to the said respondents, or any of them, and (4) from combining and conspiring among themselves, or with others, to induce, coerce, or compel manu-

facturers, directly or indirectly, to refuse to sell products to their jobber competitors, or to others engaged in similar business upon the same terms and conditions usually offered and given by said manufacturers to said respondents or any of them, and (5) from combining and conspiring among themselves, or with others, to boycott or to threaten to boycott, or to threaten with loss of patronage or custom any manufacturer engaged in interstate commerce who sells or agrees to sell to their jobber competitors or others engaged in similar business on the same terms and conditions accorded by said manufacturer to the said respondents, or any of them.

Respondents also agreed that if they, or any of them, should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them, or any of them, in the trial of the complaint which the commission may issue. (July 11, 1927.)

**206. Price Agreements—Imitation Leather or Pyroxylin.**—Respondents, seven corporations, engaged in the business of manufacturing pyroxylin-coated material or imitation leather, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, from time to time entered into agreements or mutual understandings having as their object the elimination of substantially all active competition between and among such corporations in the sale and distribution by them in interstate commerce of imitation leather (1) through the establishment and maintenance of uniform so-called "Standard Costing Procedure" or list prices arrived at through a comparison of cost data submitted by the various corporations aforesaid, (2) by the adoption of uniform discounts (*a*) to consumers and (*b*) to jobbers or distributors, and (3) by limiting each and all of the aforesaid corporations to the acceptance of contracts calling for the delivery of products over a period not to exceed 90 days.

Respondents agreed to cease and desist forever from combining, associating or cooperating, among themselves or with others engaged in the same trade (1) to fix, or to make uniform, the prices of pyroxylin-coated material or imitation leather sold and/or distributed in interstate commerce by them or any of them, (2) to maintain standard or fixed selling or resale prices for pyroxylin-coated material or imitation leather sold and/or distributed in interstate commerce by them or by any of them, (3) in the compilation and publishing, for use by themselves, or such others, of average, normal or standard production costs with instructions or understandings for the translation of such

standard costs into uniform selling prices under the name of "Standard Costing Procedure" or any other name, (4) for the purpose of discussing and agreeing upon uniform terms, discounts and prices, or adopting or employing any means or methods which fix or tend to fix the prices at which pyroxylin-coated material or imitation leather shall be sold by them in interstate commerce, or which is designed to equalize or make uniform the sale prices, terms, discounts, or policies of such corporations, or any others, in the sale of pyroxylin-coated material or imitation leather in interstate commerce.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue: (July 29, 1927.)

**207. False or Misleading Advertising and Brands or Labels—Cigars.**—Respondent, an individual, engaged in the manufacture of cigars and in the sale and distribution of the same in interstate commerce, and in competition with other individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreements to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent in soliciting the sale of and selling his cigars in interstate commerce caused advertisements to be inserted in newspapers distributed between and among various States of the United States and by means of other advertisements or printed matter circulated in interstate commerce caused certain of his products to be represented and referred to as being manufactured of tobacco known as "Havana," "Habana," or "Vuelta Abajo," and also caused the aforesaid cigars to contain a brand or label purporting to represent or designate said product featuring the words "Havana," "Habana," or "Vuelta Abajo" so as to import or imply that said product was made of tobacco grown on the island of Cuba, and with the aforesaid brands or labels affixed thereto sold said product in commerce between and among various States of the United States, when in truth and in fact the product so represented, designated and referred to was not made wholly from tobacco grown on the island of Cuba.

Respondent agreed to cease and desist forever from the use of the words "Havana," "Habana," or "Vuelta Abajo," or any of them to represent or designate his said product in advertisements and other printed matter used in soliciting the sale of or selling said product in interstate commerce, and also agrees to cease and desist forever from the use of the words "Havana," "Habana," or "Vuelta Abajo," either independently or in connection or conjunction with any other word or words as a trade name, brand or label in the sale, in interstate commerce, of a product which is not composed wholly of tobacco

grown on the island of Cuba; or unless, when said product is composed in substantial part of tobacco grown on the island of Cuba and the words "Havana," "Habana," and "Vuelta Abajo" are properly used to designate said product, in which case the said words, or any of them, shall be employed in connection or combination with some other word or words which shall be displayed in type equally as conspicuous as that in which the words "Havana," "Habana," or "Vuelta Abajo" or any of them are printed so as to clearly indicate that such product is not made wholly of tobacco grown on the island of Cuba, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of tobacco other than that known to the trade and purchasing public as "Havana," "Habana," or "Vuelta Abajo."

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 16, 1927.)

208. **False or Misleading Advertising and Trade or Corporate Name—Correspondence School.**—Respondent, an individual, engaged in conducting a correspondence school, more particularly in the business of preparing courses of instruction in accountancy and other subjects which he sells and distributes in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair practices, as set forth therein.

American Institute of Accountants is a corporation organized, existing, and doing business under and by virtue of the laws of the District of Columbia with its principal place of business located in the city of New York, State of New York, and having a branch office in the city of Philadelphia, State of Pennsylvania, and a branch office in the city of Washington, District of Columbia. It has, since the year 1916, continuously maintained contact with schools of commerce and accountancy in leading universities and colleges of the United States, and at divers times had conducted and still conducts its own examination for admission to American Institute of Accountants coincident with the examinations for admission to practice as certified public accountants. It also edits a publication entitled "Journal of Accountancy," and a syllabus and circular of information showing the nature of examinations conducted by it, outlining the subjects covered. It has been and is now a nationally known and recognized corporation for the advancement of the interests of its accountant members.

Respondent, in the course and conduct of his business adopted and used as part of his trade name the word "American" in such manner



as to simulate the corporate or trade name of the American Institute of Accountants so as to confuse the purchasing public into the belief that the school conducted by respondent was part of, connected with, or accredited by the aforesaid American Institute of Accountants, and the said respondent caused his said trade name containing the word "American" to be used in his enrollment or application blanks, envelopes, and other printed matter circulated in interstate commerce in soliciting the sale of and selling his courses of instruction in accountancy, and said respondent caused advertisements to be inserted in newspapers and other publications having circulation between and among various States of the United States, said advertisements featuring said trade name containing the word "American" while in certain of his circular matter said respondent made use of the following: "Our course and system have been publicly indorsed in letters and printed interviews by United States Senators, Congressmen, and other governmental officials as being of inestimable service in assisting in the advanced education of prospective future employees"; and said respondent also licensed others located in various States of the United States to whom he sold his course of instruction in accountancy to use his said trade name containing the word "American" in the advertising matter and sale of said courses of instruction by said licensees in commerce between and among various States of the United States, and the said licensee caused the said trade name containing the word "American" to be used on the stationery and other printed and advertising matter employed by said licensee in soliciting the sale of and selling said course of instruction on accountancy to the purchasers thereof located in various States of the United States; when in truth and in fact said respondent is in no way connected with, or accredited by the American Institute of Accountants referred to in the preceding paragraph hereof, and the "courses and system" sold and distributed by respondent and his licensees in interstate commerce have not been publicly or otherwise indorsed by Government officials. Respondent also caused certain of his printed and advertising matter circulated in interstate commerce to be accompanied by a seal or waiver containing the word "American" while certain of his literature was signed by himself as president so as to import or imply that it was an incorporated entity; when in truth and in fact it was not incorporated.

Respondent agreed to cease and desist forever from the use of and/or from licensing others to use the word "American" as part of, or in connection or conjunction with, his trade name and trade designation in the sale and distribution in interstate commerce of his or their courses of instruction, and from the use of, or licensing others to use, the word "American" in advertisements inserted by him or by said licensees in newspapers or publications having circulation between

and among various States of the United States, or on his or their letterheads, envelopes, circulars, application blanks, contracts, or other printed matter distributed in interstate commerce in soliciting the sale of and selling said courses of instruction, which may import or imply that said respondent or his licensees is or are conducting a school which is part of, connected with, or accredited by the American Institute of Accountants, or which may confuse, mislead, or deceive the public into the belief that said respondents or his licensees is or are conducting a school which is part of, or connected with, or accredited by the said American Institute of Accountants; and the said respondent further agrees to cease and desist from the use, and from licensing others to use, in his or their advertising or other printed matter, of indorsements or testimonials of Government officials unless said indorsements or testimonials have been actually obtained from said Government officials; and said respondent also agrees to cease and desist from the use of any word or words, seal or waver, or other means, which may import or imply that the school conducted by said respondent and/or said licensees is incorporated, or which may have the capacity and tendency to confuse, mislead, or deceive the public into the belief that the said school is incorporated.

Respondent also agrees that if he should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (September 21, 1927.)

**209. False or Misleading Advertising and Representations—Pumice Stone.**—Respondent, a corporation engaged in the business of selling and distributing pumice stone in interstate commerce and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair practices as set forth therein.

Pumice stone sold in the United States of America is of two kinds, viz, that which has been ground in foreign countries and that which has been ground in the United States. For the most part the raw product is of foreign origin, but the foreign process of grinding such raw material is of such nature that the resultant material is not as good for the uses to which it is put as that which is ground in the United States of America, and there is a distinct preference in the trade for the said American ground product.

Respondent in the course and conduct of its business caused supplies of pumice stone ground and placed in finished state in a foreign country to be imported in the United States, delivered to its warehouse, and there sold and distributed through the instrumentality of salesmen and otherwise between and among various States of the United States.

Respondent also caused the word "Mills" to be used in its circulars, folders, letterheads, and other printed matter circulated in interstate commerce so as to import or imply that said product was ground and placed in finished state in mills located in the United States of America which it owned, controlled, or operated; when in truth and in fact said respondent did not own, operate, or control a mill located in the United States of America wherein was ground and/or placed in finished state the purnice stone sold by it in interstate commerce, and said respondent filled orders for products made from purnice stone ground and/or placed in finished state at a mill or mills located in foreign countries which it neither owned, controlled, or operated.

Respondent agreed to cease and desist forever from the use of the word "Mills," either independently or in connection or conjunction with any other word or words on its labels, or in its circulars, folders, letterheads, and other advertising matter, which import or imply that the respondent either owned, controlled, or operated a mill located in the United States of America wherein is ground and/or placed in finished state the pumice stone sold by it in interstate commerce; and the said respondent also agrees to cease and desist forever from the use of the word "Mills," either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that said respondent either owned, controlled, or operated a mill located in the United States of America wherein is ground and/or placed in finished state the pumice stone sold by it in interstate commerce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 21, 1927.)

**210. False or Misleading Advertising and "Free" Offers—Shirts; Neckties.**—Respondents, a corporation, engaged in the sale and distribution of shirts and neckties in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair practices, as set forth therein.

Respondent, in the course and conduct of its business, secured the services of agents in different States of the United States by means of inserting advertisements in newspapers and other periodicals having circulation between and among the various States of the United States, and through the medium of such agents sold and shipped in interstate commerce to purchasers and prospective purchasers shirts manufactured from domestic cotton material and shirts manufactured from a fabric other than silk, the product of

the cocoon of the silkworm, said shirts being finished to simulate broadcloth and/or silk in appearance and texture, and which shirts were advertised in catalogues circulated in interstate commerce by said respondent, said advertisements containing such descriptive matter as "English broadcloth," "imported English broadcloth," "broadcloth," "silk stripe," "rayon silk," or as "supreme silk"; when in truth and in fact said shirts so described and sold in interstate commerce were not manufactured in whole or in part from silk, the product of the cocoon of the silkworm, or from broadcloth, but were manufactured from a fabric, or fabrics other than broadcloth, and which did not contain silk; and said respondent caused to be inserted in its catalogues circulated in interstate commerce advertising matter such as "Silk tie free with every shirt"; when in truth and in fact the tie was not given free as advertised, but its cost was included in the price charged for the shirt.

Respondent agreed to cease and desist forever from the use of the words "broadcloth" and "silk" either independently or in connection or conjunction each with the other in its advertisements and advertising matter purporting to describe its products, and from the use of the words "broadcloth" and "silk" either independently or in conjunction each with the other or with any other word or words, letter or letters, or in any other way purporting to define and describe its products that directly assert or clearly import or imply that said products were manufactured in whole or in part of silk, the product of the cocoon of the silkworm and/or of broadcloth, or that may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are manufactured in whole or in part from silk, the product of the cocoon of the silkworm and/or broadcloth; and said respondent further agrees to cease and desist forever from representing in its advertising matter or by other means that a silk tie or other premium will be given free with every shirt purchased, unless such gift is to be, and is, an actuality.

Respondent also agrees that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (September 21, 1927.)

211. **False or Misleading Advertising—Shoes; Shirts.**—Respondents, copartners, engaged in the sale and distribution of shoes and shirts in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, sold their products through the medium of agents or representatives in different States of the United States, the said agents or representatives canvassing their respective territories soliciting orders from the purchasing public, which said orders were forwarded by said agents or representatives to said respondents at their place of business and the articles ordered were forwarded direct by said respondents, usually through the United States mail, to the customer. As a means of selling their products the said respondents employed circulars, catalogues, and other advertising matter, which they caused to be distributed through the United States mails and/or their agents or representatives to their prospective customers located in various States of the United States, the said circulars, catalogues, and other advertising matter containing such descriptive words and phrases as "Sold exclusively direct to wearer," or "Manufactured for and sold exclusively direct to wearer," or "Save the middleman's profits"; while in certain of their catalogues and other advertising matter distributed in interstate commerce, the said respondents made use of the pictorial representation of a large, pretentious building, followed by illustrations entitled "The old way," that is, through jobber and retailer to consumer, and "The new way, direct to you;" when in truth and in fact the said respondents did not own, operate, or control a mill for the knitting or fabrication of the cloth from which the shirts sold by them were made, or a plant or factory wherein were made or fabricated the shoes sold by them in interstate commerce; and the said respondents filled orders for shirts made from cloth knitted or fabricated by mills which they neither owned, operated, nor controlled; and filled orders for shoes made or fabricated by plants or factories which they neither owned, operated, nor controlled. Also in the course and conduct of their business respondents made use of advertising matter which they caused to be distributed through the United States mails and/or their agents or representatives to their prospective customers located in various States of the United States, the said advertising matter containing descriptive words and phrases such as "Piccadilly broadcloth" and "imported broadcloth"; when in truth and in fact the products so designated, described, advertised, and sold in interstate commerce were not made from cloth which was imported from England or any other foreign country, but were made from cloth knitted or fabricated by a mill or mills located in the United States.

Respondents agreed to cease and desist forever from the use, in catalogues, circulars, letterheads, invoices, receipts, order blanks, cards, or other printed matter circulated in interstate commerce in soliciting the sale of and selling their products, of the words "Sold exclusively direct to wearer," "Save the middleman's profit," or any

other word or words, phrase, statement, slogan, pictorial, or other representation which tends to import or imply that the aforesaid respondents are manufacturers and own, operate, or control a plant or factory in which are manufactured the products sold by them in interstate commerce, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the aforesaid respondents are manufacturers of such products or that the said products are in fact sold to the wearer direct from the manufacturer without the intervention of middlemen; and to cease and desist forever from using, to describe their shirts, in circulars, catalogues, or other advertising matter circulated in interstate commerce, the words "Piccadilly" and "imported" either independently or in connection or conjunction with any other word or words which may import or imply that the said products are made of cloth which has been imported from England or any other foreign country; and from the use of the words "Piccadilly" and "imported" either independently or in connection or conjunction with any other word or words, or in any other way, in their circulars, catalogues, or other advertising matter, or as a brand or label for their products which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made of cloth which has been imported from England or any other foreign country.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 5, 1927.)

**212. False or Misleading Advertising—Hosiery.**—Respondents, copartners, engaged in the mail-order business, selling and distributing hosiery in interstate commerce, and in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, sold their products through the medium of agents or representatives located in various States of the United States; said agents canvassed their respective territories and took orders from the purchasing public. These orders so obtained were forwarded by said agents or representatives to said respondents at their principal place of business, and the articles ordered were forwarded direct by said respondents to the customer, usually through the United States mails. As a means of selling their products the said respondents employed circulars and catalogues, including testimonials and other advertising matter, which they caused to be distributed through the United States mails and/or their agents or representatives to their prospective customers

located in various States of the United States, the said circulars, catalogues, and other advertising matter containing such descriptive words and phrases as "When you buy direct-to-wearer"; "Made possible by selling hosiery direct to the consumer only, whereby you save two or three profits"; when in truth and in fact the said respondents did not own, operate, or control a mill or factory for the fabrication of the products which they sold in interstate commerce, and the said respondents filled their orders from products made or fabricated by mills or factories which they neither owned, operated, nor controlled. Respondents also in the course and conduct of their business made use of advertising matter which they caused to be distributed through the United States mails and/or their agents or representatives to their prospective customers located in various States of the United States, the said advertising matter containing descriptive words and phrases such as "ladies' genuine pure thread silk hose," "Japanese silk hose," or "ladies' genuine full-fashioned chiffon"; when in truth and in fact the said products were not manufactured wholly of silk the product of the cocoon of the silkworm, but were manufactured in part of a material or materials other than silk.

Respondents agreed to cease and desist forever in soliciting the sale of and selling their products in interstate commerce from the use in catalogues, circulars, and other printed or advertising matter of the words, "Direct to wearer," or "Direct to consumer only," or any other word or words, phrase, statement, slogan or other representation which imports or implies that the aforesaid respondents are manufacturers and own, operate, or control a plant or factory in which are manufactured the products sold by them in interstate commerce, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the aforesaid respondents are the manufacturers of said products, or that the said products are in fact sold direct to the wearer from the manufacturer without the intervention of middlemen; and the said respondent further agreed to cease and desist forever from the use in interstate commerce of the words "silk" or "chiffon" either independently or in connection or conjunction with any other word or words, letter or letters which import or imply that the products so represented are made of silk, the product of the cocoon of the silkworm, and from the use in interstate commerce of the words "silk" or "chiffon" either independently or in connection with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the products so represented, designated, described, and advertised are manufactured of silk, the product of the cocoon of the silkworm.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may

be used in evidence against them in the trial of the complaint which the commission may issue. (October 5, 1927.)

213. **False or Misleading Advertising—Silk; Canton Crêpe.**—Respondent, an individual, engaged in the mail-order business of selling and distributing dresses in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertisements to be inserted in newspapers and other publications having circulation between and among various States of the United States, wherein the said respondent caused his said products to be designated, represented, and referred to as "silk" or "Canton crêpe"; when in truth and in fact the said products so advertised and sold in interstate commerce were not manufactured in whole or in part from silk, the product of the cocoon of the silkworm, but were manufactured from a material or materials other than silk.

Respondent agreed to cease and desist forever from the use, in advertisements inserted in newspapers and other publications having circulation between and among various States of the United States, of the word "silk" and the words "Canton crêpe," either independently or in connection or conjunction each with the other or with any other word or words to define and describe his said products, which directly assert or clearly import or imply that the said products are manufactured in whole or in part from silk, the product of the cocoon of the silkworm, and from the use, in soliciting the sale of and selling his products in interstate commerce, of the word "silk" or the words "Canton crêpe" either independently or in connection or conjunction each with the other or with any other word or words, letter or letters, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so represented are manufactured from silk, the product of the cocoon of the silkworm, or until such time as the said respondent does actually sell, in interstate commerce, products manufactured from silk as represented by the descriptive matter used in connection therewith.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (October 14, 1927.)

214. **False or Misleading Advertising—Shirts.**—Respondent, a corporation, engaged in the sale and distribution of shirts in interstate commerce, and in competition with other corporations, firms,



partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold its products through the medium of traveling salesmen or representatives who made "house-to-house" canvasses of their respective territories and took orders for the said products from the purchasing public in various States of the United States. The orders so obtained were transmitted by said salesmen or representatives to said respondent and the articles ordered were forwarded in interstate commerce direct to the customer, usually through the United States mails. In procuring such orders, catalogues, order blanks, sample books, and other printed matter, furnished by the aforesaid respondent to its salesmen or representatives, were brought directly to the attention of the ultimate purchaser and were used to induce such purchaser to order goods represented therein; the said catalogues, order blanks, sample books, and other printed matter contained descriptive words and phrases such as "Direct from factory to wearer," or "From factory to you"; when in truth and in fact the said respondent did not own, operate, or control a mill or factory for the knitting or fabrication of the cloth from which its shirts were made, or did it cut or fashion the shirts sold by it in interstate commerce, and the said respondent filled orders for shirts which it neither cut, fashioned, or made from cloth knitted or fabricated by mills or factories which it neither owned, operated, nor controlled. Also in the course and conduct of its business respondent made use of advertising matter which it caused to be distributed through the United States mails and/or its salesmen or representatives to its customers or prospective customers located in various States of the United States, which said advertising matter contained words and phrases such as "English broadcloth" and "We sell nothing but genuine English broadcloth shirts"; when in truth and in fact the products so designated, described, advertised, and sold in interstate commerce were not made from cloth which was imported from England, known to the trade and purchasing public as "English broadcloth."

Respondent agreed to cease and desist forever from using in catalogues, order blanks, sample books, and other printed matter circulated or distributed in interstate commerce in soliciting the sale of and selling its products, the words "Factory to wearer," "Factory to you," or any other word or words, phrase, statement, slogan, pictorial, or other representation which imports or implies that the aforesaid respondent is a manufacturer and owns, operates, or controls a mill or factory in which are manufactured the products sold by it in interstate commerce, or which may have the capacity and tendency to mislead or deceive the purchasing public into the belief

that the aforesaid respondent manufactured the products sold by it in interstate commerce, or that the said products are in fact sold direct to the wearer from the factory or manufacturer without the intervention of middlemen; and the said respondent also agreed to cease and desist forever from using the words "English broadcloth" to describe its shirts in catalogues or other advertising matter distributed in interstate commerce, or the use of the words "English broadcloth" either independently or in connection or conjunction with any other word or words which import or imply that the said products are made of broadcloth which has been imported from England, or which may have the capacity and tendency to mislead or deceive the purchasing public into such belief.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (October 21, 1927.)

**215. Misrepresentations as to Prices, Terms, etc.—Encyclopedias and Reference Works.**—Respondents, a copartnership, engaged in the sale and distribution in interstate commerce, of sets of encyclopedias and reference works, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, employed the following methods, to wit:

(a) Represented to prospective customers or subscribers that as a special introductory offer, a limited number of persons residing in a given community would be sold, for advertising purposes, sets of encyclopedias or reference works, together with a loose-leaf extension service for a specified period of years at a price much lower than the price regularly charged, and offered to the subscriber a membership certificate in an "Education Society" and in some instances set forth an alleged regular price for said subscription, service, and membership, which price was marked out in red ink and a lower figure substituted thereafter in red ink, when in truth and in fact said "introductory" and "advertising" offers were not bona fide, the usual and customary price for said subscription, service, and membership to all persons was the aforesaid lower price, and there had not been for some time past a loose-leaf extension service and research bureau, and the "Education Society" referred to in the membership certificate was nonexistent;

(b) Represented that the books were given away to each prospective customer who would subscribe to the loose-leaf extension

service at a specified amount per year for a period of 10 years, when in truth, and in fact the contract which the customer was required to sign provided for a monthly payment of a specified amount over a period of 10 months;

(c) Made use of testimonials or recommendations of county superintendents of schools and prominent educators known to the prospective subscriber, and represented that the publications had been officially approved by State departments of education and by libraries, when in truth and in fact the said testimonials or recommendations had not been made by and were not used with the knowledge and approval of said superintendents or educators, and the representations of official approval by State superintendents and libraries were likewise not founded in truth and in fact;

(d) Represented that past-due notes or other indebtedness were placed in the hands of a designated collection agency, when in truth and in fact no such agency was employed, but the name of such agency was used by the respondents so as to import or imply that a collection agency was employed independent of the partnership conducted by said respondents;

(e) Represented by various means that their books were bound in leather and printed on paper of a certain grade, when in truth and in fact the said books were not bound in leather and were not printed on paper of the grade represented;

(f) Adopted and used trade names, in each of which the word "publishing" was used and in the sale and distribution of their books in interstate commerce; when in truth and in fact the said respondents were not publishers and did not own, control, or operate a plant wherein were published the books which they sold and distributed in interstate commerce but purchased their supplies of books from independent publishing companies.

Respondents agreed to cease and desist forever from—

(a) Representing to customers or prospective customers that as a special introductory offer, a limited number of customers residing in a given community would be sold for advertising purposes, sets of encyclopedia or reference works, together with a loose-leaf extension service, or other inducement, at a price much lower than the price regularly charged, when such is not the fact;

(b) Representing to customers or prospective customers that the usual prices which the said respondents received for any book, set of books or publications are greater than the prices at which they are offered to such customers or prospective customers, when such is not the fact;

(c) The fictitious "marking up" of the price of books sold and distributed by said respondents in interstate commerce, and the use of contracts containing fictitious representations of prices in con-

nection with the sale and distribution of such books in interstate commerce;

(d) Representing that a certain number of books, or sets of books, have been set aside, for advertising purposes, to be given free, or that a certain number of selected persons in each community have been designated to secure a book or a set of books, or any form of service, free, when such is not the fact;

(e) Representing that collections of past-due notes or other indebtedness were being made through a collection agency, when in truth and in fact, no such agency existed independent of the copartnership conducted by said respondent;

(f) Making use of testimonials or recommendations of prominent educators or other persons, or representing that books or publications have been officially approved by State departments of education, or by libraries or other recognized literary institutions, unless such testimonials or recommendations have been made by the said educators or other persons and not obtained by purchase, gift, or honorarium and the representations of official approval by said State department, libraries, or other institutions are founded in truth and in fact, and

(g) The use of the word "publishing" as part of or in connection or conjunction with their trade name, or names, in the sale and distribution in interstate commerce of respondents' books or reference works which may import or imply that the said respondents are publishers of the said books or reference works, and the use of the word "publishing" as part of, or in connection or conjunction with their trade name or names, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said respondents are publishers of the said books or reference works.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (October 21, 1927.)

216. **False or Misleading Advertising and Brands or Labels—Shoes.**—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its shoes in interstate commerce, caused its said products to be marked, stamped, branded, or labeled on the soles thereof either as "U. S. Army Shoe, Munson Army Last," or as "U. S. Garrison Shoe," and caused to be stamped next to the heels of said

shoes the name or number of an inspector, similar to the practice followed in marking shoes made for the United States and inspected by a United States inspector; and upon the boxes containing the aforesaid shoes were placed labels bearing the words "United States Army Shoe" and/or "U. S. Army Shoe," together with a pictorial representation of soldiery; and the said respondent caused its catalogues and other advertising matter to be circulated in commerce between and among various States of the United States, the said catalogue and other advertising matter containing the words, "United States Army shoe. This is the regulation peace-time United States Army shoe \* \* \* A high-grade, good-looking, sturdy, service model for those who want a real Army shoe," and "The regulation United States Army garrison model," and "Modeled on the regulation United States Navy pattern," "United States Army marching shoe," and "United States Army side-seam blucher pattern"; when in truth and in fact the said products so marked, stamped, labeled, advertised, and sold in interstate commerce were not manufactured by the said respondent for the United States Army or Navy in accordance with United States Army or Navy specifications or Government requirements, and had not been subjected to inspection by United States Army, Navy, or Government officials.

Respondent agreed to cease and desist forever from the use, in soliciting the sale of and selling its said products in interstate commerce, of the words and/or letters "U. S. Army," "U. S. Garrison," "United States Army," "United States Army Garrison," "United States Navy" or "Army," "Garrison," or "Navy," either independently or in connection or conjunction each with the other, or with the name or number of an inspector or in connection or conjunction with any other words, figures, letters, numerals, pictorial representation, or insignia which import or imply that the products so marked, stamped, branded, or labeled are made in accordance with the United State Army or Navy specifications or Government requirements and have been passed upon or approved by an Army, Navy, or Government inspector, or which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products so marked, stamped, branded, or labeled are manufactured for the United States Army or Navy in accordance with Army or Navy specifications or Government requirements and/or have been passed upon or approved by an Army, Navy, or Government inspector, or that the said products have been declared and sold as surplus stock by the United States Army, Navy, or Government; and the said respondent further agreed to cease and desist forever from the use as an advertising medium circulated in interstate commerce of any of the words or letters "U. S.," "Army," "Garrison,"

"Navy," "United States," or any other words, figures, letters, numerals, pictorial representations, or insignia in soliciting the sale of and selling its products between and among various States of the United States so as to import or imply that the products so advertised were made in accordance with United States Army or Navy specifications or Government requirements and/or have been passed upon or approved by an Army, Navy, or Government inspector; unless and until such time as the said products so advertised and sold are made under contract for the United States Army or Government in accordance with Army or Navy specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (November 2, 1927.)

**217. False or Misleading Advertising—Piece Goods; Mill Remnants.**—Respondent, an individual, engaged in the sale and distribution of piece goods and remnants in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of his business, in soliciting the sale of and selling his products in interstate commerce, caused advertisements to be inserted in newspapers and periodicals having general circulation between and among various States of the United States, and in said advertisements made use of the following language: "Direct from the mills to you at enormous saving"; when in truth and in fact the said respondent did not own, operate, or control a mill or factory for the manufacture or fabrication of the products which he sold and distributed in interstate commerce but filled orders for products from piece goods and remnants obtained by him from mills which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use, in advertisements circulated in interstate commerce, of the phrase "Direct from the mills to you at enormous saving," or any other representations or statements which import or imply that the said respondent either owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products which he sells in interstate commerce, and from the use of the word "mills" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said respondent either owns, operates, or controls a mill or factory wherein are

manufactured or fabricated the products which he sells in commerce between and among various States of the United States.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (December 2, 1927.)

**218. False or Misleading Advertising—Piece Goods; Mill Remnants.**—Respondent, a corporation, engaged in the sale and distribution of piece goods and remnants in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused advertisements to be inserted in newspapers and periodicals having general circulation between and among various States of the United States, and in said advertisements made use of the following language: "Direct from the mills to you at enormous saving"; when in truth and fact the said respondent did not own, operate, or control a mill or factory for the manufacture or fabrication of the products which it sold and distributed in interstate commerce, but filled orders for products from piece goods and remnants obtained by it from mills which it neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use, in advertisements circulated in interstate commerce, of the phrase, "Direct from the mills to you at enormous saving," or any other representations or statements which import or imply that the said respondent either owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products which it sells in interstate commerce, and from the use of the word "mills" either independently or in connection or conjunction with any other word or words, or in any other way which may have the capacity and tendency to mislead or deceive the purchasing public into the belief that the said respondent either owns, operates, or controls a mill or factory wherein are manufactured or fabricated the products which it sells in commerce between and among various States of the United States.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

**219. Resale Price Maintenance—Perfume, Rouge, Powder, Cosmetics.**—Respondent, a corporation, engaged in the manufacture of perfume, rouge, powder, and other cosmetics and in the sale and

distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted a system involving the cooperation of the wholesale and retail trade for the maintenance and enforcement of certain resale prices established by it, and as a method of effecting obedience to its system, the said respondent, cooperating with the trade as aforesaid, employed the following means, to wit:

Caused it to be generally known to the trade through the issuance of price lists, by means of letters and circulars, and in advertisements inserted in magazines, newspapers, and other periodicals having circulation between and among various States of the United States, through its salesmen and by other means, that it expected and required its customers to maintain said suggested resale prices;

Solicited and obtained by letters, through its salesmen and by other means, agreements, promises, and assurances from the wholesale and retail trade, that they would cooperate in the observance and maintenance of said resale prices;

Threatened to refuse, and did refuse to sell products to dealers who ignored or failed to observe and maintain said suggested resale prices or who sold to other dealers who failed to observe or maintain such suggested resale prices;

Solicited and obtained from its customers, salesmen, and otherwise, reports of the names of retail, wholesale, and other dealers, who ignored or failed to observe or maintain such suggested resale prices, and upon securing such reports, advised said dealers by letters, through its salesmen, and otherwise, that the said suggested resale prices must be adhered to under the threat or penalty that said reported price cutters would be removed from the direct list should they fail to cease selling below the suggested resale prices;

Notified the trade which cooperated in the maintenance of resale prices on products of the names of alleged price cutters for the purpose of preventing such alleged price cutters from obtaining products;

Sought and secured promises and assurances from alleged price cutters that they would thereafter maintain said resale prices as a condition to further supplying them with products;

Caused dealers to be enrolled upon black lists as undesirable purchasers who were not to be supplied with products unless and until they should give satisfactory assurances of their purpose to observe and maintain said suggested resale prices.



Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from (a) soliciting or obtaining by letters, through its salesmen, or by other means, agreements, promises, or assurances from its wholesale and retail trade that they would cooperate in the observance and maintenance of any system of price fixing established by said respondent; (b) threatening to refuse or refusing to sell to dealers because of the failure of such dealers to adhere to any such system of resale prices; (c) soliciting and obtaining from its customers, salesmen, or others, reports of the names of dealers who do not observe and maintain such resale prices; (d) seeking and securing promises and assurances from offending dealers that they will maintain such resale prices as a condition to further supplying them with products; (e) maintaining a black list or causing dealers to be enrolled upon lists of so-called undesirable purchasers who are not to be supplied with products unless and until they shall give satisfactory assurances of their purpose to observe and maintain such resale prices; (f) notifying the trade of the names of alleged price cutters for the purpose of preventing such alleged price cutters from obtaining products; (g) directly, or indirectly carrying into effect by cooperative methods, any system of resale prices in which said respondent, its customers, and agents undertake to prevent others from obtaining products of the said respondent at less than the prices designated by said corporation.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

220. False or Misleading Advertising—Electrical Fixtures.—Respondent, a corporation, engaged in the sale and distribution of electrical fixtures in wholesale and/or retail quantities in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, sold its products through the medium of travelling salesmen operating in various States of the United States and who were furnished by the aforesaid respondent with catalogues to be, and which were used by such salesmen in soliciting the sale of and selling its products to the purchasing public. The said catalogues contained "cuts" purporting to be pictorial illustrations of the products sold and distributed by said respondent; when in truth and in fact certain of the said illustrations did not accurately or pictorially represent products sold and distributed by the aforesaid respondent, but did pictorially represent

products sold in interstate commerce by a competitor or competitors of the aforesaid respondent.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from using or employing in its catalogues or other advertising matter circulated in interstate commerce, "cuts" or other illustrations which do not pictorially represent products handled, sold, and/or distributed in interstate commerce by the said respondent or which said "cuts" or illustrations pictorially simulate products sold in interstate commerce by a competitor or competitors of said respondent and which products are not also handled, sold, and/or distributed in interstate commerce by said respondent.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

221. **False or Misleading Brands or Labels—Lawn Mowers.**—Respondent, a corporation, engaged in the manufacture of lawn mowers, which it sells and distributes in interstate commerce, in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of similar products in interstate commerce, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused certain of the products of its manufacture to be stenciled, marked, stamped, or labeled as "Ball Bearing," and with such stencil, mark, stamp, or label affixed thereto, sold and shipped said products to the jobbing trade located in a State or States of the United States other than the State wherein shipment originated, thereby placing in the hands of said jobbers products bearing the aforesaid stencils, marks, stamps, or labels for distribution among the purchasing public; when in truth and in fact, the said products were not "ball bearing" but were merely equipped with a ratchet having a ball serving as and for a pawl.

Respondent agreed to cease and desist forever from the use of the words "Ball Bearing" either independently or in connection or conjunction with any other word or words as a stencil, mark, stamp, or label for its products sold and shipped in interstate commerce which import or imply that said products are "ball bearing," and from the use of the words "ball bearing," or the word "ball" or "bearing" either independently or in connection or conjunction each with the other, or with any other word or words which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are ball bearing, or unless and

until such time as the said products are manufactured so as to be in truth and in fact "ball bearing."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

**222. False or Misleading Brands or Labels—Lawn Mowers.**—Respondent, a corporation, engaged in the jobbing business, selling and distributing lawn mowers in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business caused certain products sold by it in interstate commerce to be stenciled, marked, stamped or branded as "Ball Bearing" and with such stencil, mark, stamp, or label affixed thereto, sold said products in commerce between and among various States of the United States; when in truth and in fact, said products were not "ball bearing" but were merely equipped with a ratchet having a ball serving as and for a pawl.

Respondent agreed to cease and desist forever from the use of the words "Ball Bearing" either independently or in connection or conjunction with any other word or words as a stencil, mark, stamp, or label for its products sold and shipped in interstate commerce which import or imply that said products are "ball bearing," and from the use of the words "Ball Bearing" or the word "Ball" or "Bearing" either independently or in connection or conjunction each with the other, or with any other word or words which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said products are ball bearing, or unless and until such time as the said products are manufactured so as to be in truth and in fact "ball bearing."

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

**223. Resale Price Maintenance—Dental Cream.**—Respondent, a corporation, engaged in the manufacture of a dental cream and in the sale and distribution of the same in interstate commerce and which it also caused to be sold and distributed in interstate commerce through the medium of a subsidiary organization, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in the sale and distribution of its product in interstate commerce, adopted and employed, for itself and for its subsidiary organization, also engaged in the sale and distribution of respondent's products in interstate commerce, a system for the maintenance and enforcement of certain resale prices established by said respondent, and which system involved the cooperation of its customers, both retail dealers and distributors, and as a method of effecting obedience to their said system the said respondent and its subsidiary organization, cooperating with their customers as aforesaid, employed the following means, to wit: (1) Caused it to be generally known to the trade by letters, through their salesmen, and by other means, that they expected and required their customers to maintain and enforce said suggested resale prices; (2) solicited and obtained by letters, personal interviews, through their salesmen and by other means, promises and assurances from their wholesale and other customers that they would cooperate in the observance and maintenance of said suggested resale prices; (3) threatened through their officers, representatives, or agents to refuse and did refuse to sell products to dealers who ignored or failed to observe and maintain said suggested resale prices; (4) solicited and obtained from their customers, salesmen, and others, reports of the names of retail, wholesale, and other dealers who ignored or failed to observe and maintain their suggested resale prices, and upon securing such reports urged, by threats and otherwise, the offenders to cease selling below suggested resale prices; (5) sought and secured understandings, assurances, or agreements from said offenders that they would thereafter maintain said resale prices as a condition to further supplying them with products; (6) entered into agreements or undertakings with customers, who had been cut off, for the maintenance by such customers of said resale prices as a condition to the reopening of accounts with their said customers; (7) furnished to their wholesale customers the names of retailers whom they had cut off for failure to observe and maintain said suggested resale prices; (8) refused to reinstate wholesale customers who had been cut off for failure to observe and maintain said suggested resale prices, or to open new accounts with prospective wholesale customers until such customers or prospective customers had been approved by the so-called "legitimate" jobbers in the affected territory.

Respondent agreed, for itself and for its subsidiary organization, to cease and desist forever in the sale and distribution of its products in interstate commerce from (a) entering into verbal or other contracts, agreements, or understandings with dealers, whether jobbers, wholesalers, or retailers to the effect that such dealers, or any of them in reselling the products obtained by them from respondent or its subsidiary, will adhere to any system of price fixing established by the

said respondent or its said subsidiary; (b) securing or attempting to secure assurances or promises from dealers or customers that they will observe the prices established by said respondent or its said subsidiary for the resale of products purchased from the said company or its subsidiary by said dealers or customers; (c) securing or seeking to secure the cooperation of their customers or dealers in maintaining or enforcing any system of resale prices whatsoever; (d) reporting the names of dealers who do not observe and maintain such resale prices; (e) directly or indirectly carrying into effect by cooperative methods, any system of resale prices in which respondent or its said subsidiary, their customers and agents, undertake to prevent others from obtaining the products of the said company or its subsidiary at less than the prices designated by the said company or its subsidiary.

Respondent also agreed that if it, or its subsidiary organization, should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

224. **False or Misleading Brands or Labels—Candles.**—Respondent, a corporation, engaged in the manufacture of candles and in the sale and distribution of the same in interstate commerce in wholesale and/or retail quantities, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Candles designated "cathedral," "church," or "altar" candles are candles used by various religious denominations and churches in religious ceremonies and are made so as to conform to certain ecclesiastical requirements. Respondent, in the course and conduct of its business, caused certain of the candles manufactured by it to be branded or labeled "Beeswax Candles, Cathedral Brand, For Altar Use," and with the said brands and labels affixed thereto sold said candles in commerce between and among various States of the United States, when in truth and in fact the said candles so branded, labeled, and sold in interstate commerce were not manufactured wholly of beeswax and/or did not conform to the ecclesiastical requirements so as to be properly and accurately represented, designated and referred to by the use of the words "cathedral" or "altar."

Respondent agreed to cease and desist forever from the use of the word "Beeswax" and/or "Wax" either independently or in connection or conjunction with any other word or words, as a brand or label in the sale and distribution in interstate commerce of a candle which is not composed wholly of beeswax; or unless, when said product is composed in substantial part of beeswax, and the word "Beeswax"

or "Wax" are used as a trade brand or designation for said product, in which case the word "Beeswax" or "Wax" shall be employed in connection, conjunction, or combination with some other word or words displayed in type equally as conspicuous as that in which the word "Beeswax" or "Wax" is printed so as to clearly indicate that such product is not made wholly of beeswax, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of a product or products other than beeswax, and to cease and desist forever from the use of the word "Beeswax" or "Wax" in any other way in connection with the sale and distribution of candles not manufactured from "beeswax" so as to confuse, mislead, or deceive the purchasing public into the belief that said candles are in truth and in fact "beeswax" candles, and the said respondent also agreed to cease and desist forever, in the sale of its candles in interstate commerce, from the use of the words "Cathedral," "Church," or "Altar" either independently or in connection or conjunction with any other word or words to define, represent, or describe its candles unless the candles so represented, designated, and referred to are made to conform to established ecclesiastical requirements so as to be properly and accurately represented, designated, and referred to as "cathedral," "church," or "altar" candles.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 2, 1927.)

**225. False or Misleading Advertising—Leather, Harness, Saddles, Horse Collars.**—Respondent, a corporation, engaged in the sale and distribution of leather, harness, saddles, and horse collars in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of similar products, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent purchased from manufacturers and others a substantial portion of the merchandise sold and distributed by it in interstate commerce, and, of the merchandise which it manufactured, only a small proportion was made from leather tanned in its own tannery. In soliciting the sale of and selling its products in interstate commerce, respondent caused advertising matter to be inserted in catalogues, circulars, or form letters, which were distributed in interstate commerce and wherein appeared such statements and representations as, "I make harness from the leather I tan myself"; "selling direct from my tannery to you, letting you keep all the middlemen's profits in your own pocket"; "I am positively not selling anyone else's

harness made from anyone else's leather, but I am only offering you harness which is made in my own tannery, and have watched the process of the tanning every step of the way from the 'green' hide to the finished leather here in my own tannery"; "I absolutely refused to ship a single set of harness to anyone that I did not make myself from my own leather here in my own tannery," and further in soliciting the sale of and selling its products in interstate commerce, respondent caused sales talks to be broadcast through a radio station having hook-ups with radio stations located in various States of the United States, and by means of which the representations hereinbefore quoted, or some of them, were brought directly to the attention of the listening public located in various States of the United States, when in truth and in fact, the said respondent did not own, control, or operate the tanning plant or plants or the factory or factories wherein were tanned or manufactured, respectively, a substantial portion of the leather and merchandise sold and distributed by said respondent in interstate commerce, but the said respondent filled orders for merchandise manufactured in factories which it neither owned, controlled, nor operated, and which merchandise was made from leather tanned and/or cured in plants which it neither owned, controlled, nor operated.

Respondent agreed to cease and desist forever from using in catalogues, circulars, radio talks, and other advertising means, statements or representations to the effect "I make harness from the leather I tan myself"; "selling direct from my tannery to you, letting you keep all the middlemen's profits in your own pocket"; "I am positively not selling anyone else's harness made from anyone else's leather, but I am only offering you harness which is made in my own tannery, and have watched the process of the tanning every step of the way from the 'green' hide to the finished leather here in my own tannery"; "I absolutely refused to ship a single set of harness to anyone that I did not make myself from my own leather here in my own tannery," or any other words, statements or representations in advertisements or advertising matter circulated between and among States of the United States, or radio talks broadcast through hook-ups in interstate commerce which import or imply that the said respondent either owns, controls, or operates a tannery and/or factory wherein are tanned, cured, prepared and manufactured all of the leather and/or all of the merchandise made therefrom; and the said respondent also agreed to cease and desist forever from the use of the aforesaid statements or representations either independently or in connection or conjunction each with the other, or in any other way which may have the capacity and tendency to confuse, mislead, and deceive the purchasing public into the belief that the said respondent either owns, controls, or operates a tannery and/or factory in which are

tanned, cured, prepared, and manufactured all of the leather and/or all of the merchandise made therefrom.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 5, 1927.)

**226. False or Misleading Names, Advertising, and Brands or Labels—Beverage ("Grape").**—Respondent, a corporation, engaged in the manufacture or compounding of beverages and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the use of the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products, caused advertisements to be inserted in newspapers having general circulation between and among various States of the United States, and in circulars and other printed matter distributed in interstate commerce represented, designated, described, and referred to a certain product of its manufacture as "Grape," and authorized to be used and supplied for use by druggists and other dealers in various States of the United States, advertisements and advertising matter containing the word "Grape" and further caused its said product sold and transported in interstate commerce to be branded and labeled so as to include the word "Grape"; when in truth and in fact the aforesaid product was not manufactured from the juice of the grape or the fruit of the same in such substantial quantity so as to be properly represented, designated, described, or referred to by the use of the word "Grape."

Respondent agreed to cease and desist forever from the use of the word "Grape," either independently or in connection or conjunction with any other word or words, letter or letters, as a corporate or trade name, or as a trade brand or designation, in the sale and distribution in interstate commerce of a product which is not composed wholly of the juice of the grape or the fruit of the same; or unless, when said product is composed in substantial part of the juice or fruit of the grape, and the word "Grape" is used in its corporate or trade name, or as a trade brand or designation for said product, in which case the said word "Grape" shall be employed in connection, conjunction, or combination with some word or words, letter or letters, which shall be displayed in type equally as conspicuous as that in which the word "Grape" is printed so as to clearly indicate that such product is not made wholly from the juice or fruit of the grape, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is com-



posed in part of an ingredient or ingredients other than the juice or fruit of the grape. The said respondent further agreed that it will not use a pictorial representation in soliciting the sale of and selling its product in interstate commerce that will import or imply that said product is manufactured from the juice or fruit of the grape, and will also cease and desist from the use of the word "Grape" in any other way in connection with the sale or distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice of the grape or the fruit of the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 12, 1927.)

227. **False or Misleading Advertising—Shoes.**—Respondent, a corporation engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations; firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, manufactured shoes on the Munson last and finished the same to simulate shoes made in accordance with United States Army specifications and Government requirements, and in soliciting the sale of and selling its products in interstate commerce caused its said products to be advertised in newspapers having circulation between and among various States of the United States, the said advertising matter containing the following words: "U. S." and "Army," when in truth and in fact the said products so advertised, sold, and distributed in interstate commerce were not manufactured by said respondent under Government contract in accordance with United States Army specifications or Government requirements.

Respondent agreed to cease and desist forever from the use in its advertising matter or in soliciting the sale of and selling its products in interstate commerce of the letters "U. S." or the words "United States" or "Army" either independently or in connection or conjunction each with the other, or with any other letter or letters, word or words, or in any other way which may import or imply that the products so advertised, offered for sale, and sold in interstate commerce are made in accordance with United States Army specifications or Government requirements, or which may mislead and deceive the purchasing public into the belief that the said products are manufactured for the United States Army or in accordance with any specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (December 14, 1927.)

228. **False or Misleading Trade Name, Brands or Labels, and Advertising—Sirups and Concentrates.**—Respondent, a corporation, engaged in the manufacture of concentrates or sirups, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Respondent, engaged in the manufacture of sirups and concentrates, adopted the word "Grape" as part of its corporate or trade name, and also used the word "Grape" as part of its trade brand or designation for its product and the resultant beverages made therefrom. Respondent, in soliciting the sale of and selling its products in interstate commerce, advertised the same under its corporate or trade name containing the word "Grape," and also used in its advertisements and advertising matter, circulated in interstate commerce, in soliciting the sale of and selling its said products, its trade brand or label containing the word "Grape" together with other representations so as to import or imply that the said product was composed in whole or in part of the juice of the grape or fruit of the same; when in truth and in fact the said product was not made of the juice of the grape, but was made of an ingredient or ingredients other than grape.

Respondent agreed to cease and desist forever from the use of the word "Grape" either independently or in connection or conjunction with any other word or words, letter or letters as a corporate or trade name, or as a trade brand, or designation in the sale or distribution in interstate commerce of a product which is not composed wholly of the juice of the grape or the fruit of the same; or unless, when said product is composed in substantial part of the juice or fruit of the grape, and the word "Grape" is used in its corporate or trade name, or as a trade brand or designation for said product, in which case the said word "Grape" shall be employed in connection, conjunction, or combination with some other word or words, letter or letters which shall be displayed in type equally as conspicuous as that in which the word "Grape" is printed so as to clearly indicate that such product is not made wholly from the juice or fruit of the grape, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of a product or products other than the juice or fruit of the grape. The aforesaid corporation further agreed that it will

not use a pictorial representation in soliciting the sale of and selling its product in interstate commerce that will import or imply that said product is manufactured from the juice or fruit of the grape, and will also cease and desist from the use of the word "Grape" in any other way in connection with the sale or distribution of a synthetic product so as to confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice of the grape or the fruit of the same.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

**229. False or Misleading Trade Name, Brands or Labels, and Advertising—Sirup or Compounds.**—Respondents, copartners, engaged in the manufacture of a concentrate or compound and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, in soliciting the sale of and selling their products in interstate commerce, caused advertisements to be inserted in newspapers and other publications having circulation between and among various States of the United States, and on their letterheads, envelopes, labels, and other printed matter represented, designated, and referred to their products as "Grape," and also caused their trade name containing the word "Grape" to be used in connection with the aforesaid advertisements and advertising matter, and said respondents entered into contractual relations with numerous bottlers and wholesalers to whom they sold their product, to use their said trade name containing the word "Grape" in the advertisement and sale of said product in commerce between and among various States of the United States, and pursuant to said contractual authorization, the aforesaid bottlers and wholesalers caused said trade name containing the word "Grape" to be used as a brand or label for said product, and with the aforesaid brand or label affixed thereto sold said product in interstate commerce; when in truth and in fact the said product so advertised, represented, designated, and referred to as "Grape" was not composed of the juice or fruit of the grape in such substantial quantity so as to be properly and accurately advertised, represented, designated, and referred to as a grape product.

Respondents agreed to cease and desist forever from the use of, or contracting with, licensing or authorizing others to use the word "Grape" either independently or in connection or conjunction with

any other word or words, letter or letters, as a trade name, brand, or designation in the sale and distribution in interstate commerce of a product which is not composed wholly of the juice of the grape or the fruit of the same; or unless, when said product is composed in substantial part of the juice or fruit of the grape, and the word "Grape" is used in their trade name or as a trade brand or designation for said product, in which case the said word "Grape" shall be employed in connection, conjunction, or combination with some other word or words, letter or letters, which shall be displayed in type equally as conspicuous as that in which the word "Grape" is printed so as to clearly indicate that such product is not made wholly from the juice or fruit of the grape, and that will otherwise properly and accurately represent, define, or describe said product so as to clearly indicate that the same is composed in part of an ingredient or ingredients other than the juice or fruit of the grape. The aforesaid respondents further agreed that in soliciting the sale of and selling their product in interstate commerce, they will also cease and desist from the use of the word "Grape" in any other way in the sale and distribution of a synthetic product which may confuse, mislead, or deceive the purchasing public into the belief that the said product is the juice of the grape or the fruit of the same.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 11, 1928.)

230. False or Misleading Advertising—Shirts.—Respondents, copartners, engaged in the business of selling and distributing men's shirts in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in course and conduct of their business, in soliciting the sale of and selling their products, caused advertising circulars to be distributed in commerce between and among various States of the United States, said circulars containing such words, statements, and representations as "Direct from manufacturer," "Better grade genuine English broadcloth shirts," "Rayon silk shirts," while on their envelopes, letterheads, and other advertising matter distributed in interstate commerce appeared the words "Manufacturers of high-grade shirts," and the said respondents sold and distributed in interstate commerce shirts advertised as aforesaid; when in truth and in fact (a) the said copartners do not own, control, or operate a mill or factory for the manufacture or fabrication of the products which they advertise, sell, and distribute in interstate commerce but fill

orders for shirts made from products manufactured or fabricated by mills which they neither own, control, nor operate; (b) the shirts advertised, designated, referred to, and sold in interstate commerce by the said respondents as "English broadcloth" are not manufactured or fabricated from broadcloth imported from England but are made from materials manufactured or fabricated by mills or factories located in the United States; (c) and the shirts advertised, designated, referred to, and sold in interstate commerce by the said copartners as "rayon silk" are not manufactured from and do not contain silk, the product of the cocoon of the silkworm, either in whole or in part.

Respondents in soliciting the sale of and selling their products in interstate commerce agreed to cease and desist forever from the use in advertising matter circulated in interstate commerce (a) of the words "Direct from Manufacturer" either independently or in connection or conjunction with any other word or words so as to import or imply that the said copartners either own, control, or operate a mill or factory wherein are manufactured or fabricated the materials from which were made said products sold and distributed in interstate commerce and from the use of the word "Manufacturer" either independently or in connection or conjunction with any other word or words, letter or letters, or in any other way which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said copartners either own, operate, or control a mill or factory for the manufacture or fabrication of the products which they sell and distribute in interstate commerce and/or of the materials from which said products are made; (b) of the words "English broadcloth" either independently or in connection or combination with some other word or words so as to import or imply that the said products are made of broadcloth which has been imported from England and from the use of the word "English" either independently or in connection or conjunction with any other word or words, or in any other way in their advertising matter or as a brand or label for their products which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products are made of broadcloth which has been imported from England; (c) of the words "rayon silk" or the word "silk" either independently or in connection or conjunction with any other word or words in their said advertising matter circulated in interstate commerce that directly assert or clearly import or imply that the said products sold by the said respondents are manufactured either in whole or in part from silk, the product of the cocoon of the silkworm, and the use of the word "silk" in any other way purporting to describe the aforesaid products sold by them in interstate commerce that may have the capacity and tendency to confuse, mislead, or

deceive the purchasing public into the belief that the said products are manufactured from silk.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 11, 1928.)

**231. False or Misleading Brands or Labels—Overalls.**—Respondent, a corporation, engaged in the manufacture of overalls and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, caused products of its manufacture to be marked or labeled as follows: "The material in this garment is shrunken to the degree possible by the mills," and with the aforesaid marks or labels affixed thereto, caused said products to be sold and shipped in commerce between and among various States of the United States; when in truth and in fact the materials of which said products were made were not "shrunken" or "shrunken" as such representation is accepted to mean in the trade and among the purchasing public.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from the use of the word "shrunken" or "shrunken" either independently or in connection or conjunction with any other word or words, as a brand or label for its products which import or imply that the said products are manufactured from "shrunken" cloth as such representation is generally accepted to mean in the trade and among the purchasing public, and from the use of the words "shrunken" or "shrunken" either independently or in connection or combination with any other word or words, or in any other way as descriptive of its products sold in interstate commerce which may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are manufactured from cloth which has been "shrunken" as such representation is generally accepted to mean in the trade and among the purchasing public.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

**232. False or Misleading Advertising—Ladders.**—Respondent, a corporation, engaged in the manufacture of ladders and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships

likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, caused said products to be advertised in catalogues which were circulated in interstate commerce, said products being advertised as containing "Norway pine" or "spruce," and said respondent caused said products of its manufacture so advertised and described to be sold in commerce between and among various States of the United States, when in truth and in fact said products were not manufactured of "Norway pine" and/or "spruce" but were made of a material or materials other than "Norway pine" or "spruce."

Respondent agreed to cease and desist forever from the use of the words "Norway pine" or the word "spruce" either independently or in connection or conjunction each with the other, or with any other word or words, or in any other way which may import or imply that the products so represented, designated, described, and referred to were made of "Norway pine" and/or "spruce" or which may have the capacity and tendency to mislead and deceive the public into the belief that the products were made of Norway pine and/or spruce.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

233. **False or Misleading Brands or Labels—Shoes.**—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its shoes in interstate commerce, caused said products to be marked, stamped, branded, or labeled so as to simulate the brands or labels as used by manufacturers of shoes made in accordance with Army specifications or Government requirements, and in addition thereto caused the name of an inspector to be stamped on the soles of said shoes, as is usually and customarily done by Government or Army officials when inspecting shoes for the United States Army, and in accordance with the said policy, respondent stamped, branded, or labeled the said shoes on the soles thereof as "U. S. Army" or "Army," when in truth and in fact the said products so marked, stamped, branded, or labeled and sold in

interstate commerce were not manufactured by said respondent for the United States Army in accordance with Army specifications or Government requirements, and had not been subjected to inspection by United States Army or Government officials.

Respondent agreed to cease and desist forever from the use, in soliciting the sale of and selling its products in interstate commerce, as a brand or label for its said products, of the words or letters "Army," or "U. S." either independently or in connection or conjunction with the name of an inspector, or in connection or conjunction each with the other, or with any other words, figures, numerals, or insignia that may import or imply that the products so marked, stamped, branded, or labeled were made in accordance with United States Army specifications or Government requirements and/or have been passed upon or approved by an Army or Government inspector, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products so marked, stamped, branded, or labeled and sold in interstate commerce are manufactured for the United States Army in accordance with Army specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

**234. False or Misleading Advertising—Washing Bluing, Wrist Watches, Rings, Bracelets, Toilet Sets.**—Respondent, a corporation engaged in the manufacture of a washing bluing, and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products caused advertisements to be inserted in newspapers and magazines having circulation between and among various States of the United States, and by means of representations or inducements therein set forth secured the services of agents, generally boys and girls under their majority, to sell its products to the purchasing public located in various States of the United States, the said representations or inducements comprising offers in such phraseology as "Given wrist watch," "Sell only 28 packages of bluing at 10 cts. each and remit per plan in catalogue. With each package of bluing give beautiful art picture free," when in truth and in fact the wrist watch referred to was not given for only selling the exact amount of merchandise specified in the advertisement but required, as further consideration, the payment of an additional sum of money,



and the picture offered as a free gift to the purchaser of each package of bluing was not in truth and in fact given free, but its cost was included in the cost of the package of bluing; and the said respondent also caused representations or inducements to be set forth in its catalogues, circulars, and other printed matter distributed in interstate commerce, said representations or inducements comprising offers in such phraseology as "Four solid gold filled rings \* \* \* includes a 10-karat solid gold filled stock signet ring \* \* \*," "Ivory finish toilet set," "snowy white ivory finish," and "Beautiful platinum effect bracelet," when in truth and in fact the articles described as "solid gold filled" and as being "10 karat" were not manufactured of 10-karat gold and did not contain gold in such proportion so as to be properly and accurately represented, described, and referred to as "gold filled"; and the articles described as "ivory finish" were not finished with ivory and were not otherwise manufactured from the tusks of mammals, but were made of a product which simulates ivory in finish and/or appearance; and the articles described as "platinum finish" were not finished with platinum, but were made of a material or materials other than platinum.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from the use of the words "Given" and/or "Free" either independently or in connection or conjunction with any other word or words so as to import or imply that the products to which the same refer are in truth and in fact given as a gratuity and not as a consideration or award for the sale of its merchandise, and the use of the words "Given" and/or "Free" in any other way which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products are in fact given free and not included in the purchase price of its products; and the said respondent further agreed to cease and desist forever from the use of the words "gold filled" or "10-karat solid gold filled" either independently or in connection or conjunction with any other word or words, or in any other way which directly assert or clearly import or imply or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the products to which the said words refer are manufactured of 10-karat gold and/or manufactured of gold in such proportion so as to be properly and accurately represented, described, and referred to as "10-karat solid gold filled" or as "gold filled"; and the aforesaid respondent also agreed to cease and desist from the use of the words "ivory finish" to describe products which are not finished with ivory or manufactured from the tusks of mammals, and from the use of the words "platinum finish" to describe products which are not finished with platinum or do not contain platinum.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

235. False or misleading advertising—Manicuring Sets and Specialties.—Respondents, copartners, engaged in the manufacture of manicuring specialties and in the sale and distribution of the same in interstate commerce, and in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondents, in the course and conduct of their business, caused advertisements to be inserted in their catalogues which they circulated in commerce between and among various States of the United States and in which catalogues said respondents advertised a line of manicuring specialties including manicure sets, cases, nail and pocket files, and manicure sticks, the said manicure sets being described as "ivory," "shell," "amber," "ivory grained," "pearloid on amber," "decorated amber," "pearl on amber," and "ivory on amber," "satin lined" or as having "satin lining," said nail and pocket files being described as "platinum finish" or as "ivory" or "amber" and said manicure sticks being described as "real orange wood" or "real orange"; when in truth and in fact (a) said manicuring sets and pocket files described as "ivory," "amber," "shell," "ivory grained," "pearloid on amber," "decorated amber," "pearl on amber" or as "ivory on amber" are not manufactured, respectively, from ivory, the tusks of mammals, or from amber or from shell or from pearl but are made from a product or products which simulate in appearance and finish either ivory, amber, shell, or pearl; (b) said cases described as "satin lined," or as having "stain lining" are not lined with silk, the product of the cocoon of the silkworm, but are lined with a product consisting in part of a material other than silk; (c) said nail files described as being "platinum finish" are not finished in platinum or made of platinum metal, but are made of a substance finished to simulate platinum in appearance; (d) said manicure sticks described as "real orange wood" or "real orange" are not made from the wood of the orange tree but are made of a wood other than the wood of the orange tree.

Respondents agreed to cease and desist forever from using in their catalogues or other means of advertising circulated in interstate commerce (a) the words "ivory," "amber," "shell," or "pearl" either independently or in connection or conjunction with any other words, letter or letters, or in any other way to describe products which are respectively imitation of ivory, imitation of amber, imitation of shell or imitation of pearl; (b) the word "satin" to describe

a material unless the same is made of silk, the product of the cocoon of the silkworm, or unless when the material so described is made partly of silk, and partly of some other material or materials the word "satin" shall be accompanied by a word or words clearly indicating that the said material is not made wholly of silk; (c) the word or words "platinum" or "platinum finish" to describe products which are not made of platinum or which are not finished in platinum; (d) the word "orangewood" or "orange" to describe products which are not made from the wood of the orange tree.

Respondents also agreed that if they should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against them in the trial of the complaint which the commission may issue. (January 11, 1928.)

236. **Resale Price Maintenance—Radio Receivers and Parts.**—Respondent, a corporation, engaged in the manufacture of radio receivers and parts and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, adopted and employed a system for the maintenance and enforcement of resale prices established by it, the said system involving the cooperation of its dealer customers located in various States of the United States, and as a method of effecting observance of said system, the said respondent used the following means, to wit: Entered into written and/or other contracts, agreements, or understandings with dealers to the effect that such dealers, or any of them, in reselling the products purchased by them from said respondent, would adhere to the system of resale prices fixed or established by said respondent; solicited and obtained, by letters and other means, promises and assurances from its dealer customers that they would cooperate in the observance and maintenance of said suggested resale prices; solicited and received the cooperation of its said dealer customers in tracing price cutters and/or alleged price cutters by means of serial numbers and secret symbols placed by said respondent on its products and by means of which shipments could be and were traced; solicited and obtained the cooperation of its customers in reporting dealers and others cutting the prices or alleged to be cutting the prices of its products; threatened to refuse and did refuse to sell its products to dealers who ignored or failed to observe and maintain said suggested resale prices or who sold to any person or dealer other than the consuming public; acted upon information received from its cooperating dealers by cutting off numerous dealers who were accused of price cutting or of selling to other dealers;

solicited and obtained from its customers, reports of the names of other dealers who ignored or failed to observe and maintain its suggested resale prices, and upon securing such reports, urged the offenders to cease selling below the suggested resale prices, and sought and secured promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition to further supplying them with respondent's products; entered into contracts, agreements, or understandings with customers, who had been cut off, for the maintenance by such customers of said resale prices as a condition to the reopening of accounts with said customers.

Respondent agreed to cease and desist forever, in soliciting the sale of and selling its products in interstate commerce, from (a) entering into contracts, agreements, or understandings with dealers to the effect that such dealers, in reselling the products purchased by them from said respondent, will adhere to any system of resale prices fixed or established by said respondent, and (b) from securing or attempting to secure assurances or promises from dealers that they will observe the prices established by the said respondent for the resale of products purchased from the said respondent by said dealers; and (c) from securing or attempting to secure the cooperation of dealers in maintaining or enforcing any system of resale prices whatsoever, and (d) from acting upon information received from its cooperating dealers by threatening to refuse, or refusing to sell its products to any dealer because of such dealer's failure to adhere to any such system of resale prices; and (e) from soliciting the cooperation of dealers in reporting dealers cutting prices or alleged to be cutting prices of respondent's products, and acting upon information thus obtained by cutting off or threatening to cut off such offenders; and (f) from soliciting promises or assurances from such offenders that they would thereafter maintain the suggested resale prices as a condition to further supplying them with products; and (g) from directly or indirectly carrying into effect, by cooperative methods, any system for the maintenance of resale prices eliminating or having a tendency or capacity to eliminate price competition on its products.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

237. **False or Misleading Brands or Labels—Shoes.**—Respondent, a corporation, engaged in the manufacture of shoes and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its shoes in interstate commerce, caused said products to be marked, stamped, branded, or labeled so as to simulate the brands or labels as used by manufacturers of shoes made in accordance with Army specifications or Government requirements, and in addition thereto caused the name of an inspector to be stamped on the soles of said shoes, as is usually and customarily done by Government or Army officials when inspecting shoes for the United States Army, and in accordance with the said policy, respondent, stamped, branded, or labeled the said shoes on the soles thereof as "U. S. Army" or "Army"; when in truth and in fact the said products, so marked, stamped, branded, or labeled and sold in interstate commerce, were not manufactured by said respondent for the United States Army in accordance with Army specifications or Government requirements, and had not been subjected to inspection by United States Army or Government officials.

Respondent agreed to cease and desist forever from the use, in soliciting the sale of and selling its products in interstate commerce, as a brand or label for its said products, of the words or letters "Army" or "U. S.," either independently or in connection or conjunction with the name of an inspector, or in connection or conjunction each with the other or with any other words, figures, numerals, or insignia that may import or imply that the products so marked, stamped, branded, or labeled were made in accordance with United States Army specifications or Government requirements and/or have been passed upon or approved by an Army or Government inspector, or which may have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said products so marked, stamped, branded, or labeled and sold in interstate commerce are manufactured for the United States Army in accordance with Army specifications or Government requirements.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

**238. False or Misleading Advertising and Brands or Labels—Shirts.**—Respondent, a corporation, engaged in the manufacture of shirts and in the sale and distribution of the same in interstate commerce, and in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, in soliciting the sale of and selling its products in interstate commerce, inserted advertisements in newspapers and other publications having circu-

lation between and among various States of the United States, in which said advertisements its shirts were designated, described, and referred to as "pongee," "silk," and "silk," and the said shirts were branded or labeled as "pongee," "silk," or "silk"; when in truth and in fact the said shirts so branded, advertised, and sold in interstate commerce, were not manufactured in whole or in part from silk, the product of the cocoon of the silkworm, but were manufactured from a fabric or fabrics other than silk. Respondent also caused certain of its shirts to be advertised in interstate commerce as "flannel" and sold and distributed said shirts in commerce between and among various States of the United States; when in truth and in fact said shirts were not made wholly of flannel or wool, but were made in varying quantities of material or materials other than wool.

Respondent agreed to cease and desist forever from the use in interstate commerce of the word "Flannel" either independently or in connection or conjunction with another word or words to describe products so as to import or imply that such products are composed of wool, or unless when said products are composed in substantial part of wool and the word "Flannel" is used to designate said products, then in that event the word "Flannel" shall be accompanied by another word or words which shall be displayed in type equally as conspicuous as that in which the word "Flannel" is printed, so as to clearly indicate that such products are not made wholly of wool, and that will otherwise properly and accurately represent, define, and describe said products so as to clearly indicate that the same are composed in part of a material or materials other than wool; and the said respondent further agreed to cease and desist from the use in interstate commerce of the word "Pongee," and the words "Silk" or "Silk" either independently or in connection or conjunction with any other word or words in advertising matter of whatsoever character, distributed in interstate commerce, or as a brand or label for its products sold in interstate commerce, which import or imply that the products so described or designated are made of silk, the product of the cocoon of the silkworm, or which have the capacity or tendency to confuse, mislead, or deceive the purchasing public into the belief that the said products are made in whole or in part of silk.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 11, 1928.)

239. **False or Misleading Advertising—Canvas Work Gloves.**—Respondent, an individual, engaged in the business of selling and distributing canvas work gloves in wholesale quantities in interstate commerce, and in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following

stipulation of facts and agreement to cease and desist forever from the alleged unfair methods as set forth therein.

Respondent, in the course and conduct of his business, sold gloves in wholesale and/or retail quantities to the jobbing and other trade located in various States of the United States, and in soliciting the sale of and selling said products in interstate commerce used the words "Glove Manufacturers," on his letterheads, envelopes, invoices, order blanks, and other printed matter circulated in interstate commerce; when in truth and in fact said respondent did not own, control, or operate a plant or factory for the manufacture of the product sold by him in interstate commerce but filled orders for glove products manufactured by a plant or factory which he neither owned, operated, nor controlled.

Respondent agreed to cease and desist forever from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words upon his letterheads, envelopes, order blanks, invoices, and other printed matter circulated in interstate commerce so as to import or imply that said respondent owned, controlled, or operated a plant or factory for the manufacture of the product which he sold in interstate commerce. He further agreed to cease and desist from the use of the word "Manufacturers" either independently or in connection or conjunction with any other word or words, or in any other way that may have the capacity and tendency to confuse, mislead, or deceive the purchasing public into the belief that said respondent either owned, operated, or controlled a plant or factory wherein were manufactured the products sold by him in interstate commerce, or until such time as said respondent does actually own, control, or operate such a plant or factory for the manufacture of the products which he sells and distributes in interstate commerce.

Respondent also agreed that if he should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against him in the trial of the complaint which the commission may issue. (January 23, 1928.)

• 240. **False or Misleading Advertising—Misrepresentation—"Engraved" (Imitation) Products.**—Respondent, a corporation, engaged in the business of printing by a special process, commencement invitations, graduation announcements, visiting cards, and similar products and in the sale and distribution of the same in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following stipulation of facts and agreement to cease and desist forever from the alleged unfair methods of competition as set forth therein.

Respondent, in the course and conduct of its business, printed by a special process and/or by a special type of machine, invitations,

announcements, calling cards, and similar products which it designated, defined, and described as "engraving" or as "embossing," and sold said products so designated, defined, and described in commerce between and among various States of the United States through the medium of traveling salesmen. Respondent also caused said descriptive phraseology, namely, "engraving" and "embossing" to be set forth in its contracts, price lists, and other advertising matter circulated between and among various States of the United States, and to be used by its salesmen in soliciting the sale of and selling said products to purchasers and prospective purchasers located in various States of the United States when in truth and in fact the process used, or the methods employed by respondent in the manufacture of its products, was and is not the process of producing an impression on stationery from inked plates in which have been stamped, cut, or carved letters, sketches, designs, or inscriptions from which impressions or reproductions are made, known as "engraving," but was and is the result of the use of a chemical in powdered form applied to type printing while the ink is wet, which chemical adheres to the wet ink and in passing through a baking process the heat causes it to fuse so as to present a raised letter effect so as to resemble in appearance or simulate the impression made from ink engraved plates, known as "engraving."

Respondent agreed to cease and desist forever from the use of the word "engraved" and "embossed" or either of them to define or describe its products in contracts, price lists, or other advertising matter of whatsoever character circulated or distributed in interstate commerce, and the use of the word "engraved" or "embossed" or either of them, either independently or in connection or conjunction with any other word or words which import or imply that said products printed and sold by said respondent are the result of the impression made from inked engraved plates, commonly known to the trade and purchasing public as "engraving" and/or "embossing," and from the use of the words "engraved" or "embossed" either independently or in combination with any other word or words, or in any other way which may have the capacity and tendency to confuse or mislead the purchasing public into the belief that the products printed and sold by said respondent are engraved or embossed; or until such time as said respondent, if the word "engraved" or the word "embossed" is used to describe its products, does actually engrave or emboss, respectively, the products so designated and described which it sells in commerce between and among various States of the United States.

Respondent also agreed that if it should ever resume or indulge in any of the practices in question, this said stipulation of facts may be used in evidence against it in the trial of the complaint which the commission may issue. (January 25, 1928.)



## APPENDIX I.

### ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS.

#### FEDERAL TRADE COMMISSION ACT.<sup>1</sup>

[Approved Sept. 26, 1914.]

[PUBLIC—No. 203—63D CONGRESS.]

[H. R. 15613.]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

#### Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

<sup>1</sup> This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Reported decisions of the courts for the period covered by this volume (Nov. 5, 1926, to Jan. 29, 1928) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 629 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II-X, inclusive, of the Commission's Reports.

It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and

**Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.**

Term, seven years. each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

Chairman to be chosen by commission.

Pursuit of other business prohibited.

Removal by President.

Vacancy not to impair exercise of power by remaining commissioners.

Seal judicially noticed.

The commission shall have an official seal, which shall be judicially noticed.

**Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES.**

Commissioner's salary, \$10,000.

**SEC. 2.** That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The

duties, and for other purposes,' approved Sept. 20, 1916, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2 and 3 of said report presenting the minority views respectively of Messrs. Stevens and Lafferty; report of Senator Newlands from the Committee on Interstate Commerce on Federal Trade Commission (June 13, 1914, 63d Cong., 2d sess., Rept. No. 597) and debates and speeches, among others, of Congressman Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840-8849; 9008; 14925-14933 (part 15); Dickinson for, part 9, pp. 9189-9190; Mann against, part 15, pp. 14939-14940; Morgan, part 9, 8854-8857, 9063-9064, 14941-14943 (part 15); Sims for, 14940-14941; Stevens of N. H. for, 9063 (part 9); 14941 (part 15); Stevens of Minn. for, 8849-8853 (part 9); 14933-14939 (part 15); and of Senators Borah against, 11180-11189 (part 11); 11232-11237, 11298-11302, 11600-11601 (part 12); Brandegee against, 12217-12218, 12220-12222, 12261-12262, 12410-12411, 12792-12804 (part 13), 13103-13105, 13209-13301; Clapp against, 11872-11873 (part 12), 13061-13063 (part 13), 13143-13146; 13301-13302; Cummins for, 11102-11106 (part 11), 11379-11389, 11447-11458 (part 12), 11522-11539,

commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Appointment of secretary. Salary, \$5,000.

Other employees. Salaries fixed by Commission.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lippt against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for, 9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14787-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Snulsbury for, 11185, 11591-11594 (part 2); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12980-12986, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part 12), 12862-12869 (part 13), 12978-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in Vol. II of Commission's Decisions. p. 564 at pp. 570-579.)

**Sec. 2. SALARIES. SECRETARY. OTHER EMPLOYEES. EXPENSES OF THE COMMISSION. OFFICES—Continued.**

Commission may rent suitable offices.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Auditing of accounts.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

**Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.**

Bureau of Corporations absorbed by Commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

**Sec. 4.—DEFINITIONS.**

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce.”

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any

such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Corporation.”

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this Act.

“Documentary evidence.”

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

“Acts to regulate commerce.”

“Antitrust acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety;<sup>2</sup> also the sections seventy-three to seventy-seven, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen.

“Antitrust acts.”

#### Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.\*

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

Unfair methods unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Commission to prevent. Banks and common carriers excepted.

\* For text of Sherman Act, see footnote on pp. 603-605.

<sup>2</sup> Jurisdiction of Commission under this section limited by sec. 406 of the “Packers and Stockyards Act, 1921,” approved Aug. 15, 1921, ch. 64, 42 Stat. 159. See second paragraph of footnote on p. 539.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

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 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 thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Action by Court. Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

Commission's findings. Conclusive if supported by testimony. Introduction of additional evidence, if reasonable grounds for failure to adduce theretofore.

May be taken before Commission.

Commission may make new or modified findings by reason thereof.

Judgment and decree subject to review upon certiorari, but otherwise final.

Petition by respondent to review order to cease and desist.

To be served on Commission.

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

**Sec. 5. UNFAIR COMPETITION, COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.**

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.<sup>3</sup>

Service of Commission's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

**Sec. 6. FURTHER POWERS.<sup>4</sup>**

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

Sec. 6. That the commission shall also have power—  
(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

<sup>3</sup> For text of Sherman Act, see footnote on pp. 603-605. As enumerated in last paragraph of sec. 4 of this act, see p. 593.

<sup>4</sup> Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.



(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

To require annual or special reports from corporations, except banks and common carriers.

Such reports to be under oath, or otherwise, and filed within such reasonable period as commission may prescribe.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts,<sup>5</sup> to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts<sup>5</sup> by any corporation.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts<sup>5</sup> in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator of antitrust acts.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient

To make public, as it deems expedient, portions of information obtained.

<sup>5</sup> For text of Sherman Act, see footnote on pp. 603-605. As enumerated in last paragraph of sec. 4, of this act, see p. 593.

## Sec. 6. FURTHER POWERS—Continued.

To make reports in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To classify corporations, and make rules and regulations incidental to administration of Act. (g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving United States, reporting to Congress with recommendations deemed advisable. (h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

### Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

Court may refer suit to Commission. SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts,<sup>6</sup> the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

### Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.<sup>7</sup>

To furnish, when directed by President, records, papers, and information, and to detail officials and employees. SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and

<sup>6</sup> For text of Sherman Act, see footnotes on pp. 603-605. As enumerated in last paragraph of sec. 4 of this act, see p. 593.

<sup>7</sup> Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

shall detail from time to time such officials and employees to the commission as he may direct.

**Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MAN- DAMUS TO ENFORCE OBEDIENCE TO ACT.\***

SEC. 9. That for the purposes of this Act the commis- sion, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of ex- amination, and the right to copy any documentary evi- dence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the commission may sign subpoenas, and members and ex- aminers of the commission may administer oaths and af- firmations, examine witnesses, and receive evidence.

Commission to have access to documentary evidence and right to copy same.

May require at- tendance of wit- nesses and pro- duction of evi- dence.

Subpoenas, oaths, affirma- tions, examina- tion of witnesses. Reception of evi- dence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of wit- nesses and the production of documentary evidence.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpoena. Com- mission may in- voke aid of any United States court.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requir- ing such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in ques- tion; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

In case of con- tumacy or dis- obedience of sub- poena, any dis- trict court in jurisdiction in- volved may order obedience.

Disobedience thereafter pun- ishable as con- tempt.

Upon the application of the Attorney General of the United States, at the request of the commission, the dis- trict courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Mandamus from District Courts on application of Attorney General to enforce com- pliance with Act.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investi-

Commission may order depo- sitions at any stage.

\* Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stock- Yards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

**Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MAN-  
DAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.**

May be taken before person designated by Commission. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Testimony to be reduced to writing, etc. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Witness fees, same as paid for like services in United States courts. No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Incriminating testimony or evidence no excuse for failure to testify or produce. But natural person shall not be prosecuted with respect to matters involved. Perjury excepted.

**Sec. 10. PENALTIES.\***

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both. SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

\* Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business. Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000,

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

## Sec. 10. PENALTIES—Continued.

or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

## Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

Not affected by this act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts<sup>9</sup> or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

THE CLAYTON ACT.<sup>1</sup>

[Approved Oct. 15, 1914.]

[PUBLIC—No. 212—63D CONGRESS.]

[H. R. 15657.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

## Sec. 1. DEFINITIONS.

"Antitrust laws."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

<sup>9</sup> For text of Sherman Act, see footnote on pp. 603-605. As enumerated in last paragraph of sec. 4 of this act, see p. 593.

<sup>1</sup> This act has been annotated up to July 1, 1921, and may be found, so annotated, in Volume III of the Commission's Reports. Subsequent reported decisions for the period covered by this and the preceding volumes (July 1, 1921, to Jan. 29, 1928) and bearing on the provisions of this act affecting the Commission are: *Canfield Oil Co. v. Federal Trade Commission*, 274 Fed. 571 (see opinion set forth in Appendix II of Volume IV at p. 542 et seq.); *Sinclair Refining Co. v. Federal Trade Commission*, 276 Fed. 686 (see opinion set forth in Appendix II of Volume IV at p. 552 et seq.); *Auto Acetylene Light Co. v. Prest-O-Lite Co., Inc.*, 276 Fed. 537; *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 42 Sup. Ct. 360; *United Shoe Machinery Corporation v. United States*, 258 U. S. 451, 42 Sup. Ct. 363; *Aluminum Co. of America v. Federal Trade Commission*, 284 Fed. 401 (see opinion set forth in Appendix II of Volume V at p. 529 et seq.); *Standard Oil of N. J. et al. v. Federal Trade Commission*, 282 Fed. 81 (see opinion set forth in Appendix II of Volume V at p. 542 et seq.); *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568 (see opinion set forth in Appendix II of Volume V at p. 599 et seq.); *Mennen Co. v. Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of Volume VI at p. 579 et seq.); *Federal Trade Commission v. Sinclair Refining Co. et al.*, 261 U. S. 463 (see opinion and decision set forth in Appendix II of Volume VI at p. 587 et seq.); *B. S. Pearnell Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of Volume VI at p. 605 et seq.); *A. B. Dick Co. v. Fuller*, 6 F. (2d) 393; *National Biscuit Co. et al. v. Federal Trade Commission*,

July second, eighteen hundred and ninety<sup>3</sup>; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government,

209 Fed. 733 (see opinion and decision set forth in Appendix II of Volume VII at page 603 et seq.); *Aluminum Co. of America v. Federal Trade Commission*, 209 Fed. 361 (see opinion and decision set forth in Appendix II of Volume VII at page 618 et seq.); *Western Meat Co. v. Federal Trade Commission*, 1 F. (2d) 95 (see opinion and decision set forth in Appendix II of Volume VIII at page 589); *Butterick Co. et al. v. Federal Trade Commission*, 4 F. (2d) 910 (see opinion and decision set forth in Appendix II of Volume VIII at page 602); *S. S. Kresge Co. v. Champion Spark Plug Co.*, 3 F. (2d) 415; *Swift & Co. v. Federal Trade Commission*, 8 F. (2d) 535 (see opinion and decision set forth in Appendix II of Volume VIII at page 616); *Western Meat Co. v. Federal Trade Commission*, 4 F. (2d) 223 (see opinion and decision set forth in Appendix II of Volume VIII at page 623); *Federal Trade Commission v. Thatcher Manufacturing Co.*, 5 F. (2d) 615 (see opinion and decision set forth in Appendix II of Volume IX at page 631); *Parker v. New England Oil Corporation*, 8 F. (2d) 392, 418; *The Q. R. S. Music Co. v. F. T. C.*, 12 F. (2d) 730 (see opinion and decision set forth in Appendix II of Volume X at page 683); *General Investment Co. v. N. Y. C. R. Co.*, 271 U. S. 228; *Connecticut Tel. & El. Co. v. Automotive Equipment Co.*, 14 F. (2d) 957, 967, 969 et seq.; *Continental Securities Co. v. M. C. R. Co.*, 16 F. (2d) 378; *Federal Trade Commission v. Western Meat Co. et al.*, 272 U. S. 554 (see opinion and decision set forth in Appendix II of this volume at page 629); and *General Investment Co. v. N. Y. C. R. Co.*, 23 F. (2d) 822.

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess., 39 Stat. 728, 734) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto \* \* \*";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 150, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 458 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

That Public No. 146, Sixty-seventh Congress, approved Feb. 18, 1922 (42 Stat. 388), permits, subject to the provisions set forth, associations of producers of agricultural products for the purpose of "preparing for market, handling, and marketing in interstate and foreign commerce such products \* \* \*" (See also, in this general connection, the Cooperative Marketing Act, approved July 2, 1920, 44 Stat. 803, and the limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note.)

\* The Sherman Act (26 Stat. 209), which, as a matter of convenience is printed herewith. While the Act itself has not been amended (laying to one side provisions of other laws, as above noted, limiting the scope thereof), appropriations for the Department of Justice for the enforcement of the antitrust laws for the fiscal years 1920-1928, inclusive (41 Stat. 208, 41 Stat. 922, 41 Stat. 1411, 42 Stat. 613, 42 Stat. 1080, 43 Stat. 215, 43 Stat. 1027, and 44 Stat. 343 and 1194, respectively), were made contingent upon no part of the moneys being—

Sec. 1. DEFINITIONS—Continued.

and for other purposes,'” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce.” “Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

“Person or persons.” The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of

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“Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products.”

The act, omitting the usual formal “*Be it enacted*,” etc., follows:

CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.



either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

## Sec. 2. PRICE DISCRIMINATION.\*

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of com-

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

It shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

### ADDITIONAL PARTIES.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

### FORFEITURE OF PROPERTY.

SEC. 6. Any property owned under any contract or by any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

### SUITS—RECOVERY.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

### "PERSON" OR "PERSONS" DEFINED.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country.

\* On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 603.

### Sec. 2. PRICE DISCRIMINATION—Continued.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

merce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition:

Vendor may select own customers if not in restraint of trade.

*And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

### Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.<sup>4</sup>

Unlawful where effect may be to substantially lessen competition.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

### Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

May sue in any United States district court, and recover threefold damages, including cost of suit

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws<sup>5</sup> may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect

<sup>4</sup> On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 603.

<sup>5</sup> For text of Sherman Act, see footnote on pp. 603-605. As enumerated in Clayton Act, see first paragraph thereof on p. 602.

to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

**Sec. 5. PROCEEDINGS BY OR IN BEHALF OF UNITED STATES UNDER ANTITRUST LAWS. FINAL JUDGMENTS OR DECREES THEREIN AS EVIDENCE IN PRIVATE LITIGATION. INSTITUTION THEREOF AS SUSPENDING STATUTE OF LIMITATIONS.**

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Prima facie evidence against same defendant in private litigation.

Consent judgments or decrees excepted.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

**Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.**

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by antitrust laws with respect to their legitimate objects.

\* For text of Sherman Act, see footnote on pp. 603-605. As enumerated in Clayton Act, see first paragraph thereof on p. 602.

**Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.**

thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

**Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.<sup>1</sup>**

Of other corporation. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Of two or more other corporations. Prohibited where effect may be to substantially lessen competition, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

<sup>1</sup> On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 603.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 626, sec. 3.)

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,<sup>a</sup> nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

**Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.\***

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank

\* For text of Sherman Act, see footnote on pp. 603-605. As enumerated in Clayton Act, see first paragraph thereof on p. 602.

<sup>a</sup> By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 758, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally

Common carriers excepted with reference to branch or tap lines where no substantial competition.

Existing rights heretofore lawfully acquired not affected.

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over \$5,000,000.

**Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.**

or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

How eligibility determined.

Not to serve more than one bank, banking association, or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid

engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 603.

a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker or any officer, director, or employee of any member bank or class A director of a Federal reserve bank, who shall first procure the consent of the Federal Reserve Board, which board is hereby authorized, at its discretion, to grant, withhold, or revoke such consent, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if such other bank, banking association, or trust company is not in substantial competition with such banker or member bank.

Class A director of Federal reserve bank excepted and

Private banker or officer, etc., of member bank, or class A director may serve, with consent of Federal Reserve Board, not more than two other banks, etc., where no substantial competition.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.<sup>10</sup>

Consent may be secured before applicant elected director.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.<sup>11</sup> The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

Not to serve two or more presently or previously competing corporations if capital, surplus, and undivided profits aggregate more than \$1,000,000, and elimination of competition by agreement would violate antitrust laws.

How eligibility determined.

<sup>10</sup> The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, and act May 26, 1920, ch. 206.

<sup>11</sup> For text of Sherman Act, see footnote on pp. 603-605. As enumerated in Clayton Act, see first paragraph thereof on p. 602.

**Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS—Contd.**

Eligibility at time of election or selection not changed for one year.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

**Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY.**

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.



**Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.**

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding, under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Dealings in securities, etc., and contracts for construction or maintenance, aggregating more than \$50,000 a year to be by bid in case director, etc., of common carrier, also director, etc., of other party or has a substantial interest therein.

Bidding to be competitive under regulations prescribed by Interstate Commerce Commission, and to show names and addresses of bidder, officers, etc.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

**Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS—Continued.**

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

Penalty.

Effective date extended to Jan. 1, 1921.

Except as to corporations organized after Jan. 12, 1918.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.<sup>12</sup>

**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.<sup>13</sup>**

Jurisdiction as respectively applicable vested in—

Interstate Commerce Commission;

Federal Reserve Board; and

Federal Trade Commission.

Commission or board to issue complaint if believes secs. 2, 3, 7, or 8 violated, and serve same with notice of hearing on respondent or defendant.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person 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 thirty days after the service of said complaint. The person so

<sup>12</sup> Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

<sup>13</sup> On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see footnote on p. 603.

complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Respondent to have right to appear and show cause, etc.

Intervention may be permitted for good cause.

Transcript of testimony to be filed.

In case of violation commission or board to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commis-

In case of disobedience of its order, commission or board may apply to Circuit Court of Appeals for enforcement of its order, and file transcript of record.

Court to cause notice thereof to be served on respondent and to have power to enter decree affirming, modifying, or setting aside order of commission or board.

**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.**

**Findings of commission or board conclusive if supported by testimony.** sion or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave

**Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce therefor.** to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

**Commission or board may make new or modified findings by reason thereof.** sion or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

**Judgment and decree subject to review upon certiorari, but otherwise final.** judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

**Petition by respondent to review order to cease and desist.** Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

**To be served on commission or board which thereupon to certify and file transcript of record in the court.** the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

**Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly conclusive.** and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

**Jurisdiction of Court of Appeals exclusive.** The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.<sup>14</sup>

Complaints, orders, and other processes of the commission or board under this section may be served by any one duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Service of commission's or board's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

#### Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws<sup>14</sup> against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

#### Sec. 13. SUBPENAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST LAWS.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

<sup>14</sup> For text of Sherman Act, see footnote on pp. 603-605. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 602.

**Sec. 13. SUBPENAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTI-TRUST LAWS—Continued.**

May run into any district, but permission of trial court necessary in civil cases if witness lives out of district and more than 100 miles distant.

nal, arising under the antitrust laws<sup>15</sup> may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

**Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTI-TRUST LAWS.**

Deemed also that of individual directors, officers, etc.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws,<sup>16</sup> such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction thereof of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

A misdemeanor.

Penalty, fine or imprisonment, or both.

**Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.**

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

<sup>15</sup> For text of Sherman Act, see footnote on pp. 603-805. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 602.

of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

Court may summon other parties.

**Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.**

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,<sup>10</sup> including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue:

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

*Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

**Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.**

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No preliminary injunction without notice.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the in-

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

Temporary restraining order, to show date and hour of issue, define injury, etc.

<sup>10</sup> For text of Sherman Act, see footnote on pp. 603-605. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 602.

**Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.**

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

Opposite party may move dissolution or modification on two days' notice.

Sec. 263 of Judicial Code repealed.

Sec. 266 not affected.

jury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

**Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.**

Except as provided in sec. 16 of this act.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.



**Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS.**

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Must set forth reasons, be specific, and describe acts to be restrained.

Binding only on parties to suit, their officers, etc.

**Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.**

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute,

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

**Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT—Contd.**

any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Acts specified in this paragraph not to be considered violations of any law of the United States.

**Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.**

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

**Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES.**

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,*

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Failure of natural person to make return. Attachment against person.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for a misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

## Sec. 23. EVIDENCE. APPEALS.

**SEC. 23.** That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

## Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

**SEC. 24.** That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

## Sec. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

**SEC. 25.** That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

## Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

**SEC. 26.** If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Approved, October 15, 1914.

WEBB ACT.<sup>1</sup>

[Approved Apr. 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

AN ACT To promote export trade, and for other purposes.

Sec. 1. DEFINITIONS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Export trade."

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"Trade within the United States."

That the word "Association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

"Association."

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety,<sup>2</sup> shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in

Association not illegal if organized for and engaged in export trade solely.

<sup>1</sup> With the exception of a reference thereto in the case of *United States v. United States Steel Corporation*, 251 U. S. 417 at 453, and in *Es Parte Lamar*, 274 Fed. 100 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

<sup>2</sup> For text of Sherman Act, see footnote on pp. 603-605.

**Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW—Continued.**

Nor agreement nor act, if not in restraint of trade within the United States, or of the export trade of any domestic competitor, and

If such association does not artificially or intentionally enhance or depress prices of, or substantially lessen competition, or restrain trade in commodities of class exported.

such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

**Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.**

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within United States.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen,<sup>3</sup> shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

**Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS.**

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen,<sup>4</sup> shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

<sup>3</sup> See *ante*, p. 602 et seq.

<sup>4</sup> See *ante*, p. 589 et seq.

port trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Even though acts involved done without territorial jurisdiction of United States.

**Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION.**

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Export trade associations or corporations to file statement with Federal Trade Commission showing location of offices, names, and addresses of officers, etc., and also articles of incorporation or contract of association, etc.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

**Sec. 5. OBLIGATIONS OF EXPORT TRADE ASSOCIATIONS UNDER THIS ACT. PENALTIES FOR FAILURE TO COMPLY. DUTIES AND POWERS OF COMMISSION—Continued.**

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."\*

Approved, April 10, 1918.

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\* See ante, p. 589 et seq.



## APPENDIX II

### DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION<sup>1</sup>

FEDERAL TRADE COMMISSION *v.* WESTERN MEAT CO.<sup>1</sup>

No. 96.

THATCHER MANUFACTURING CO. *v.* FEDERAL TRADE  
COMMISSION.<sup>1</sup>

No. 213.

SWIFT & CO. *v.* FEDERAL TRADE COMMISSION.<sup>1</sup>

No. 231.

(Supreme Court. Argued Oct. 25 and 26, 1926. Decided Nov. 23,  
1926.)

MONOPOLIES KEY No. 24 (1).

Federal Trade Commission, acting under authority conferred by Clayton Act, Section 11 (Comp. St. Sec. 8835j), can not go beyond statute, properly construed, read and applied in light of its general purpose.

MONOPOLIES KEY No. 24 (2)—ORDER OF TRADE COMMISSION REQUIRING CORPORATION TO DIVEST ITSELF OF STOCK OF COMPETING CORPORATION UNLAWFULLY OBTAINED HELD NOT IN EXCESS OF COMMISSION'S AUTHORITY, THOUGH IT PREVENTED RESPONDENT CORPORATION FROM SECURING PROPERTIES OF COMPETING CORPORATION AND THEN DISSOLVING IT (FEDERAL TRADE COMMISSION ACT, SECTION 5 (COMP. ST. SEC. 8836E); CLAYTON ACT, SECTION 11 (COMP. ST. SEC. 8835J)).

Order of Federal Trade Commission, requiring corporation to divest itself of stock of [176] a competing corporation acquired in violation of Federal Trade Commission Act, Section 5 (Comp. St. Sec. 8836e), and to include in such divestment competing company's plant and all property necessary to the conduct and operation thereof, and ordering that none of such stock or property should be sold or transferred to any stockholder, officer, director, employee, or agent of respondent corporation, *held* not in excess of the Commission's authority under Clayton Act, Section 11 (Comp. St. Sec. 8835j), though it prevented respondent corporation from securing title to properties of competing corporation and then dissolving it.

MONOPOLIES KEY No. 24 (2)—ORDER OF FEDERAL TRADE COMMISSION, REQUIRING COMPANY TO DISPOSESS ITSELF OF PROPERTIES OF FORMER COMPETING COMPANIES ACQUIRED THROUGH CONTROL OF STOCK UNLAWFULLY ACQUIRED, HELD IN EXCESS OF AUTHORITY (CLAYTON ACT, SECS. 4, 7, 11, 15, 16 (COMP. ST. SECS. 8835D, 8835G, 8835J, 8835N, 8835O); SHERMAN ACT (COMP. ST. SEC. 8820 ET SEQ.); FEDERAL TRADE COMMISSION ACT, SECTION 11 (COMP. ST. SEC. 8836K)).

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<sup>1</sup> Reported in 272 U. S. 554, 47 Sup. Ct. Rep. 175.

Where company, after acquiring stock of competing corporations in violation of Clayton Act, Section 7 (Comp. St. Sec. 8835g), used the control so acquired to obtain transfers of all business and assets of such corporations and then caused their dissolution, *held*, order of Federal Trade Commission, acting under section 11 (Sec. 8835j, requiring company to dispossess itself of the property of such former competing corporations and to restore prior conditions, was in excess of its authority in view of Sherman Act (Comp. St. Sec. 8820 et seq.), Federal Trade Commission Act, Section 11 (Comp. St. Sec. 8836k), and Clayton Act, Sections 4, 15, 18 (Comp. St. Secs. 8835d, 8835n, 8835o).

MONOPOLIES KEY No. 24 (2)—ORDER OF FEDERAL TRADE COMMISSION REQUIRING PACKING COMPANY TO DESIST FROM HOLDING, CONTROLLING, AND/OR OPERATING PHYSICAL PROPERTIES AND BUSINESS OF FORMER COMPETING COMPANIES, HELD IN EXCESS OF ITS AUTHORITY (CLAYTON ACT, SECS. 7, 11 (COMP. ST. SECS. 8835g, 8835j)).

Where packing company unlawfully acquired stock of competing companies, and through its use obtained title to their business and physical properties, *held*, order of Federal Trade Commission, acting under Clayton Act, Sections 7, 11 (Comp. St. Secs. 8835g, 8835j), requiring such company to cease and desist from holding, controlling, and/or operating such business was in excess of its authority, though order directing packing company to divest itself of valueless stock of former competing companies would have accomplished no practical relief.

(The syllabus is taken from 47 Sup. Ct. Rep. 175.)

On writs of certiorari to the United States Circuit Courts of Appeals for the Ninth, Third, and Seventh Circuits, to review judgments respectively modifying the Commission's order against the Western Meat Co. (4 F. (2d) 223 and 1 F. (2d) 95); denying Swift & Co.'s petition to set aside the Commission's order against it (8 F. (2d) 595); and directing the enforcement of the Commission's order, as modified, against the Thatcher Manufacturing Co. 5 F. (2d) 615. Judgment as to the Western Meat Co. modified, and, as modified, affirmed; affirmed in part, and reversed in part as to the Thatcher Manufacturing Co.; and reversed as to Swift & Co. and order set aside.<sup>1</sup>

Mr. Justice Brandeis, Mr. Chief Justice Taft, Mr. Justice Holmes, and Mr. Justice Stone dissenting in part.

*Mr. Adrien F. Busick*, of Washington, D. C., with whom *Mr. Bayard T. Hainer* (and *Mr. James M. Brinson* in No. 96) was on the briefs, for petitioner in No. 96 and for respondent in Nos. 213 and 231.

*Messrs. Edward Barry*, of Bloomington, Ill., and *J. F. Sullivan*, of San Francisco, Calif., for respondent in No. 96.

*Messrs. James M. Sheean*, *Albert H. Veeder*, and *Henry Veeder*, all of Chicago, Ill., for petitioner in No. 231.

<sup>1</sup> The above cases before the Commission are respectively reported as follows: Western Meat Co., 5 F. T. C. 417; Thatcher Manufacturing Co., 6 F. T. C. 213; and Swift & Co., 5 F. T. C. 143.

*Messrs. Herbert Know Smith and Charles Henry Butler*, of Washington, D. C., for petitioner in No. 213.

[556] Mr. JUSTICE McREYNOLDS delivered the opinion of the Court.

## I.

These causes necessitate consideration of the power of the Federal Trade Commission where it finds that one corporation has acquired shares of a competitor contrary to the inhibition of the Clayton Act, approved October 15, 1914, c. 323, 38 Stat. 730, 731. That act provides—

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. \* \* \*

Section 8 forbids interlocking directors.

Sec. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such persons a complaint. \* \* \* If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person ("person" includes corporation) an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. \* \* \*

Section 5 of the act to create a Federal Trade Commission, approved September 26, 1914, c. 311, 38 Stat. 717, 719, declares unfair methods of competition in commerce unlawful, prescribes the procedure to be followed, and gives the Commission power to require an offending party to cease and desist from such methods. This section is not presently important; the challenged orders sought to enforce obedience to Section 7 of the Clayton Act.

## II.

No. 96. The Western Meat Company, a California corporation, and the Nevada Packing Company, of Nevada, were interstate competitors engaged in manufacturing, selling, and distributing meat prod-

ucts. December 30, 1916, the former purchased all stock of the latter and has continued to hold it. In a proceeding begun November 24, 1919, the Commission found such purchase and con[558]tinued ownership contrary to law and entered an order directing—

That the respondent, Western Meat Company, shall forthwith cease and desist from violating the provisions of Section 5 of said Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and also the provisions of Section 7 of said Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the Nevada Packing Company as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to neither directly or indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation.

That in such divestment, no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its officers, directors or stockholders or the officers, directors or stockholders of any of respondent's subsidiaries or affiliated companies.

The court below held this order went beyond the Commission's authority and directed that it be modified by eliminating "the injunction against the acquisition by the petitioner of the plant and property of the Nevada Packing Company."

Respondent maintains that the Commission's authority is strictly limited by the statute and that where there has been an unlawful purchase of stock it can do no more than enter "an order requiring such person to cease and [559] desist from such violations and divest itself of the stock held." Also, that the Commission has no power to prevent or annul the purchase of a competitor's plant and business, as distinguished from stock therein. *Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165, 174; *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453; *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 475, are relied upon.

Without doubt the Commission may not go beyond the words of the statute properly construed, but they must be read in the light of its general purpose and applied with a view to effectuate such purpose. Preservation of established competition was the great end which the legislature sought to secure.

The order here questioned was entered when respondent actually held and owned the stock contrary to law. The Commission's duty was to prevent the continuance of this unlawful action by an order directing that it cease and desist therefrom and divest itself of what it had no right to hold. Further violations of the act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property. And the same result would follow a transfer to one controlled by or acting for the respondent.

Although the respondent held all the capital stock, the plant and other property of the Nevada Packing Company had not been acquired. The Commission directed that it so divest itself of all this stock as to include in such divestment, the Packing Company's plant and property necessary to the operation thereof, etc. Taken literally, this goes beyond the situation revealed by the record, but the order must be construed with regard to the existing circumstances. Divestment of the stock must be actual and complete and may not be effected, as counsel for respondent admitted was intended, by using the control resulting therefrom to secure title to the possessions of the Packing Company and then to dissolve it. Properly understood, the order was within the Commission's authority, and the court below erred in directing the elimination therefrom of the above-quoted words. Its decree must be modified accordingly and then affirmed.

*Modified and affirmed.*

### III.

No. 213. The Commission entered complaint against the petitioner March 1, 1921, and charged that the latter, contrary to Section 7 of the Clayton Act, first acquired the stock of four competing corporations—Lockport Glass Company, Essex Glass Company, Travis Glass Company and Woodbury Glass Company—and thereafter took transfers of all the business and assets of the first three and caused their dissolution, October 20, 1920, December 18, 1920, and January 13, 1921, respectively. Having found the facts concerning a rather complicated series of transactions, the Commission ruled that the acquisitions of all these stocks were unlawful and ordered the petitioner to cease and desist from ownership, operation, management and control of the assets, properties, rights, etc., of the Lockport, Essex and Travis Glass companies secured through such stock ownership, and to divest itself of the assets, properties, rights, etc., formerly held by them. Also, that it should divest itself of the stock of the Woodbury Glass Company.

The court below held that the last-named company was not in competition with petitioner within the meaning of the statute and modified the order accordingly. Therein we agree and to that extent affirm its decree.

[561] The court further ruled, in effect, that as the stocks of the remaining three companies were unlawfully obtained and ownership of the assets came through them, the Commission properly ordered the holder so to dispossess itself of the properties as to restore prior lawful conditions. With this we can not agree. When the Commission institutes a proceeding based upon the holding of stock contrary to Section 7 of the Clayton Act, its power is limited by Section 11 to an order requiring the guilty person to cease and desist from such violation, effectually to divest itself of the stock, and to make no further use of it. The act has no application to ownership of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. The purpose of the act was to prevent continued holding of stock and the peculiar evils incident thereto. If purchase of property has produced an unlawful status a remedy is

provided through the courts. Sherman Act, c. 647, 26 Stat. 209; act to create a Federal Trade Commission, c. 311, Section 11, 38 Stat. 717, 724; Clayton Act, c. 323, Sections 4, 15, 16, 38 Stat. 730, 731, 736, 737; *United States v. American Tobacco Co.*, 221 U. S. 106. The Commission is without authority under such circumstances.

*Affirmed in part; reversed in part.*

#### IV.

No. 231. A complaint against petitioner, filed November 24, 1919, charged that in 1917 and 1918 it had unlawfully obtained stock in two competing companies—Moultrie Packing Company and Andalusia Packing Company—and, thereafter, through the use of this, obtained title to their business and physical property. The findings support the charge. The Commission ordered:

[562] That respondent, Swift & Company, within six calendar months from and after the date of the service of a copy of this order upon it, shall:

(1) Cease and desist from further violating Section 7 of the Clayton Act by continuing to own or hold, either directly or indirectly, by itself or by any one for its use and benefit, any of the capital stock of the Moultrie Packing Company and of the Andalusia Packing Company, or either of them, and cease and desist from holding, controlling and/or operating, or causing to be held, controlled and/or operated by others for its use and benefit, the former property and business either of the said Moultrie Packing Company or of the said Andalusia Packing Company, which have been held, controlled and operated by respondent and its employees and agents, following and as a result of respondent's unlawful acquisition of the capital stocks of said named corporations; and to that end, respondent shall

(2) So divest itself of all the capital stocks heretofore acquired by respondent, including all the fruits of such acquisitions, in whatever form they now are, whether held by respondent or by anyone for its use and benefit, of the Moultrie Packing Company, a corporation, and of the Andalusia Packing Company, a corporation, or either of them, in such manner that there shall not remain to respondent, either directly or indirectly, any of the fruits of said acquisitions, including the control and/or operations of said corporations, or either of them, resulting from such acquisitions and/or holdings of such capital stocks.

(3) In so divesting itself of such capital stocks respondent shall not sell or transfer, either directly or indirectly, any of such capital stocks to any officer, director, stockholder, employee or agent of respondent, or to any person under the control of respondent, or to any partnership or [563] corporation either directly or indirectly owned or controlled by respondent.

The court below denied a petition for review and the matter is here by certiorari. As all property and business of the two competing companies were acquired by the petitioner prior to the filing of the complaint, it is evident that no practical relief could be obtained through an order merely directing petitioner to divest itself of valueless stock. As stated in No. 213, we are of opinion that under Sections 7 and 11 of the Clayton Act the Commission is without authority to require one who has secured actual title and possession of physical property before proceedings were begun against it to dispose of the same, although secured through an unlawful purchase of stock. The courts must administer whatever remedy there may be in such situation. The order of the Commission should have been reviewed and set aside; and judgment to that effect will be entered here.

*Reversed.*

Mr. JUSTICE BRANDEIS, dissenting in part.

In my opinion, the purpose of Section 7 of the Clayton Act was not, as stated by the court, merely "to prevent continued holding of the stock and the peculiar evils incident thereto." It was also to prevent the peculiar evils resulting therefrom. The institution of a proceeding before the Commission under Section 7 does not operate, like an injunction, to restrain a company from acquiring the assets of the controlled corporation by means of the stock held in violation of that section. If, in spite of the commencement of such a proceeding, the company took a transfer of the assets, the Commission could, I assume, require a re-transfer of the assets, so as to render effective the order of divestiture of the stock. I see no reason why it should not, likewise, do this although the company succeeded in securing the assets of the controlled corporation before [564] the Commission instituted a proceeding. Support for this conclusion may be found in Section 11, which provides for action by the Commission whenever it "shall have reason to believe that any person is violating *or has violated* any of the provisions" of the earlier sections. (*Italics ours.*)

I think that the decrees in Nos. 213 and 231 should be affirmed.

The CHIEF JUSTICE, Mr. JUSTICE HOLMES, and Mr. JUSTICE STONE join in this dissent.

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LOUIS LEAVITT v. FEDERAL TRADE COMMISSION.<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. December 9, 1926.)

No. 11.

Petition to review order of the Federal Trade Commission.<sup>2</sup>

*Alexander A. Mayer*, of New York City, for petitioner.

*Bayard T. Hainer*, *Adrien F. Busick*, and *G. E. Rowland*, all of Washington, D. C., for respondent.

Before HOUGH, HAND, and MACK, *Circuit Judges*.

PER CURIAM:

Order affirmed in open court.

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<sup>1</sup> Reported in 16 F. 2d, 1019.

<sup>2</sup> The Commission's order (reported in 9 F. T. C. 221 at 225) required respondent to cease and desist from the application to his product of the terms "Gold Seal Combination White Lead" or "Combination White Lead" unless the product so designated and described actually contains sulphate of lead or carbonate of lead or the two in combination as its principal and predominant ingredient "to the extent of not less than 50 per cent by weight of the product" or from using any other designation, brand or label "which falsely represent the relative quantity of genuine white lead contained in said products."

FEDERAL TRADE COMMISSION *v.* PACIFIC STATES  
PAPER TRADE ASSOCIATION ET AL.<sup>1</sup>

(Supreme Court. Argued Dec. 8, 1926. Decided Jan. 3, 1927.)

No. 71.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY NO. SERIES—IN CONSIDERING WHETHER PAPER WHOLESALERS SHOULD BE ORDERED TO CEASE CERTAIN METHODS OF COMPETITION, COMMISSION MAY CONSIDER INFERENCES DRAWN FROM STIPULATED FACTS (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836E)).

In considering whether paper trade association should be ordered to cease certain methods of competition in interstate commerce, violating Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e), Commission is not confined to stipulated facts, but may consider inferences legitimately to be drawn from them.

MONOPOLIES KEY No. 17 (1)—PAPER WHOLESALERS HELD PROPERLY PROHIBITED FROM USING PRICE LISTS FIXED BY AGREEMENT IN SELLING OUTSIDE STATE.

Order prohibiting paper trade association from using price lists fixed by agreement between wholesalers in selling outside state, and from making and distributing such price lists, *held* valid, though there was no established rule, that such lists be followed in taking orders for interstate shipments, where finding that there was understanding that they be followed was not without support.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY NO. SERIES—IN CONSIDERING WHETHER PAPER WHOLESALERS SHOULD CEASE CERTAIN METHODS OF INTERSTATE COMPETITION, WEIGHT TO BE GIVEN FACTS AND INFERENCES IS FOR COMMISSION (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836E)).

In considering whether paper trade association should be ordered to cease certain methods of competition in interstate commerce, as violating Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e), weight to be given facts and circumstances admitted, as well as to inferences reasonably to be drawn from them, is for Commission.

COMMERCE KEY No. 40 (1)—SALE OF PAPER TO RETAILERS WITHIN STATE, TO BE SHIPPED FROM MILL IN ANOTHER STATE TO OR FOR RETAILER, IS "INTERSTATE COMMERCE."

Transaction by which wholesale paper dealers sold to retailers in same state, shipment being from mill in another state to or for retailer, *held* to constitute "interstate commerce," since what is interstate commerce is to be determined on broad consideration of circumstances of whole transaction.

CERTIORARI KEY No. 64 (1)—ON CERTIORARI SUPREME COURT HAS SAME POWER AS ON APPEAL OR WRIT OF ERROR.

On certiorari Supreme Court has same power and authority as if case had been brought up by appeal or writ of error.

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<sup>1</sup> Reported in 273 U. S. 52, 47 Sup. Ct. Rep. 255.



CERTIORARI KEY No. 64 (1)—ON CERTIORARI RESPONSES, WHO DID NOT PETITION FOR CERTIORARI, CAN NOT QUESTION CORRECTNESS OF PART OF DECREE NOT CHALLENGED.

Respondents held not entitled to have review of part of decree not challenged by petitioner, where they did not petition for certiorari.

(The syllabus is taken from 47 Sup. Ct. Rep. 255.)

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, to review a judgment modifying the Commission's order (4 F. (2d) 457). Decree of the Court of Appeals reversed in part.

*Mr. Adrien F. Busick*, of Washington, D. C., for petitioner.

*Messrs. Warren Olney, jr., Edward J. McCutchen, and Allan P. Matthew*, all of San Francisco, Calif., for respondents.

[58] \* \* \*

Mr. Justice BUTLER delivered the opinion of the court.

The Federal Trade Commission made an order requiring respondents to cease and desist from certain methods of competition in interstate commerce found to be in violation of section 5 of the Federal Trade Commission Act of September 26, 1914, c. 311, 38 Stat. 717. (7 Federal Trade Commission Decisions 155.) The order contains eight paragraphs designated by letters (a) to (h) inclusive. The respondents brought (b), (c), (e), (g), and (h) under review in the Circuit Court of Appeals. The first two were set aside, paragraph (e) was modified, and the last two were allowed to stand. (4 F. (2d) 457.) This court granted certiorari (268 U. S. 684) on petition of the commission, which asks reversal of the decree as to paragraphs (b) and (c). No petition has been filed by respondents.

The facts were stipulated; and those here material are: Dealers in paper in each of the five principal jobbing centers in the States on the Pacific Coast have a local association. These centers are Seattle and Tacoma taken as one, Spokane, Portland, San Francisco and Los Angeles. [59] And there is a general association known as the Pacific States Paper Trade Association whose members are the paper dealers in these centers including most but not all of the members of the local associations, and some who do not belong to a local association. The respondents in this case are the five local associations, the general association, and their members.

The territory served by the members of each local association, while loosely defined, is that naturally tributary to the center where the members are located. The territory of Seattle and Tacoma is the northwestern part of Washington and Alaska; that of Spokane is eastern Washington, northern Idaho and western Montana; that of Portland is Oregon, southerly Washington and part of southern and western Idaho; that of San Francisco is the north half of California, a small portion of southern Oregon, and part of Nevada; and that of Los Angeles is the south half of California and part of Nevada and Arizona. A majority of the dealers in the Pacific Coast States are members of the associations, and they have 75 per cent of the busi-

ness in paper and paper products, exclusive of roll news paper which for the most part is not handled by them.

Each local association distributes uniform price lists to its members to be observed in its territory within the State. The secretary of each is authorized to investigate complaints against members to determine whether they sell below the established prices; and three of the associations authorize the imposition of heavy fines on members for making such sales.

The Spokane association in its list of prices established for Washington printed "suggested prices" for sales to purchasers in Idaho and western Montana, and there was a tacit or implied understanding that the prices suggested would be observed.

And these association lists are habitually carried and used by the salesmen of members in quoting prices and [60] making sales outside the State. No association has any requirement that such price lists be observed outside the State; and the quoting of, or the making of sales at, lower or different prices in such territory is not deemed an infraction of rules or trade regulations by reason of which any jobber or wholesaler may complain.

Among the prices fixed by each local association for sales by its members within the State where they are located are prices on what are called "mill shipments." These are sales or orders not requiring immediate delivery and capable of being filled by shipment from the place of manufacture. They include less than carload lots and also carload lots. The former are combined with other paper to make a carload which is shipped to the wholesaler as a single consignment. At destination the delivery is taken by the wholesaler and the portion intended for the purchaser is turned over to him. The carload shipments are made on directions specifying as the point of destination the place where delivery is to be made from the wholesaler to the purchaser. In some cases the wholesaler, in other cases the purchaser, is named as consignee. When so named the wholesaler either takes delivery and turns over the shipment to the purchaser or indorses the bill of lading to the purchaser who then receives the paper directly from the carrier. Where named as consignee, the purchaser takes delivery. In all cases the wholesaler orders the paper from the mill and pays for it. There is no contractual relation between the manufacturer and the purchaser from the wholesaler. These shipments are made from mills within and also from those without the State covered by the agreement fixing prices.

The commission in its findings substantially follows the stipulated facts, and, from them it draws certain inferences or conclusions. Referring to the prices fixed by the local associations, the commission said the habitual carrying and use of such price lists by member jobbers in [61] quoting prices and making sales outside the State, have a natural tendency to and do limit and lessen competition therein, and the result of such practice is fixed and uniform prices for such products within such territories. As to mill shipments, the commission finds the facts in accordance with the stipulation, and concludes that mill shipments from points outside the State to or for purchasers within the State are in interstate commerce until delivered to the purchaser, and that the inclusion of fixed and uni-

form prices for such sales in the price lists of the associations eliminates price competition.

Paragraph (b) of the commission's order is to prevent the local associations, their officers and members, separately or in combination, from using any price list fixed by agreement between wholesalers in soliciting or selling in interstate commerce, and from making and distributing any such price list intended for use in making such sales. Paragraph (c) prohibits making or acting under agreements fixing prices on mill shipments when the paper sold is shipped from outside the State where the wholesaler is located, and the making or distributing of price lists to be used for making such sales.

The Circuit Court of Appeals held that the stipulated facts do not sustain the commission's finding that the use of association prices by members outside the State where they are located has a tendency to lessen competition and to fix uniform prices in such territories. The validity of the inference or conclusion drawn by the commission and of this part of the order depends upon the proper estimation of the facts stipulated. The language specifically relating to such use of the agreed prices if considered alone might possibly be deemed insufficient. But the commission is not confined to so narrow a view of the case. That part of the stipulation properly may be taken with all the admitted facts and the inferences legitimately to be drawn from them.

[62] The members of the associations dominate the paper trade in question. They are organized to further common purposes. They limit competition in intrastate trade by adherence to uniform prices fixed by agreements through combination. The facts admitted show a strong purpose and much diligence to that end. And some of their activities are for like purpose and have the same effect in the field of interstate commerce. Suggested prices for Idaho and Montana were sent out with the Spokane lists. There was an understanding that such prices would be followed. Mill shipments, whether shipped from within or from without the State, are subject to the agreed prices. From the standpoint of respondents, restraint upon price competition in their interstate commerce is as desirable as in their business local to the States. In both classes of business, they are stimulated by the same motive to lessen competition. All the salesmen while in intrastate territory are required to sell at prices fixed by agreement. And, when across the State line in interstate territories, they use the agreed lists in quoting prices and making sales. It does not appear whether the prices so fixed are adhered to in interstate business. The fact that there is no established rule that the lists shall be followed in taking orders for interstate shipments or that the quoting of lower prices is an infraction for which complaint may be made is not controlling in favor of respondents. An understanding express or tacit that the agreed prices will be followed is enough to constitute a transgression of the law. No provision to compel adherence is necessary. It would appear difficult for these jobbers to maintain a uniform price list in the State while making sales across the line at different and competing prices. The effective combination to restrain price competition on one side of the state line is not consistent with the absence of such restraint on the other. The organized maintenance of uniform prices in business local [63]

to the States lends probative significance and weight to facts pointing in the direction of like restraint in the interstate territories. The use of the association prices by all the salesmen in making sales in interstate territories is not necessarily to be regarded as coincidence. There is ample ground for saying that such use results from the admitted combination. The failure of the stipulation to contain any direct statement on the subject does not require it to be found that salesmen are free to depart from the prices furnished them, or that the list used by one differs or may differ from that used by others in the same locality.

The weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the commission. Its conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory can not be said to be without sufficient support. Paragraph (b) does not go beyond what is justified by the findings. It is valid.

Paragraph (c) applies only to mill shipments from one State to another. For the consummation of a transaction involving such a shipment, two contracts are made. The first is for sale and delivery by wholesaler to retailer in the same State. The seller is free to have delivery made from any source within or without the State. The price charged is that fixed by the local association. The other contract is between the wholesaler and the manufacturer in different States. There is no contractual relation between the manufacturer and retailer. By the shipment of the paper from a mill outside the State to or for the retailer, the wholesaler's part of the first contract is performed. The question is whether the sale by the wholesaler to the retailer in the same State is a part of interstate commerce where, subsequently at the instance of the seller and to perform his part of the contract, the paper is shipped from a mill in another State to or for [64] the retailer. "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Company v. United States*, 196 U. S. 375, 398. And what is or is not interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction. *Dozier v. Alabama*, 218 U. S. 124, 128. Such commerce is not confined to transportation, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. And it includes the buying and selling of commodities for shipment from one State to another. *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 290; *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 55. The absence of contractual relation between the manufacturer and retailer does not matter. The sale by the wholesaler to the retailer is the initial step in the business completed by the interstate transportation and delivery of the paper. Presumably the seller has then determined whether his source of supply is a mill within or one without the State. If the contract of sale provided for shipment to the purchaser from a mill outside the State, then undoubtedly it would be an essential part of commerce among the States. *Sonneborn Bros. v. Cureton*, 262 U. S. 506, 515. Clearly the absence of such a provision does not affect the substance of the matter when in fact such a shipment was contemplated and made. Cf. *Dozier v. Alabama*, *supra*; *Western Union Tel. Co. v. Foster*, 247 U. S. 105,

113; *Lemke v. Farmers Grain Co.*, *supra*, 55. The election of the seller to have the shipment made from a mill outside the State makes the transaction one in commerce among the States. And on these facts the sale by jobber to retailer is a part of that commerce.

The lower court cites and quotes from *Ware & Leland v. Mobile County*, 209 U. S. 405. Respondent cites *Moore v. N. Y. Cotton Exchange*, 270 U. S. 593, and asserts that it is identical with the last mentioned case and with the [65] one now before us. In the *Ware & Leland case*, brokers at their office at Mobile, Ala., took orders from customers to buy and sell contracts for future deliveries of cotton and grain and sent the orders to another office of theirs for execution on an exchange or board of trade in New York, New Orleans, or Chicago. Such contracts were for the most part closed out by sale or purchase of other contracts necessary to cover them. No actual deliveries were made except in a few instances; and then they were made outside Alabama at the place where the orders were sent for execution. Deliveries, if any, of cotton purchased for a customer were made to the brokers at the places where the exchanges are located. When the Mobile office of brokers made delivery of cotton on the sale of a future for a customer, the cotton was shipped by the customer from Alabama to the place of sale and there delivered through the brokers to the buyer. Delivery of grain on such contracts, when required, was made at Chicago. In the *Moore case*, the contracts considered were between members of the exchange made for the purchase or sale of cotton for future delivery; the cotton was represented by warehouse receipts issued by a licensed warehouse in New York and was deliverable from the warehouse. The transactions on exchanges and boards of trade, which were considered in these cases, are essentially local in character. It was well understood that they might be closed out without any delivery. And, while for the most part if not wholly, the cotton and grain deliverable under these contracts originated in other States and had theretofore been transported in interstate commerce, it was not contemplated by the parties, seller or buyer, that delivery would be made while the commodity remained in such commerce. It would be a mere chance if any such transaction should be completed by delivery of the commodity while still the subject of commerce among the States. [66] When regard is had to the facts and known course of business, it is quite clear that the transactions considered in these cases are essentially different from the mill shipments now before us.

And, as the contracts between the wholesaler and the retailer constitute a part of commerce among the States, the elimination of competition as to price by the application of the uniform prices fixed by the local associations was properly forbidden by the order of the commission. Paragraph (c) is valid.

Respondents, notwithstanding their failure to petition for certiorari, now ask for reversal of that part of the decree which leaves in force part of paragraph (e) and paragraphs (g) and (h). This court has the same power and authority as if the case had been carried here by appeal or writ of error. A party who has not sought review by appeal or writ of error will not be heard in an appellate court to question the correctness of the decree of the lower court. This is so well settled that citation is not necessary. The respondents are

not entitled as of right to have that part of the decree reviewed. *Hubbard v. Tod*, 171 U. S. 474, 494; *French Republic v. Saratoga Vichy Co.*, 191 U. S. 427, 440; *Alice State Bank v. Houston Pasture Co.*, 247 U. S. 240, 242. Cf. *Hamilton Shoe Co. v. Wolf Brothers*, 240 U. S. 251, 257. And, assuming power, we are not moved by any persuasive consideration to examine the parts of the commission's order to which respondents object.

That part of the decree which sets aside paragraphs (b) and (c) of the Commission's order is reversed.

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OSTERMOOR & CO., INC. *v.* FEDERAL TRADE COMMISSION <sup>1</sup>

(Circuit Court of Appeals, Second Circuit. January 10, 1927.)  
10, 1927.)

No. 67.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68—SLIGHT PICTORIAL EXAGGERATION OF QUALITIES OF ARTICLE IS NOT MISREPRESENTATION OR UNFAIR COMPETITION (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836E)).

The slightest pictorial exaggeration of articles can not be deemed to be either a misrepresentation or unfair method of competition, within Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY NO. SERIES—FEDERAL TRADE COMMISSION'S CEASE AND DESIST ORDER HELD ERRONEOUS, AS ATTEMPTING TO PROHIBIT SLIGHT PICTORIAL EXAGGERATION.

Cease and desist order of Federal Trade Commission held erroneous, in attempting to prohibit pictorial representation of any exaggeration of expansion which would take place if completed mattress was partly left open.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 68—PICTORIAL REPRESENTATIONS OF OSTERMOOR MATTRESS, EXAGGERATING EXPANSION IN CASE OF COMPLETED MATTRESS LEFT OPEN, HELD NOT UNFAIR COMPETITION (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836E)).

Pictorial representation of process of manufacturing Ostermoor mattresses, showing exaggerated expansion in case of completed mattress being partly left open, held not to constitute unfair competition, within Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY NO. SERIES—FORMER OWNER, HAVING TRANSFERRED BUSINESS TO CORPORATION, HELD IMPROPERLY JOINED IN PROCEEDINGS CHARGING UNFAIR COMPETITION (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836E)).

Former owner, who had, before suit was instituted, transferred to corporation his former business, held improperly made party to proceedings to enjoin unfair methods of competition, within Federal Trade Commission Act,

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<sup>1</sup>The case is reported in 16 F. (2d) 962.

Sec. 5 (Comp. St. Sec. 8836e), although owning practically all of capital stock.

(The syllabus is taken from 16 F. (2d) 962.)

Petition to review order of the Federal Trade Commission. Order of Commission annulled.<sup>2</sup>

*C. C. Cousins*, of New York City, for petitioners.

*Bayard T. Hainer*, chief counsel, Federal Trade Commission, *Adrien F. Busick*, assistant chief counsel, and *Richard P. Whiteley*, all of Washington, D. C., for respondent.

Before HOUGH, MANTON, and MACK, Circuit Judges.

MACK, *Circuit Judge*:

The amended complaint filed against petitioners in April, 1924, charges as unfair methods of competition within section 5 of the Federal Trade Commission Act (Comp. St. Sec. 8836e), that they had published throughout the country false and deceptive advertisements consisting principally of pictorial representations of mattresses. We shall assume that the complaint further charges as respondent asserts in its brief, that the misrepresentation is in "pictorially showing that petitioners' mattresses are constructed of superimposed layers of cotton felt or bats of such number and thickness and resilience that, if a completed mattress of from four to six inches in thickness were opened up at one end by ripping or removing the ticking or covering thereon, said layers of cotton felt would expand to the extent of 35 inches or more, and that the said expansion of such opened-up end would be at least six or seven times the thickness of the inclosed end of said mattress."

The Commission found that, when opened at one end in the manner above described the expansion was from 3 to 6 inches instead of as the pictures indicated, 35 inches or more; that over \$4,000,000 had been expended by petitioner and its predecessors in advertising; that a substantial number of the public had been induced to buy petitioners' mattress in preference to that of other manufacturers who do not falsely represent their mattress to possess the expansion, resilience or thickness of filling claimed by petitioners for the Ostermoor.

The order to cease and desist in substance forbade the pictorial representation of any exaggeration of the expansion which takes place if a completed mattress were partly ripped open; the essential basis of the order was the pictures in use as trade-marks for over 30 years. These pictures and their origin are described in the findings of the Commission as follows:

"In 1895, respondent Ames caused to be [963] constructed a model of a mattress filled with layers of cotton, with the cover open and the filling exposed at one end, said exposed end and the cotton filling thereof being manipulated so as to greatly expand such cotton filling, between the bats or layers of which supports were placed to hold the filling in said expanded position. Photographs were then taken of this model, and, guided by said photographs and by drawings

<sup>2</sup> The case before the Commission is reported in 10 F. T. C. 45.

and instructions from respondents, a picture of a mattress was produced by an artist, showing the mattress inclosed at one end and opened and greatly expanded at the other end. This exaggerated picture was incorporated by respondents in the several trade-marks adopted by them. About January 15, 1895, respondents began using the picturizations or depictions of open-end mattresses as trade-marks, and attached to all mattresses manufactured and sold by them a label or brand bearing pictorial representations of an Ostermoor mattress *in the later processes of construction*. The device upon this label is a circle set within a square and quartered by lines of diameter intersecting at the center; in one corner is a mattress cover upon which has been placed several layers or bats of cotton felt; a woman is in the act of adding a final layer to the mattress filling. In the second quarter of the label is shown a mattress with upper portion of the cover drawn in part over the filling, so as to restrain one end; at the other end the mattress filling is shown as flaring widely, showing eight layers or bats. In the third quarter a woman is represented as in the act of fastening the edges of the cover together; she has progressed in the process some inches from the end of the mattress; and the filling has flared or expanded toward the other end, so as to show the bats or layers of filler rising to about the height of the woman's head, although the support of the mattress reaches only to a point below the pictured woman's hip and the inclosed top to about her hip. In the fourth quarter is shown a mattress in sections, the smaller section completed and tufted, while in the larger section the filling for a few inches is restrained by the cover, and for the rest of the distance it is exposed, showing a flare similar to that shown in the adjacent quarter. Following one of the diameter lines which divide the circle is the word 'Ostermoor,' and following the other diameter line is the legend 'Hand-Laid Filling,' thus giving the impression that the representations in series upon the label were of *the final processes of Ostermoor mattress construction*."

The misrepresentation is found as follows:

"Such pictorial representations of the bed mattresses of respondents so set forth upon such brands or labels indicate great elasticity and resiliency, and an expansion of the filling when unrestrained to several times the thickness of such filling when bound in such mattresses; such filling when flared out or expanded being at least six or seven times as thick at the extreme free or open end as in the covered portion of the mattress. The thickness of the completed stock mattresses of respondent is from about 4 inches to about 6 inches, while the flaring free ends are of such proportion that they plainly indicate the thickness of the cotton filling when freed from restraint to be at least 35 or 40 inches."

"The pictorial representations of Ostermoor mattresses which appear upon the labels and in the advertising of respondents, grossly exaggerate the expansion which actually occurs in respondents' mattress filling freed at one end from restraint. As a matter of fact, the filling of respondents' mattresses when unrestrained rises above the thickness of the mattress when restrained, or completed, only about 50 to 100 per cent, or from 3 to 6 inches instead of 35 inches or more, as indicated in the aforesaid picturizations. Such pictorial representations used in the advertising of respondents and on the



labels exaggerate the expansion of the filling of respondents' mattresses and imply a resiliency or elasticity far beyond the fact."

As pointed out by the dissenting commissioner, Humphrey, even the slightest exaggeration, well within the limits of legitimate trade puffing, would fall under the Commission's condemnation. But the statutory power to prohibit unfair methods of competition can not be stretched to this extent; the slightest pictorial exaggeration of the qualities of an article can not be deemed to be either a misrepresentation or an unfair method of competition. The time-honored custom of at least merely slight puffing unlike the clear misrepresentation of the character of goods, as in the *Winsted Hosiery Company case*, 258 U. S. 483, has not come under a legal ban. See *F. T. C. v. Gratz*, 253 U. S. 421, as to "unfair competition." Even if petitioner were properly found to have committed a wrong, the order here issued [964] must be deemed erroneous, in that it attempted to prohibit, not merely the wrongdoing, but likewise proper trade practices.

We cannot, however, concur in the interpretation of the pictorial representation upon which the order is based. As also pointed out by the dissenting commissioner, and as indicated in the above-quoted findings of the Commission, the pictures clearly assume to show the final stages in the construction of the mattress, the thickness and resiliency before compression and not afterwards; a mattress in process of manufacture, not one completed and, after some unknown time and unknown use, ripped open again. And there is no testimony that such a representation is a misrepresentation of the unfinished article, or of the materials or of the process of utilizing them in the manufacture of the mattress. Concededly it is an exaggeration of the actual condition; indeed, petitioner asserts that it is not and was not intended to be descriptive but fanciful and as such the subject matter of valid trade-marks.

The only possible support in the record for the interpretation of the picture as a finished and partially reopened mattress as charged in the complaint and as enjoined by the order, is the fact that in a 1913 cushion catalogue and in the mattress catalogue last printed in 1916 and abandoned since its last issuance in 1921, a year before corporate defendant's incorporation, and three years before the complaint was filed, the legend accompanying one of the pictures reads: "Showing the built-up Ostermoor sheets appearing from out a completely finished cushion, ripped open for inspection. Note resiliency of filling." No such legend accompanied any of the mattress pictures in this or other catalogue, or any picture, since 1921.

Defendant Ames personally and trading as Ostermoor & Company was improperly joined as a defendant; his old-established business had been transferred to Ostermoor & Company, Inc., two years before complaint was filed; the fact that he owned practically all of the capital stock did not render him individually subject to the cease and desist order. The sole apparent purpose in making him a party defendant was to get the discontinued 1916 and earlier catalogues into the record as admissible in evidence against him.

It is unnecessary to determine many questions sought to be raised; among others, whether the proceeding is in the public interest, in the light of the fact that petitioner does less than 1 per cent of the mattress and cushion business of the country, that hundreds of com-

petitors use similar advertising pictures, that petitioner and its predecessors have established a high reputation and have always fulfilled their guarantee to make good any complaints, or to what extent the use of otherwise valid trade-marks in unfair competition may be forbidden. The determination of validity or invalidity of the picture as a trade-mark, because fanciful or merely descriptive, is not within the jurisdiction of the Commission or of this court in this proceeding. The sole inquiry here is that of unfair competition against the public interest.

In our judgment this pictorial representation of the process of manufacturing Ostermoor mattresses and of the materials used therein, even though exaggerated as to their characteristics, can not deceive the average purchaser and the record is practically bare of any evidence of actual reliance upon the puffing exaggeration of qualities. There is no basis for the finding that "*substantial* numbers of purchasers had been misled and deceived by the grossly exaggerated pictorial representation."

Finding no evidence of unfair competition, the order of the Commission is annulled.

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ARKANSAS WHOLESALE GROCERS' ASSOCIATION ET AL. *v.* FEDERAL TRADE COMMISSION.<sup>1</sup>

(Circuit Court of Appeals, Eighth Circuit. April 5, 1927.)

No. 301.

CONSTITUTIONAL LAW KEY No. 80 (2)—STATUTE MAKING FACT FINDINGS OF FEDERAL TRADE COMMISSION, SUPPORTED BY TESTIMONY, CONCLUSIVE, HELD CONSTITUTIONAL (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836e)).

Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e), providing that finding of commission as to facts, if supported by testimony, is conclusive, is constitutional, since Congress has power to delegate to administrative body or head of department power of finding facts on which subsequent orders may be made and action predicated.

CONSTITUTIONAL LAW KEY No. 318—RIGHT OF REVIEW TO DETERMINE WHETHER FACT FINDINGS OF FEDERAL TRADE COMMISSION ARE BASED ON SUBSTANTIAL EVIDENCE HELD TO SATISFY DUE PROCESS REQUIREMENT (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8836e); CONST. AMEND. 14).

Right of review to determine whether fact findings of Federal Trade Commission are based on substantial evidence or whether they are arbitrary, oppressive, and in excess of its powers, and whether the order made is responsive to and justified by such findings, satisfies constitutional requirement of due process, as against contention that Federal Trade Commission Act, Sec. 5 (Comp. St. Sec. 8836e), making fact findings of commission, supported by testimony, conclusive, is invalid.

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<sup>1</sup>The case is reported in 18 F. (2d) 866. Petition for writ of certiorari filed by the Arkansas Wholesale Grocers' Assn. et al. in the Supreme Court on June 21, 1927, denied Oct. 17, 1927, 275 U. S. 533. Case before Commission reported in 10 F. T. C. 155.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
DISCONTINUANCE BEFORE FILING OF COMPLAINT, OF PRACTICES FORMING BASIS  
OF FEDERAL TRADE COMMISSION'S ORDER TO CEASE AND DESIST DOES NOT AFFECT  
COMMISSION'S JURISDICTION, NOR PROPRIETY OF ORDER.

That practices forming basis of findings and order of Federal Trade Commission requiring voluntary association of wholesale grocers to desist from unfair practices in restraint of interstate trade had been discontinued prior to filing of complaint with commission would not affect jurisdiction of commission, nor propriety of order made by it, since commission is not [867] obliged to assume that such practices will not be resumed.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
ERROR ASSIGNED TO INCOMPETENCY OF TESTIMONY BEFORE FEDERAL TRADE  
COMMISSION CANNOT BE CONSIDERED, IF FINDINGS ARE SUPPORTED BY SUB-  
STANTIAL COMPETENT TESTIMONY.

If findings of Federal Trade Commission on which its order requiring respondents to cease and desist from continuing unfair practices in restraint of interstate trade are supported by any substantial competent evidence, error assigned because of incompetency of testimony at hearings cannot be considered by court.

COMMERCE KEY No. 48—RESTRAINT OF INTERSTATE COMMERCE PRODUCED BY  
PEACEFUL PERSUASION IS UNLAWFUL.

Restraint of interstate commerce produced by peaceful persuasion, unattended by coercion or intimidation, is unlawful.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
COMPLAINT CHARGING THAT WHOLESALE GROCERS' ASSOCIATION, BY THREATS,  
INTIMIDATION, AND BOYCOTT, SOUGHT TO PREVENT MANUFACTURERS SELLING  
DIRECTLY TO RETAIL DEALERS, HELD SUFFICIENTLY DEFINITE TO SUPPORT ORDER  
TO CEASE AND DESIST (FEDERAL TRADE COMMISSION ACT (COMP. ST. SECTIONS  
8836a-8836k)).

Complaint charging that voluntary association of wholesale grocers, by persuasion, intimidation, boycott, and threats of boycott, coerced manufacturers and producers to refrain from selling goods directly to retail dealers, dealers carrying on combined retail and wholesale business, and co-operative purchasing enterprises of retailers, resulting in obstruction of interstate trade, within Federal Trade Commission Act (Comp. St. Sections 8836a-8836k), held sufficiently definite to support order to cease and desist from such practices.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
FEDERAL TRADE COMMISSION'S ORDER REQUIRING WHOLESALE GROCERS' ASSO-  
CIATION TO DESIST FROM UNFAIR PRACTICES OBSTRUCTING INTERSTATE TRADE  
HELD NOT INDEFINITE OR UNCERTAIN.

Order of Federal Trade Commission requiring voluntary association of wholesale grocers, its officers, members, agents, representatives, and employees, to cease and desist from following a common course of action pursuant to mutual understanding, combination, agreement, or conspiracy to directly or indirectly lessen competition in trade in groceries in interstate commerce, stating specific practices charged and established by proof and calculated to bring about unfair dealing in interstate trade, held not indefinite, uncertain, or illegal.

(The syllabus is taken from 18 F. (2d) 866.)

Petition for review of order of Federal Trade Commission. Order affirmed.

*Mr. Edgar Watkins*, of Atlanta, Ga. (*Messrs. Watkins, Asbill & Watkins*, of Atlanta, Ga., on the brief), for petitioners.

*Mr. Eugene W. Burr*, of Washington, D. C. (*Mr. Bayard T. Hainer* and *Mr. Adrien F. Busick*, both of Washington, D. C., on the brief), for respondent.

Before **STONE** and **VAN VALKENBURGH**, Circuit Judges, and **TRIEBER**, District Judge.

**VAN VALKENBURGH**, *Circuit Judge*:

On or about September 13, 1924, a proceeding was instituted before the Federal Trade Commission against the Arkansas Wholesale Grocers Association, its officers and members. The complaint charged that the Wholesale Grocers Association therein named as respondent is a voluntary unincorporated association of individuals, partnerships, and corporations with their principal places of business in the State of Arkansas, and engaged in selling, at wholesale, groceries and allied products to retail dealers located at points in Arkansas and in neighboring states, said members being banded together with said association for the purpose of promoting and protecting their common interest; that the members of the association are many in number, and in the aggregate constitute about one-half the number of all the wholesale dealers in the State of Arkansas; that said members and corporations, named as respondent, purchase the products in which they deal directly and immediately from manufacturers and producers located for the most part in states other than the State of Arkansas, and said manufacturers and producers ship the goods so purchased from their respective places of business in such other states, to the members and corporation respondents in the State of Arkansas; that upon reselling said products in the course of their aforesaid business the members and corporation respondents cause said products to be transported from their respective places of business in the State of Arkansas to their vendees at their respective points of location in the State of Arkansas and in neighboring states; that said members and corporation respondents are normally in competition with each other in price and otherwise, and with other individuals, partnerships, and corporations also engaged in the purchase of like products from manufacturers and producers, as aforesaid, and in the resale thereof in the territory served by said respondent association; that the respondents in said proceedings designate the channel of [868] distribution commencing with the manufacturer or producer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public, as the only regular and legitimate channel of distribution. Channels of distribution originating with the manufacturer or producer which do not flow through the wholesale dealer, but go direct to the consumer, or to a dealer doing both a wholesale and retail business, or direct to retail dealers, and especially to cooperative purchasing enterprises of retail dealer, are by said respondents designated as irregular and illegiti-

mate channels of trade, and such dealers acquiring goods through so-called illegitimate channels are by respondents designated as irregular or illegitimate dealers. The complaint further charges that for more than three years, then last past, the respondents named therein have united in a common course of action and have cooperated and confederated together and with others to confine the distribution of groceries and allied products to the aforesaid so-called regular and legitimate channels of trade; to prevent so-called irregular and illegitimate dealers from obtaining groceries and allied products from manufacturers and producers thereof, and thereby to suppress competition and especially competition in price therein, in the territory which they serve.

In furtherance of this program it is charged that said respondents frequently hold general and special meetings for the interchange of information concerning and the discussion and adoption of plans and measures for the carrying out of their said undertaking; also by distributing and disseminating among respondents, the members of said respondent association, and others, bulletins published by respondent association containing names and lists of names of manufacturers and producers selling to so-called irregular dealers, and by correspondence and reports between the association and the members and between the members amongst themselves, all the members are informed of instances of the sale by manufacturers and producers of aforesaid products to so-called irregular dealers, and thereupon respondents bring pressure to bear upon such manufacturers and producers to cease dealing with such vendees and by persuasion, intimidation, threats of boycott, and by boycott, attempt to and do coerce such manufacturers and producers to refrain from supplying such dealers with goods; that said respondents use other cooperative and individual means to carry out and make effective their aforesaid undertaking. It is further charged that said acts and things substantially lessen, hinder and suppress competition in the sale and distribution of groceries and allied products in the territory served by respondents, obstruct the natural flow of commerce in the channels of interstate trade, and deny the dealers in and consumers of said commodities in the aforesaid territories advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition, all resulting in restraint of trade and to the prejudice of the public, of respondents' competitors and of manufacturers, producers and dealers not complying with and adhering to the aforesaid plan and limitation of trade, and constituting unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act. (Comp. St. secs. 8836a-8836k.)

The record is long and tends to support the charges made in the complaint. As alleged therein the secretary of the respondent association sent out frequent bulletins to the membership, strongly urging them to refrain from trading with manufacturers and producers who sold directly to retailers, brokers, or consumers. A few quotations from these bulletins will serve to illustrate their character and objective. That of January 9, 1922, contains the following:

We hope that all wholesale grocers will look over their list of manufacturers from whom they buy and see the ones that are selling the chain stores at the

same price that they are selling the wholesale grocers. When you buy from them, you give them the club that they are pounding you with and the club that they pound the retailers with.

One of December 27, 1921, reads:

Resolved, that as far as possible, we will give our orders for merchandise to those manufacturers who sell to the wholesale trade exclusively.

And, again:

Be loyal to those who are loyal to you. You can reduce to a minimum the articles carried for those manufacturers who are giving the "double cross" to the wholesale grocers. You know who those manufacturers are. We don't have to make a list of them. Just go through your stock, make a list for your own information, then see if you can't cut those lines out that are featured by the manufacturer who is not dealing on the level with the wholesale grocers.

Now is the time and now the opportunity to clean all such articles out of stock [869] and now is the time to favor the goods which "pay their fare" and to favor those manufacturers who favor you \* \* \*. The trade is united; it is on the defensive; courageous action is the need of the hour.

A certain trade journal known as "Duncan's Trade Register," on the cover of its issue of November, 1921, announced its purpose to publish a list of "undesirables," and in the course of its notice said:

What the retailer needs is a list of concerns placing chain stores on the jobbers' list \* \* \*. Compel them to distribute through the chain stores.

The cover then gave as a sample of the list later to be published a number of prominent manufacturers and producers. The secretary of the respondent association, on November 3, 1921, issued a bulletin containing the following:

#### THE LIST OF UNDESIRABLES.

The above is the title of an article on the front page of Duncan's Trade Register, November, 1921. If you do not take this splendid magazine, it will pay you to subscribe. In his January edition he will give you a complete list of "undesirables." That is what he terms the manufacturers who are selling the chain stores at the prices they sell the wholesaler. In this article he gives a few of them. He says that the list given is just a sample, and that the complete list will be ready for distribution January 1. The price is \$3, including yearly suscription to Duncan's Trade Register. "Don't you think the list worth the money, and then you get this fine magazine for a year? Address, Portland, Oregon."

In the February issue of Duncan's Trade Register, under the heading "List of Undesirables and Malefactors of Great Wealth" appeared a list of corporations, manufacturers, and producers concerning which that magazine gave the following advice:

Boycott them? Why certainly. Trade Register makes no reservation in advising the boycott and ostracism. They are criminals without the law, a menace to commerce, society, and the peace of the world. Boycott them by all means, fair or foul. \* \* \* Don't buy their goods, use their goods, or miss a chance to advise your friends to give like treatment.

In the bulletin of February 8, 1922, the secretary of the respondent association makes the following comment:

Duncan's Trade Register for February. Have you received your copy? Well, ours has arrived. It is a real "hot one." Mr. Duncan is one of those fearless writers, who call an ace an ace and a spade a spade. His defense of the Wholesale Grocer in his article entitled "Jobbers Must Stand Trial," is one of the best things that we have ever read, and if there was nothing else in this issue it should appeal to you to subscribe. But there are many other articles

that merit your attention. Then the list of the concerns over this country who are not dealing as they should, are in this issue.

The foregoing quotations from the bulletins of the Wholesale Grocers Association will serve sufficiently to disclose the objects and methods of that association and its members. It appears in evidence that the suggestions thus broadly made resulted in withdrawals of patronage amounting to boycott, and affecting interstate trade in groceries and allied products in Arkansas and in neighboring states.

The Commission found the practice of the respondents to be as follows:

The member respondents purchase the major part of the products in which they deal, both directly and through brokers, from manufacturers and producers of such products located in various states of the United States other than the State of Arkansas and cause such purchased products to be transported from the various states, in which the same are manufactured or produced, to the several warehouses and places of business of the respondent members in the State of Arkansas. The goods so transported are sold and delivered by the respondent members from their respective places of business in the State of Arkansas to their dealer vendees at the respective points of location of said vendees in the State of Arkansas and at times to dealer vendees located in neighboring states, including Missouri, Texas, and Oklahoma. In the course and conduct of their respective businesses respondent members are engaged in competition with each other, and with other wholesale grocer concerns, and with various manufacturers and producers for the trade of retail grocers within the territory above described served by said respondent members. Manufacturers, both those acting through brokers and those not so acting, ship groceries and allied products to customers in Arkansas, including respondent members and other wholesale grocers and chain stores, and are in competition among themselves for this trade.

\* \* \* \* \*

The acts and things aforesaid, done by respondent association and respondent officers and members pursuant to the said mutual understanding, tend to close certain outlets in the State of Arkansas for the sale, by manufacturers and producers in other states, of goods shipped by them into said state, to regulate commerce by eliminating "irregular" dealers and their suppliers from it and by restricting it to such producers and dealers as abide by the plan of trade described above, and to lessen competition in the sale of groceries and allied products in the territory served by respondents and thus to deny dealers and consumers advantages in price and otherwise which they would obtain from the natural flow of commerce under conditions of free competition. Such common course of action, combination and conspiracy was adopted and pursued for the purpose and with the effect of substantially lessening, hindering, burdening, and regulating the course of interstate commerce in groceries and allied products between other states and the State of Arkansas.

It held such practices to be to the injury and prejudice of the public, competitors, manufacturers, producers, and their representatives, and to constitute unfair methods of competition in interstate commerce. It made a cease and desist order in accordance with these findings. To review that order of the Commission this original petition is brought before us.

Section 5 of the Federal Trade Commission Act contains this provision: "The finding of the Commission as to the facts, if supported by testimony, shall be conclusive." Petitioners submit that this provision, and, therefore, the statute, is unconstitutional. It is conceded that the Federal Trade Commission Act has frequently been enforced in the courts, and that the provision attacked has often been quoted, applied, and approved. It is insisted, however, that this issue has not heretofore been definitely raised, and that courts do

not voluntarily hold a statute unconstitutional in the absence of such an issue. It may be true that the constitutionality of the act, instead of being directly decided, has rather been necessarily assumed, in the many cases in which that act, and this specific provision, have been considered by the Supreme Court. Nevertheless, we think the question can not now be regarded an open one. The Federal Trade Commission is an administrative body; it is a fact finding body. It has been authoritatively held that it is within the power of Congress to delegate to an administrative body, or head of a department, the duty and power of finding facts upon which subsequent orders may be made and action predicated. Such power has been delegated, and its exercise upheld, in the case of the Interior Department, the Department of Agriculture, the Post Office Department, the Interstate Commerce Commission, the Commissioner of Immigration, and the Federal Trade Commission; the orders made enjoin a course of conduct; in some cases they indirectly, at least, affect substantial property rights.

\* In *I. C. C. v. Union Pacific R. R. Co.*, 222 U. S. 541, after declaring that the statute made the findings of the Interstate Commerce Commission as to reasonableness of rates prima facie correct, the court said:

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. "The findings of the Commission are made by law prima facie true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." (*Ill. Cen. v. I. C. C.*, 206 U. S. 441.) Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order. (*Id.*, pp. 547, 548.)

In *U. S. v. L. & N. R. R.*, 235 U. S. 314, the court below substituted its judgment as to the existence of a preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so. In rejecting this view the Supreme Court, speaking through Mr. Justice White, said:

It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed. (*East Tenn., &c., Ry. Co. v. Interstate Com. Com.*, 181 U. S. 1, 23, 29.) And the amendments by which it came to pass that the findings of the Commission were made not merely prima facie but conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, supra, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It can not be otherwise since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action. (*Id.* pp. 320, 321.)

The general power of Congress to clothe an administrative body with such authority is thus expressed by the Supreme Court in *Union Bridge Co. v. U. S.*, 204 U. S. 364:

Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the



state of things upon which the enforcement of its enactment depends would be "to stop the wheels of government" and bring about confusion, if not paralysis, in the conduct of the public business. (Id. p. 387.)

If such be the holdings in cases where the findings are made but prima facie true, how much greater their pertinency where such findings are by statute made conclusive.

But decisions respecting the Federal Trade Commission Act itself are abundant and equally conclusive. In *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, Mr. Justice McReynolds said:

Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive.

And in a concurring opinion in the same case Mr. Chief Justice Taft uses this significant language:

I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Commission be made a fact-finding body, and that the court in its rulings preserve the board's character as such and not interject its views of the facts where there is any conflict in the evidence.

To the same effect are *U. S. v. L. & N. R. R. Co.*, 235 U. S. 314; *Federal Trade Com. v. Winsted Hosiery Co.*, 258 U. S. 483; *Chamber of Commerce v. Fed. Trade Com.* (C. C. A. 8), 280 Fed. 45, 48; *Cream of Wheat Co. v. Fed. Trade Com.* (C. C. A. 8), 14 Fed. (2d) 40; *National Harness Mfg. Ass'n v. Federal Trade Com.* (C. C. A. 6), 261 Fed. 170, 171; *Federal Trade Com. v. Gratz* (C. C. A. 2), 258 Fed. 314; *Beech-Nut Packing Co. v. Federal Trade Com.* (C. C. A. 2), 264 Fed. 885, 890; *Western Sugar Refining Co. v. Federal Trade Com.* (C. C. A. 9), 275 Fed. 725, 733; *Grocers Ass'n of El Paso v. Federal Trade Com.* (C. C. A. 5), 277 Fed. 657, 663; *American Tobacco Co. v. Federal Trade Com.* (C. C. A. 2), 9 Fed. (2d) 570, 575; also *Harriet Hubbard Ayer Inc. v. Federal Trade Com.* (C. C. A. 2) [15 F. (2d) 274]; *Federal Trade Com. v. Pacific States Paper Trade Ass'n* [273 U. S. 52]; *Virginian Ry. Co. v. United States* [272 U. S. 658]. The three last cases being not yet reported.

The right of review to determine whether the findings of the Commission are based upon substantial evidence or whether they are arbitrary, oppressive, and therefore in excess of its powers, and whether the order made is responsive to and justified by such findings, satisfies the requirement of due process. There is no ground in a case of this nature to say that the petitioners did not have, or were denied, a full and sufficient hearing. *San Diego Land Company v. National City*, 174 U. S. 739.

It is urged that many or all of the practices which formed the basis of the findings and order of the Commission had taken place and had been discontinued some time prior to the filing of the complaint. This, if true, would not affect the jurisdiction of the Commission nor the propriety of the order made, since the Commission is not obliged to assume that such practices will not be resumed. *Guarantee Veterinary Co. v. Federal Trade Com.* (C. C. A. 2), 285 Fed. 853; *Chamber of Commerce of Minneapolis v. Federal Trade Com.* (C. C. A. 8), 13 Fed. (2d) 673, 686.

Error is assigned because of alleged incompetent testimony at the hearings. This assignment can not be entertained provided there

is any substantial competent testimony to support the findings. *Hill Bros. v. Federal Trade Commission* (C. C. A. 9) 9 Fed. (2d) 481, 484. "Findings and order of the Commission may not be rejected as evidence because of any errors in its procedure not amounting to a denial of the right to a fair hearing, so long as the essential facts found are based upon substantial evidence. \* \* \* the Commission is not to be regarded as having acted arbitrarily, nor may its findings and order be rejected as wanting in support, simply because the hearsay evi[872]dence was considered with the rest." *Spiller v. Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117, 126, 131; *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44.

It is next insisted that the facts in evidence do not sustain the finding; that petitioners at most resorted merely to persuasion and that this they had a right to do provided that persuasion was peaceful and unattended by coercion or intimidation. The controlling decisions are to the contrary as applied to the facts in this case. *Eastern States Lumber Ass'n v. United States*, 234 U. S. 600; *Lawlor v. Loewe*, 235 U. S. 522, 534. Referring to the cases last cited the Supreme Court in *Duplex Co. v. Deering*, 254 U. S. 443, 467, 468, said:

It is settled by these decisions that such a restraint produced by peaceful persuasion is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

Our conclusion is that the complaint filed was sufficiently definite, that the proofs sustained the charges made, and that the findings of the Commission were supported by substantial competent evidence. Finally, it is complained that the order to cease and desist is indefinite, uncertain, and illegal both in general and in each particular paragraph thereof. That order is:

That the respondent association, its officers, both individually and in their said official capacity, and its individual members, their agents, representatives and employees or any group of such respondents or their agents, either with or without the cooperation of persons not parties hereto, cease and desist from following a common course of action pursuant to mutual understanding, combination, agreement or conspiracy, for the purpose or with the effect, directly or indirectly, of lessening competition in the course of trade in groceries or allied products, or any of them, entering the State of Arkansas from other states, by the following methods, or any one or more thereof, to wit:

Then follow in separate paragraphs the specific practices charged in the complaint, established by the proof, and naturally calculated to bring about the unfair dealing in interstate trade, which was the subject of investigation by the Commission. These various paragraphs are responsive to and justified by the findings made. In no respect does the order invade the right to exercise individual preferences in trade relations; that is, of buying from whom one pleases and selling to whom one elects, if unaccompanied by unlawful combination and agreement. It is, therefore, approved and confirmed.

TRIEBER, *District Judge*, concurring:

I concur in the opinion of Judge Van Valkenburgh, but wish to add that on the question of the constitutionality of the provision of the Federal Trade Commission Act, making the findings of the Com-

mission, if supported by testimony, conclusive, the authorities cited by counsel for petitioners to sustain this contention are not in point.

In *Cairo & Fulton Railroad Company v. Parks*, 32 Ark. 131, the act made a tax deed executed by the county clerk conclusive that each and every act and thing required to be done had been performed. Under that statute there was no hearing or opportunity to be heard and the clerk is merely a ministerial officer, possessing no quasi-judicial powers.

In *Little Rock & F. S. Railroad Company v. Payne*, 33 Ark. 816, the statute did not provide that the killing of stock by trains shall be conclusive evidence of negligence, but the trial court so construed it. This was held to be erroneous.

In *Chicago, etc., Railway v. Minnesota*, 134 U. S. 418, the statute made the rates or charges for transportation recommended by the Railway & Warehouse Commission of the State conclusive. There was no opportunity afforded to have a judicial inquiry as to the reasonableness of the rate established, or whether confiscatory. This was held unconstitutional.

In *United States v. Colgate*, 250 U. S. 300, the sufficiency of an indictment was involved, and it was held that as the indictment failed to charge the defendant with acting in cooperation with other manufacturers of like articles, and that one carrying on a private business has the right to determine to whom to sell or refuse to sell. This also applies to some of the other authorities relied on.

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## FEDERAL TRADE COMMISSION ET AL. v. CLAIRE FURNACE CO. ET AL.<sup>1</sup>

(Supreme Court. Argued December 6, 1923. Reargued November  
24, 1925. Decided April 18, 1927.)

No. 1.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—FEDERAL TRADE COMMISSION ORDERS, UNDER CHARGE OF UNFAIR COMPETITION OR VIOLATING CLAYTON ACT, CAN BE ENFORCED ONLY THROUGH CIRCUIT COURT OF APPEALS (FEDERAL TRADE COMMISSION ACT, SEC. 5 (COMP. ST. SEC. 8830E); CLAYTON ACT, SECTIONS 2, 3, 7, 8 (COMP. ST. SECTIONS 8835B, 8835C, 8835G, 8835H)).

Orders of the Federal Trade Commission, pursuant to charge of practicing unfair methods of competition, in violation of Federal Trade Commission Act, Section 5 (Comp. St. Section 8836e), or for violation of Clayton Act, Sections 2, 3, 7, 8 (Comp. St. Sections 8835b, 8835c, 8835g, 8835h), can be enforced only through Circuit Court of Appeals.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—BILL IN EQUITY WILL NOT LIE TO ENJOIN FEDERAL TRADE COMMISSION FROM ENFORCING ORDERS REQUIRING INDUSTRIES TO FURNISH REPORTS, OTHER REMEDIES BEING ADEQUATE (FEDERAL TRADE COMMISSION ACT, SECTIONS 6, 9 (COMP. ST. SECTIONS 8830F, 8836I)).

Bill in equity will not lie to enjoin Federal Trade Commission from enforcing or attempting to enforce orders requiring certain industries to fur-

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<sup>1</sup> Reported in 274 U. S. 160, 47 Sup. Ct. 553.

nish monthly reports of cost of production, balance sheets, and other detailed information relating to business under claimed authority of Federal Trade Commission Act, Sections 6, 9 (Comp. St. Sections 8836f, 8836i), notwithstanding consent of parties to determination of Commission's authority, since defendants may be fully heard, and adequately and effectively present every ground of objection, in proceedings to enforce such orders.

(The syllabus is taken from 47 Sup. Ct. Rep. 553.)

Appeal from the Court of Appeals of the District of Columbia. Reported in 285 Fed. 936. Reversed and remanded, with directions. Mr. Justice McReynolds dissenting.

Suit by the Claire Furnace Company and others against the Federal Trade Commission and others.

*Mr. W. D. Mitchell*, Solicitor General of Washington, D. C. (with whom *Mr. Adrien F. Busick* of Washington, D. C., was on the brief), for appellants.

*Messrs. Paul D. Cravath*, of New York City and *W. D. Stewart*, of Pittsburgh, Pa., for appellees.

[165] \* \* \*

Mr. Chief Justice TART delivered the opinion of the Court.

This was a bill in equity brought in the Supreme Court of the District of Columbia on behalf of twenty-two companies of Ohio, Pennsylvania, West Virginia, New York, Delaware, New Jersey, and Maryland, in the coal, steel, and related industries, to enjoin the Federal Trade Commission from enforcing or attempting to enforce orders issued by that Commission against the com[166]plainant companies, requiring them to furnish monthly reports of the cost of production, balance sheets and other voluminous information in detail upon a large variety of subjects relating to the business in which complainant corporations are engaged. The authority under which the Commission professed to act was expressed in the following resolution adopted by the Commission December 15, 1919:

Whereas at a hearing held by the Committee on Appropriations of the House of Representatives on August 25th, 1919, the Federal Trade Commission was requested to suggest what it might undertake to do to reduce the high cost of living; and

Whereas the commission recommended to the said committee that it would be desirable to obtain and publish from time to time current information with respect to "the production, ownership, manufacture, storage, and distribution of foodstuffs or other necessaries, and the products or by-products arising from or in connection with the preparation and manufacture thereof, together with figures of cost and wholesale and retail prices," and particularly with respect to various basic industries, including coal and steel; and

Whereas the said committee recommended an appropriation of \$150,000 for the current fiscal year for the said commission in consequence of this recommendation and the same was duly made by authority of Congress, and made available on November 4, 1919: Now, therefore, be it

*Resolved*, That the Federal Trade Commission by virtue of section 6, paragraphs (a) and (b), of the Federal Trade Commission Act, proceed to the collection and publication of such information with respect to such basic industries as the said appropriation and other funds at its command will permit: And be it further

[167] *Resolved*, That such action be started as soon as possible with respect to the coal industry and the steel industry, including in the latter closely related industries such as the iron ore, coke, and pig iron industries.

Purporting to proceed under this resolution, the Commission served separate notices upon the twenty-two appellees and many other corporations engaged in mining, manufacturing, buying and selling coal, coke, ore, iron and steel products, etc., which directed them to furnish monthly reports in the form prescribed showing output of every kind, itemized cost of production, sale prices, contract prices, capacity, buying orders, depreciation, general administration and selling expenses, income, general balance sheet, etc., etc. Elaborate questionnaires, accompanying these orders, asked for answers revealing the intimate details of every department of the business, both intrastate and interstate. A summary of these printed in the margin sufficiently indicates their contents.\* The concluding paragraph of the notice de[168]clared—"The purpose of this report is to compile in combined or consolidated form the data received from individual companies and to issue currently in such form accurate and comprehensive information regarding changes in the conditions of the industry both for the benefit of the industry and of the public."

Appellees did not comply with the inquiries in the notices but filed in the Supreme Court, District of Columbia, their joint bill against the Commission and its members, wherein they set out its action, alleged that it had exceeded its powers, and asked that all defendants be restrained "from the enforcement of said orders, and from requiring answers to said questionnaires, and from taking any proceedings whatever with reference to the enforcement of compliance with said orders and answers to said questionnaires;" also for general relief.

Without questioning the appellees' right to seek relief by injunction, the appellants answered, admitted issuing of the orders, claimed authority therefor under Sections 6 and 9, Federal Trade Commission Act, September 26, 1914, c. 311, 38 Stat. 717, 721, 722, and further alleged and said—

That the reports were required "for all the purposes and under all the authority granted to them by law, including the purpose of gathering and compiling said information for publication and the consequent regulation of the interstate commerce of said complainants resulting from such publication of the true trade facts as to all of the business of complainants and of others en[169]gaged in commerce in those commodities, and including the purpose of making

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\* Summary of interrogatories submitted by Federal Trade Commission to sundry corporations with direction to report monthly:

- (1) Quantities of 44 specified products produced.
- (2) Costs of 25 products from each battery of ovens, furnace, mill or other unit of operation.
- (3) Sales prices ("actual realization f. o. b. mill after deduction of freight allowance") of 19 products, separately as to domestic and export shipments.
- (4) Contract prices ("base price less freight allowance") named in orders for future delivery of 19 products, separately as to domestic and export shipments.
- (5) Capacity of ovens, furnaces, works and mills in respect of 18 products.
- (6) Orders booked during each month and orders unfilled at the end of each month respecting 19 products.
- (7) Depreciation and general administrative and selling expenses allocated to 17 products, details of income from other sources, balance of net income transferred to surplus, with details of interest, rentals, cash discounts on purchases, royalties, dividends from affiliated or subsidiary companies, income from outside investments, and details of deductions from net income, including federal income and excess profit taxes, interest on bonds and notes, sinking fund provisions, discount on bonds and notes, losses on investments, amortization, losses on contracts, reorganization expenses, fire losses, donations, adjustment of property value and bonuses to officials.

reports to Congress and of recommending additional legislation to Congress.

"Defendants allege that all of the information to be acquired through the answers to said questionnaires is necessary and has direct relation to regulation and control of the interstate and foreign commerce of complainants and others answering said questionnaires, and is sought by the Federal Trade Commission for the purpose and in necessary aid of the regulation of said commerce.

"Defendants admit that no complaint has been filed or is now pending before the commission against any of the complainants for a violation of Section 5 of the Trade Commission Act, but aver that the activities sought to be enjoined were instituted and are sought to be carried on under the provisions of said trade commission act.

"That one purpose of the requirements made in this case is the gathering of complete information, which is necessary in the proper regulation through publicity of the true facts as to the interstate business of the industry. That such purpose can not be properly performed without the acquisition of the complete facts. That the acquisition of the complete information and facts required will effectuate such purpose, in that the dissemination of such complete trade information will tend to prevent undue fluctuations and panic markets based on ignorance of the true facts, or based on incomplete and partial or self-interested information, published only whenever and in so far as it may serve those self-interested who may publish it. That regulation by publicity is, and for a long time has been, recognized as one form of regulation which has been generally conceded to be fair and equitable to all concerned. That unless such regulation through public dissemination of the full and complete facts is carried out, other more drastic forms of attempted regulations without proper information may follow.

[170] "That in addition to the regulatory effect, in and of itself, of such public dissemination of the complete facts, it is one of the purposes of these activities to gather and convey to Congress, for its information in the performance of its duties, the full and complete facts, in order that instead of legislating on incomplete or partial or prejudiced information, it may have the full facts before it. That if any regulatory effect upon intrastate commerce flows from such publicity, it is merely incidental to the general regulation of interstate commerce, as to which the power of Congress is complete."

The cause was heard upon motion to strike the answer from the files because it contained no adequate defense. The trial court concluded that, as the propounded questions were not limited to interstate commerce, but asked also for detailed information concerning mining, manufacture, and intrastate commerce, they were beyond the Commission's authority. "The power claimed by the Commission is vast and unprecedented. The mere fact that a corporation engaged in mining ships a portion of its product to other States does not subject its business of production or its intrastate commerce to the powers of Congress." It accordingly held the answer insufficient and, as defendants declined to amend, granted the injunction as prayed. The Court of Appeals affirmed this action. (285 Fed. 936; 52 App. D. C. 202.) The cause, here by appeal, has been twice argued.

Appellees were not charged with practicing unfair methods of competition (Sec. 5, Act of September 26, 1914) or violating the Clayton Act (c. 323, Secs. 2, 3, 7, 8, 38 Stat. 730, 731, 732). Orders under such charges can be enforced only through a Circuit Court of Appeals (Sec. 11, Clayton Act; Sec. 5, Federal Trade Commission Act).

The action of the Commission here challenged must be justified, if at all, under the paragraphs of Sections 6 and 9, Act of September 26, 1914, copied below, and the only [171] methods prescribed for enforcing orders permitted by any of these paragraphs are specified in Sections 9 and 10. They are application to the Attorney General to institute an action for mandamus, and proceedings by him to recover the prescribed penalties.

Sec. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission. \* \* \*

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recom[172]mendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable. \* \* \*

Sec. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence \* \* \*

[173] Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have

jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof \* \* \*

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment \* \* \*

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The cost and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

There was nothing which the Commission could have done to secure enforcement of the challenged order except [174] to request the Attorney General to institute proceedings for a mandamus or supply him with the necessary facts for an action to enforce the incurred forfeitures. If, exercising his discretion, he had instituted either proceeding the defendant therein would have been fully heard and could have adequately and effectively presented every ground of objection sought to be presented now. Consequently, the trial court should have refused to entertain the bill in equity for an injunction.

We think that the consent of the parties was not enough to justify the court in considering the fundamental question that has been twice argued before us. It was intended by Congress in providing this method of enforcing the orders of the Trade Commission to impose upon the Attorney General the duty of examining the scope and propriety of the orders, and of sifting out of the mass of inquiries issued what in his judgment was pertinent and lawful before asking the court to adjudge forfeitures for failure to give the great amount of information required or to issue a mandamus against those whom the orders affected and who refused to comply. The wide scope and variety of the questions, answers to which are asked in these orders, show the wisdom of requiring the chief law officer of the Government to exercise a sound discretion in designating the inquiries to enforce which he shall feel justified in invoking the action of the court. In a case like this, the exercise of this discretion will greatly relieve the court and may save it much unnecessary labor and discussion. The purpose of Congress in this requirement is plain, and we do not think that the court below should have dispensed with such assistance. Until the Attorney General acts, the defendants can not suffer, and when he does act, they can promptly answer and have full opportunity to contest the legality of any prejudicial proceeding against them. That right being adequate they were not in a position to ask relief by injunction. The bill should have been dismissed for want of equity.

[175] This conclusion leads to a reversal of the decree of the District Court of Appeals and a remanding of the case to the Supreme Court of the District with direction to dismiss the bill.



MR. JUSTICE SUTHERLAND and MR. JUSTICE BUTLER took no part in the consideration or decision of this case.

The separate opinion of MR. JUSTICE McREYNOLDS:

I think the decree below should be affirmed—the Commission went beyond any power granted by Congress.

This appeal was taken four years ago. Nearly seven years have passed since the cause began—June 12, 1920. Able counsel have argued it twice before us, but none suggested that the trial court erred in failing to dismiss the bill because there was an adequate remedy at law. Under well-settled doctrine such a defense may be waived by failure promptly to advance it. *Keynes v. Dumont*, 130 U. S. 354, 395; *Singer Sewing Machine Co. v. Benedict*, 229 U. S. 481, 484; *American Mills Co. v. American Surety Co.*, 260 U. S. 360, 363.

In my view it is now much too late for this court first to set up and then maintain the defense of lack of jurisdiction in the trial court, and I cannot acquiesce in the disposition of the cause upon that instable ground. The real issue should be met and determined.

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FEDERAL TRADE COMMISSION v. ALFRED KLESNER,  
DOING BUSINESS UNDER THE NAME "SHADE SHOP,"  
HOOPER & KLESNER.<sup>1</sup>

(Supreme Court. Argued March 10, 1927. Decided April 18, 1927.)

No. 211.

COURTS KEY No. 443—COURTS OF DISTRICT OF COLUMBIA ARE "FEDERAL COURTS" FOR PURPOSE OF ENFORCING FEDERAL LAW WITHIN DISTRICT.

For the purpose of enforcing federal law within the District of Columbia, the courts of the District of Columbia are federal courts of the United States, and part of the federal judicial system.

COURTS KEY No. 445—COURT OF APPEALS OF DISTRICT OF COLUMBIA HAS JURISDICTION TO REVIEW ORDERS OF FEDERAL TRADE COMMISSION AFFECTING PERSONS WITHIN DISTRICT (FEDERAL TRADE COMMISSION ACT, SECTIONS 4, 5, 9 (COMP. ST. SECTIONS 8836d, 8836e, 8836i); ACT FEB. 9, 1893 (27 STAT. 434); CODE D. C. SECTIONS 61, 62, 84).

The Court of Appeals of the District of Columbia has, under the Federal Trade Commission Act (Comp. St. Sections 8836a-8836k), jurisdiction to review orders of the Federal Trade Commission, entered against persons engaged in commerce within District of Columbia, pursuant to sections 4, 5, 9, of the act (Sections 8836d, 8836e, 8836i), requiring them to cease and desist from use of unfair methods of competition, in view of appellate jurisdiction, conferred on Court of Appeals by Act Feb. 9, 1893 (27 Stat. 434), creating such court and Code D. C. Sections 61, 62, 84, relative to jurisdiction of District Supreme Court.

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<sup>1</sup> Reported in 274 U. S. 145, 47 Sup. Ct. 537. Petition for rehearing or modification filed May 27, 1927, denied May 31, 1927.

(The syllabus is taken from 47 Sup. Ct. Rep. 557.)

On writ of certiorari to the Court of Appeals of the District of Columbia to review a judgment of dismissal (Reported in 6 F. (2d) 701). Reversed and remanded. Mr. Justice McReynolds dissenting.

*Mr. Adrien F. Busick*, of Washington, D. C. (with whom *Mr. W. D. Mitchell*, Solicitor General, *Mr. Bayard T. Hainer* and *Mr. Charles Melvin Neff*, all of Washington, D. C., were on the brief), for petitioner.

*Mr. Harry S. Barger*, of Washington, D. C., for respondent.

[148] \* \* \*

Mr. Chief Justice TART delivered the opinion of the court.

The question presented in this case is whether the Court of Appeals of the District of Columbia has under [149] the Federal Trade Commission Act, 38 Stat. 717, jurisdiction to enforce, set aside or modify orders of the Federal Trade Commission entered against persons engaged in commerce within the District of Columbia requiring them to cease and desist from the use of unfair methods of competition within the District.

The case, as made before the Commission, was as follows: Klesner, a resident of the District, was engaged, among other things, in the manufacture and sale of window shades in the District, doing business under the name and style of "Shade Shop." For some years prior to respondent's entry into this business another establishment had been engaged exclusively in the window shade business under the same name and style, and had become well and favorably known to the purchasing public by that name. The charge heard before the Commission was that the respondent by the use of the name "Shade Shop," was deceiving the purchasing public into the belief that his establishment was that of a prior long-established competitor, and by this means was causing people to deal with the respondent, in the belief that they were dealing with his competitor. Klesner answered, denying the charge. Evidence was received upon the issues joined, and after argument the Commission made its report upon the facts and issued an order requiring the respondent to cease and desist from doing business in the District of Columbia under the name of "Shade Shop."<sup>2</sup> Klesner failed and refused to obey the order, and the Commission applied to the Court of Appeals of the District of Columbia for a decree of enforcement. That court, without considering the merits of the case, held that it was without jurisdiction in the premises, and dismissed the Commission's petition, June 1, 1925, in an opinion reported in 6 F. (2d) 701. A petition for certiorari was granted by this court October 26, 1925 (269 U. S. 545), pursuant to section 240 (a) of the Judi[150]cial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The ground for the dismissal of this case by the Court of Appeals was that Congress, in the Trade Commission Act, had not given jurisdiction to the Court of Appeals of the District of Columbia over suits brought to enforce the order of the Commission as it had done in respect of such suits in the proper circuit courts of appeals. The

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<sup>2</sup> Reported in 5 F. T. C. 24.

pertinent part of the Federal Trade Commission Act bearing on this question we have set out in the margin.<sup>3</sup>

**SEC. 4.** That the words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. \* \* \*

**SEC. 5.** That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

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 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. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. \* \* \* The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is [151] prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation, an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the [152] commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the

[151] The Trade Commission Act was passed by Congress to prevent persons, partnerships, or corporations from using unfair methods of competition in the commerce which Congress had the constitutional right to regulate. By section 4 of the act the commerce to be reached is defined as including not only commerce between the States, and with foreign nations and between the District of Columbia and any State or Territory or foreign nation, but also commerce within the District of Columbia. The statute is clear in its direction that the Commission shall [152] make orders preventing persons engaged in the District from using the forbidden methods. Therefore the commission was authorized to make the order which was made in this case. In section 9 of the Trade Commission Act, the commission is given power to require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under investigation. And this may be required from any place in the United States at any designated place of hearing, and in case of disobedience to a subpoena, the commission may invoke the aid of any court of the United States in requiring such attendance and testimony. Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on, may in case of contumacy or refusal to obey a [153] subpoena issue an order requiring the presence of the person summoned and a failure to obey the order may be punished by the district court as a contempt thereof. Upon application of the Attorney General, at the request of the commission, the district courts shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions

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same shall be subject to review by the Supreme Court upon certiorari as provided in section 240 of the Judicial Code. \* \* \*

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. \* \* \*

SEC. 9. That for the purposes of this Act the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated, or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all [153] such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof.

of this Act or any order of the Commission made in pursuance thereof.

By section 61 of the Code of Laws for the District of Columbia, 31 Stat. 1199, the Supreme Court of the District is given the same powers and the same jurisdiction as district courts of the United States and is to be deemed a court of the United States, and shall exercise all the jurisdiction of one, and a special term of the court shall be a district court of the United States. The justices of the court are vested with the power and jurisdiction of judges [154] of the district courts of the United States. Sections 62 and 84, Code of the District of Columbia 1924. It follows that the Trade Commission could use the Supreme Court of the District to enforce the procedure needed on its part to take evidence and thus enable it to reach its conclusions, and in this could avail itself of the power of contempt of that court.

It has been the evident intention of Congress that laws generally applicable to enforcement of what may be called federal law in the United States generally should have the same effect within the District of Columbia as elsewhere. For this purpose the courts of the District of Columbia are federal courts of the United States. *Keller v. Potomac Electric Company*, 261 U. S. 428, 442. They are part of the federal judicial system. In *Benson v. Henkel*, 198 U. S. 1, this court held that the Supreme Court of the District of Columbia was a court of the United States and that the District of Columbia was a district within the meaning of Revised Statutes, section 1014, providing for the apprehension and holding persons for trial before such court of the United States. Where the Judicial Code provides that no writ of injunction shall be granted by any court of the United States to stay proceedings of any court of a state, with certain exceptions, the District Court of Appeals has held that the statute applied to the Supreme Court of the District of Columbia. *Hyattsville Building Assn. v. Bouick*, 44 D. C. App. 408. See also *United States v. B. & O. R. R.*, 26 D. C. App. 581; *Arnstein v. United States*, 296 Fed. 946, 948.

The question, therefore, which we have to answer is whether, when Congress gave the Commission power to make orders in the District of Columbia with the aid of the Supreme Court of the District in compelling the production of evidence by contempt or mandamus, it intended to leave the orders thus made, if defied, without any review or sanction by a reviewing court, though such [155] review and sanction are expressly provided everywhere throughout the United States except in the District. We think this most unlikely, and, therefore, it is our duty, if possible in reason, to find in the Trade Commission Act ground for inference that Congress intended to refer to and treat the Court of Appeals of the District as one of the circuit courts of appeals referred to in the Act to review and enforce such orders.

It is to be noted that the same question arises in the construction of the Clayton Act of October 15, 1914, c. 323, 38 Stat. 730. That Act applies, as this one does, to commerce in the District, as well as between States, and with foreign nations. By its second section it forbids difference in prices to purchasers in order to lessen competition. In the third section it makes it unlawful to lease or make and sell goods patented or unpatented or fix a price thereon with

the condition that the lessee or purchaser shall not use the goods or wares of competitors, where such a provision shall lessen competition. By section 7, corporations are forbidden to acquire stock of another to lessen competition, and by section 8 there is a restriction upon interlocking directorates in two or more competing corporations applicable to banking associations and other corporations. Section 11 provides that authority to enforce compliance with the sections just referred to is vested in the Interstate Commerce Commission where applicable to common carriers, in the Federal Trade Board where applicable to banks, and in the Federal Trade Commission where applicable to all the other character of commerce. The orders of these bodies are to be made upon hearings similar to those provided for in the Federal Trade Commission Act, and the circuit courts of appeals are to review and enforce the orders. The existence of two such Acts itself enforces the inference that Congress thought that the term "Circuit Court of Appeals" was sufficient to include the appellate court of the District of Columbia.

[156] The Court of Appeals of the District of Columbia was created by an act of Congress approved February 9, 1893, 27 Stat. 434, which conferred upon it appellate jurisdiction over the Supreme Court of the District of Columbia. Section 7 of the act provides that any party aggrieved by any final order, judgment or decree of the Supreme Court of the District, or of any justice thereof, may appeal therefrom to the Court of Appeals thereby created, and upon such appeal shall review such order, judgment or decree and affirm, reverse or modify the same as shall be just. This was a substitution of the Court of Appeals for the general term of the Supreme Court which latter court was abolished by the Act. The parallelism between the Supreme Court of the District and the Court of Appeals of the District, on the one hand, and the district courts of the United States and the circuit court of appeals, on the other, in the consideration and disposition of cases involving what among the States would be regarded as within Federal jurisdiction, is complete.

A question similar to the one we have here was presented in the case of the *Steamer Coquitlam v. United States*, 163 U. S. 346. The United States in that case brought a suit in admiralty for the forfeiture of the steamer Coquitlam because of an alleged violation of the revenue laws of the United States, in the District Court of Alaska, and, a decree having been rendered for the United States, an appeal was prosecuted to the Circuit Court of Appeals for the Ninth Circuit. Under the 15th section of the act creating the circuit court of appeals, 26 Stat. 826, 830, the circuit courts of appeal in cases in which their judgments were made final by the Act, were given the same appellate jurisdiction by writ of error or appeal to review the judgments, orders and decrees of the Supreme Courts of the several territories as by the Act they might have to review the judgments, orders, and [157] decrees of the district courts and circuit courts, and for that purpose the several territories were, by orders of the Supreme Court, to be made from time to time, to be assigned to particular circuits. 26 Stat. 826, 830. Now, in Alaska there was only one court, and it was called the District Court of Alaska, and it was contended that it was not a supreme court of the territory and, therefore, was not a court from which an appeal could

be prosecuted to the Circuit Court of Appeals for the Ninth Circuit. By the Act of May 17, 1884, 23 Stat. 24, a civil government was provided for Alaska, to constitute a civil and judicial district, with the civil and judicial and criminal jurisdiction of district courts of the United States, and such other jurisdiction not inconsistent with the Act as might be established by law, and the general laws of Oregon, so far as the laws were applicable, were adopted. This court held that under the statutes, the Circuit Court of Appeals of the Ninth Circuit could not review the final judgments or decrees of the Alaska court in virtue of its appellate jurisdiction over the district and circuit courts mentioned in the Act of March 3, 1891, 26 Stat. 826, 830, but that, as Alaska was one of the territories of the United States and as the District Court established in Alaska was the court of last resort within the limits of the territory, it was in a very substantial sense the supreme court of that territory; that no reason could be suggested why a territory of the United States in which the court of last resort was called a supreme court should be assigned to some circuit established by Congress that did not apply with full force to the Territory of Alaska in which the court of last resort was designated as the District Court of Alaska. The court, speaking by Mr. Justice Harlan, said (p. 352):

Looking at the whole scope of the act of 1891, we do not doubt that Congress contemplated that the final [158] orders and decrees of the courts of last resort in the organized Territories of the United States—by whatever name those courts were designated in legislative enactments—should be reviewed by the proper Circuit Court of Appeals, leaving to this Court the assignment of the respective Territories among the existing circuits.

We think we may use the same liberality of construction in this case. We find here a court which by acts of Congress is to be treated as a district court of the United States, and we find here a court of appeals which by the terms of its creation is exercising reviewing power over all Federal cases proceeding from that district court of the United States by appeal or writ of error so that it is exercising exactly the same function as the circuit court of appeals does with respect to the district courts within their respective territorial jurisdictions in the other parts of the United States. The services of this district court of the United States in the District of Columbia are to be availed of under the Trade Commission Act when necessary in compelling evidence by the express words of the act. We must conclude that Congress, in making its provision for the use of the circuit courts of appeal, in reviewing the Commission's orders, intended to include within that description the Court of Appeals of the District of Columbia as the appellate tribunal to be charged with the same duty in the District. The law was to be enforced, and presumably with the same effectiveness, in the District of Columbia as elsewhere in the United States.

We do not think that the cases of *Swift v. Hoover*, 242 U. S. 107, and of *Tefft, Weller & Company v. Munswiri*, 222 U. S. 114, should lead us in this case to a different conclusion. They related to appeals direct to this court in bankruptcy from a court in Porto Rico and from the Supreme Court of the District, respectively. With the [159] heavy burden upon this Court, every direct review imposed on

it was naturally viewed with critical care, and when it was sought to enlarge the jurisdiction of this Court by strained construction to include review of the numerous and small claims from courts of bankruptcy in such jurisdictions, it is not strange that the attempt failed. More than that, in those cases the bankruptcy proceedings were judicial proceedings with judicial judgments which could be enforced even if not reviewed. They were not left in the air without any sanction against a defiant litigant, such as would be the result in the present case, were the view we have taken not to prevail.

The judgment of dismissal of the Court of Appeals of the District of Columbia is reversed and the cause remanded for further proceedings.

Reversed.

The separate opinion of Mr. JUSTICE McREYNOLDS:

I think the judgment of the court below should be affirmed.

If the cause involved no more than interpretation of a doubtful provision in the statute, it hardly would be worth while to record personal views. But judicial legislation is a hateful thing and I am unwilling by acquiescence to give apparent assent to the practice.

Possibly—probably, perhaps—if attention had been seasonably called to the matter Congress would have authorized the Court of Appeals for the District of Columbia to enforce orders of the Trade Commission. But the words of the enactment, which we must accept as deliberately chosen, give no such power; and I think this court ought not to interject what it can only suppose the lawmakers would have inserted if they had thought long enough.

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### FEDERAL TRADE COMMISSION *v.* AMERICAN TOBACCO CO.<sup>1</sup>

(Supreme Court. Argued April 19 and 20, 1927. Decided May 31, 1927.)

No. 279.

COURTS KEY No. 383 (1)—PROBABILITY THAT JUDGMENT AND OPINION BELOW WILL SERIOUSLY HINDER FUTURE ADMINISTRATION OF LAW JUSTIFIES ISSUANCE OF WRIT OF CERTIORARI.

Petition for certiorari, showing probability that judgment and opinion of court below may seriously hinder future administration of law, justifies issuance of writ.

COURTS KEY No. 383 (1)—SUPREME COURT WILL NOT INTERFERE, WHERE CONCLUSIONS OF CIRCUIT COURT OF APPEALS DEPEND ON APPRECIATION OF CIRCUMSTANCES ADMITTING OF DIFFERENT INTERPRETATIONS.

Where conclusions of Circuit Court of Appeals depend on appreciation of circumstances which admit of different interpretations, the Supreme Court will not interfere.

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<sup>1</sup> Reported in 274 U. S. 543, 47 Sup. Ct. Rep. 663.



(The syllabus is taken from 47 Sup. Ct. Rep. 663.)

The Federal Trade Commission brings certiorari to review a judgment of the United States Circuit Court of Appeals for the Second Circuit<sup>1</sup> setting aside an order of the Federal Trade Commission. Judgment affirmed.

*Mr. Adrien F. Busick*, (with whom *Mr. William D. Mitchell*, Solicitor General, *Mr. Bayard T. Hainer*, and *Mr. Edward L. Smith*, all of Washington, D. C., were on the brief), for petitioner.

*Mr. Edward S. Rogers*, of Chicago, Ill., for respondent.

[544] Mr. Justice McREYNOLDS delivered the opinion of the court

The statement of the petition for certiorari that the judgment and opinion below might seriously hinder future administration of the law was grave and sufficiently probable to justify issuance of the writ.

Proper decision of the controversy depends upon a question of fact. Did the American Tobacco Co. become party to the unlawful combination of tobacco jobbers at Philadelphia to maintain prices? After considering much evidence the Commission gave affirmative answer to that query; but the Circuit Court of Appeals thought there was nothing to support their view. (9 Fed. (2d) 570.)

It now appears to us that this matter of fact is of no general importance. Accordingly, we adhere to the usual rule of noninterference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations. And upon that ground alone we affirm the judgment below.

The opinion of the Circuit Court of Appeals is of uncertain intentment and is not satisfactory as an exposition of the law. What this court has said in many opinions indicates clearly enough the general purpose of the statute and the necessity of applying it with strict regard thereto.

Affirmed.

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FEDERAL TRADE COMMISSION *v.* EASTMAN KODAK  
CO. ET AL.<sup>2</sup>

(Supreme Court of the United States. Argued March 10 and 11,  
1927. Decided May 31, 1927)

No. 215.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
FEDERAL TRADE COMMISSION, IN PROCEEDING TO REQUIRE DEFENDANTS TO  
DESIST FROM UNFAIR COMPETITION, CAN NOT REQUIRE DEFENDANT TO DISPOSE  
OF PROPERTY ACQUIRED PRIOR TO COMMISSION'S ACTION. (FEDERAL TRADE  
COMMISSION ACT, SECTION 5 (U. S. C. TIT. 15, SEC. 45; COMP. ST. SEC. 8836E).)

The Federal Trade Commission, in proceeding under Federal Trade Com-  
mission Act, Section 5 (U. S. C. tit. 15, Sec. 45 (Comp. St. Sec. 8836e) ), to

<sup>1</sup> Reported in 9 F. (2d) 570. Order of Commission reported in 7 F. T. C. 255.

<sup>2</sup> Reported in 274 U. S. 619, 47 Sup. Ct. Rep. 688.

require defendants to desist from unfair methods of competition in the manufacture and sale of positive cinematograph films in interstate and foreign commerce, had no authority to require that one defendant divest itself of ownership of certain laboratories which it had acquired prior to commission's action, since, if ownership thereof produced any unlawful competition, remedy must be administered by court in appropriate proceedings therein instituted.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
FEDERAL TRADE COMMISSION EXERCISES ONLY ADMINISTRATIVE FUNCTIONS.  
FEDERAL TRADE COMMISSION ACT (COMP. ST. SECS. 8836a-8836k.)

The Federal Trade Commission exercises only administrative functions delegated to it by the Federal Trade Commission Act (Comp. St. Secs. 8836a-8836k), and does not exercise judicial powers.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
CIRCUIT COURT OF APPEALS, ON REVIEWING FEDERAL TRADE COMMISSION ORDER,  
IS LIMITED TO DETERMINING WHETHER ADMINISTRATIVE AUTHORITY WAS  
PROPERLY EXERCISED. (FEDERAL TRADE COMMISSION ACT (COMP. ST. SECS.  
8836a-8836k).)

Circuit Court of Appeals, on petition to review order of the Federal Trade Commission, is limited to the question of whether or not it has properly exercised the administrative authority given it by the Federal Trade Commission Act (Comp. St. Secs. 8836a-8836k), and may not sustain or award relief beyond authority of the commission; such review not being in exercise of original jurisdiction by the court itself.

(The syllabus is taken from 47 Sup. Ct. Rep. 688.)

The Federal Trade Commission brings certiorari to review a judgment of the United States Circuit Court of Appeals for the Second Circuit.<sup>1</sup> Judgment affirmed. Mr. Justice Stone and Mr. Justice Brandeis dissenting.

*Mr. Adrien F. Busick*, with whom *Mr. William D. Mitchell*, Solicitor General, and *Mr. Bayard T. Hainer*, all of Washington, D. C., were on the brief, for petitioner.

*Mr. John W. Davis*, of New York City, and *Mr. Clarence P. Moser*, of Rochester, N. Y., for respondents.

[620]

Mr. Justice SANFORD delivered the opinion of the court.

This writ brings up for review a decree of the Circuit Court of Appeals setting aside in part an order of the Federal Trade Commission, entered after a due hearing in a proceeding instituted by it under section 5 of the Federal Trade Commission Act,<sup>2</sup> by which the Eastman Kodak Co., the Allied Laboratories Association, Inc., and others were required to desist from acts held by the Commission to constitute unfair methods of competition in the manufacture and sale of positive cinematograph films in interstate and foreign commerce.<sup>3</sup>

<sup>1</sup> Reported in 7 F. (2d) 994.

<sup>2</sup> 88 Stat. 717, c. 311; U. S. C., Tit. 15, Sec. 45.

<sup>3</sup> Case before Commission reported in 7 F. T. C. 484.

These positive films are raw materials used by film laboratories in making positive prints of motion pictures that are thrown upon the screen. The Eastman Co. originated the commercial manufacture of such films many years ago. In 1920 it manufactured and sold 94 per cent of those used in the United States; but in 1921, owing to competition by importers of films manufactured in foreign countries, its sales decreased to 81 per cent. Upon an agreed statement of facts, and the inferences which it drew therefrom, the Commission found, in effect, that thereafter the Eastman Co., with the purpose and intent of maintaining its monopoly and lessening competition in the sale of such films, acquired three laboratories used in making motion-picture prints, whose combined capacity exceeded that of all the other laboratories [621] east of Chicago, and announced its intention of entering upon the manufacture of such prints; that this constituted an effective threat of overpowering competitive force which compelled the members of the Allied Laboratories—an association of manufacturers of such prints—to enter into an agreement or understanding with the Eastman Co. that the members of the Allied Laboratories would use American-made films only, to the exclusion of foreign-made films, so long as the company did not compete with them in manufacturing prints, and that the company—which continued to maintain its laboratories in readiness for operation—would not manufacture prints in competition with them so long as they used American-made films exclusively; that this agreement or understanding had the effect of lessening competition in the sale of the films in interstate and foreign commerce and sustaining the monopoly of the company therein; and that its ownership of the three laboratories and their maintenance in condition for operation, continued to have the effect of inducing and compelling the manufacturers of prints to use only the films made by the company.

On these and subsidiary findings, the Commission entered an order requiring the defendants to cease and desist from combining and cooperating in restraining competition in the manufacture and sale of positive films and maintaining the monopoly of the Eastman Co. in their sale in interstate and foreign commerce, by the agreement and understanding that the members of the Allied Laboratories would use American-made films exclusively, provided the Company would not operate its laboratories in competition with them, and that the Company would not operate its laboratories for the manufacture of prints in competition with them, provided they used and continued to use American-made films exclusively; and by other incidental means. And the Com[622]mission further ordered that for the purpose of preventing the maintenance of the monopoly of the Eastman Co. in the manufacture and sale of positive films and restoring competitive freedom in their distribution and sale, the company should with due diligence sell and convey its three laboratories to parties not directly connected, or indirectly interested, with it.

On a petition by the Eastman Co. and the Allied Laboratories for a review of this order, the Circuit Court of Appeals—without referring specifically to the purpose for which the Eastman Co. acquired and maintained the three laboratories—held, in substance, that the reciprocal agreement or understanding between the Eastman Co. and the Allied Laboratories that their members would use only American-

made films in the manufacture of prints, and the Company would not operate its laboratories for the manufacture of prints, was an unfair method of competition which the Commission had authority to prevent; but that—one judge dissenting—it was not unlawful for the Eastman Co. to equip itself to enter upon the business of manufacturing prints, there being nothing unfair in its going into this business, and the Commission had no authority to order the Company to divest itself of the laboratories which it had lawfully acquired. (7 Fed. (2d) 994.) A decree was accordingly entered affirming the order of the Commission in so far as it required the Eastman Co. and the Allied Laboratories to desist from their agreement or understanding in reference to the use of American-made films and the operation of the Eastman Co.'s laboratories, but setting aside the order in so far as it required the Eastman Co. to sell its laboratories, and in other incidental respects.

This writ of certiorari was then granted on a petition by the Commission which challenged the correctness of the decree of the Court of Appeals only in respect to the [623] setting aside of so much of the order as required the Eastman Co. to dispose of its laboratories.

For present purposes we do not find it necessary to determine the questions whether the finding of the Commission as to the purpose for which the Eastman Co. acquired the three laboratories—based in part at least upon inferences from the agreed statement of facts—was correct, and whether, in any event, it was conclusive upon the Court of Appeals; but, in the absence of any specific reference to this matter by the Court of Appeals, we shall assume the correctness of the Commission's finding, and proceed, on that assumption, to the consideration of the only other question presented in the petition for the writ of certiorari and pressed in this court, namely, whether the Commission had authority to order the Eastman Co. to sell and convey its laboratories to other parties.

The proceeding before the Commission was instituted under section 5 of the Federal Trade Commission Act, and its authority did not go beyond the provisions of that section. By these the Commission is empowered to prevent the using of "unfair methods of competition" in interstate and foreign commerce, and, if it finds that "any unfair method of competition" is being used, to issue an order requiring the offender "to cease and desist from using such method of competition." The Commission exercises only the administrative functions delegated to it by the act, not judicial powers. *National Harness, etc., Association v. Federal Trade Commission* (C. C. A.), 268 Fed. 705, 707; *Chamber of Commerce v. Federal Trade Commission* (C. C. A.), 280 Fed. 45, 48. It has not been delegated the authority of a court of equity. And a circuit court of appeals on a petition to review its order is limited to the question whether or not it has properly exercised the administrative authority given it by the act, and may not sustain or award relief beyond [624] the authority of the Commission; such review being appellate and revisory merely, and not an exercise of original jurisdiction by the court itself.

The question here presented is in effect ruled by *Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554, 561, 563, in which the decisions in *Federal Trade Commission v. Thatcher Mfg. Co.*

(C. C. A.), 5 F. (2d) 615, and *Swift & Co. v. Federal Trade Commission* (C. C. A.), 8 F. (2d) 595, that were relied upon by the Commission in its petition for the writ of certiorari, were reversed by this court. In that case it was held that—although the Commission, having been granted specific authority by section 11 of the Clayton Act<sup>1</sup> to require a corporation that had acquired the stock of a competitive corporation in violation of law “to cease and desist from such violations, and divest itself of the stock held,” might require the corporation to divest itself of such stock in a manner preventing its use for the purpose of securing the competitor’s property—it could not, after the corporation by the use of such stock had acquired the property of the competitor, require it to divest itself of the property thus acquired so as to restore the prior lawful condition. As to this we said: “The Act has no application to ownership of a competitor’s property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. The purpose of the Act was to prevent continued holding of stock and the peculiar evils incident thereto. If purchase of property has produced an unlawful status a remedy is provided through the courts.” And they “must administer whatever remedy there may be in such situation.” Distinct reference was there made (p. 561) to section 15 of the Clayton Act, where express provision is made for the invocation of judicial remedies as need therefor may arise.

[625] So here, the Commission had no authority to require that the Company divest itself of the ownership of the laboratories which it had acquired prior to any action by the Commission. If the ownership or maintenance of these laboratories has produced any unlawful status, the remedy must be administered by the courts in appropriate proceedings therein instituted.

The decree of the Circuit Court of Appeals is accordingly affirmed.

MR. JUSTICE STONE, dissenting.

I am unable to agree that the Federal Trade Commission, in the performance of its duties under the Federal Trade Commission Act, lacks the power to order the divestment of physical property, or that the decision in *Federal Trade Commission v. Western Meat Company*, 272 U. S. 554, forecloses our consideration of that question here. In the *Thatcher* and *Swift* Cases considered in that opinion, the stock of competing corporations had been acquired in violation of section 7 of the Clayton Act, which prohibits the acquisition by one corporation of the capital stock of another “where the effect of such acquisition may be to substantially lessen competition.” The stock control having been followed by purchase of the physical assets of the competing corporation, the Commission, proceeding under sections 7 and 11, ordered the offending corporation to divest itself of both the stock and the physical property. In deciding that the Commission had exceeded its authority, so far as the property was concerned, the Court expressly limited its consideration to the grant of power under sections 7 and 11 of the Clayton Act, section 11 in terms authorizing the Commission to

<sup>1</sup> 38 Stat. 730, c. 311; U. S. C., Tit. 15, Sec. 21.

make an order "requiring such person to cease and desist from such violations, and divest itself of the stock held \* \* \* contrary to the provisions of sections 7 \* \* \*." [626] the effect of section 5 of the Federal Trade Commission Act, dealing with the different subject of unfair competition, was put to one side, the Court saying: "This section (referring to section 5) is not presently important; the challenged orders sought to enforce obedience to section 7 of the Clayton Act" (p. 557). The scope of the decision was thus stated: "When the Commission institutes a proceeding based upon the holding stock contrary to section 7 of the Clayton Act, its power is limited by section 11 to an order requiring the guilty person to cease and desist from such violation, effectually to divest itself of the stock, and to make no further use of it" (p. 561).

It was not held that the Commission under no circumstances could compel the sale of physical property, and there was in fact a clear intimation in the opinion that under section 7 of the Clayton Act the acquisition of the property after a complaint had been filed against the corporation for illegal stock purchases would not find the Commission powerless.

Section 5 of the Trade Commission Act, with which we are now concerned, declares unlawful "unfair methods of competition in commerce," and empowers and directs the Commission to prevent the use of such methods. The Commission is directed upon finding that the method of competition under investigation is prohibited by the Act, to issue its order "requiring such person, partnership, or corporation to cease and desist from using such method of competition."

The powers thus broadly given sharply contrast with the specific enumeration of sections 7 and 11 of the Clayton Act. As was pointed out in the *Western Meat Co.* case, the Clayton Act prohibits only the acquisition of stock and not the assets of the competing corporation, and in terms merely authorizes an order requiring the corporation "to cease and desist from such violations, and divest itself of the stock held \* \* \*." For that reason alone, [627] the majority of the Court thought that the language of these provisions was not broad enough to enable the Commission to order the corporation to divest itself of the physical assets thus acquired, although their acquisition aggravated and brought to its final consummation the very evil aimed at by the statute.

The comprehensive language of section 5 neither invites nor supports a narrow construction. It is general in terms, and in the authorized prevention of unfair methods of competition the Commission is not limited to any particular method of making its orders effective. The power does not any the less exist because the Commission framed the present order in part in affirmative terms specifying the manner in which the company should abandon the unfair method of competition it found had been practiced. Nor does the fact that the Commission is not a court of equity lessen the power conferred upon it by the statute. It is of course essentially an administrative agency. Its orders never have the effect of an injunction and are enforceable only by proceedings instituted in the appropriate circuit court of appeals. Its powers are not enhanced by the circumstances that its orders are enforceable in courts having in their own right equity powers. But it is likewise true that it can not

be denied powers granted by Congress merely because its orders resemble in form familiar equitable decrees. To make its want of equity powers ground for limiting those expressly conferred by the statute is to condemn all the orders ever made by the Commission. Orders compelling the sale of stock, preventing price cutting, local price discrimination, resale price maintenance, exclusive dealing arrangements, boycotting, blacklisting, disparagement of competitor's wares, misrepresentation, misbranding, adulteration, dishonest advertising, espionage, commercial bribery, coercion, threats, intimidation, the use of "fighting brands" or bogus independents, to mention [628] only a few of the practices which the Commission has forbidden, remind of equitable relief no less than an order compelling the sale of physical property, the very acquisition and continued possession of which may be the indispensable element in a scheme of unfair competition.

The conclusion seems to me unavoidable, therefore, that this case can not be disposed of without determining whether the acquisition and retention of the film laboratories by the Eastman Co., under the circumstances disclosed by the record, constituted in itself or was a part of or a step in an unfair method of competition. Until that is determined we can not say that the Commission was without power under section 5 to make any appropriate order to prevent the use of such methods.

That ruinous competition or the threat of it when the aim is monopoly or the suppression of competition may be the dominant factor in a violation of the Sherman Act is no longer fairly open to question. But in determining the meaning of "unfair methods of competition," it should be borne in mind that the Trade Commission's function is to discourage certain trade tendencies before violations of the Sherman Act have occurred. The advised use of the phrase "unfair methods of competition" for the more familiar "unfair competition" of the common law indicates an unmistakable Congressional intent to confer on the Commission the power, subject of course to the judicial review provided for in the Act, to prevent unfair trade practices not included in the prohibition of the Sherman Act and of the common law. See *Henderson, Federal Trade Commission*, 36; cf. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483.

In that part of its order which now remains undisturbed, and which is not questioned here, the Commission has found and forbidden the agreement between the Eastman Co. and the association that the members of the association would use American raw film, of which [629] it appears ninety-four per cent of that used in the United States is produced by the Eastman Co., to the exclusion of foreign manufactured film, provided the Eastman Co. would not operate its laboratories commercially to produce positive prints in competition with the members of the association.

The majority, not having found it necessary to consider whether the stipulated facts established unfair methods of competition because of the Commission's supposed want of power, any extended review of them here is uncalled for. But the evidence is sufficient to justify the inference drawn by the Commission that suppression

of competition in the sale for foreign films, consummated by this agreement, was accomplished in part at least by the acquisition and retention of these laboratories as a constant and imminent threat to members of the association of competition in the business field they occupy.

Superficial examination might suggest that the respondent's course of conduct involves nothing more than the innocuous process of extending its business to include an allied trade, but the matter may not be thus lightly disposed of. We may lay aside the question whether one already possessing monopoly powers in one field, especially where as here there is no available substitute for his products, may make use of his strategic position to dominate all phases of the industry from production to consumption. For here it seems fairly inferable from the stipulated facts that there was no intention of permanent expansion. The Eastman Co. threatened to engage in temporary competition with the manufacturers of prints in order to attain its objective—the suppression of foreign competition in raw film. When that was attained, the laboratories were allowed to remain idle, and the assumed advantages to the public from permanent competition were lacking. I have no difficulty in concluding that this threat of temporary competition was unfair to the Eastman Co.'s purchasers and to its [630] foreign competitors, and was an unfair method of competition within the meaning of section 5. Compare *Tuttle v. Buck*, 107 Minn. 145; *Dunshie v. Standard Oil Co.*, 152 Ia. 618, 626–627; *United States v. Corn Products Refining Co.*, 234 Fed. 964, 984, 1010; *United States v. Central West Publishing Co.*, Decrees and Judgments in Federal Anti-Trust Cases, 359, 360, 362; *Thomsen v. Cayser*, 243 U. S. 66, 87; for cases which, although not exactly in point, lend support to this view.

It would seem that that part of the order which still stands, forbidding the agreement for the suppression of competition, is futile if the Eastman Co. may retain the laboratories as a threat to compel the manufacturers of prints to do that which they could not lawfully agree to do. In my view, the decree below should be reversed and the order of the Commission upheld.

Mr. JUSTICE BRANDEIS joins in this dissent.



THE ROYAL BAKING POWDER CO. v. FEDERAL TRADE COMMISSION, AND JOHN F. NUGENT, CHARLES W. HUNT, ABRAM F. MYERS, AND WILLIAM E. HUMPHREY, COMMISSIONERS<sup>1</sup>

(Supreme Court of the District of Columbia. June 21, 1927)

At Law No. 72173

REVIEW BY WRIT OF CERTIORARI TO CORRECT ALLEGED UNLAWFUL COMMISSION PROCEDURE.

The Federal Trade Commission, created by act of Congress approved September 26, 1914 (38 Stat. 717), is a body exercising only the administrative functions delegated to it by the act, and not judicial powers (*Federal Trade Commission v. Eastman Kodak Co. et al.*, 274 U. S. 619), and, as such, is not subject to writ of certiorari to review its orders (*Degge v. Hitchcock*, 229 U. S. 162); and motion to quash such a writ will be sustained.<sup>2</sup>

*O'Brien & O'Brien*, of Washington, D. C., for plaintiff.

*Mr. Adrien F. Busick* and *Mr. M. A. Morrison*, of Washington, D. C., for the Commission.

OPINION<sup>3</sup>

A writ of certiorari was upon the petition herein issued to respondents the Federal Trade Commission and the individual defendants commissioners thereof commanding them to send to this court the record and proceedings before the respondents as appearing on the docket and in the files of the Federal Trade Commission Docket No. 540 subsequent to a certain order of dismissal therein issued on March 23, 1926, including all records and proceedings contained and appearing in the "confidential file, Docket 540" or elsewhere and including all documents and paper writings of every kind and description by whomsoever filed which have been received or considered in said cause subsequent to said order of dismissal.

The respondents moved to quash the writ on several grounds variously stated but which in substance are that the court is without jurisdiction to issue a writ of certiorari to review an administrative order of an administrative body and that the petition does not state a cause of action.

The respondents moved also to dismiss the petition for the writ which motion was in substance on the same grounds as those stated in the motion to quash.

<sup>1</sup> See opinion of court on equity side, handed down November 7, 1927 (*infra*, p. 701), granting motion of Commission to dismiss the bill for an injunction, after the company elected to transfer the cause to equity side.

Attention should here be invited to the case of *Cannan v. United States*, decided June 13, 1927 (19 F. (2d) 823), in which the Circuit Court of Appeals for the Third Circuit held that a person supplying certain papers to the Commission in response to demand made by it, accompanied by a reference to the penalties provided for disobedience under the Federal Trade Commission Act (Sec. 10), and later testifying, but in neither instance in response to subpoena, did not acquire immunity under the provisions of Section 9 of the act in question, in a subsequent prosecution for use of the mails to defraud; but that neither the papers in question nor copies thereof could be used in evidence against such person in such proceeding, they being in the nature of involuntary confessions.

<sup>2</sup> By Mr. Chief Justice McCoy.

A demurrer was filed by the respondents which also raises substantially the same questions as those raised by the motions above mentioned.

The petitioner moved to strike the motion to quash and the motion to dismiss.

As the court understands the situation it was agreed on the argument that the case should be submitted upon the question of jurisdiction and upon the question of whether a cause of action was stated.

As the matter stands the facts alleged in the petition must be taken as true. They are substantially as follows:

Plaintiff is a corporation and the Federal Trade Commission a Commission created by an act of Congress, the individuals named as defendants being the commissioners thereof.

The petitioner has for a long time been engaged in the manufacture and sale of baking powder and in connection therewith owns a valuable business, trade, reputation, custom and good will.

Baking powders are known as and distinguished according to their respective acid ingredients, those having for such ingredients cream of tartar are known as "Cream of Tartar" baking powders; those having phosphate for their acid ingredient are known as "Phosphate" baking powders and those having any compound of aluminum for their acid ingredient are known as "Alum" baking powders. Baking powders containing both compounds of aluminum and phosphate are sometimes referred to as "Alum-phosphate" baking powders. Plaintiff makes the "Royal" baking powder which has never contained alum. Petitioner's baking powder is sold in direct competition in interstate commerce with baking powders of other manufacturers, many of which have contained and do contain alum.

The nature of the materials used in baking powder is of importance to the consumer and the petitioner has for many years recommended its baking powders as containing no alum and leaving no bitter taste, and purchasers have bought it on the assurance that it contains no alum although the price of it is approximately double that at which alum baking powders are sold and the difference between the two kinds of powders constitutes a part of the petitioner's trade reputation, goodwill and property.

The Commission acting in pursuance of the act creating it issued a complaint against petitioner in the year 1920 designated by said Commission as docket 540 and after certain proceedings following said complaint in the year 1923 issued its supplemental and amended complaint in said proceeding docket 540 containing vague, indefinite and ambiguous charges of false statements by the petitioner concerning the use of alum in baking powder and the effects thereof as being unfair methods of competition within the meaning of said act and after the examination of many witnesses and the introduction of testimony covering several thousand pages and many hundreds of exhibits the Commission on March 23, 1926, dismissed said supplemental and amended complaint. After said proceedings had been so terminated the Commission or the individual respondents or some of them purporting to act as said Commission using its name commenced and have continued a series of acts without due process of law or authorization by the statute or power or jurisdiction thereunder or proceeding as therein prescribed which acts have interfered with and damaged and will continue to interfere with and

damage petitioner's business, trade, reputation and goodwill and are doing and calculated to do irreparable injury thereto, all of which is greatly in the interest of your petitioner's alum using competitors.

The original complaint in said proceeding, docket 540, issued against the petitioner in 1920 charged the petitioner with making unfair and false representations concerning the presence of alum in baking powders of some of its competitors and the effect thereof. The petitioner filed with the Commission its answer to the said complaint alleging among other things that said representations as it had made concerning the presence of alum in other baking powders and the effect thereof were true. A motion on behalf of the Commission to strike out those portions of the answer was denied, and although the charges contained in said original complaint received great publicity from statements given out by the Commission to the press nevertheless the Commission did not at any time offer proof in support of said charges but abandoned the same.

The supplemental and amended complaint above mentioned charged the petitioner with using unfair and unlawful methods of competition for the purpose and with the intent of injuring its competitors and unlawfully restraining their trade in three specifications: 1st, that petitioner falsely represented in various ways that several of its competitors manufactured and sold baking powders containing alum which the general public understands to be the astringent commonly sold in the drug stores; 2d, a practically similar false representation by a different method, 3d, that by a number of methods petitioner falsely represented (a) that competitors' powders are poisonous; (b) made from ground-up aluminum cooking utensils; (c) do not come within the Pure Food Laws; (d) pucker up the stomach in the same manner that lump alum puckers the mouth, and (e) are made of the same substance which is used for styptic purposes after shaving. The fourth charge in the supplemental complaint was that petitioner had adopted the methods of publishing and causing to be published on an extensive scale anonymous, disparaging statements and opinions concerning the nature, composition and effect of competitors' baking powders concealing its connection with an interest in such publication.

The petitioner answered the supplemental complaint which answer was in substance a general denial of the false representations and claimed that it had employed language in its ordinary meaning and was not responsible for any misunderstandings and claimed that the matters alleged in the fourth specification were too vague to be properly answered but that any opinions, statements or comments made by it were true. The answer claimed a lack of jurisdiction in the Commission and prayed that the supplemental and amended complaint be dismissed.

No proof in support of the charges against the petitioner was offered by the Commission until November 9, 1923, on which day a hearing on the amended complaint which it was agreed wholly superseded the original complaint, was ordered and many hearings had before the trial examiner at which there was presented and received testimony from 158 witnesses and 638 exhibits were admitted in evidence. The hearings were concluded on May 2, 1925.

On November 10, 1925, the trial examiner filed his report upon the facts in said docket 540 in which he found that there was a complete failure of proof of express malice and that it could not be found that the petitioner circulated any statements pursuant to a general plan as alleged in the supplemental and amended complaint; that there was a complete failure of proof to show that petitioner falsely stated that sodium aluminum sulphate is alum and that to call it alum in connection with baking powder is not misleading; that the evidence in the record does not prove that aluminum compounds as used in baking powders are harmless and does prove that there are substantial grounds on which to predicate an honest opinion that they are harmful. With reference to the statements set out in specification 3 and there described under subheadings (a), (b), (c), (d), and (e), the trial examiner reported concerning the statements proved in support of said charges "many of the statements set out in this paragraph are literally true, others are clearly figurative, others are expressions of opinion." The trial examiner found also as a fact that the petitioner did advertise in respect to its own product by using the slogan "Contains No Alum—Leaves No Bitter Taste" and that the petitioner made no denial of the use of this statement; that it is admitted that the petitioner's product does not contain alum and that there is no proof in the record that it does leave a bitter taste.

With reference to the products of other manufacturers the trial examiner reported that it had been proven that certain powders had contained alum and that under some circumstances such powders do leave a bitter taste in biscuits made with said powders. Concerning the allegations of the fourth paragraph of said supplemental and amended complaint the trial examiner found one isolated instance in which it had been proved that the petitioner had caused to be published certain anonymous statements, opinions and comments but that this was not sufficient to establish the allegations of the complaint.

Counsel for the Commission filed exceptions to the trial examiner's report upon the facts excepting to all the paragraphs therein but the one which found that petitioner was a corporation. Briefs were filed and arguments had before the Commission in which five of the petitioner's competitors were permitted to intervene but solely for the purpose of oral argument.

On March 23, 1926, the Commission issued and served upon the petitioner its final order in said docket 540, dismissing the supplemental and amended complaint which order was enrolled and duly recorded when issued.

The petition here claims that by the order of dismissal the power of the Commission under the complaint ceased and that there was no further jurisdiction in the proceeding and particularly over acts of the petitioner occurring after said order of dismissal unless and until the Commission shall issue and serve upon petitioner its complaint in a new proceeding stating charges as prescribed in the act creating it.

On the day upon which the order of dismissal was enrolled and recorded a motion was filed by counsel for the Commission praying that said order be vacated and a rehearing granted and that an order to cease and desist upon certain specific practices charged in the

complaint be issued against the petitioner. The grounds of the motion were:

(1) That the order of dismissal was contrary to the great preponderance of the evidence, in that your petitioner, contrary to its defense that it had *not* made certain statements, was in fact making certain allegedly false representations, of which eight were enumerated.

(2) That the issues raised by the scientific evidence in the record had never been argued before the Commission.

(3) That the proceeding is of greatest interest to the public.

The petitioner avers that the matters alleged in the motion for rehearing were contained in the record, were considered by the trial examiner set forth in the printed briefs filed by both parties and argued by the Commission when the case was submitted and that the motion set forth no grounds recognized in law as a proper basis for the relief asked for and prayed for certain orders by the Commission beyond its jurisdiction and not authorized by acts of Congress. The motion was argued but before it was decided counsel for the Commission asked leave to file a supplemental motion. The petition for the purpose set out that since the date of the motion for rehearing he had discovered and ascertained certain new and additional evidence sufficient to require further proceedings in said cause Docket 540; that he had prepared a supplemental motion to vacate the order of dismissal and for other relief in that cause alleging the possession of said evidence and stating that—

“typical items of such new evidence are by reference incorporated in said supplemental motion and are tendered therewith and herewith from which the competency and materiality of such new evidence fully appears;” wherefore counsel prayed for leave to file said supplemental motion; that appropriate action be taken to serve notice on your petitioner of the filing of said supplemental motion and that a time be fixed by the said Federal Trade Commission for the presentation before it of the said motion filed March 23, 1926, and the supplement or addition thereto. In said supplemental motion counsel for the Federal Trade Commission alleged the same facts concerning the discovery and possession of new evidence as were set forth in the said petition above described, alleging in addition thereto that said new evidence showed that your petitioner had been continuing the unfair practices charged in the complaint from and since the Commission closed the evidence in said cause on, to wit, the 3d day of December, 1923, down to and including the 19th day of April, 1926; and that such evidence consisted of certain papers and documents that may not be bodily incorporated in this motion, and they are hereby incorporated by reference and are submitted herewith and identified respectively as exhibits numbered severally from 1 to —; said so-called supplemental motion further alleged that said items of evidence so incorporated herein by reference to wit, said exhibits so numbered respectively 1 to —, appear upon an inspection thereof to be and constitute relevant, material and sufficient evidence to show that the practices alleged in the complaint were continued by your petitioner during the intervening period and also from and after the dismissal of the said complaint and the filing of this supplemental motion. Said supplemental motion further presented to the Commission for the first time in said cause an exception to an alleged refusal by the trial examiner to admit in evidence certain proof in rebuttal by counsel for the Federal Trade Commission and expresses the serious belief of counsel for the Commission that said absence of evidence influenced the action of the Commission in dismissing the complaint in said cause.

26. Said petition for leave to file said supplemental motion was, with attached papers, presented to and considered by the Federal Trade Commission. No notice was given to your petitioner and no opportunity to be heard but after *ex parte* hearing and consideration, on, to wit, the twenty-first day of April,

1926, an order of the said Commission was entered in said dismissed cause reciting that leave to file said supplemental motion had been granted by the Commission and that the Commission was fully advised in the premises, and ordering that argument for and against said further supplemental motion and said motion of counsel for the Commission previously argued on, to wit, April 5, 1926, be received by the Commission at its offices in Washington, D. C., on the sixth day of May, 1926. Said order of the Commission dated the twenty-first day of April, 1926, further required that copies of said petition for leave to file said supplemental motion, of said supplemental motion and of said order granting leave to file said supplemental motion, of said supplemental motion and of said order granting leave to file said supplemental motion be served on the parties at interest.

27. On the 22d day of April, 1926, thereafter, by registered mail, your petitioner received from the Federal Trade Commission copies of said order of April twenty-first, 1926, of said petition and of said supplemental motion but did not receive copies of any of said items of evidence referred to in said petition and said supplemental order as exhibits numbered severally 1 to —.

28. Said exhibits were considered by the Commission before issuance of its order granting leave to file said supplemental motion, and at all times thereafter in said cause.

29. The said supplemental motion contained no description of said exhibits or statement of contents of the same sufficient to inform your petitioner of the nature of the charges against which it was then being called upon to defend itself, and no statement of the specific charge or charges in support of which said alleged items of evidence were then presented and received.

30. Your petitioner was informed by the service on it of copies of said petition, said supplemental motion and said order that said exhibits were attached to the original copy of said motion but was not informed as to the total number of said exhibits, said supplemental motion describing them only as exhibits numbered severally 1 to —.

31. Immediately thereafter, on, to wit, the 22d day of April, 1926, your petitioner by its counsel applied to Otis B. Johnson, secretary of said Federal Trade Commission and to Bayard T. Hainer, chief counsel for said Commission, and requested that it be forthwith supplied with copies of the exhibits referred to in said supplemental motion and there described as exhibits numbered severally 1 to —, which said request was then and there refused.

32. In order to secure the information necessary properly to prepare itself for said hearing to be held on the sixth day of May, 1926, your petitioner, by its counsel, immediately after receiving the refusal of its request mentioned in the preceding paragraph, did on the 22d day of April, 1926, apply to Otis B. Johnson, secretary of the Federal Trade Commission, to Bayard T. Hainer, chief counsel for said Commission, and to the clerk then on duty at the office of the docket section and requested that it be given access to and permission forthwith to examine the original of said petition, of said supplemental motion and of said exhibits, or, in the alternative, copies of said exhibits, which requests were each and all then and there refused.

33. Your petitioner by its counsel immediately thereafter on, to wit, the 22d day of April, 1926, requested said Johnson and said Hainer, as secretary and chief counsel of the Federal Trade Commission, respectively to inform it then and there of the total number of said exhibits described in said supplemental motion as exhibits numbered severally from 1 to —, which said request was by said officers of the Federal Trade Commission then and there refused.

34. Your petitioner by its counsel thereafter on, to wit, the 23d day of April, 1926, appearing specially, filed with said Commission a certain motion in and by which it prayed that service of said copies of said petition, said supplemental motion and said order be quashed and that said supplemental motion for a rehearing in said cause be stricken from the record. In support of said motion to quash the service, your petitioner respectfully showed that said motion failed to comply with the provisions of rule X of the rules of practice before said Commission in that said exhibits were not properly filed with said motion and had not been previously filed or served in said cause; that no sufficient description of said alleged exhibits had been furnished to your petitioner to enable it to know the number, nature or contents of the same; that no true copy thereof was served on your petitioner or available for inspection by your petitioner at the office of said docket section; that by reason of said failure to inform your petitioner of the number, nature or contents of said exhibits your petitioner was not advised of the charges against it and was unable to prepare to meet

said motion at the hearing; that permission to examine said exhibits had been refused by the secretary and chief counsel of the Commission; that said supplemental motion was anticipatory and speculative in that it alleged that said unrevealed exhibits would prove acts of your petitioner subsequent to the filing of said supplemental motion; that your petitioner believed said supplemental motion was incomplete and would be further supplemental from time to time in order that said cause might be held indefinitely in suspense. In support of its prayer that said supplemental motion for a rehearing be stricken from the record, your petitioner respectfully showed to said Commission that the proceedings in said cause were closed by the order of dismissal on March 23, 1926, and that the present proceedings were irregular, improper and not in accordance with law; that said supplemental motion for a rehearing was based on acts alleged to have occurred after final judgment in said cause; that said supplemental motion purported to be based on newly discovered evidence, but failed to allege that the facts on which it relied were not known to the applicant prior to final judgment or could not have been discovered by the exercise of reasonable diligence prior to final judgment; that it was vague, ambiguous, unverified and was based in part on evidence which was alleged to be additional or cumulative and in the remainder on grounds not in existence at the time of final judgment; that it set up matters which, if at all competent for the consideration of the said Commission, constituted the basis for a new complaint in a new proceeding against your petitioner; that it attempted after final judgment to raise questions of errors of law committed by the trial examiner and previously waived by counsel. Your petitioner further showed in its said motion that if the alleged new facts did in the opinion of the Commission constitute a cause of action against your petitioner, the usual procedure of the Commission in the issuance of a new complaint or an agreement by stipulation should be followed and said matters settled independently of the dismissed proceeding, docket 540.

On April 25, 1926, respondent furnished the petitioner copies of certain exhibits numbered from one to nineteen.

On April 26, 1926, the respondent denied petitioner's motion to quash service of the petition for leave to file the supplemental motion above mentioned and to strike said supplemental motion from the record.

The petitioner was not at any time informed by the respondent that copies of exhibits served as above stated were copies of all the exhibits filed with said supplemental motion or otherwise filed in said dismissed cause. Other exhibits, affidavits, papers, and documents alleged to be items of evidence were filed in support of said supplemental motion and were considered by the respondent without notice to the petitioner prior to the hearing on the motion for leave to file the supplemental motion which was had on May 6, 1926. Upon the argument of that motion certain affidavits, circulars and hearsay evidence not previously disclosed to petitioner and not included in copies of exhibits previously delivered to petitioner were offered in evidence, received and considered by the respondent. Counsel for the respondent was allowed to present and the Commission considered proof of other and different unfair methods of competition not charged in the complaint or in the supplemental complaint. During the taking of evidence on said motion officers and counsel of manufacturers of baking powder containing alum attended upon and counseled the Commission in the introduction of testimony and exhibits in making up the record upon which the proceedings were determined, and counsel for such manufacturers took part in the oral argument before the Commission.

Following the final order of dismissal manufacturers of baking powder containing alum filed with the Commission sundry petitions, affidavits, exhibits and other papers entitled in said proceeding docket

540 containing statements, charges and alleged proof against the petitioner of which no copies have been served on the petitioner and concerning which it has been given no information enabling it to reply thereto and the filing of such papers has continued from time to time and those manufacturers through counsel also filed certain petitions and motions containing charges against the petitioner and entitled in said cause docket 540, all of which said papers so filed on behalf of the competitors of the petitioner were considered by the Commission and made the basis of orders in said docket 540. Such petitions, motions, affidavits, exhibits, and other papers so filed on behalf of petitioner's competitors were not exhibited to the petitioner nor were copies of them furnished to or served upon it before said hearing on May 6, 1926, and some of them were served on the petitioner after that hearing. These petitions and papers were not made a part of the public records in the docket section of the Commission in said proceeding and were not available for examination in the office of the docket clerk thereof at the time they were filed and were not discovered by the petitioner in the public records of said docket section until the 15th day of October, 1926, previous to which time they had been kept in a separate docket and file known among the respondents and their subordinates as confidential file, docket 540.

Counsel for intervening and competing companies were permitted by one or more members of the Commission to appear in person and present evidence and arguments in support of the supplemental motion above mentioned and other motions and petitions filed on behalf of those competitors but said conferences with counsel were ex parte and without notice to and in the absence of counsel for petitioner and were held before the issuance of certain orders in said proceeding.

During the period between the dismissal of the proceeding and the hearing on said supplemental motion on May 6, 1926 there appeared in the public press purported interviews and alleged statements of the policies of the Commission in said docket 540 which purported to give accounts of certain pleadings and papers filed with the Commission but not disclosed to the petitioner.

After the argument had on May 6, 1926, upon said supplemental motion petitioner on May 14, 1926, filed a motion that all the proceedings subsequent to the order of dismissal be dismissed setting forth among other grounds the bringing in of new and irrelevant issues and the consideration of the papers and affidavits not previously exhibited to the petitioner and not served on it. The motion asked in the alternative that an order issue from the Commission requiring that copies of all affidavits and other matter before the Commission in connection with any proceeding subsequent to the order of dismissal be served upon counsel for petitioner, together with a concise and unambiguous statement of the particular charges then being urged against it. The motion was placed and held in said confidential file, docket 540, and on October 15, 1926, was still there, no copy being found with the public records in said docket 540.

On June 21, 1926, the Commission served upon the petitioner copies of certain exhibits stating that they had been submitted to the Commission by its counsel in support of said supplemental motion, and that they were the exhibits to which reference had been made in the



oral argument of that motion. At the same time petitioner was notified that the Commission had fixed ten days from the date of service of the notice within which petitioner might make such reply as it desired. No statement of charges accompanied said notice. Certain of said exhibits were referred to at the hearing on May 6, but were not shown to petitioner at that time. Others of them were not referred to at said hearing and certain affidavits and other papers referred to at the hearing by counsel for the Commission which were not shown to the petitioner although presented to the Commission were not inclosed with said notice. Certain of the exhibits accompanying the notice were not presented to or received by the Commission upon the argument on May 6, nor were they included in the exhibits attached to the supplemental motion filed on April 18, and petitioner received no notice that said papers would be presented to the Commission and was not present when the same were offered and received.

On June 29, 1926, petitioner moved the Commission to require its counsel definitely and finally to close the case upon the motions he had made on a day to be fixed by the Commission; that petitioner be served with notice of all papers filed with or under consideration by the Commission in connection with any proceedings in said docket 540 subsequent to the order of dismissal and not previously served upon petitioner and that before requiring the petitioner to proceed further the Commission inform it of its decision on the motion of May 14 to quash the proceeding, and that a reasonable time be allowed petitioner after decision on motions of counsel for the Commission in which to consider, investigate and properly prepare its reply to charges urged against it. Counsel for the Commission filed an answer to this motion and represented to the Commission that his case upon his said motions was closed and asserted that copies of all exhibits filed in said supplemental motion had been served on petitioner but did not allege that all exhibits and affidavits under consideration in said cause had been so served and the petitioner reaffirms that it has not received copies of all the affidavits and exhibits filed in support of said supplemental motion or of papers filed in said cause by counsel for its competitors.

On July 8 petitioner was served with a formal order in said proceeding docket 540, under date of July 7, denying all pending motions of the petitioner and vacating in part said order of dismissal and expressly providing that "no evidence be taken with respect to the statements published by the respondent, Royal Baking Powder Co., relative to the deleteriousness of alum baking powder," and further, that the dismissal of the complaint with respect to the slogan "No alum—no bitter taste" be and the same is hereby confirmed, it being the opinion of the majority of the Commission that the same, as before the Commission in this case, is not an unfair method of competition. One member of the Commission dissented from such order as follows:

I refuse to vote because it is apparent that a majority of the full Commission will be in favor of the motion to reopen the case. I am still of the opinion, first, that the Commission has not jurisdiction to set aside its dismissal, and second, I think the procedure is irregular and that the matters presented be-

fore the Commission has been presented in an irregular way and not according to our procedure as provided by law and the rules and procedure of the Commission.

On August 24, 1926, petitioner published and circulated copies of a booklet entitled "Trial Examiner's Report Upon the Facts, including review of scientific testimony concerning alum in baking powder and its physiological effects as submitted by Edward M. Averill to the Federal Trade Commission, Washington, D. C., with explanatory foreword and indices by the Royal Baking Powder Co., New York." In said booklet the petitioner included facsimile reproductions of the order of dismissal and the supplementary order of July 7, together with a true and accurate reproduction of the entire text of the trial examiner's report. In an explanatory foreword the petitioner gave a concise and accurate statement of the history and purpose of the controversy. With this booklet the petitioner distributed certain other printed matter containing quotations from the report of the trial examiner and certain other statements not necessary to mention.

On September 29, 1926, a certain "release" was issued by the Commission to the newspapers for immediate publication describing a certain other order issued by the Commission against the petitioner and on the next day petitioner was served with a copy of such order. By this order the petitioner was informed that a certain publication attached thereto and certain exhibits had been filed with the Commission by seven alum-using competitors of petitioner in and by which it was represented to the Commission that the petitioner had published and circulated the report of the trial examiner upon the facts in docket 540, together with statements and comments in relation to such report and that the Commission of its own motion after consideration of the petition and exhibits and the record in docket 540, ordered that the petitioner be served with a copy of said petition and exhibits and show cause on the 8th of October why an order should not be made in said cause docket 540 which first-mentioned order reads:

*It is ordered,* That the order of the Commission dismissing this case on March 23, 1926, and that the order entered by the Commission on July 7, 1926, relating to the reopening of the case for certain purposes only, be and the same are hereby vacated, set aside and held for naught.

*It is further ordered,* That this case be and the same is hereby reopened for the taking of additional evidence relevant to the issues raised by the pleadings and occurring since the close of the taking of evidence on May 2, 1925.

*It is further ordered,* That evidence be also taken concerning the publication and circulation of the respondent of copies of the report upon the facts filed November 10, 1925, by Trial Examiner Edward M. Averill, and that publication and circulation by the respondent of other matters relevant to the issues involved in this proceeding down to the closing of the taking of such additional evidence pursuant to this order.

With said order the Commission served upon the petitioner copies of the petition of its competitors and exhibits consisting of the booklet above mentioned and of two of the papers circulated therewith. Said petition of the petitioner's competitors is in the form of a letter to the Commission and not entitled in docket 540. In addition to the exhibits served with the petition there was a further exhibit filed with the Commission a copy of which was not served.

On October 8 the petitioner appeared in response to the order of September 29 and filed its return and moved to strike the petition from the records and to cancel the order of September 29 on the ground that it was presented by strangers to said proceeding, docket 540, contained no charges which the petitioner was required by law to answer and protested that if the petitioner had done anything unlawful since the order of dismissal in docket 540 it should be proceeded against by a new complaint. This return was presented to the Commission on October 7, and the following is a transcript of the stenographer's minutes of the proceedings:

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 540

IN THE MATTER OF ROYAL BAKING POWDER COMPANY

HEARING ROOM, FEDERAL TRADE COMMISSION,  
Washington, D. C., October 8, 1926.

Met pursuant to notice, 2 o'clock p. m.

BEFORE: The Federal Trade Commission.

PRESENT: Commissioners Hunt (chairman), Humphrey and Myers.

APPEARANCES: Robert O. Brownell and Martin A. Morrison (Washington, D. C.),  
in behalf of the Commission.

John Walsh, Esq., and C. H. McChord, Esq., in behalf of the petitioners, Kenton  
Baking Powder Co., Richard B. Davis Co., Calumet Baking Powder Co.,  
Southern Manufacturing Co., Seagull Co., and Rich Maid Manufacturing Co.

The CHAIRMAN: In the matter of the Royal Baking Powder Co., docket 540,  
is the respondent represented?

Mr. WILLIAM H. MONDELL. I have a letter to read, sir, from Frank W. Mondell.

[Mr. Mondell read the letter as follows:]

FRANK W. MONDELL

Attorney and Counsellor at Law  
Investment Building,  
Washington, D. C.

OCTOBER 8, 1926.

FEDERAL TRADE COMMISSION,  
Washington D. C.

GENTLEMEN: On behalf of Mr. Archibald Cox, attorney for the Royal Baking  
Powder Co., I file herewith copies of the return of the Royal Baking Powder  
Co. to the order of the Commission dated September 29, 1926.

Mr. Cox has requested me to say that unexpected professional engagements  
prevent his attendance in person, that he waives oral argument and submits the  
matter to the Commission on this return.

Respectfully,

(Signed) F. W. MONDELL.

These are the copies. (Passing up papers to the Commission.)  
Commissioner HUMPHREY. Have the attorneys for the Commission had a good  
chance to examine this?

Mr. BROWNELL. No, sir, we have not seen it.

The CHAIRMAN. The chief counsel will be instructed to prepare a complaint  
in compliance with the order. Now, under the circumstances, we will adjourn.  
(Thereupon, at 2.10 o'clock p. m., the Commission adjourned.)

The return above mentioned is largely argumentative but does take  
issue with some of the statements contained in the petition and states  
that in making quotations the petition divorces words from their con-  
text and applies them in a different connection and that the state-  
ments in the petition are in general misleading.

The petition herein alleges that from the announcement made by one of the commissioners as set forth above and from an article appearing in a newspaper on October 9 the petitioner is informed and believes that the proposed order recited in said order to show cause of September 29 is about to be issued and served upon petitioner; that the respondents are about to vacate, set aside and hold for naught the prior decisions of the Commission on March 23 and July 7 and that the petitioner is threatened with irregular, improper, and unlawful acts by respondents including prosecution for an act or acts of the petitioner occurring after such said decisions and in reliance thereon and including the continuance of said proceeding against the petitioner without warrant or authority in law or under the statute. Petitioner alleged that the present and threatened proceedings are irregular and improper, not according to law, denying petitioner due process and are based on assumed authority entirely outside the lawful jurisdiction of the Commission. It alleges further that it has no remedy at law.

#### THE STATUTE

The Federal Trade Commission was created by the act of September 26, 1914, 38 Stat. 717.

Unfair methods of competition in commerce are forbidden by the act and the Commission is empowered and directed to prevent the use of such methods. It is further provided that—

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 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 thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If one against whom an order to cease and desist has gone, fails or neglects to comply therewith while the same is in effect the Commission may apply to a circuit court of appeals of the United States (in this District to the Court of Appeals) for the enforcement of its order filing with its application a transcript of the entire record in the proceeding including all the testimony taken and the report and order of the Commission. Upon the filing of the application and

transcript the court is required to cause notice to be served upon the party affected by the order and thereupon the court acquires jurisdiction of the proceeding and of the question determined therein and has power to make and enter on the pleading testimony and proceedings set forth in the transcript a decree affirming, modifying or setting aside the order of the Commission. The findings of the Commission as to the facts if supported by testimony are made conclusive. On a proper showing either party may have the matter remanded to the Commission to take additional evidence in which case the Commission may act on the new evidence and modify its findings as to facts and make new findings which if made shall be filed in the court.

Any party required by order of the Commission to cease and desist from using unfair methods of competition may obtain a review of such order by filing in the circuit court of appeals a petition praying that the order be set aside. Upon service of a copy of such petition on the Commission it must certify and file in the court a transcript of the record in the manner above stated and thereupon the court acquires jurisdiction similar to that acquired when the Commission is the moving party and the findings of fact are equally conclusive. The jurisdiction of the circuit court of appeals to enforce, set aside or modify orders of the Commission is made exclusive.

Complaints, orders, and processes of the Commission under section 5 may be served by anyone duly authorized by the Commission to make service.

All of the above-mentioned provisions of the act are found in section 5 thereof.

Section 6 of the act gives the Commission broad power of investigation and various other powers and has conferred on it various duties none of which has any relation to its powers and duties under section 5.

Section 9 gives the Commission power to subpoena witnesses and to issue subpoenas for the production of documents. On failure to respond to a subpoena application may be made to a proper district court to compel obedience and failure to obey an order of the court is punishable as a contempt of court.

#### RULES OF THE COMMISSION

The rules promulgated by the Commission provide for sessions but not for definite terms; for investigation before a complaint shall issue; for an answer "which shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint unless the defendant is without knowledge in which case he shall so state, such statement operating as a denial." A rule provides that "upon joining of issue" examination of witnesses shall proceed with diligence. Another provides for the manner of making objections to evidence.

Rule X provides that "A motion in a proceeding by the Commission shall briefly state the nature of the order applied for and all affidavits, records, and other papers upon which the same is founded except such as have been previously filed or served in the same pro-

ceeding, shall be filed with such motion and plainly referred to therein."

Rule XII provides among other things that the examiner to whom the case is referred for the taking of testimony make a report on the facts and serve a copy thereof on the parties or their attorneys who may file exceptions thereto in writing. Argument on the exceptions shall be had at the final argument on the merits. Briefs may be filed. They must contain the exceptions and must be served upon adverse parties.

#### THE LAW

The main contentions of the petitioner are that the Commission lost jurisdiction of the case made by the complaints, docket 540, when they were dismissed by the order of the Commission and that the steps taken thereafter were in any event irregular because they did not comply with the statute nor with the rules of the Commission. Both questions call for an interpretation of the act.

There is no express provision of the statute to the effect that a complaint shall be dismissed when the evidence does not sustain the charge contained in it but action on the complaint is required and if a cease and desist order is not made the complaint should be dismissed as was done in the present instance. An order dismissing a complaint exhausts the power of the Commission to act thereon. It is not to be supposed that it was intended by Congress that in a case begun by service of a complaint the party proceeded against is to be perpetually subject to the orders of the Commission and to being called upon to defend from time to time and whenever the Commission may see fit to order rehearings after a decision favorable to the party and a dismissal. It is hardly necessary to point out that a business could scarcely prosper if subjected to that sort of thing. The serious results of a construction contended for may be considered when a statute is ambiguous and fairly open to two constructions. *Lewis' Sutherland Statutory Construction* 2d Ed. 490. The act does provide that until a transcript of the record on a hearing on the complaint shall have been filed in a circuit court of appeals upon proceedings in such court the Commission may at any time on notice modify or set aside any report or order issued by it under section 5, evidently meaning a cease and desist order. If it had been intended that an order dismissing a complaint might be set aside and further proceedings had thereunder that intent would have been expressed.

The inquisitorial powers of the Commission if they may be so called are not conferred by section 5 of the act which is under consideration here. That section provides for notice and an opportunity to be heard and is widely different in purpose from section 6 which confers powers of investigation.

It can not be successfully contended that the statutory procedure is not a matter of right. See *Reaves v. Ainsworth*, 219 U. S. 296, 305.

#### CERTIORARI

The petitioner contends that the Commission is an inferior judicial tribunal "with a branch of equity jurisdiction" and that the cases which hold that the actions of such tribunals may be controlled by

use of the writ of certiorari should be followed. But it is now conclusively determined that "The Commission exercises only the administrative functions delegated to it by the act, not judicial powers. \* \* \* It has not been delegated the authority of a court of equity." *Federal Trade Commission v. Eastman Kodak Co. et al.*, Supreme Court No. 215—October term, 1926, decided May 31, 1927. [274 U. S. 619.]

The writ of certiorari may not be used for the purpose of reviewing an administrative order. *Degge v. Hitchcock*, 229 U. S. 162. The court says at page 169:

This case is the first instance, so far as we can find, in which a Federal court has been asked to issue a writ of certiorari to review a ruling by an executive officer of the United States Government. That at once suggests that the failure to make such application has been due to the conceded want of power to issue the writ to such officers. For, since the adoption of the Constitution, there have been countless rulings by heads of departments that directly affected personal and property rights and where the writ of certiorari, if available, would have furnished an effective method by which to test the validity of quasi-judicial orders under attack.

and at page 172:

The writ of certiorari is one of the extraordinary remedies and being such it is impossible to anticipate what exceptional facts may arise to call for its use, but the present case is not of that character, but rather an instance of an attempt to use the writ for the purpose of reviewing an administrative order. *Public Clearing House v. Coyne*, 194 U. S. 497. This can not be done.

Considering that the statute provides for procedure which finally produces a "record" it would be interesting to consider whether the facts here are not so "exceptional" as to call for the use of the writ but this court may not blaze that trail in view of what is said in the *Degge case* and in *Michadiet v. Payne*, 50 App. D. C., 115; 269 Fed. Rep. 194, where the court after pointing out that the petitioner who was asking for a writ of certiorari had another remedy said:

Even if this were not so, the appellants would not be entitled to the writ of certiorari, since the Supreme Court has said so unmistakably that the writ will not issue to review an administrative order made by an executive officer of the government. To this rule there are no exceptions.

In so ruling the court followed the *Degge case* as it did also in *Detroit & T. S. D. R. Co. v. Interstate Commerce Commission*, 51 App. D. C., 133; 277 Fed. Rep. 53, stating that even though the Commission had acted outside its jurisdiction the writ would not issue.

What it decided in the cases above cited is against a review by certiorari of the departure from proper procedure shown by the petition. The writ must be quashed.

When the petitioner applied for the writ of certiorari it asked that the cause be transferred to the equity side of the court if it should appear that certiorari was not the proper remedy. If the petitioner now elects to have the cause so transferred an order to that effect will be made. The questions raised by the demurrer of the respondents will then be considered as well as the question whether the acts of the commission have not been so arbitrary as to warrant an injunction. If the case is not to be so transferred there is no need to rule on the demurrer.

UTAH-IDAHO SUGAR CO. *v.* FEDERAL TRADE COMMISSION. WOOLLEY *v.* SAME<sup>1</sup>

(Circuit Court of Appeals, Eighth Circuit. October 21, 1927)

Nos. 259, 260

MONOPOLIES KEY—No. 14—INTERFERENCE WITH PRODUCTION AND MANUFACTURE OF SUGAR BEETS INTO SUGAR HELD NOT RESTRAINABLE BY FEDERAL TRADE COMMISSION; "COMMERCE" FEDERAL TRADE COMMISSION ACT, SECTION 5 (15 USCA SEC. 45).

Production of sugar beets and manufacture of sugar therefrom is not "commerce," and interference with such production and manufacture by sugar manufacturing corporation, to prevent construction of new factories in its claimed sugar beet territory, was beyond the power of the Federal Trade Commission to restrain, under Federal Trade Commission Act, Section 5 (15 USCA Sec. 45).

(The syllabus is taken from 22 F. (2d) 122)

Petitions of the Utah-Idaho Sugar Co. and of Ernest R. Woolley to set aside restraining orders of the Federal Trade Commission directing petitioners and others to desist from certain acts alleged to constitute unfair methods of competition in interstate commerce and conspiring for that purpose. Orders set aside.

*Mr. Richard W. Young*, of Salt Lake City, Utah (*Mr. D. N. Straup*, of Salt Lake City, Utah, on the brief), for petitioner, Utah-Idaho Sugar Co.

*Mr. Ernest R. Woolley*, pro se.

*Mr. George R. De Bruler*, of Washington, D. C. (*Mr. Adrien F. Busick* and *Mr. Bayard T. Hainer*, both of Washington, D. C., on the brief), for respondent.

Before LEWIS, Circuit Judge, and POLLOCK and SCOTT District Judges.

LEWIS, *Circuit Judge*:

[122] These are suits to set aside a restraining order of the Federal Trade Commission, entered in a proceeding which it instituted against Utah-Idaho Sugar Co., a Utah corporation, and E. R. Woolley (petitioners), and The Amalgamated Sugar Co., a Utah corporation, A. P. Cooper and E. F. Cullen, under section 5 of the act of Congress known as the Federal Trade Commission Act. USCA, title 15, chapter 2. After answers were filed denying the charges of using unfair methods of competition in interstate commerce and conspiring for that purpose, an examiner took the evidence, covering many

<sup>1</sup> The case is reported in 22 F. (2d) 122. The case before the Commission is reported in 6 F. T. C. 390.



thousand pages, which has been condensed to 1,500 pages for present use. The Commission made its findings of fact, covering 24 pages of the record, and entered its conclusion on October 3, 1923, that the facts found established the charge that the two corporations and Woolley and Cooper (Cullen not having been served) were guilty of said unfair methods; and on the same day it entered its order:

\* \* \* that the respondents, Utah-Idaho Sugar Co. and the Amalgamated Sugar Co., each of them and their officers, agents, and employees and E. R. Woolley and A. P. Cooper shall forever cease and desist from conspiring or combining between and among themselves to maintain or retain the monopoly of corporation respondents hereinbefore set out; to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons or interests other than said corporation respondents, and to hinder, forestall, obstruct or prevent competitors or prospective competitors from engaging in the purchase of sugar beets, and in the manufacture and sale of refined beet sugar in interstate commerce, and from effectuating or attempting to effectuate such conspiracy and combination—

(1) By respondent corporations allocating to themselves certain territory and establishing interstate territorial division lines to be observed by and between themselves in the obtaining of sugar beets and the building of beet sugar factories for the purpose of unlawfully protecting the said respondent corporations against competitors who may endeavor to come into such allocated territory for the purpose of obtaining sugar beets and for the purpose of building factories for the manufacture of beet sugar.

(2) By intimidation, untruthful statements, or otherwise, preventing, hindering, or attempting to prevent or hinder the Dyer company, a corporation of Cleveland, Ohio, a manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States or any other such manufacturer, from engaging in interstate commerce in selling, building and equipping beet sugar factories for competitors or prospective competitors who are engaged or who are about to engage in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

(3) By using their financial power and influence so as to cause banks and others to refuse credit to and to discourage competitors and prospective competitors from engaging in the purchase of sugar beets and the man[123]ufacture and sale of refined beet sugar, in interstate commerce.

(4) By using the financial power and influence to purchase land and erect factories in the territory where competitors or prospective competitors intend or shall undertake to start in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce, when such purchases or erections are not done in good faith and for no other purpose than to forestall, obstruct and prevent competitors and prospective competitors from engaging in the business of purchasing sugar beets and of manufacturing and selling refined beet sugar in interstate commerce.

(5) By inducing beet growers to break or cancel contracts for the production of sugar beets for competitors or prospective competitors, by promises to build sugar factories when said respondent corporations have no intention of constructing same but make such promise solely for the purpose of causing breach of contracts for said production in order thereby to prevent or hamper the building of prospective competing factories or the operation of existing competing factories.

(6) By circulating and publishing false, misleading and unfair statements concerning the machinery and equipment of competitors' or prospective competitors' factories, or the fitness of such machinery to successfully manufacture refined beet sugar.

(7) By circulating and publishing false, misleading and unfair statements concerning the (a) ability of competitors or prospective competitors to get and pay for beet seed; (b) adaptability to raising sugar beets on land or territory in the localities where competitors are located or are intending to locate; (c) ability of competitors or prospective competitors to pay producers or growers for sugar beets contracted for or delivered to them.

(8) By making untruthful and unjustifiable statements against competitors or prospective competitors to induce, persuade and influence United States Government departments and agents, for the purpose of causing said governmental departments or agents to use their power and authority to prevent the building of factories for the manufacture and sale in interstate commerce of refined beet sugar by competitors or prospective competitors.

(9) By offering to advertise in newspapers circulating in the localities of the States of Utah, Idaho, Oregon, and Montana, or elsewhere, where competitors operate or prospective competitors intend to build and operate beet sugar factories, with the understanding that editorial policies shall be in favor of corporation respondents as against competitors in regard to the beet sugar industry.

(10) By inducing beet growers or others, through false, unfair and misleading statements, to withdraw their support from, and to breach contracts for the growing of sugar beets with, competitors and prospective competitors in the manufacture and sale in interstate commerce of refined beet sugar, thereby depriving said competitors of, or hampering them in, the ability to compete with corporation respondents.

(11) By circulating and publishing false, misleading, and unfair statements concerning the financial standing and responsibility of competitors or prospective competitors for the purpose of preventing or hampering the sale or disposition of the stocks, bonds, and promissory notes of such competitors or of otherwise causing said competitors financial embarrassment.

(12) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of inciting financial trouble and embarrassment to competitors or prospective competitors by purchasing or acquiring secretly the whole or a controlling interest in the business of competitors or prospective competitors who are engaged, or who intend to engage, in the manufacture and sale of refined beet sugar in interstate commerce.

(13) By financing and furnishing money to secret and undisclosed agents or employees for the purpose of annoying, harassing and eliminating competitors and prospective competitors by instituting unjustifiable and groundless litigation and law suits.

(14) By circulating false, misleading and unfair statements in writing or orally concerning the honesty, integrity, or ability of the promoters, officers, or employees of competitors or prospective competitors engaged in or about to engage in the purchase of sugar beets and the manufacture and sale in interstate commerce of refined beet sugar.

(15) By utilizing any other equivalent means not hereinbefore stated of accomplishing the object of unfairly preventing, forestalling, stifling or hampering the business of competitors and of those about to compete with corporation respondents in the purchase of sugar beets and the manufacture and sale of refined beet sugar in interstate commerce.

The Utah-Idaho Sugar Co. was organized in 1907, being a consolidation of three other sugar companies which owned and operated factories for the manufacture [124] of beet sugar at Lehi, Utah, Idaho Falls, and Nampa, Idaho. At the time of the hearing Utah-Idaho Sugar Co. owned and operated eleven beet sugar factories, seven of which were in the State of Utah, one in Idaho, and three in Washington. The Amalgamated Sugar Co. owned and operated seven factories—four in Utah and three in Idaho. From time to time, beginning with the year 1915, and for some four years thereafter, other parties proposed the building and operation of beet sugar factories in Utah and Idaho in the same territory, in most instances, in which the Utah-Idaho company or the Amalgamated company owned and was operating a factory.

We think the proof taken by the examiner may be broadly characterized thus: Evidence tending to show that the Utah-Idaho company was opposed to the building of other factories in its claimed sugar beet territory, and the Amalgamated company was opposed to the building of other factories in its claimed sugar beet territory, and

that both of those companies used obstructive methods for the purpose of preventing the building of said new factories by others. The preventive methods used were, (a) by the field men of those two companies, whose duty it was to obtain contracts from farmers to raise sugar beets and deliver them to the factory of one or other of said companies, representing that the proposed new factory would not be built, that its proponents were without funds for that purpose, that contracts of farmers with field agents of the proposed new factory would not be carried out by it, that the proposed new factory was to be constructed, in some instances, out of old, secondhand machinery, and for that reason it could not successfully make beet sugar, by statements on the part of said field agents that one or the other of said two old companies would see to it that said new factories were not built, by said field agents invading the territory immediately surrounding the proposed location of said new factory and attempting to make contracts with farmers in order to prevent the field agents of said proposed new factory from making contracts with them; (b) by the activity of officers of one or the other of said two old companies in ascertaining the name of the contractor who was to build said proposed new factory or factories and then using persuasive means to prevent the making of contracts for the construction of the new factories, by discouraging the purchase of stock in the company promoting said new factories, by efforts to prevent the obtaining of credit at banking institutions by said new companies, and by the allocation of territory in which said two old companies should operate and prevent establishment of new factories therein by the means aforesaid, and by other acts and threats on the part of the officers, agents and employees of the two old companies tending to discourage the construction of new factories in or adjacent to territory occupied by factories of either of the old companies, or in territory within said States which either of them intended later to develop in the beet sugar industry by a factory to be constructed by one of them. Some of the proposed new factories were constructed and put in operation, and some of them were later purchased by one or the other of said two old companies.

It is not claimed that the proof showed any interference on the part of the two old companies with the marketing and disposition of the product of the new factories, nor did the Commission make a finding to that effect, nor do we think there is any proof of interference on the part of the two old companies, their representatives and agents with the purchase and acquisition in interstate commerce of sugar beets or beet seed for any of the new factories. It may be seriously doubted whether some of the specific findings of fact are supported by the proof, but we think the general aspect of the situation, and the conduct of the two old companies in obstructing the establishment of new factories are well sustained. It seems clear that they were strongly opposed to the erection of new factories by others within the territory which they had developed in the beet sugar industry, or at all adjacent to that territory. The business was somewhat new and unusual in character. It required expert knowledge, first, in analyzing the soil to ascertain whether it was adapted to the growth of sugar beets; second, in ascertaining the extent of acreage that was fit for that purpose to justify the

erection of a factory; third, in ascertaining that a sufficient supply of water for irrigation of the growing beets could be had; fourth, in inducing farmers to make contracts that they would grow the required acreage; fifth, in teaching them the proper method of cultivating and irrigating the crop; and then, sixth, to make an estimate of the whole situation in order to see whether it would be practicable to make the outlay for the construction of a factory in the particular locality. The two old companies likely felt that they and their predecessors, being pioneers in the beet sugar industry in the States named, were entitled to some kind of priority because of their preliminary invest[125]tigations and expenditures and the chances which they took in early development, and there is suggestion that some of the new promotions were not in good faith, but with an ulterior purpose. It further appears that some of the promoters of the proposed new factories were uninformed on the subject of growing sugar beets and manufacturing them into refined sugar, that they were without means of their own to finance their proposed factories, that some if not all of the proposed new factories would be so located as to encroach on territory then tributary in the raising of sugar beets to factories of the two old companies, and in that event there would not be sufficient production to justify the operation of two plants. We are not, however, concerned with the reasons which actuated the two old companies in their opposition, unless they were incentives for acts which interfered with interstate commerce by the use of unfair methods of competition in that commerce.

Commissioners Van Fleet and Gaskill dissented from the making of the order on the facts found, supra. They set forth their reasons in an opinion found in the record, and as we are persuaded that the views which they expressed are sound we make these excerpts:

- In this case the respondents are engaged in the manufacture and sale of beet sugar. The sugar is sold in interstate commerce. The manufacture is intrastate. This proceeding is based on section 5 of the Federal Trade Commission Act which declares unlawful unfair methods of competition in commerce. The fact that respondents are engaged in commerce in selling sugar produced has no bearing on the case for the reason that the proof does not show any acts of unfair competition in such product. The fact that a respondent is engaged in commerce is not material unless the acts charged have to do with such commerce or that of its competitors in such commerce. The acts to which the proof is directed are concerning only the manufacture. The manufacture of sugar from beets is somewhat peculiar in that it is necessary to have the factory located where beets may readily be obtained by short haul. It is not profitable to ship the beets a great distance to the factory. The acts to which the proof is directed consisted in the effort of respondents to prevent competing factories being located in contiguous territory where they might absorb a part of the supply of beets to respondents' factories. It was at most a prevention of competition in the purchase of the raw material for manufacture within the State, and, in no case does the proof show an interference with the transport of beets from one State to another, or an interference with the purchase thereof.

It is well settled that production and manufacture is not commerce. *Coe v. Errol*, 116 U. S. 517; *Kidd v. Pearson*, 128 U. S. 1; *United States v. C. C. Knight Co.*, 156 U. S. 1; *Capital City Dairy Co. v. Ohio*, 183 U. S. 233; *McCluskey v. Marysville & Northern Ry. Co.*, 243 U. S. 36; *Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co.*, 249 U. S. 134; *The Coronado Case*, 259 U. S. 344; *Hammer v. Dagenhart*, 247 U. S. 251.

The fact that an article in process of manufacture is intended for export to another State does not render it an article of interstate commerce. *Crescent Oil Co. v. Mississippi*, 257 U. S. 129. \* \* \*

In the present case there is no commerce to obstruct until the beets are manufactured into sugar and such sugar has been placed in transport. The argument is, however, as stated above, that the acts here cut off at the source such commerce. It is only such acts as *directly* interfere with commerce which come under the Federal jurisdiction. The line must be drawn somewhere, else all jurisdiction in trade or production would become Federal. Hence Congress has not jurisdiction of such acts as only indirectly or remotely affect commerce. In the instant case if interference with the production and manufacture into sugar of beets is an obstruction to a later or unborn commerce in sugar to be made from the beets, one who intrastate sold defective beet seed, thus preventing the production of beets to be manufactured into sugar, would be in commerce. Or one who sold fertilizer to raise the seed to plant the beets to make the sugar to be shipped in commerce would be in commerce.

To the cases cited by Commissioners Van Fleet and Gaskill on the proposition that the production of sugar beets and their manufacture into sugar does not constitute interstate commerce, may be added the later case of *United Leather Workers v. Herkert*, 265 U. S. 457, [126] 462, and the cases there cited. We think it clear that the conduct on which the Commission's findings were made went no farther than an interference with the raising of sugar beets and the manufacture of sugar therefrom, and that those transactions were beyond the power and outside the scope of regulation given to the Commission by the act of Congress under which its order was made. As applied to the facts here, the limitation of that power is nowhere better stated than by Mr. Justice Lamar, in *Kidd v. Pearson*, 128 U. S. 1. At pages 20 and 21 of the opinion in that case he aptly said:

No distinction is more popular to the common mind or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile v. Kimball*, 102 U. S. 691, 702, is as follows: "Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be, local in all the details of their successful management. It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

In short, it is our conclusion that the facts found by the Commission present a situation over which it had no jurisdiction and it was without authority to make the restraining order. That order will, therefore, be set aside, and an order of this court may be entered accordingly.

FEDERAL TRADE COMMISSION *v.* MAYNARD COAL CO.<sup>1</sup>

(Court of Appeals of District of Columbia. Argued January 10, 1924. Reargued October 3, 1927. Decided November 7, 1927)

No. 3984

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No. 80½—  
INJUNCTION WILL NOT LIE TO RESTRAIN FEDERAL TRADE COMMISSION FROM  
ENFORCING ORDER REQUIRING COMPLAINANT TO FURNISH REPORTS AND INFOR-  
MATION CONCERNING ITS BUSINESS (FEDERAL TRADE COMMISSION ACT, SECTIONS  
9, 10, 15 USCA SECTIONS 49, 50).

Under Federal Trade Commission Act, Sections 9, 10 (15 USCA Sections 49, 50), injunction will not lie to restrain Federal Trade Commission from enforcing or attempting to enforce an order requiring complainant to furnish monthly reports and other information in detail relative to its business; its remedy at law in case of attempted enforcement of order being adequate.

(The syllabus is taken from 22 F. (2d) 873)

Suit for injunction by the Maynard Coal Company against the Federal Trade Commission. From a decree for complainant, defendant appeals. Reversed, and cause remanded, with directions to dismiss.

*Mr. W. H. Fuller*, of McAlester, Okla., and *Mr. Adrien F. Busick*, of Washington, D. C., for appellant.

*Mr. K. D. Loos* and *Mr. E. B. Prettyman*, both of Washington, D. C., and *Mr. S. A. Foster*, of Chicago, Ill., for appellee.

Before MARTIN, Chief Justice; ROBB and VAN ORSDEL, Associate Justices.

[874]

VAN ORSDEL, *Associate Justice.*

This appeal is from a decree of the Supreme Court of the District of Columbia granting appellee corporation an injunction restraining appellant Federal Trade Commission from enforcing or attempting to enforce an order issued against complainant company requiring it to furnish monthly reports and other information in detail relative to the business in which the complainant is engaged.

It appears that the Commission recommended to a committee of Congress "that it would be desirable to obtain and publish from time to time, current information with respect to the 'production, ownership, manufacture, storage and distribution of foodstuffs, or other necessities, and the products or by-products arising from or in connection with the preparation and manufacture thereof, together with figures of cost and wholesale and retail prices,' and particularly with respect to various basic industries, including coal and steel."

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<sup>1</sup> The case is reported in 22 F. (2d) 873.

An appropriation of \$150,000 was made available by Congress, and the Commission, under a resolution of its own, resolved to "proceed to the collection and publication of such information with respect to such basic industries as the said appropriation and other funds at its command will permit, and that such action be started as soon as possible with respect to the coal industry and the steel industry, including in the latter closely related industries, such as iron ore, coke, and pig-iron industries."

In the present case the inquiry instituted related to the mining output and production at the mines of coal produced by the complainant company. The purpose, it will be observed, of securing information was for the publication of such information as in the opinion of the Commission would be of interest to the public. As a means of securing this information the Commission issued to complainant company forms of reports, schedules, and questionnaires, calling for detailed information regarding the amount of coal produced, the sales and contract prices thereof, mining costs, administrative and selling expenses, and the filing with the Commission of quarterly income statements and balance sheets.

Complainant was given notice that if it failed to comply with the orders of the Commission, the penalty prescribed by section 10 of the Trade Commission Act (38 Stat. 717) would be enforced against it. Section 10, among other things, provides: "If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States."

The Commission presumed to act in this case under the authority conferred in section 6 of the Federal Trade Commission Act which provides: "That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports [875] or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made

under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

The Commission's threat to publish the reports obtained from complainant was based upon the authority conferred by the Trade Commission Act "to make public from time to time such portions of the information obtained by it hereunder, excepting trade secrets and names of customers, as it shall deem expedient in the public interest."

With this statement we are forced to the consideration of a controlling question of jurisdiction. In the case of *Federal Trade Commission, et al., v. Claire Furnace Company, et al.*, 274 U. S. 160, the Supreme Court, considering a proceeding identical with that presented in this case, where an injunction had been granted to restrain the threatened enforcement of the penalty for refusal to comply with a similar order of the Commission. The court there held that injunction did not lie, since the statute furnished complainants a complete and adequate remedy at law.

In the *Claire case* no notice of default, as contemplated by section 10 of the act had been issued against the corporations when the petition for injunction was filed. In the present case notice of default had been served before this suit was brought, and the accumulation of penalties of \$100 per day, as provided in the act, was running. It is this which counsel for complainant insist distinguishes this case from the *Claire case*. We are, however, not impressed with this contention. The decision in the *Claire case* turned upon the provision in section 9 of the act as follows: "Upon the application of the Attorney General of the United States, at the request of the Commission, the District Courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act, or any order of the Commission made in pursuance thereof."

The court held that this vested in the Attorney General discretion to review the orders of the Commission and determine for himself whether an action should be brought, and if, in the exercise of his discretion, he decides to institute proceedings in mandamus to acquire the facts necessary for an action to enforce the incurred forfeitures, complainant would have as full and complete opportunity to be heard in defense as is afforded by a proceeding in equity. This discretion, we think, applies the same in a case where notice of default has been served as in a case where such service is merely threatened.

Considering the discretionary power reposed in the Attorney General to control the bringing of actions under the act, the court in its opinion in the *Claire case* said:

There was nothing which the Commission could have done to secure enforcement of the challenged orders except to request the Attorney General to institute proceedings for a mandamus or supply him with the necessary facts for an action to enforce the incurred forfeitures. If, exercising his discretion, he had instituted either proceeding the defendant therein would have been fully heard and could have adequately and effectively presented every ground of objection sought to be presented now. Consequently, the trial court should have refused to entertain the bill in equity for an injunction.

\* \* \* It was intended by Congress in providing this method of enforcing the orders of the Trade Commission to impose upon the Attorney General the duty of examining the scope and propriety of the orders, and of sifting out of



the mass of inquiries issued what in his judgment was pertinent and lawful before asking the court to adjudge forfeitures for failure to give the great amount of information required or to issue a mandamus against those whom the orders affected and who refused to comply. The wide scope and variety of the questions, answers to which are asked in these orders, show the wisdom of requiring the chief law officer of the Government to exercise a sound discretion in designating the inquiries to enforce which he shall feel justified in invoking the action of the court.

In a case like this, the exercise of this discretion will greatly relieve the court and may save it much unnecessary labor and discussion. The purpose of Congress in this requirement is plain, and we do not think that the court below should have dispensed with such assistance. Until the Attorney General acts, the defendants can not suffer, and when he does act, they can promptly answer and have full opportunity to contest the legality of any prejudicial proceeding against them. That right being adequate, [876] they were not in a position to ask relief by injunction. The bill should have been dismissed for want of equity.

The decree is reversed with costs, and the cause is remanded with directions to dismiss the bill.

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THE ROYAL BAKING POWDER CO. v. FEDERAL TRADE COMMISSION, ET AL.<sup>1</sup>

(Supreme Court of the District of Columbia. November 7, 1927)

Equity No. 47284

JURISDICTION OF COMMISSION OVER CAUSE FOLLOWING ORDER OF DISMISSAL, AND ORDER REOPENING CASE IN RESPONSE TO CONTEMPORANEOUS MOTION.

The Commission does not exhaust its jurisdiction over a case by order of dismissal, followed by vacating order in response to motion made and entertained on day on which dismissal order entered.

REVIEW BY INJUNCTIVE PROCESS OF ORDER OF COMMISSION SETTING ASIDE ORDER OF DISMISSAL; AND OF SUBSEQUENT ORDERS IN RELATION TO THE CAUSE.

Such a vacating order reopening a case, and subsequent orders by the Commission in relation thereto, are administrative and procedural in character, and not subject to review by the court; and bill for an injunction as well as writ of supersedeas so to operate pending appeal, must be dismissed.

*O'Brien & O'Brien* of Washington, D. C., for plaintiff.

*Mr. Adrien F. Busick* and *Mr. Martin A. Morrison*, of Washington, D. C., for the Commission.

MEMORANDUM <sup>2</sup>

MOTION TO DISMISS COMPLAINT

This case is before the Court on motion filed to dismiss the complaint, the several grounds of which may be summarized in the one stated objection that the plaintiff has not stated such a case as entitles it to the relief prayed.

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<sup>1</sup> See opinion of the Court handed down June 21, 1927 (*ante*, p. 877), on company's petition for writ of certiorari in the same matter. The matter herewith reported includes, in addition to "memorandum" on motion to dismiss, "memorandum" on form of decree, and final decree, both as of November 15.

<sup>2</sup> By Mr. Justice Hoehling.

In order properly to understand the questions involved, or such of them as to the Court appear necessary to the disposition of the motion, a brief statement of the case should be made.

On February 4, 1920, a complaint issued by the Federal Trade Commission against the Royal Baking Powder Co., charging it with a violation of section 5 of the Federal Trade Commission Act; on April 18, 1923, a supplemental and amended complaint issued on the same charge; and, on March 23, 1926, after hearing, the Commission issued an order dismissing the complaint. On the same day, however, counsel for the Commission filed motion in the case to set aside and vacate the order of dismissal; to grant a rehearing thereon; and to issue a "cease and desist" order; the Commission entertained the motion; permitted it to be filed; and set the same for oral argument, the respondent therein (plaintiff herein) being notified. Later the Commission permitted supplemental motion to be filed. Upon hearing thereafter had, the Commission entered an order vacating said former order of dismissal, and took steps looking to further proceedings in the cause.

Thereafter, action at law (No. 72173) was filed in this Court, seeking to review, by certiorari, the acts of the Commission; writ of certiorari issued; and, thereupon, the respondents therein moved to quash the writ, upon the ground, among others, that the Court was without jurisdiction to issue a writ of certiorari to review an administrative order of an administrative body, and that, therefore, the petition failed to state a cause of action. Respondents, also, filed demurrer, based upon substantially the same grounds; and, by agreement of counsel, the case was heard by the Court upon the questions (a) jurisdiction, and (b) whether a cause of action was stated.

The Court there decided that it did not have jurisdiction to issue the writ of certiorari, and, accordingly, quashed the same; reserving to plaintiff the right to have the cause transferred to the equity side of the court, should it so elect; its holding in that regard being thus stated in memorandum opinion filed in the case:<sup>1</sup>

\* \* \* The writ must be quashed.

When the petitioner applied for the writ of certiorari it asked that the cause be transferred to the equity side of the court if it should appear that certiorari was not the proper remedy. If the petitioner now elects to have the cause so transferred an order to that effect will be made. The questions raised by the demurrer of the respondents will then be considered as well as the questions whether the acts of the Commission have not been so arbitrary as to warrant an injunction. If the case is not to be so transferred there is no need to rule on the demurrer.

The plaintiff did so elect; and the cause was transferred to this the equity side of the court, where the complaint was amended to make it conform to the proper practice in equity.

From an examination of the decided cases bearing upon the questions presented herein, the Court is of opinion that, by the entry of the order of dismissal, on March 23, 1926, the Commission did not exhaust its jurisdiction over the case pending before it; that its order reopening the case, as well its subsequent orders in relation thereto, were administrative and procedural in character; and that the same are not subject to review by this Court.

Accordingly, the motion to dismiss is granted.

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<sup>1</sup> See *ante*, pp. 677, 691.

## FORM OF DECREE

In this case, motion was filed by defendants to dismiss the bill of complaint, and after argument, the motion was granted; and plaintiff electing to stand upon its said complaint, suggested forms of final decree have been presented; one by plaintiff, which simply dismisses the bill, and, at the foot thereof, is a notation of appeal to the Court of Appeals, with allowance of supersedeas upon undertaking to be given in amount to be fixed by the Court; and the other by defendant, in alternative form, one thereof reciting reasons for sustaining the motion to dismiss, and the other, without such recitals, substantially in the form as so submitted by plaintiff, with the exception that defendants object to the granting of a supersedeas.

Rule 38, of the equity rules of this Court (and which is substantially the same as Federal equity rule 74, formerly 93) provides as follows:

When an appeal from a final decree granting or dissolving an injunction is taken the justice may, in his discretion, make an order suspending, modifying, or restoring the injunction during the pendency of the appeal, upon such terms, as to undertaking or otherwise, as he may consider proper for the security of the rights of the opposite party.

It will be noted that the rule, in terms at least, covers only the cases of an injunction granted or dissolved, and makes no mention of an injunction refused; whereas, in the instant case, an injunction has been neither granted nor dissolved; on the contrary, it has been refused. Hence, to grant the supersedeas so now requested would be to grant plaintiff the relief to which this Court has found it is not entitled; and that too in a case where the refusal was based upon the conclusion of the Court that it was without jurisdiction to grant injunctive relief under the facts disclosed in the bill.

A similar situation was involved in *N. Y. Life Ins. Co. v. Marshall* (21 F. (2d) 173, 177), where an injunction has been refused, and, upon entry of final decree for defendant, plaintiff applied for an injunction pending the appeal; and, as to that, in denying the application, it was stated (District Court, E. D. Louisiana):

If I should find now, as I must if this application is to be allowed, that it would suffer irreparable injury, then I should feel constrained to recall the decree and issue the injunction originally prayed for.

It is not here necessary to decide whether this Court, because of the limitations of the equity rule, *supra*, is or is not vested with discretion to grant a supersedeas which shall operate as an injunction against the Federal Trade Commission pending the appeal; but in view of the fact that this Court reached the conclusion herein that the several orders complained of were administrative and procedural, and, as such not here properly subject to review, it is of opinion that it should not thus do indirectly that which it has directly held it has no right or jurisdiction to do.

Counsel for plaintiff, in urging the application have referred to the fact that, unless an injunction pending appeal be granted, there is danger that the question will have become moot before the appeal herein can be heard and determined (*Shaw v. Lane*, 47 App. D. C. 170). The Court is not persuaded that such situation is here involved,

since if plaintiff, instead of availing itself of the several periods of time allowed for the filing and printing the record and brief in the Court of Appeals, acts with expedition, it would seem possible that this case may be heard in the appellate court in the reasonably near future. No bill of exceptions or statement of evidence is here required—merely the pleadings, decree and memorandum of Court; and, furthermore, the case on both sides, has been exhaustively briefed by counsel, including printed brief for plaintiff.

If, however, this Court is in error in respect of its determination concerning the matter of supersedeas on appeal, the plaintiff conceivably has the right to apply to the appellate court for a writ of supersedeas.

Final decree in the case has been signed, and will be filed contemporaneously herewith.

#### FINAL DECREE

This cause having come on for hearing upon the motion of defendants, Federal Trade Commission, and John F. Nugent, Charles W. Hunt, Abram F. Myers, and William E. Humphrey, commissioners, to dismiss the bill of complaint herein filed by plaintiff, Royal Baking Powder Co., a corporation; and the Court having heard argument upon said motion by counsel for the parties, and having taken the same under advisement and being now sufficiently advised in the premises, sustains said motion to dismiss said bill of complaint; and the plaintiff having elected to stand upon its pleadings; it is, by the Court, this 15th day of November, 1927, adjudged, ordered, and decreed:

That the bill of complaint herein be, and the same hereby is, dismissed, with costs, to be taxed by the clerk of this Court, and for which the defendants shall have execution as at law.

A. A. HOEHLING, *Justice*.

From the foregoing decree, the plaintiff, in open court, notes an appeal to the Court of Appeals of the District of Columbia; and the Court hereby fixes the amount of undertaking for costs on appeal in the penalty of \$100, or a cash deposit of \$50, in lieu of an undertaking.

A. A. HOEHLING, *Justice*.

SEA ISLAND THREAD COMPANY, INC. *v.* FEDERAL  
TRADE COMMISSION<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. November 23, 1927)

No. 69

Petition to review order of the Federal Trade Commission.

*Munn, Anderson & Munn*, of New York City (*Mr. J. K. Brachvogel*, of New York City, of counsel), for petitioner.

*Mr. Edward L. Smith*, of Phillipsburgh, N. J., and *Mr. Bayard T. Hainer* and *Mr. Adrien F. Busick*, both of Washington, D. C., for respondent.

*Mr. Walter Gordon Merritt* and *Mr. John W. Simpson 2d*, both of New York City, *amici curiae*, for Silk Association of America.

Before MANTON, L. HAND, and AUGUSTUS N. HAND, Circuit Judges.

PER CURIAM. Order affirmed in open court.

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FEDERAL TRADE COMMISSION *v.* MILLERS' NATIONAL  
FEDERATION, ET AL.<sup>2</sup>

(Court of Appeals of District of Columbia. Submitted October 4,  
1927. Decided December 5, 1927)<sup>3</sup>

No. 4541

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—  
EQUITY HAS JURISDICTION TO SET ASIDE FEDERAL TRADE COMMISSION'S ORDER  
DIRECTING ISSUANCE OF SUBPOENAS DUCES TECUM, REQUIRING UNINCORPORATED  
ASSOCIATION TO PRODUCE DOCUMENTS BEFORE COMMISSION CONDUCTING  
INVESTIGATION UNDER RESOLUTION OF SENATE (FEDERAL TRADE COMMISSION  
ACT, SECS. 9, 10; 15 USCA SECS. 49, 50).

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<sup>1</sup> The case is reported in 22 F. (2d) 1019.

The case before the Commission is reported in 11 F. T. C. 97. As set forth in the syllabus of the case, the Commission found that respondent, engaged in the manufacture and sale of cotton thread so mercerized and finished as closely to resemble silk, featured the word "Satinilk" or "Satin Silk" upon the labels on its spools and the containers thereof, using such legends in its aforesaid labels as "Satinilk" with the words "Trade-Mark" and "None Better Mercerized Cotton", and "Satinilk Trade-Mark. Mercerized Machine Twist," with the word "Trade-Mark" in each case written in small letters underneath the word "Satinilk"; with the tendency and capacity to mislead and deceive a substantial part of the purchasing public by causing them to believe the aforesaid thread to be composed in whole or in part of silk, and to purchase the same in that belief, and to divert trade from and otherwise injure competitors engaged in the sale and distribution of sewing thread composed wholly of silk and so designated and described, and competitors engaged in the sale and distribution of sewing thread composed of mercerized cotton and so designated and described.

The Commission's order required respondent, its officers, etc., to cease and desist from—  
"Using the word 'Satinilk' or the words 'Satin Silk', either alone or with other word or words, as a brand or label upon spools of thread composed wholly of cotton, or upon the containers of such thread."

<sup>2</sup> Reported in 23 F. (2d) 908.

<sup>3</sup> Petition for rehearing denied January 21, 1928.

Equity court held to have jurisdiction to set aside order directing issuance of subpoenas duces tecum, requiring unincorporated association to produce certain letters and documents at hearing conducted by Federal Trade Commission, investigating production, distribution, transportation, and sale of flour and bread, including by-products, under resolution of United States Senate, since Federal Trade Commission Act, section 10 (15 USCA Sec. 50), imposes criminal liability for refusal of person to attend hearing and testify or produce documentary evidence and under section 9 (15 USCA Sec. 49) attendance of witnesses and production of documentary evidence may be required.

**EQUITY KEY No. 44—STATUTORY REMEDY DOES NOT EXCLUDE EXERCISE OF EQUITABLE JURISDICTION.**

Remedy is not exclusive merely because it is statutory, since remedy at law, to exclude concurrent remedy in equity, must be as complete, practical, and efficient to ends of justice and its prompt administration as remedy in equity.

**CONSTITUTIONAL LAW KEY-NO. 250, 258—INJUNCTION KEY-NO. 85 (2)—STATUTE COMPELLING INDIVIDUAL TO SUBJECT HIMSELF TO CRIMINAL PROSECUTION FOR FAILURE TO PRODUCE EVIDENCE BEFORE FEDERAL TRADE COMMISSION TO INQUIRE INTO THE COMMISSION'S POWER OR JURISDICTION, AMOUNTS TO DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF LAWS, SO THAT EQUITY MAY ENJOIN ENFORCEMENT (FEDERAL TRADE COMMISSION ACT, SEC. 10; 15 USCA SEC. 50).**

Jurisdiction of equity to restrain threatened enforcement of criminal penalties for failure of unincorporated association to produce documentary evidence before Federal Trade Commission under subpoenas duces tecum is based on principle that, where statute, such as Federal Trade Commission Act, section 10 (15 USCA Sec. 50), compels individual to subject himself to criminal prosecution, as condition precedent to inquiring into power or jurisdiction of commission to act, it amounts to denial of due process and equal protection of laws.

**APPEAL AND ERROR KEY-NO. 863—ON SPECIAL APPEAL FROM TEMPORARY INJUNCTION, ONLY QUESTION OF JURISDICTION WILL BE DETERMINED.**

On special appeal from temporary decree of injunction, reviewing court will go no further than to determine question of lower court's jurisdiction; questions passed on in granting temporary injunction, but going to merits of case when issues are properly joined, not being proper for decision.

(The syllabus is taken from 23 F. (2d) 968)

Appeal from Supreme Court of District of Columbia.<sup>1</sup>

Suit by the Millers' National Federation and others against the Federal Trade Commission. From a temporary decree of injunction to set aside, annul, and suspend an order directing that subpoenas duces tecum be issued, defendant appeals. Affirmed and remanded.

*A. F. Busick* and *J. T. Clark*, both of Washington, D. C., for appellant.

*K. D. Loos*, of Washington, D. C., and *S. A. Foster* and *E. S. Rogers*, both of Chicago, Ill., for appellees.

Before MARTIN, Chief Justice, and ROBB and VAN ORSDER, Associate Justices.

<sup>1</sup> Opinion and decision reported in 10 F. T. C. 739.

[1968]

VAN ORSDEL, *Associate Justice*:

Appellees, plaintiffs below, sought a temporary injunction to set aside, annul and suspend, an order directing that subpoenas duces tecum be issued and served upon the plaintiffs or their officers requiring the production of certain letters and documents specified in the order. From a temporary decree of injunction the case comes here by special appeal.

The Millers' National Federation is an unincorporated association composed of about 300 individuals, partnerships, and corporations. The association was organized in 1902 to promote the general welfare of the Millers of the United States, engaged in the production of wheat flour and by-products. It is averred in the bill, and admitted by the motion to dismiss, that the object of the association is mutual assistance in working out the problems affecting the industry as a whole, including traffic and freight matters; that it is not engaged in business; has no shares of capital or capital stock; has never at any time sought, collected or disseminated among its members any price information, or attempted to fix or suggest prices, or to interfere with commercial business either interstate or intrastate.

On February 16, 1924, the United States Senate by resolution directed the Federal Trade Commission "to investigate the production, distribution, transportation, and sale of flour and bread, including by-products, and report its findings in full to the Senate, showing the costs, prices, and profits at each stage of the process of production and distribution, from the time the wheat leaves the farm until the bread is delivered to the consumer; the extent and methods of price fixing, price maintenance, and price discrimination; the developments in the direction of monopoly and concentration of control in the milling and baking industries, and all evidence indicating the existence of agreements, conspiracies, or combinations in restraint of trade."

In pursuance of this resolution, the Federal Trade Commission, through its representative, demanded of plaintiff federation access to its books and records, and that copies be furnished of all papers and documents disclosing the activities of the federation. This request was partially refused for the reason alleged that the letters and papers demanded were of a private and confidential nature and were not material or relevant to any lawful investigation by the Commission.

On April 16, 1926, the Commission issued an order for a hearing before an authorized examiner to be held at Chicago, Ill., on the 28th of April, 1926, and at Minneapolis, Minn., on May 3, 1926; and that the plaintiffs herein, together with a large number of other persons connected with the federation, be subpoenaed to testify and produce at the hearings such documents and papers as may be required by the Commission.

The subpoena served upon the secretary of plaintiff federation, A. P. Husband, required him to appear and testify and to produce the minutes of 21 group meetings held by members of the plaintiff federation; 390 letters from the witness Husband to various milling companies and from various milling companies to him; 53 letters from members of the plaintiff federation to the witness Husband in

answer to a circular letter from him requesting the views and opinions of the members of the Federation as to whether certain practices should be obeyed or disobeyed. Similar subpoenas were issued and served on various persons and milling companies, some of whom were members of the federation and others who were not members.

It is averred that no complaint has ever been filed before the Federal Trade Commission charging any of the plaintiffs with the violation of the antitrust laws, and the Commission is proceeding wholly upon the resolution of the Senate, and that if it be not restrained the private letters, papers, and documents of the plaintiff federation, containing information relating to trade practices, customers, merchandising policies, special markets, and information generally regarding the affairs of the members of plaintiff federation, will be exhibited and revealed to the public, transmitted to the Senate of the United States, and made available to the inspection of everyone as a public record, thereby inflicting upon plaintiff federation and its members irreparable damage and injury.

It is not contended that in the present case the Commission is proceeding under section 5 of the Federal Trade Commission Act, since the plaintiffs, as alleged in the bill, have not been served with a complaint stating any charges or containing a notice of hearing as therein provided. It is sought, however, by the Commission, to sustain its authority to proceed under the provisions of section 6d of the act, which, among other things, provides that the Commission may proceed when directed to do so by "the President, or either House of Congress, to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation."

The motion of defendant Commission to dismiss the bill is based upon the alleged lack of jurisdiction of a court of equity to grant the relief prayed; that plaintiffs have failed to state a case which entitles them to any relief in a court of equity; that plaintiffs have a complete and adequate remedy at law under section 9 of the Federal Trade Commission Act (38 Stats. 717); that the bill fails to state facts showing that plaintiffs are threatened with irreparable injury or damage; that to grant an injunction in the premises would be an unconstitutional interference with the legislative branch of the government; that plaintiffs are not threatened with or liable to a multiplicity of suits; and that the witnesses subpoenaed have no such interest in and are not so threatened with injury by reason of the investigation as to entitle them to be heard in a court of equity.

The jurisdiction of the court below to enter the decree appealed from is challenged chiefly on the authority of a recent decision of the Supreme Court in a case which is in some respects similar to the one at bar. *Federal Trade Commission et al. v. Claire Furnace Co. et al.*, 274 U. S. 160. In that case the Commission issued an order requiring a number of corporations engaged in the coal, steel, and related industries to file with it monthly reports in the form prescribed, showing output of every kind, cost of production, sale prices, contract prices, capacity, buying orders, depreciation, expenses, income, etc. It was sought to enjoin the Commission from proceeding to enforce its order. The penalty imposed against a corporation for failure [970] to respond to the demands of the Commission and file such reports as may be required, is prescribed in section 10 of the Federal Trade Commission Act, as follows: "If any corporation



required by this act to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures."

The question of criminal liability was not involved in the *Claire* case. The forfeiture could only be recovered against the corporations in a civil proceeding, and the action could only be brought for such recovery under the following provision of section 9 of the act: "Upon the application of the Attorney General of the United States, at the request of the Commission, the District Courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the Commission made in pursuance thereof."

It was held that this placed a discretionary power in the Attorney General, as to whether or not he should grant the application of the Commission and apply for mandamus to compel compliance with the order of the Commission, or bring a civil suit for the collection of the forfeited penalties; and that in either event the corporation so proceeded against would have an opportunity to present all the defenses available in a proceeding in equity. Accordingly it was held that the defense thus open, furnished a complete and adequate remedy at law, and the court directed the dismissal of the case.

It is insisted that the *Claire* decision is controlling in the present case, but we are not impressed with this contention. The proceeding here instituted by the Commission is not against a corporation but against an unincorporated association of individuals, partnerships, and corporations. Monthly reports are not sought from the corporations involved, but testimony from individual witnesses. The subpoenas issued in this case require the response of individual witnesses who would be personally liable for neglect or refusal to appear and testify. The penalty imposed by section 10 of the act for such neglect or refusal is as follows: "That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment."

It will be observed that the penalty affixed against an individual for refusal to testify or furnish documentary evidence is very different and much more severe than that imposed against a corporation for failure to make the reports required by the Commission. After the penalty has attached, ample procedure is provided in the act to compel a witness to testify. The discretionary power of the Attorney General to proceed by mandamus extends to both persons and corpo-

rations; and section 9 of the act also provides that "such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing, and in the case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence." But the penalty for disobedience of the order of the court in these instances is for contempt, and not the penalty for disobedience of subpoena provided in section 10. It will be observed that the power to punish a person offending, under section 10 of the act, is not dependent on the action or discretion of the Attorney General or the Commission, but may be had upon the complaint of any person interested in seeing the orders of the Commission enforced.

If the only procedure open against a contumacious witness was by mandamus at the instance of the Attorney General, as in the case of a corporation, and in the event of the issuance of a writ, and the witness by complying with the order could purge himself from liability, the rule in the *Claire case* would apply; but here the mere refusal to obey the subpoena is made a separate and substantive criminal offense, with the additional possibility of a proceeding against him at the instance of the Commission. In other words, the discretion reposed in the Attorney [971] General in no respect furnishes immunity from prosecution in any court having proper jurisdiction of the case.

Unquestionably, as in the *Claire case* where specific performance of the order could be compelled only by mandamus, and a full opportunity is afforded to answer, and set up by way of defense, objections to the validity of the orders, the legal remedy would be adequate. In the present case, however, a different situation is presented, since upon refusal to comply with the subpoena the witness lays himself liable to the criminal penalties imposed by section 10. The criminal liability attaches even if the procedure by mandamus were attempted by the Attorney General, or action be instituted by the Commission to compel obedience to its subpoena; and whether the witness be proceeded against for disobedience of the subpoena under section 10, or in mandamus at the instance of the Attorney General, or by the Commission under section 9, criminal liability for disobedience is a condition precedent to the right to test the validity of the act.

The jurisdiction of a court of equity to grant injunction in such cases, even before indictment, is upheld in *Tedrow, United States District Attorney, v. Lewis & Sons*, 255 U. S. 98. The threatened criminal proceedings in that case were under the Lever Law, and the proceeding in equity to restrain the threatened prosecutions on the ground of the unconstitutionality of the statute. It would seem that this question would have afforded a complete defense in the criminal trials, but the court held that the remedy thus afforded, as a defense to the threatened criminal proceedings, was inadequate and that injunction would lie to prevent the threatened prosecutions. It follows that a remedy is not exclusive merely because it is statutory. It is well settled "that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity." *Walla Walla v. Water Co.*, 172 U. S. 1, 12.

The jurisdiction of equity to restrain the threatened enforcement of the criminal penalties in this case is based upon the well recognized principle that, where the terms of the statute are so expressed that the only avenue open to test its validity is through disobedience of a criminal statute, it amounts to a denial of a hearing, a want of due process of law. In other words, if the statute, as in this case, compels an individual to subject himself to a criminal prosecution, as a condition precedent to inquiring into the power or jurisdiction of the Commission to act, it amounts to a deprivation of the equal protection of the laws. In *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, 102, Mr. Justice Brewer, speaking for the court held: "But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts, that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws."

The penalty provided in section 10 of the act, applicable to this case, provides for the punishment of a person refusing to testify or produce documentary evidence. It also applies to corporations as well as individuals. True, there is the provision of the same section, construed in the *Claire case*, which applies solely to corporations and provides for a forfeiture of \$100 per day for disobedience of an order of the Commission to produce records or make reports when called for. Such an order, however, runs against the corporation for the production of records and reports, and has no reference to the provision relating to witnesses. A corporation can only testify through its officers or agents. These are persons within the statute, and the refusal of an agent or officer to testify or produce records, in response to a subpoena duces tecum affecting the corporation, brings such agent or officer within the criminal provisions of section 10, providing for the punishment of witnesses refusing to testify. In that case, there must first be a violation of the criminal statute by some officer or agent of the corporation to furnish a basis for the corporation to contest the validity of the proceeding in which the testimony is sought.

A corporation is not required to subject its agents or officers to such a hazard as a condition precedent to its right to be heard in a court of justice. Besides, it might be difficult to find an agent who would be willing to refuse to testify and take the chance of imprisonment in the event that the statute authorizing the proceeding should be declared valid. In that instance, if the chance should be mistakenly taken, the plea in the criminal proceeding, that the witness was only a representative of the corporation, would not avail against the enforcement of the penalty.

In *Ex parte Young*, 209 U. S. 123, [972] it was held that the enormous fines and penalties provided for the enforcement of the act there involved were unconstitutional because the threat of enforcement would result in the denial of any hearing, a want of due process of law. Accordingly the jurisdiction in equity to pass upon the validity of the statute was upheld. On this point the court said: "It is further objected that there is a plain and adequate remedy at law open to the complainants and that a court of equity, therefore, has no jurisdiction in such case. It has been suggested that the proper way

to test the constitutionality of the act is to disobey it, at least once, after which the company might obey the act pending subsequent proceedings to test its validity. But in the event of a single violation the prosecutor might not avail himself of the opportunity to make the test, as obedience to the law was thereafter continued, and he might think it unnecessary to start an inquiry. If, however, he should do so while the company was thereafter obeying the law, several years might elapse before there was a final determination of the question, and if it should be determined that the law was invalid the property of the company would have been taken during that time without due process of law, and there would be no possibility of its recovery.

Another obstacle to making the test on the part of the company might be to find an agent or employee who would disobey the law, with a possible fine and imprisonment staring him in the face if the act should be held valid. Take the passenger rate act, for instance: A sale of a single ticket above the price mentioned in that act might subject the ticket agent to a charge of felony, and upon conviction to a fine of five thousand dollars and imprisonment for five years. It is true the company might pay the fine, but the imprisonment the agent would have to suffer personally. It would not be wonderful if, under such circumstances, there would not be a crowd of agents offering to disobey the law. The wonder would be that a single agent should be found ready to take the risk.

In *Terrace v. Thompson*, 263 U. S. 197, jurisdiction in equity to determine the validity of the Anti-Alien Law of the State of Washington, where the fines and imprisonment threatened were less than those imposed by section 10, the court said: "They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights." It thus appears that it is not necessary, as suggested by counsel for the Commission, that the possible fines and penalties be so enormous as "to stagger the imagination" before a court of equity will intervene. The gravity of the penalty is not controlling, since the mere risk of imprisonment is sufficient to deter the average person into submission to the restrictions of a statute, thus depriving the person, company, or corporation, affected of any remedy to test its validity. This rule as to equity jurisdiction is upheld in a number of recent cases by the Supreme Court. *Truax v. Raich*, 239 U. S. 33, 37-39; *Oklahoma Operating Co. v. Love*, 252, U. S. 331, 336-338; *Stafford v. Wallace*, 258 U. S. 495, 512.

Inasmuch as this is a special appeal, it is unnecessary for us to go further than to determine the question of the jurisdiction of the court below. The consideration of other questions passed upon in the opinion of the learned trial justice in granting the temporary injunction go to the merits of the case when issues are properly joined, but are not proper for decision at this time. We are, therefore, of the opinion that the *Claire case* is not controlling here; that the present case must be determined upon principles not obtaining in that case, and that injunction will lie to restrain the Commission, should the court find on a final determination of the case on its merits that the Commission has exceeded its jurisdiction.

The decree is affirmed with costs, and the cause is remanded for further proceedings, not inconsistent with this opinion.

J. W. KOBİ COMPANY v. FEDERAL TRADE COMMISSION<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. December 12, 1927)

No. 40

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—COMBINATION OR CONSPIRACY TO MAINTAIN RESALE PRICES MAY BE IMPLIED FROM COURSE OF DEALING OR OTHER CIRCUMSTANCES (CLAYTON ACT, 38 STAT. 730).

Essential agreement or combination or conspiracy to maintain resale prices of products constituting a violation of the Clayton Act<sup>2</sup> (38 Stat. 730), may be implied from a course of dealing or other circumstances.

MONOPOLIES KEY-NO. 17 (1)—PLAN TO MAINTAIN RESALE PRICES AND ELIMINATE PRICE CUTTERS COMES WITHIN PROHIBITION OF "UNFAIR METHOD OF COMPETITION" (FEDERAL TRADE COMMISSION ACT, 15 USCA SECS. 41-51).

Plan to maintain resale prices and eliminate price cutters, indicating a dangerous tendency unduly to hinder competition and to create a monopoly, comes within the prohibition of an "unfair method of competition" in commerce, forbidden by Federal Trade Commission Act (15 USCA SECS. 41-51).

MONOPOLIES KEY-NO. 17 (2)—AGREEMENTS FOR MAINTAINING RESALE PRICES, TOGETHER WITH METHOD OF SECURING REPORTS ON PRICE CUTTERS, HELD TO WARRANT CEASE AND DESIST ORDER OF FEDERAL TRADE COMMISSION (CLAYTON ACT, 38 STAT. 730).

Agreements with customers, either directly or indirectly, assuring resale prices would be observed, together with method for securing reports on price cutters, with threat to refuse sales to dealers so reported, *held* offensive to the Clayton Act<sup>3</sup> (38 Stat. 730), and to warrant order of Federal Trade Commission to cease and desist from carrying or attempting to carry into effect such policy.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—COMMISSIONER, TAKING EVIDENCE AND MAKING REPORT WITHOUT RECOMMENDATION, WAS NOT DISQUALIFIED FROM PARTICIPATING IN DECISION RENDERED BY COMMISSION (FEDERAL TRADE COMMISSION ACT, SECTIONS 3, 9, 15 USCA SECS. 43, 49).

The fact that commissioner, under Federal Trade Commission Act, Section 3, 9 (15 USCA SECS. 43, 49), took evidence and made a report without recommendation, does not disqualify him from participating in decision rendered by the Commission.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION EXERCISES ONLY ADMINISTRATIVE FUNCTION (FEDERAL TRADE COMMISSION ACT, 15 USCA SECS. 41-51).

Federal Trade Commission exercises only the administrative function delegated by Federal Trade Commission Act (15 USCA SECS. 41-51), and has no judicial powers.

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<sup>1</sup> The case is reported in 23 F. (2d) 41. The case before the Commission is reported in 10 F. T. C. 200.

<sup>2</sup> Sherman Act.

<sup>3</sup> Federal Trade Commission Act.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—  
CEASE AND DESIST ORDER OF FEDERAL TRADE COMMISSION HELD NOT TOO INDEFINITE FOR PURPOSES OF OBEDIENCE TO ITS COMMAND.

Order of Federal Trade Commission, directing seller to cease and desist from carrying into effect or attempting to carry into effect its policy of securing maintenance of resale prices for its products by cooperative methods, held not too indefinite for purposes of obedience to its command.

(The syllabus is taken from 23 F. (2d) 41)

Application by J. W. Kobi Co. to review an order of the Federal Trade Commission, denied.

*Joseph A. Burdeau*, of New York City (*Daniel N. Dougherty*, of San Francisco, Calif., *George F. Scull*, of New York City, and *Chadwick, McMicken, Ramsey & Rupp*, of Seattle, Wash., of counsel), for petitioner.

*Bayard T. Hainer*, chief counsel, *Adrien F. Busich*, assistant chief counsel, and *James T. Clark*, all of Washington, D. C., for respondent.

Before MANTON, L. HAND and A. N. HAND, Circuit Judges.

[41]

MANTON, *Circuit Judge*:

The order entered by the Federal Trade Commission directs the petitioner to cease and desist from carrying into effect or attempting to carry into effect its policy of securing the maintenance of resale prices for its products by cooperative methods in which it and its distributors, customers, and agents undertook to prevent sales of its products for less than such prices by (a) seeking or securing or entering into contracts, agreements or understandings with customers or prospective customers that they will maintain the resale prices designated by it; (b) by soliciting customers to report the names of other customers who failed to observe such resale prices and (c) by utilizing any equivalent cooperative means of accomplishing the maintenance of such resale prices. The order rests on agreements or understandings and cooperative methods of price fixing. The agreement or understanding or cooperative methods might be implied from the course of dealing or other circumstances. *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441; *Frey & Son v. Cudahy Packing Co.*, 256 U. S. 208.

This record consists of correspondence of the petitioner with its customers relating to resale price fixing. No customers were called [42] as witnesses, but the petitioner's officers were called and admitted that in some instances they had inquired from the trade as to price cutting by competitors and stated that it was their policy not to sell to price cutters when so informed. They also admitted that in some specific instances, they had entered into agreements with customers to observe resale prices and that when price cutting had been called to their attention, they asked customers to call further instances of price cutting of the kind to their attention. The correspondence between the petitioner and its customers and others brings this case well within the rule that the essential agreement or combination or conspiracy which is a violation of the Clayton [Sherman]

Act (38 Stat. 730) might be implied from a course of dealing or other circumstances. *United States v. Schrader's Sons, Inc.*, 252 U. S. 85; *Federal Trade Com. v. Beech-Nut Packing Co.*, supra. The petitioner undoubtedly was endeavoring to control its resale prices so as to prevent reduced prices. That was its definite purpose. It represented that it did not sell to price cutters and before it accepted customers, it made it plain that its resale prices would have to be observed. In some instances it obtained a tacit agreement to maintain resale prices and in others it received a promise so to do, and thereupon served the customer his requirements. There are many instances in which it wrote to price-cutting customers a letter of which the one to George Kay is a sample, wherein it said:

In the few instances where it has been necessary to urge the price-maintenance proposition with other customers, we have received voluntary assurance that our prices would not be cut by the distributor unless we were first notified. This arrangement seems very fair to us, and although we do not suggest that you take such action, we think possibly that you may wish to do so. We shall hope to hear from you again.

And another to the Royal Drug Co.:

We will greatly appreciate your immediate assurance that you agree with our contentions and that you will comply with our request not to list Golden Glint or Golden Glint Shampoo at a lower quotation than \$2.00 net.

And receiving no reply, they again wrote:

We are therefore returning your order and regret that we will be unable to fill it, until such time as you are prepared to furnish reliable assurance that you agree with our policies. A letter endorsing our suggestions and stating in detail what steps you have taken or are taking to carry them out will be carefully considered. Telegraphic advice of this kind will not be accepted.

Thereafter when they received an order with assurances that the prices would be maintained, they replied:

We have your letter of April 7 and thank you for the assurance that you will not cut the resale price of Golden Glint Shampoo below \$2.

This character of correspondence was repeated to a number of their customers and warnings were delivered that if the prices were not maintained, future sales would be withheld. Its insistence that its terms and conditions be met before it accepted customers and its reference to other customers who were following its policy or requirements, was sufficient to justify the finding of the Commission that there were agreements to maintain resale prices. There was sufficient to require the action of the Trade Commission which would forbid the continuance and extension of these practices which constituted a method to make the petitioner's policy of fixing resale prices that of its customers.

Another objectionable practice consisted of obtaining reports of price cutters from competitors. A letter written by petitioner's sales manager to its president makes reference to a complaint (a) from wholesalers against retail druggists associations; (b) from hair goods jobbers against each other, and (c) from Brown against anybody and everybody who trespassed on his territory. And in a letter dated January 11, 1923, addressed to one of its customers, it wrote:

Our salesmen are reporting all deviations from the suggested resale price schedule that come to their attention. A number of jobbers have consented to cooperate in the same way. We would like very much to have your assur-

ance that you will support us in our effort to do the fair thing by everybody. How about it?

And to another customer they wrote on May 15, 1923:

We note that you previously cut the prices in order to meet competition. In case a similar necessity should arise again, we will be very appreciative if you will send us the name of your price-cutting competitor. We feel that we can safely guarantee you against this sort of competition and will appreciate your cooperation as requested.

Letters of like character showing a well-settled and determined plan to maintain resale prices and eliminate price cutters is found in this extensive correspondence offered in evidence. It indicates clearly a dangerous tendency unduly to hinder competition and to attempt to create a monopoly in its products and it is a practice which it was the desire of the Clayton [Federal Trade Commission] Act to prevent. *Federal Trade Comm. v. Gratz*, 253 U. S. 421. It comes well within the prohibition of an unfair method of competition in commerce which is declared unlawful. (38 Stat. 717.) The basis of the condemnation of resale price fixing is the elimination of competition as represented by the prices among distributors of a product on which the resale prices were so fixed and it has the danger of a distinct monopolistic effect. *Toledo Pipe Threading Machine Co. v. Fed. Trade Comm.*, 11 Fed. (2d) 337; *Fox Film Corp. v. Fed. Trade Comm.*, 296 Fed. 353.

But it is argued that the decision in *Harriet Hubbard Ayer Inc. v. Fed. Trade Comm.*, 15 Fed. (2d) 274, justifies the petitioner in its business conduct. There we pointed out that there was no evidence to show that there was anything by way of direction in their merchandising system to compel or even request retail dealers to adhere to their prices in resale. A price list was sent out in the packages and to serve no purposes other than to apprise the ultimate consumer of the ordinary retail prices at which he could purchase petitioner's products, and also to name the price at which the retailer or jobber could purchase its product. We pointed out that there were but a few isolated instances of an effort to eliminate a price cutter, and said:

We think the petitioner did no more than it might lawfully do in selecting its customer whom it considered desirable.

And further we said:

There is nothing disclosed in this record to base a finding of fact that there was an effort of discrimination resulting in substantially lessening competition or tending to create a monopoly in this line of commerce. Price maintenance is unlawful when it tends to create a monopoly. But there was no cooperation with its jobbers and retailers, or other distributors, which was effectual either as an agreement, expressed or implied, intended to accomplish purposes of price fixing. Until such is established, an order to cease and desist is unwarranted.

For the reasons there stated, we think the cases are distinguishable. What was proven here established offenses of agreements or understanding either in obtaining, directly or indirectly from its customers, promises or assurances that the prices fixed by the petitioner would be observed by such dealers and entering into contracts with the understanding that the petitioner's products would be resold by the dealers at prices specified or fixed by the petitioner. There was also a method employed in reporting on price cutters and a continuous



request of dealers and jobbers to report the competitors who did not observe the resale prices suggested by the petitioner and a threat to refuse sales to dealers so reported on. These practices were offensive to the act and warranted the order entered below. *Cream of Wheat Co. v. Fed. Trade Com.*, 14 Fed. (2d) 40; *Q. R. S. Music Co. v. Fed. Trade Comm.* 12 Fed. (2d) 730; *Moir et al. v. Fed. Trade Comm.*, 12 Fed. (2d) 22; *Hills Bros. v. Fed. Trade Comm.*, 9 Fed. (2d) 481.

It is argued that the order can not stand because one commissioner took the testimony in the case to support the complaint and afterwards passed on the effect of it as a member of the Commission; that he was not present at the oral argument when the case was submitted. It is conceded that briefs were filed. The claim that the statute makes the commissioner both the judge and prosecutor has been held to be unsubstantial. *Sears, Roebuck & Co. v. Fed. Trade Comm.*, 258 Fed. 307. The Statute provides (sec. 3, Fed. Trade Comm. Act) that the Commission may, by one or more of its members or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. Section 9 of the Federal Trade Commission Act authorizes a member of the Commission to sign subpoenas, administer oaths, affirmations, summon witnesses, and receive evidence. The fact that the commissioner took the evidence and made a report without recommendation does not, under the terms of the act, disqualify him from participating in the decision rendered by the Commission.

It is argued that the order of the Commission should be supplemented by directing affirmatively what the petitioner may do. But the Commission exercises only the administrative function delegated by the act. It has no judicial powers. *Natl. Harness Manufacturers' Ass'n v. Fed. Trade Comm.*, 268 Fed. 705. It has not had delegated to it the power of review. The order of the Commission is not too indefinite for purposes of obedience to its command. *Oppenheimer, Oberndorf & Co. v. Fed. Trade Comm.*, 5 Fed. (2d) 574; *Fed. Trade Com. v. Beech-Nut Packing Co.*, 257 U. S. 441.

The petition is denied.

## FEDERAL TRADE COMMISSION v. PAUL BALME, TRADING UNDER THE NAME AND STYLE OF B. PAUL<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. January 9, 1928)

No. 86

COURTS KEY—No. 405 (3)—CIRCUIT COURT OF APPEALS IS APPELLATE COURT, REVIEWING DISTRICT COURT'S DECISIONS (26 STAT. 826).

Under Act March 3, 1891 (26 Stat. 826), the Circuit Court of Appeals is an appellate court, reviewing decisions of the District Court.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY—No. 80½—JURISDICTION OF CIRCUIT COURT OF APPEALS, UNDER FEDERAL TRADE COMMISSION ACT, DOES NOT DEPEND ON RANK OF COURT, BUT ON TERMS OF STATUTE (15 USCA SEC. 41 ET SEQ.).

<sup>1</sup> Reported in 23 F. (2d) 615. The case before the Commission is reported in 4 F. T. C. 410.

The Federal Trade Commission Act (15 USCA Sec. 41 et seq.) confers special statutory jurisdiction on Circuit Court of Appeals, and the extent of such jurisdiction and the conditions of its exercise over subjects or persons necessarily depends on terms in which jurisdiction is thus conferred, and not on rank of court on which it is conferred.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—**  
**JURISDICTION OF CIRCUIT COURT OF APPEALS UNDER FEDERAL TRADE COMMISSION ACT MUST BE STRICTLY PURSUED (15 USCA SEC. 41 ET SEQ.).**

Jurisdiction granted to Circuit Court of Appeals by Federal Trade Commission Act (15 USCA Sec. 41 et seq.) must be strictly pursued.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—**  
**DECREE AFFIRMING, MODIFYING, OR SETTING ASIDE FEDERAL TRADE COMMISSION'S ORDER DEPENDS ON PROOF OF VIOLATION OF LAW, NOT ON VIOLATION OF COMMISSION'S ORDER (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

Decree of Circuit Court of Appeals, affirming, modifying, or setting aside order of the Federal Trade Commission directing respondent to desist from practices constituting unfair competition, in violation of Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), is not dependent on proof of the violation of the Commission's order, but on proof of a violation of the law, and court must therefore first examine proceeding before Commission, and determine whether there has been a violation of the law, before determining • disputed questions of fact as to violation of the order.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—**  
**POWER OF CIRCUIT COURT OF APPEALS TO MODIFY FEDERAL TRADE COMMISSION'S ORDER INCLUDES POWER TO CONFORM ORDER IN POINT OF LAW TO PLEADINGS AND FINDINGS (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

Power of Circuit Court of Appeals to modify an order of the Federal Trade Commission, under Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), includes the power to conform an order in point of law to the pleadings and findings, and even where court remands, with instructions to modify in accordance with its opinion, the decree continues to be that of the court.

**[616] TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—**  
**CIRCUIT COURT OF APPEALS MAY CORRECT LAW ERROR IN FEDERAL TRADE COMMISSION'S ORDER, ITS JURISDICTION BEING ORIGINAL, AND COMMISSION BEING PURELY FACT-FINDING BODY (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

Jurisdiction of the Circuit Court of Appeals to review an order of the Federal Trade Commission under Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), is original, and where the fault in Commission's order is in point of law, court may correct it, but in doing so it recognizes the Commission is purely a fact-finding body.

**TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY-NO. 80½—**  
**IT IS FOR COURTS, NOT FOR FEDERAL TRADE COMMISSION, TO DETERMINE MEANING OF "UNFAIR METHOD OF COMPETITION," WITHIN STATUTE (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

It is for the courts, not for the Federal Trade Commission, to determine as matter of law the meaning of the words "unfair method of competition," as used in Federal Trade Commission Act, so as to authorize enforcement of order to cease such practice under section 5 of the act (15 USCA Sec. 45).

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—  
FEDERAL TRADE COMMISSION IS AN ADMINISTRATIVE BODY.

The Federal Trade Commission is an administrative body.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—  
FEDERAL TRADE COMMISSION'S FINDING OF FACT RESPECTING UNFAIR COMPETITION, SUPPORTED BY EVIDENCE, IS BINDING ON COURTS (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).

Finding of fact of the Federal Trade Commission that there has been a violation of law, justifying an order to cease and desist from unfair methods of competition, in violation of Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), having evidence to support it, is conclusive and binding on the courts.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 70 (1, 2)—  
PURCHASING PUBLIC SHOULD BE PROTECTED FROM DECEPTION, RESULTING IN THEIR SECURING ARTICLE WHICH THEY DID NOT INTEND TO PURCHASE, OR WHERE ARTICLE IS MISBRANDED (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).

The purchasing public should be protected from deception by an order of the Federal Trade Commission to cease and desist from unfair methods of competition, in violation of Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), if that deception results in their securing an article or product which they did not intend to purchase, as well as where an article is misbranded.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 70 (4)—  
TEST OF "UNFAIR COMPETITION" IS WHETHER NATURAL AND PROBABLE USE OF DECEPTIVE LABEL CAUSES ORDINARY PURCHASER TO PURCHASE THAT WHICH HE DID NOT INTEND TO BUY (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).

Test of "unfair competition," authorizing order to desist, under Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), is whether the natural and probable result of the use of a label which is deceptive to ordinary purchaser makes him unwittingly, under ordinary conditions, purchase that which he did not intend to buy.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 75—  
"UNFAIR COMPETITION" DEPENDS ON WHETHER THERE IS ACTUAL CONFUSION, CAUSED BY SIMULATION OF ONE PERSON'S GOODS FOR ANOTHER'S, ACTUAL OR ATTEMPTED DECEPTION OR DAMAGES NOT BEING NECESSARY (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).

A deliberate effort to deceive is not a necessary element in unfair competition, to support an order of Federal Trade Commission to cease and desist from such practice, under Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45); nor is it necessary, to support such order, to find actual deception, or that any competitor of respondent has been damaged, but inquiry is whether there is actual confusion, brought about by simulation of one person's goods for those of another.

TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 70 (3)—  
USE OF ARTIFICIAL NAME IN MERCHANDISING MANUFACTURER'S PRODUCT, THOUGH NOT REGISTERED AS TRADE-MARK, WILL BE PROTECTED.

When an artificial name has been adopted by a manufacturer, and he makes use of it in merchandising his product, such coined word is his sole property, and a deliberate use of such name, although no attempt has been made to register it as a trade-mark, subjects the trespassing competitor to restraint in its use.

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 68 (1)—FALSE AND MISLEADING ADVERTISING CONSTITUTES "UNFAIR COMPETITION," WITH WHICH FEDERAL TRADE COMMISSION MAY DEAL (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

False and misleading advertising is a dishonest practice, and amounts to unfair competition, of public interest, with which the Federal Trade Commission may deal, under Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45.)

**TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—FEDERAL TRADE COMMISSION'S PETITION, AND SUPPORTING EVIDENCE, HELD SUFFICIENT TO REQUIRE RESPONDENT TO ANSWER CHARGE OF MARKETING HAIR DYE IN PACKAGES DECEPTIVELY SIMILAR TO COMPETITOR'S PACKAGE (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

Petition by Federal Trade Commission for the enforcement of an order directing respondent to cease and desist from unfair methods of competition, in violation of Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), and evidence supporting petition, showing that respondent was marketing his hair dye in packages which so closely resembled in size, shape, color, and printed matter the packages of a competitor as to deceive purchasing public under ordinary conditions, *held* sufficient to require respondent to answer the charge, in view of the previous confusion, claim of which was apparently acquiesced in by respondent's complying with portion of order to cease and desist.

**[617] TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY-NO. 80½—AFFIDAVITS SUPPORTING FEDERAL TRADE COMMISSION'S PETITION FOR ENFORCEMENT OF ORDER TO CEASE UNFAIR COMPETITION CANNOT BE CONSIDERED, AND WILL BE STRICKEN FROM RECORD (FEDERAL TRADE COMMISSION ACT, SEC. 5, 15 USCA SEC. 45).**

Affidavits submitted to support petition by Federal Trade Commission for enforcement of an order directing respondent to cease and desist from certain practices found by the Commission to constitute unfair competition, in violation of Federal Trade Commission Act, Sec. 5 (15 USCA Sec. 45), will be stricken from the record, since Circuit Court of Appeals is not authorized to consider them under the statute.

(The syllabus is taken from 23 F (2d) 615)

Petition by the Federal Trade Commission for the enforcement of an order entered against Paul Balmé, trading under the name and style of B. Paul, which order directed him to cease and desist from certain practices found by the Commission to constitute unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act (15 USCA Sec. 45), affirmed, and question of present violation referred to Commission, with directions.

*Bayard T. Hainer*, chief counsel, Federal Trade Commission, *Adrien F. Busick*, assistant chief counsel, *G. Edwin Rowland* and *James W. Nichol*, all of Washington, D. C., for petitioner.

*Munn, Anderson & Munn*, of New York City (*T. Hart Anderson* and *Charles A. Morton*, both of New York City, of counsel), for respondent.

Before MANTON, L. HAND, and SWAN, Circuit Judges.

[617]

MANTON, *Circuit Judge*:

The Federal Trade Commission issued an order against the respondent directing him to cease and desist from certain practices found by it to constitute methods of unfair competition in violation of section 5 of the act (38 Stat. 717). The order directed the respondent to cease and desist (1) from using the coined word "Oréal" either standing alone or in connection with any prefix thereto as a trade name or descriptive name for a henna hair dye when sold and distributed in interstate commerce; (2) from using the same word upon the containers in which the hair dye is sold or distributed in interstate commerce; (3) from using the coined word in advertising, either circular, newspaper or magazine; (4) from using on the container in which the henna hair dye is sold or distributed in interstate commerce, the French words "la plante merveilleuse" or on any labels or circular or newspaper or magazine advertising henna hair dye in such a way as to confuse respondent's product with any competing product; (5) "From putting up the henna hair dye, sold and distributed in interstate commerce, by the respondent, in any container so similar in color and general appearance of lettering or device with that of a competitor as to confuse and mislead the public into believing that the henna hair dye of the respondent is one and the same as that of its competitor"; and (6) from using, either on the label of the container in which the henna hair dye is packed or in advertising, false or descriptive words or phrases such as "New French discovery", or "The only harmless coloring in the world", or phrase or phrases of similar import, when sold or distributed in interstate commerce.

After the order of the Commission was made, the respondent complied with its prohibitions except as to the fifth section. It is for this refusal to comply that the Commission has petitioned this court asking for an order of enforcement.

It bases its application under section 5 of the act which provides:

If such person, partnership, or corporation fails or neglects to obey such order of the Commission while the same is in effect, the Commission may apply to the circuit court of appeals of the United States within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceedings, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to the facts, if supported by testimony, shall be conclusive.

The same section gives the right of review to a respondent affected by an order to cease and desist who seeks a modification or reversal or a setting aside of the order.[618] The statute in addition to conferring jurisdiction upon the Circuit Court of Appeals to enforce, set aside and modify orders of the Commission, makes such jurisdiction exclusive and requires precedence over other cases pending so that causes may be expedited.

The Circuit Court of Appeals is an appellate court reviewing decisions of the District Court. *U. S. v. Mayer*, 235 U. S. 55; 26 Stat. 826. The Federal Trade Commission Act confers special statutory jurisdiction and the extent of such jurisdiction and the conditions of its exercise over subjects or persons must necessarily depend upon the terms in which the jurisdiction is thus conferred. It does not depend upon the rank of the court upon which it is conferred. It must be strictly pursued because the court does possess jurisdiction over other subjects or persons more extended and general. *Galpin v. Page*, 85 U. S. 350; *Chamber of Commerce of Minneapolis v. Federal Trade Commission*, 280 Fed. 45. The exercise of such power conferred is to make and enter upon the pleadings, testimony and proceedings set forth in the transcript of record, a decree affirming, modifying or setting aside the order of the Commission, and is not dependent upon proof of the violation of the Commission's order, but upon proof of a violation of the law. The statute grants jurisdiction of the proceeding and of the question determined therein. The proceeding comprises (a) the complaint of the Commission; (b) the testimony taken; (c) the report by the Commission in which shall be stated the findings as to the facts, and (d) the order to cease and desist. It thus will be seen that the proceeding does not contain any evidence with respect to a violation by the respondent of the Commission's order but only with respect to respondent's original violation of the law; that is, as it engaged in the use of unfair methods of competition in interstate commerce. Therefore, the primary question presented to us is whether the Commission's determination on this point was correctly reached. It is not conceivable that the court would take jurisdiction of the proceeding on the Commission's petition for the enforcement of the order, without first holding that the Commission's order was valid and enforceable. It would not dismiss the petition for want of proof of a violation thereof until it had first found a valid order to be violated. The act provides that "the court shall have the same jurisdiction to affirm, set aside or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order."

Manifestly, it is very apparent that the question of violation of the Commission's order would not be involved until a valid order was recognized by this court after having acquired jurisdiction. Therefore, we must first examine the proceeding before the Commission and determine whether there has been a violation of the law. Until then, no good purpose can be served for determining disputed questions of fact as to a violation of the order. The statute does not impose any penalty for violation of the Commission's order and the order is not binding until vitalized by the power of this court to punish for contempt when the court shall have entered a decree affirming the order and commanding permanent obedience thereto, and it is not

until the Commission presents a case of justifying the charge of violation that action will be taken to punish. It is then, and not until then, that the question of fact as to violation of order becomes a proper issue to be determined by the court.

The filing of an answer or the receipt of affidavits disputing the alleged violation of the order is of no importance until the order to cease and desist has received confirmation by the Circuit Court of Appeals. When confirmed, the order then entered is identical with the one entered by the Commission unless, for good reasons, there should be a modification required. *Q. R. S. Music Co. v. Federal Trade Commission*, 12 Fed. (2d) 730.

The power to modify the order of the Commission is given by statute and includes the power to conform an order in point of law to the pleadings and findings. *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441; *L. B. Silver Co. v. Federal Trade Commission*, 289 Fed. 985; *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307. Even where the court may remand with instructions to modify in accordance with its opinion, the decree continues to be that of the court. *L. B. Silver Co. v. Federal Trade Commission*, 292 Fed. 753. But under the act, the jurisdiction of the court is original. *Butterick Co. v. Federal Trade Commission*, 4 Fed. (2d) 910. Where the fault in the Commission's [619] order is in point of law, the court may correct it but in doing so it recognizes that the Commission is purely a fact-finding body.

The words "unfair method of competition" are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the Commission, to determine as a matter of law what they include. *Federal Trade Commission v. Gratz*, 253 U. S. 421. The Commission is an administrative body. *Federal Trade Commission v. Eastman Kodak Co.*, 47 Sup. Ct. 688, decided May 31, 1927.<sup>1</sup> Therefore our first inquiry is to determine whether, on the facts found as supported by the evidence, there has been a violation of the law, and the finding of fact by the Commission having evidence to support it, is conclusive and binding upon the courts. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 563; *Harriet Hubbard Ayer v. Federal Trade Commission*, 15 Fed. (2d) 274.

L'Oréal Henné is a mark or name of a hair dye originally imported from France, but later manufactured in this country, and it is claimed that the respondent simulated the dress of this product and name as prepared for the market. It was manufactured and sold in France in 1900 by a concern known as the Société Française de Taintures Inoffensives pour Cheveux, which in English means the French Company of Inoffensive Hair Dyes. Pulverized henna is its basic ingredient. It is obtained from an Asiatic thorny tree or shrub and its leaves are reddish orange in color. Henné is the French for the English Henna. L'Oréal Henné was imported, packed in blue tin boxes, 3 $\frac{1}{8}$  inches in height and 2 $\frac{1}{4}$  inches in width and when subsequently manufactured in this country it was packed in blue pasteboard boxes of approximately the same size. The Commission placed importance upon the simulation of the package as

<sup>1</sup> 274 U. S. 619; see *ante*, p. 609.

practiced by the respondent, as well as a similarity in dress between the containers in which a competitor sold L'Oréal Henné, and the respondent his product D'Oréal Henna.

There is testimony that when first imported there were no henna hair dyes on sale in this country. A competitor of respondent, one Lebeau, commenced this importation and continued until nearly 1918, first shipping in the small blue tin cans and later importing it in bulk and reducing it to packages of from ten to fifteen pounds and also into individual cans and cardboard boxes which were manufactured here. The product was advertised extensively and his importations increased steadily, but not in large volume. He sold to wholesalers and in interstate commerce. On January 2, 1918, he procured a contract to sell this product for a period of ten years. By it he was granted the right to manufacture L'Oréal Henné and obtained the right to use the trademark L'Oréal and all the formulæ, processes and secrets for the manufacture of the product in the United States, Canada and Mexico. He made his product in this country under the formulæ as employed in the imported goods. The labels used were "exactly the same."

After the respondent entered the business, he closely simulated the name and dress of Lebeau's product of L'Oréal Henné which resulted in confusion among the trade and the buying public. Henna D'Oréal was placed upon the market in June, 1915. He traded under the name of B. Paul, following a practice said to be common in this trade, of using the given name in place of the surname. There is testimony that the formulæ of respondent's product is the same as the formulæ of L'Oréal Henné. It was placed in wooden boxes with dark blue labels and white markings. Later it was sold in tin boxes with the same color scheme, the containers being one-sixteenth of an inch higher and one-eighth of an inch more in width than L'Oréal Henné. Respondent advertised extensively and his business grew and much of his product was sold in interstate commerce. The charge of the Commission's complaint is that the respondent was marketing his product in packages which so closely resembled, in size, shape, color and printed matter thereon, the general appearance of the packages of L'Oréal Henné, that the similarity was calculated to and did deceive the purchasing public under the ordinary conditions which prevail in the usual course of retail trade, and that purchasers were induced by such similarity of the packages to buy respondent's product upon the mistaken belief that it was L'Oréal Henné.

The Commission has made a finding of fact which supports this charge of the complaint. There is evidence to support the finding as to the shape, size, color and printed matter on the packages. The containers were about the same in material and size. The respondent adopted the same color scheme. His explanations as to why he did so were found unsatisfactory to the Commission. He explained his change of lettering. But a comparison of the respective containers, with such change, shows the colors of the [620] letters were exactly the same and when considered with the size and style of the lettering and the names of the two preparations, the most conspicuous words on the face of each case are almost identical. Both are shaded in white and the resemblance is most striking. They both use the



words, "La plante merveilleuse", which in English means, "The marvelous plant", and the French words, "Recoloration Naturelle Des Cheveux", which in English means natural recoloration of hair. Respondent's Henna D'Oreal combined the words and in English reads, "Nature's Hair Restorer"; then follows the name of the manufacturer and the place of manufacture. But the words are in the same relative position upon the can.

The Commission found he carried on the deception by adding the French phrase, "La plante merveilleuse", which was not translated into English. It said that the French phrase was in the exact relative position on respondent's can as it was on the L'Oréal Henné can, and that this was done designedly. On the top of the can of L'Oréal Henné is a picture of a woman's head and flowing hair, although dissimilar in appearance, the phrase Henna D'Oreal over it and the English words, "Nature's Hair Regenerator" under it. The wording on the top of respondent's can is white with a dark blue background, a simulation as to color of the lettering on the top of the L'Oréal Henné can. Upon each can, pasted around the top for the purpose of sealing it, is a band of paper with printed matter thereon. On the L'Oréal Henné can the trade name is used and under it the words "Dark Chestnut" with the French equivalent, "Chatain Fonce". Turning the can, are found the words, "La plante merveilleuse" and the words, "Bande de sureté". Respondent has printed the words "Henna D'Oréal" and "Light Auburn" and on turning the can, the words "La plante merveilleuse" and "Guarantee Seal", the latter being the English equivalent of the French "Bande de sureté".

It thus appears that the respondent has copied the color of the can, the arrangement of the words on the face thereof, the woman's head on the top, the paper band around the can and placed them in the same position as the L'Oréal can and has adopted the English of the French words used in the manufacture of L'Oréal Henné. There is a finding that it was difficult to tell the difference and that there was confusion among the purchasing public. The unsatisfactory explanation given by the respondent of the choice of his trade name, considered with his previous experience in connection with his brother's business and the suggestion then of using the name respondent now uses, to which his brother objected, was a clear indication of a design and intent to use the name Henna D'Oreal with a view of capturing the trade flowing from the advertising and marketing of L'Oréal Henné. Witnesses called before the Commission supported the finding that there was in fact confusion.

It also appears that respondent's advertising is misleading and false in character. Such advertising referred to a "new French discovery," "the only harmless coloring in the world," "trade mark registered"; when in fact it was not, and "copyrighted in 1918," when in fact it was not.

There is here presented the question of whether the public interest is concerned which would warrant the Federal Trade Commission prohibiting this respondent from competing in trade in this unfair manner which strikingly affects his competitors. Is it of sufficient public interest to warrant the Federal Trade Commission in issuing its cease and desist order? The purchasing public should be pro-

tected from deception if that deception results in their securing an article or product which they did not intend to purchase as well as where an article is misbranded. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483; *Royal Baking Powder Co. v. Federal Trade Commission*, 281 Fed. 744. The test of unfair competition is whether the natural and probable result of the use by a respondent of a label which is deceptive to the ordinary purchaser makes him unwittingly, under ordinary conditions, purchase that which he did not intend to buy. *Notaseme Hosiery Co. v. Straus*, 201 Fed. 99.

We said in *Caron Corporation v. Vivaudou, Inc.*, 4 Fed. (2d) 995:

While the plaintiff has no right to a monopoly in the use of the word, the color, or the ornament, simpliciter, when it becomes an element in a manifold likely to divert from him his customers, the law will prevent its use.

There we pointed out that color may be effective as a means of fraud when used as an element in a dress otherwise shown to be fraudulent.

And in *Florence Manufacturing Co. v. J. C. Dowd & Co.*, 178 Fed. 73 we said:

The law is not made for the protection of experts but for the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, who, in [621]making purchases, do not stop to analyze, but are governed by appearances and general impressions.

*Nims on The Law of Unfair Competition and Trade Marks* (2d Ed. Sec. 117) says:

The question is not whether two articles are readily distinguishable when set side by side but whether the general impression made by defendant's article upon the eye of a casual purchaser who is unsuspecting and off his guard is such as to be likely to result in his confounding it with the original article.

The inquiry is whether there is actual confusion, which is brought about by the simulation of one person's goods for those of another. A deliberate effort to deceive is not a necessary element in unfair competition. *Thum Co. v. Dickinson*, 245 Fed. 609; *Trappey v. McIlhenny Co.*, 281 Fed. 23. Nor is it necessary to support the order below to find actual deception or that any competitor of the respondent has been damaged. *Charles Broadway Rouss, Inc. v. Winchester Co.*, 300 Fed. 706; *Rice & Hutchins, Inc. v. Vera Shoe Co., Inc.*, 290 Fed. 124; *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307.

L'Oreal is not a descriptive name of the product. When an artificial name has been adopted by a manufacturer and he makes use of it in merchandising his product, such coined word is his sole property (*Nims—The Law of Unfair Competition and Trade Marks*, 2d Ed. Sec. 52) and a deliberate use of such name, although no attempt has been made to register it as a trade mark, subjects the trespassing competitor to restraint in its use. *G. & C. Merriam Co. v. Saalfeld*, 198 Fed. 369; *Hygeia Distilled Water Co. v. Consolidated Ice Co.*, 151 Fed. 10; *Nims—The Law of Unfair Competition and Trade Marks* (2d Ed. Sec. 53). False and misleading advertising is a dishonest practice and amounts to unfair competition of public interest with which the Federal Trade Commission may deal. *Royal Baking Powder Co. v. Federal Trade Commission*, *supra*.

The respondent argues that section 5 of the Federal Trade Commission Act is unconstitutional (a) because it fails to define any standard

of conduct for the guidance of the Commission; (b) because it is penal and fails to define elements of the offense; and (c) because it authorizes an administrative body to legislate judicially-operative *ex post facto*. Section 5 has so often been considered and held to be constitutional by the courts that it is not necessary now to consider these objections to its constitutionality.

It is conceded by the Federal Trade Commission that sections 1, 2, 3, 4, and 6 of the order have been complied with but it is charged that the respondent is now violating section 5. The respondent is now selling its product in a can of the same size with a blue background and labeled "B. Paul's Henna" with a strip of paper as a sealing band and with the picture of a woman with flowing hair on the top. It is similar in color and general appearance to the lettering on the container used in marketing L'Oréal Henné. The reading matter differs, but the Commission says that it is a device used to confuse and mislead the public into believing that the henna hair dye of the respondent is one and the same as that of its competitor. The petition submitted on this application for enforcement points out the similarity of dress of the goods as to color, shape and size. The shape and size of the can are the same as those used and associated with the name L'Oréal Henné. It sets forth confusion among purchasers and among the sales force of establishments using the product.

In view of the previous confusion, the claim of which seems to have been acquiesced in by the respondent's conduct in complying with the order to cease and desist, and the charge made in the present petition, we think there is sufficient substance therein to require the respondent to answer the charge, which he will do within ten days from the date of the entry of the mandate herein, after which the Federal Trade Commission will take proof for and against the charge made in the present petition and report to the court its findings as to the facts and as to whether there is confusion caused to the purchasing public constituting unfair competition in trade, in which the public has an interest. The affidavits submitted to support the petition, we hold, should be stricken from the record because we are unauthorized to consider them under the statute.

The order of the Federal Trade Commission adjudging the respondent guilty of unfair competition is affirmed; the question of the present violation of section 5 for which enforcement is asked by the petition to this court is referred to the Federal Trade Commission with opportunity for the respondent to answer and submit proof, and with directions to the Commission to report its conclusions to this court.

Ordered accordingly.

[622] L. HAND, *Circuit Judge* (concurring) :

I think that we have no jurisdiction to review the Commission's order until we have decided that the respondent has disobeyed it. Section 5 of the act says that "if such person \* \* \* neglects to obey such order \* \* \* the Commission may apply to the Circuit Court of Appeals." That is not to say that the Commission may so apply if they merely allege that the respondent has disobeyed; it is the fact, not their assertion, which conditions our jurisdiction.

Such at least is the form of the act and such the decision of the Seventh Circuit, *Fed. Trade Com. v. Standard Education Soc.*, 14 Fed. (2) 947.

The answer is that we can not decide that question because section five confines our inquiry to the proceedings before the Commission up to the entry of its order, and that the respondent's disobedience necessarily occurred theretofore [thereafter]. In the first place, if the fact is a condition on our jurisdiction we have inherent power, like any other court, to decide it, else we could not act at all. In the second, we must decide it at some time anyway, and I can perceive no greater express power to act after the order has been held valid than before. We are assuming a power in either event not conferred on us in words.

Passing the form and turning to convenience I can not see that it is more awkward in practice to determine disobedience before validity than validity before disobedience. It is quite true that we run the chance of wasting our time either way, for we can not decide everything at once, but it is fairer, I think, to take up the issue of disobedience first. If the respondent has in fact obeyed the order, why should he be vexed with the suit at all? Presumably the question is of little moment to him. Only after his protestation of compliance has been shown to be untrue ought he to be called on to dispute the order. At least so it seems to me. The order has no sanction in any case and we are not to confuse the case with a contempt which presupposes some coercive power already exercised.

Therefore I think that all we should do is to enter the order of reference which we propose, and in which I concur. However, on the point of jurisdiction I am overruled, and, as in fact I agree that the order is valid, I concur also in our finding that it is, as well as in the court's opinion so holding.

## APPENDIX III

### RULES OF PRACTICE BEFORE THE COMMISSION

#### I. SESSIONS

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the secretary.

Orders signed by secretary.

#### II. COMPLAINTS

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.

Commission to investigate.

Issuance and service of complaint.

## III. ANSWERS

- Time allowed for answer.** (1) In case of desire to contest the proceeding the respondent shall, within such time as the Commission shall allow (not less than 30 days from the service of the complaint), file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial.
- Form of answer.** Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.
- Failure to deny any allegation.** (2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.
- If respondent desires to waive hearing.** (3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.
- Failure to answer.** (4) Three copies of answers must be furnished. All answers must be signed in ink by the respondent or by his duly authorized attorney and must show the office and post office address of the signer. All answers must be typewritten or printed. If typewritten, they must be on paper not more than 8½ inches wide and not more than 11 inches long. If printed, they must be on paper 8 inches wide by 10½ inches long.
- Number of copies; signature; etc.**

## IV. SERVICE

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to

the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed, as aforesaid, shall be proof of the service of the same.

Personal, or

By leaving copy or

By registered mail.

Return.

V. INTERVENTION

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

VI. CONTINUANCES AND EXTENSIONS OF TIME

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

VII. WITNESSES AND SUBPŒNAS

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for witnesses.

**Subpoenas for production of documentary evidence.** Subpoenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

**Witness fees and mileage.** Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

#### VIII. TIME FOR TAKING TESTIMONY

**Examination of witnesses to proceed as fast as practicable.** Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

**Notice to counsel.**

#### IX. OBJECTIONS TO EVIDENCE

**To state grounds of objection, etc.** Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

#### X. MOTIONS

**To briefly state nature of order applied for, etc.** A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

#### XI. HEARINGS ON INVESTIGATIONS

**By single commissioner.** When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and



place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

General counsel or assistant to conduct hearing.

**XII. HEARINGS BEFORE EXAMINERS**

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to take testimony.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument on exceptions.

When, in the opinion of the trial examiner engaged in taking testimony in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel at the close of the taking of testimony announce to the attorneys for the respondent and for the Commission that the examiner will receive at any time before he has completed the drawing of the "Trial Examiner's Report upon the Facts" a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

Examiner under certain circumstances to receive from each side statement of its contentions after testimony and before his report.

These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

Time allowance for submission of tentative findings.

Any tentative draft of finding or findings submitted by either side shall be submitted within 10 days after the closing of the taking of testimony and not later, which time shall not be extended.

### XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS

Commission may order.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Before any person designated.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Applications for depositions.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form

Deposition to be forwarded.

by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

And filed. Copy to defendant or his attorney.

Size of paper, etc.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not

less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days. Notæ.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing. Limitations as to time.

**XIV. DOCUMENTARY EVIDENCE**

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed. Relevant and material matter only to be filed.

**XV. BRIEFS**

All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated: Filed with secretary.

(1) A concise abstract or statement of the case. Proof of service.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point. Number.

Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited. To contain exceptions to trial examiner's report.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 by 10½ inches, with inside margins Form.

Abstract of case.

Brief of argument.

Index.

Printing.

not less than 1 inch wide, and with double-ledged text and single-ledged citations.

**Reply brief.** The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

**Time for briefs.** The time within which briefs shall be filed is fixed as follows: For the opening brief on behalf of the Commission, 30 days from the day of the service upon the chief counsel or trial attorney of the Commission of the trial examiner's report; for brief on behalf of respondent, 30 days after the date of service upon the respondent or his attorney of the brief on behalf of the Commission; for reply brief on behalf of the Commission, 10 days after the filing of the respondent's brief. Reply brief on behalf of respondent will not be permitted to be filed. Applications for extension of time in which to file briefs shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least 5 days before the time fixed for filing such briefs. Briefs not filed with the Commission on or before the dates fixed therefor will not be received except by special permission of the Commission. Appearance of additional counsel in a case shall not, of itself, constitute sufficient grounds for extension of time for filing brief or for postponement of final hearing.

**Service of Commission brief.**

Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent be not represented by attorney, at the proper post-office address. Written acknowledgment of service, or the verified return of the party making the service, shall constitute proof of personal service as hereinbefore provided, and the return post-office receipt aforesaid for said brief when registered and mailed shall constitute proof of the service of the same.

**Oral arguments.**

Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission.

#### XVI. REPORTS SHOWING COMPLIANCE WITH ORDERS

**Report of compliance.**

In every case where an order is issued by the Commission for the purpose of preventing violations of law the respondent or respondents therein named shall file with

the Commission, within the time specified in said order, a report in writing setting forth in detail the manner and form in which the said order of the Commission has been complied with.

#### XVII. REOPENING PROCEEDINGS

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding is issued the Commission may, at any time within 90 days after the entry of such order, for good cause shown in writing and on notice to the parties, reopen the case for such further proceedings as to the Commission may seem proper.

#### XVIII. ADDRESS OF THE COMMISSION

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.



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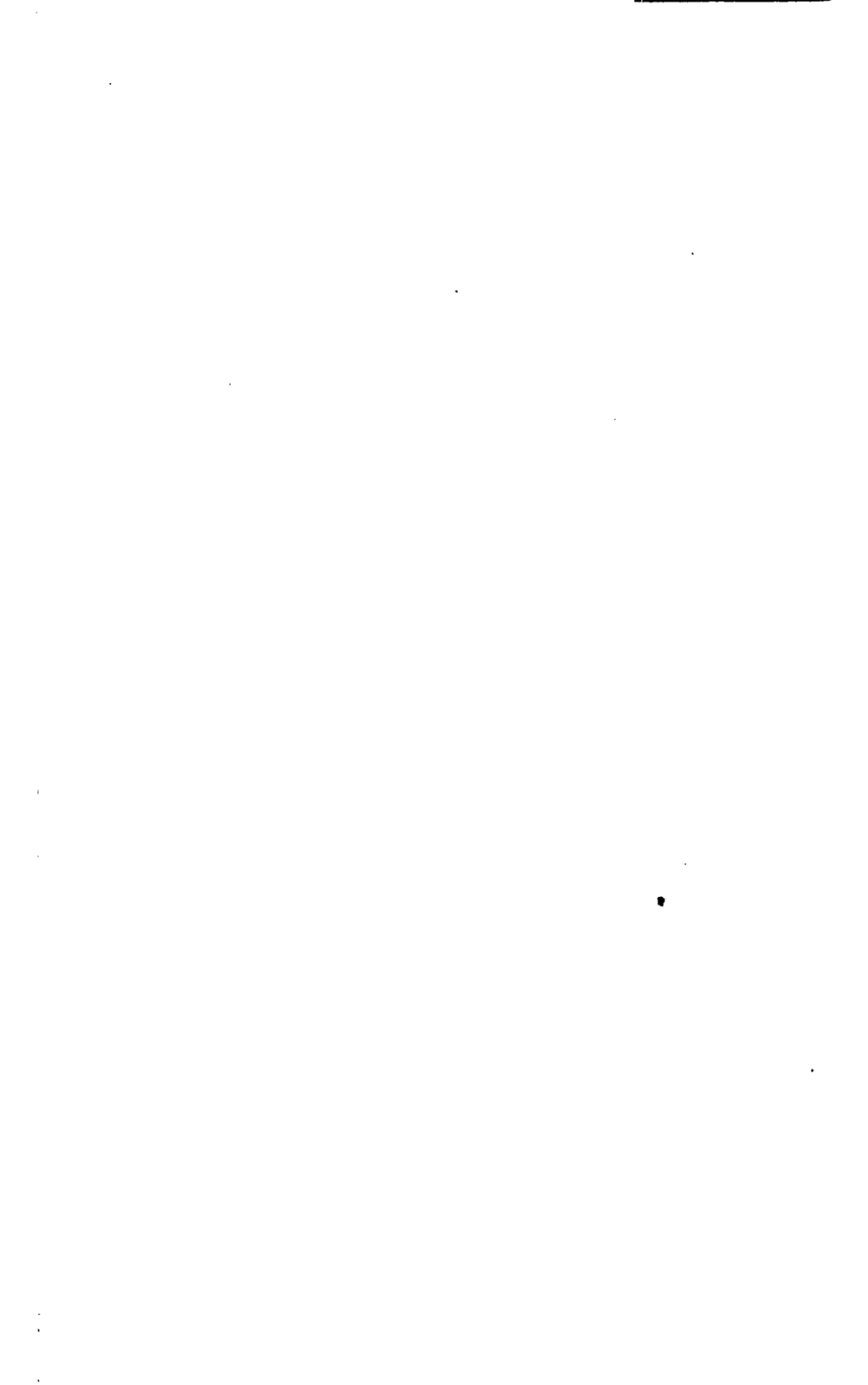
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